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Tuesday 11 March 2014

[1] Text with EEA relevance.

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Key to symbols used

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure: first reading
***II	Ordinary legislative procedure: second reading
***III	Ordinary legislative procedure: third reading

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments by Parliament:

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

EUROPEAN PARLIAMENT

2013-2014 SESSION

Sitting of 10 March 2014

The Minutes of this session have been published in OJ C 85, 12.3.2015.

2014-2015 SESSION

Sittings of 11 to 13 March 2014

The Minutes of this session have been published in OJ C 85, 12.3.2015.

TEXTS ADOPTED

Tuesday 11 March 2014

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN PARLIAMENT

P7_TA(2014)0201

European Investment Bank annual report 2012

European Parliament resolution of 11 March 2014 on the European Investment Bank (EIB) — Annual Report 2012 (2013/2131(INI))

(2017/C 378/01)

The European Parliament,

— having regard to the 2012 Annual Report of the European Investment Bank (EIB),

— having regard to Articles 15, 126, 175, 208, 209, 271, 308 and 309 of the Treaty on the Functioning of the European Union and to Protocol No 5 thereto on the Statute of the EIB,

— having regard to its resolution of 26 October 2012 on innovative financial instruments in the context of the next Multiannual Financial Framework ([1]),

— having regard to the report of its Committee on regional Development on risk sharing instruments for Member States experiencing or threatened with serious difficulties with respect to their financial stability, its position thereon of 19 April 2012 ([2]) and in particular the opinion of its Committee on Economic and Monetary Affairs,

— having regard to its resolution of 7 February 2013 on the 2011 Annual Report of the European Investment Bank ([3]),

— having regard to the report by the President of the European Council of 26 June 2012, entitled 'Towards a genuine economic and monetary union',

— having regard to the European Council conclusions of 28 and 29 June 2012, which, notably, foresee an increase in EIB capital of EUR 10 billion,

— having regard to the European Council conclusions of 27 and 28 June 2013, which call for the creation of a new investment plan to support SMEs and boost the financing of the economy,

— having regard to the European Council conclusions of 22 May 2013, which set out the objective of mobilising all EU policies in support of competitiveness, jobs and growth,

([1]) Texts adopted, P7_TA(2012)0404.
([2]) OJ C 258 E, 7.9.2013, p. 131.
([3]) Texts adopted, P7_TA(2013)0057.

— having regard to the Commission's communications on innovative financial instruments: 'A framework for the next generation of innovative financial instruments' (COM(2011)0662) and 'A pilot phase for the Europe 2020 project bond initiative' (COM(2011)0660),

— having regard to the capital increase of the European Bank for Reconstruction and Development (EBRD), notably in relation to the question of relations between the EIB and the EBRD,

— having regard to the decision on extending the scope of the EBRD to the Mediterranean area,

— having regard to the new Memorandum of Understanding between the EIB and the EBRD signed on 29 November 2012,

— having regard to Decision No 1080/2011/EU of the European Parliament and of the Council ([1]) on the EIB External Mandate 2007-2013,

— having regard to Rules 48 and 119(2) of its Rules of Procedure,

— having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Economic and Monetary Affairs (A7-0137/2014),

A. whereas the EIB was set up by the Treaty of Rome and, under Article 309 TFEU, its task is to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market with the aim of helping to realise the Union's priorities by selecting economically viable projects for investment by the EU;

B. whereas in these particularly difficult social and economic circumstances, marked by public budgetary restrictions, all EU resources and policies, including those of the EIB, need to be mobilised in efforts to sustain economic recovery and identify new sources of growth;

C. whereas the EIB also acts as the financing arm of, and complement to, other sources of investment by substituting or correcting market gaps;

D. whereas the EIB is helping the EU to maintain and reinforce its competitive edge on a global scale;

E. whereas the EIB will continue to be the cornerstone for, and catalyst of the development of, EU policies, providing for the continued presence of the public sector, and offering investment capacities, while ensuring the best possible integration and implementation of the EU 2020 flagship initiatives;

F. whereas the EIB, as a core stability instrument, will focus on playing a counter-cyclical role, acting as a reliable partner for sound projects throughout the EU and beyond;

G. whereas the EIB is supporting the key drivers of the growth and jobs objectives of the Europe 2020 strategy, such as growth-driving infrastructure, cutting-edge innovation and competitiveness;

H. whereas there is a crucial need to ensure that the EIB keeps its triple A credit rating, in order to preserve its access to international capital markets under best funding conditions, with subsequent positive impacts on project life and for stakeholders;

I. whereas in June 2012 the European Council launched a Compact for Growth and Jobs comprising a range of policies aimed at stimulating smart, sustainable, inclusive, resource-efficient and job-creating growth;

J. whereas the use of innovative financial instruments is seen as one way of extending the scope of existing tools, such as grants, and of improving the overall effectiveness of the EU budget;

K. whereas it is crucial to restore normal lending to the economy and to facilitate the financing of investment;

([1]) OJ L 280, 27.10.2011, p. 1.

L. whereas international financial instruments provide a new space for collaboration opportunities among all the institutional players and offer real economies of scale;

M. whereas the EIB's operations outside the EU are undertaken in support of the Union's external action policies and should be in line with, and promote, EU objectives, in accordance with Articles 208 and 209 TFEU;

N. whereas the EIB's activities are complemented by specific instruments provided by the European Investment Fund (EIF) that focus on providing both risk finance, for the benefit of SMEs and start-ups, and micro-finance;

O. whereas the capital increase has strengthened the EIB balance sheet, allowing for ambitious operational lending targets;

P. whereas specific effort has been made to undertake more joint interventions (combining EIF guarantees with EIB loans for SMEs);

Policy framework and guiding principles for EIB intervention

1. Welcomes the EIB Annual Report 2012 and the attainment of the agreed operational plan to finance some 400 projects in over 60 countries for an amount of EUR 52 billion;

2. Welcomes the EIB Board of Governors' approval of a EUR 10 billion capital increase, facilitating an additional EUR 60 billion (amounting to a 49 % expansion of lending targets) for long-term lending for projects in the EU in the period 2013-2015;

3. Asks the EIB to keep the anticipated targets in relation to its additional activity and to unlock EUR 180 billion in extra investments across the EU for the aforementioned period;

4. Recalls that for projects in the EU, prospects are particularly interesting for a number of priority thematic areas under the 'Europe 2020' strategy: innovation and skills, including low carbon infrastructure, investment in SMEs, cohesion, resource and energy efficiency (including the shift to low-carbon economy) 'packages'; notes that these focal areas have been duly identified in the EIB Groups' Operational Plan for 2013-2015, and welcomes the allotment of an additional EUR 60 billion in lending capacity in order to finance their implementation;

5. Strongly believes, however, that within these broad priorities greater focus should be placed on investing in long-term growth and job creation and on generating a durable and visible impact in the real economy, and calls, therefore, for a comprehensive evaluation providing viable figures on the long-term employment created through, and the impact on the economy as a result of, EIB lending, in all areas, following the financial crisis;

6. Welcomes the launch of the Growth and Employment Facility (GEF), which will enable the EIB to monitor in greater depth the employment and growth impact of the projects it finances;

7. Calls on the EIB to continue to support the EU's long-term priorities for economic and social cohesion, growth and employment, environmental sustainability, climate action and resource efficiency, through further development of new financial and non-financial instruments designed to address both short-term market inefficiencies and the more long-term structural gaps of the EU economy;

8. Encourages the EIB to negotiate and conclude memorandums of understanding (MoUs) with regional development banks active in its regions of operation in order to foster synergies, share risks and costs, and ensure sufficient lending to the real economy;

9. Regards the Compact for Growth and Jobs as an important but not sufficient response to the challenges facing the EU, noting that the EIB capital increase and an enhanced recourse to joint Commission-EIB risk sharing instruments, coupled with synergies between EIB and EIF specialised activities, are key elements for its success;

10. Asks the EIB to prioritise its financing on projects that contribute strongly to economic growth;

11. Recalls that the Commission presented, together with the EIB, a report on the opportunities and targeted priorities to be identified through the implementation of the Pact for Growth and Employment, especially with regard to infrastructure, energy efficiency and efficient use of resources, the digital economy, research and innovation and SMEs; calls, on the basis of this report, for a political debate in Parliament to be attended by the Presidents of the European Council, the Commission and the European Investment Bank;

12. Is particularly concerned that finance in Programme Countries (Greece, Ireland, Portugal, Cyprus) remained low in the course of 2012, representing roughly +/- 5 % of overall EIB investment; notes that the EIB's targets of investment in Programme Countries for 2013 represent up to EUR 5 billion, out of an overall EU target of EUR 62 billion;

13. Is concerned that the EIB has maintained a somewhat risk-averse policy in its lending, thus limiting the scope of potential borrowers to meet EIB's lending requirements and, subsequently, hindering the value-added of loans;

14. Demands that the EIB increase its internal risk-taking capacity by ensuring that its risk-management systems are adapted to the current environment;

15. Acknowledges that it is fundamental for the EIB to maintain its triple A rating in order to preserve its financial strength and capacity to inject money in the real economy; urges, however, the EIB together with the EIF to consider increasing its engagement in more risk-related activities, in order to safeguard a reasonable cost-benefit perspective;

16. Notes the increase in the EIB's higher-risk special activity targets to EUR 6 billion in 2013, the increase in funding for risk-sharing and credit enhancement initiatives to EUR 2,3 billion, and the recent launch of the Growth Financing Initiative (GFI) easing access to finance for innovative mid-cap companies;

17. Calls on EIB to increase its activity under the Risk Capital Mandate (RCM) and the Mezzanine for Growth (MFG) mandate provided by the EIB to the EIF;

18. Welcomes the EIF's increase of its EIB-funded risk capital resources mandate with EUR 1 billion, with particular focus on higher-risk mezzanine financing as part of the joint EIB-EIF actions to tackle financing constraints for new innovation and growth plans of European mid-sized businesses;

19. Invites the EIB to be more proactive in providing its technical expertise in all key areas of activities with high growth potential throughout all Member States; recalls that technical and financial advice is an efficient means of helping project delivery and speeding up disbursements and real investment; believes, therefore, that EIB expertise should be augmented and made available at early stages in projects co-financed by the EU and the EIB, and in ex-ante appraisal of large scale projects, including through the Joint Assistance to Support Projects in European Regions (JASPERS) instrument;

20. Urges the EIB, in the current context of critically low absorption rates in many Member States, to enhance efforts to support Member States' absorption capacity of EU resources, including Structural Funds, by further developing additional joint risk-sharing instruments and by adapting the existing ones already funded by the EU budget;

21. Calls on the Member States, where appropriate, to work with the Commission in using part of their Structural Fund allocations in order to share the EIB loan risk and provide loan guarantees for knowledge and skills, resource and energy efficiency, strategic infrastructure and access to finance for SMEs;

22. Appreciates that unused structural funds can now be used as a special guarantee fund for EIB lending, especially in Greece;

23. Notes that in 2012 the Bank signed Structural Programme Loans (SPL) to a value of EUR 2,2 billion, enabling support for numerous small and medium-sized schemes in line with the priorities of the Cohesion Policy in various sectors;

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24. Calls on the EIB, in light of the different economic and financial conditions that prevail within the EU, to develop, in close cooperation with the Member States, result-driven investment plans that are properly adjusted to national, regional and local growth priorities, taking into due account the horizontal priorities of the Commission's Annual Growth Survey and the European Semester for economic governance;

25. Encourages the Bank to explore possibilities of expanding its involvement by pro-actively participating in partnership agreements between the Commission and Member States;

26. Notes the decreasing trend in the number of public-private partnerships (PPPs) during and following the crisis, and recalls, at the same time, the particularly important role they play in investment, especially in transport networks and in research and innovation; notes that while the EU PPP market has grown in value, it has recorded significantly fewer transactions;

27. Believes State guarantees (SGs) to be valuable instruments in addressing market imperfections that may hold up the delivery of PPP programmes and projects; drawing on EIB's expertise in this field, calls for the increase of its participation in the loan guarantees provided to the PPPs via the SGs;

28. Believes, moreover, that the EIB advisory capacity, based on expertise gathered in the European PPP Expertise Centre (EPEC), could be used to provide targeted technical and specialised assistance at government level and where appropriate also at regional level, in order to facilitate proper assessments regarding the benefits of involving a SG in a PPP programme;

29. Recalls the launch in 2012, by the EIB and the Commission and with the support of Member States, of the pilot phase of the Project Bond Initiative, which aims at boosting the funding for key-infrastructure projects by attracting institutional investors;

30. Welcomes the Projects Bonds Pilot Phase first six-monthly report indicating the approval of nine projects in six countries; calls for the continued and increased use of such bonds and for a regular review of their efficiency in order to boost viable investment in debt instruments that channel private capital into the transport, energy and ICT infrastructure projects that are needed, especially those with a cross-border dimension; believes, however, that the EIB should conduct better evaluations as to the projects in which it wishes to invest, including evaluations of the safety and risk profiles thereof; recalls that the EU budget is providing EUR 230 million in support of EIB credit enhancement activity for infrastructure investment in the transport, energy and communications sectors;

31. Demands that it be informed about the selected projects in an appropriate manner and in due time;

32. Notes with concern that key challenges (e.g. turning interest into commitments, limited experience with bond solution from procuring authorities, hesitation to engage from institutional investors, concern over costs from sponsors) remain; invites the Bank to assess properly the possibility of co-investing in early bond deals in order to reassure investors and sponsors; calls on the EIB to ensure that the Project Bond Initiative is consistent with the EU long-term climate target, i. e. that it focuses on low-carbon infrastructures;

33. Is concerned about the poor project performance in relation to the Castor Project; demands that the Bank provide details on the soundness of its due diligence and to deliver information on whether the geological studies carried out indicate the possibility of a seismic risk or not, what the percentage was and how it was addressed;

34. Awaits the final evaluation report concerning the PBI Pilot Phase, expected in 2015;

35. Welcomes the EIB's new energy policy, introducing new energy lending criteria that reflect the EU's energy and climate policies as well as current investment trends; demands that EIB energy investments be made public and be analysed on an annual basis, showing what energy sources are supported by the EIB; wishes to emphasise, however, that the EIB's investment policy ought to focus even further on sustainable projects; recalls, nevertheless, the need to present a comprehensive phase-out plan for lending for non-renewable energy;

36. Welcomes the introduction by the EIB of a new Emissions Performance Standard, to be applied to all fossil fuel generation projects in order to screen out investments with projected carbon emissions exceeding a threshold level; calls on the Board of the EIB to keep the Emissions Performance Standard under review and to consider more restrictive commitments in the future;

37. Urges the Bank, in view of the 2030 climate package, including its decarbonisation priorities, to step up its low-carbon investment efforts and to work on policies leading to more ambitious climate targets; requests that the EIB perform a climate assessment and review of all its activities in 2014, leading to a renewed climate protection policy, e.g. through project assessment and an integrated approach to smartly combine sector-specific policies for key sectors; calls on the EIB to annex this review to its next annual report;

38. Recalls the important role played by the EIB in financing public and private sector investment in energy infrastructure and in supporting projects that contribute to achieving EU climate and energy policy goals; recalls its 2007 resolution calling for an end to public funding for fossil fuel projects and a shift to energy efficiency and renewable energies; believes that the EIB, in cooperation with the Commission, should, in line with Union and international climate change objectives and the best international standards, update its climate change strategy as regards its financing operations before the end of 2015;

39. Calls for the EIB's resources and expertise to be boosted in order to provide for climate change adaptation;

40. Demands that the EIB enforce the best international standards regarding hydropower, namely the World Commission on Dams guiding principles and the Hydropower Sustainability Assessment Protocol (HSAP), which means investing only where countries have put in place a legal framework establishing energy planning mechanisms (including 'no go' areas), that negative impacts on ecosystems and local communities must be properly assessed, avoided, mitigated and monitored, and that the projects may not be located in or near protected areas or on river stretches with good ecological status;

41. Calls on the EIB to carefully factor into its projects the vision and targets of the EU Biodiversity Strategy to 2020 'Our life insurance, our natural capital';

Strengthening the range of support for SMEs and mid-cap companies

42. Recalls that SMEs are considered the backbone of the EU's economy and the main driver of European growth and employment, accounting for more than 80 % of employment in the private sector;

43. Welcomes the particular focus (in the context of increasing the lending activity in the EU) on helping to improve access to finance for SMEs, and welcomes, subsequently, the EIB Group's target for 2013 of more than EUR 19 billion in SME lending to be signed within the EU;

44. Calls on the Council also, in this connection, to agree swiftly on the joint Commission-EIB initiatives and to blend EU budget resources intended for SMEs, as well as to take more resolute action in implementing cooperation with the ECB so as to reduce the financing constraints placed upon SMEs; points out that the main problem in several Member States is that the fragmentation of financial markets results in a lack of funding and in higher funding costs, especially for SMEs; calls for the EIB's efforts to be redirected towards defragmentation in order to promote funding for SMEs, entrepreneurship, exports and innovation, which are vital for economic recovery;

45. Welcomes the enhanced bank lending to SMEs through the revitalisation of the SME securitisation market by means of the EIB Group's new ABS initiative; invites the EIB to provide for a market analysis with a view to better calibrating this EIB offer to stakeholders needs; welcomes the enhancement of the credit capacity of the EIF through a capital increase and mandate, and invites the EIB and the Commission to finalise the process by early next year;

46. Supports the initiatives of the EIB Group on innovative financings for SMEs and mid-cap companies through the launching of Horizon 2020 and COSME financial instruments and the Risk Sharing Instruments (RSI) in order to encourage banks to provide financial resources by means of loans and guarantees, and to ensure the provision of long-term risk capitals;

47. Supports the Commission-EIB joint SME Initiative under the new MFF, blending EU funds available under the COSME and Horizon 2020 programmes, with up to EUR 8,5 billion of resources dedicated to the European Structural and Investment Funds (ESIF), in view of generating additional lending to SMEs;

48. Calls on the Member States to participate actively, by contributing to the Joint Instruments from their ESIF allocations, in order to support increased lending to SMEs in their territory, thus increasing the overall leverage effects;

49. Encourages the EIB to expand the Trade Finance Initiative; considers that this guarantee mechanism for SMEs is of key importance and should be widened at EU scale, wherever it is deemed most needed; calls on the EIB to develop its own trade facilitation programme; calls on the EIB as a first step to establish measures to ensure the provision of the guarantees needed for companies to realise their full export potential;

50. Supports the EIB's focus on the regional and local dimension and calls on the Member States to make full use of financial engineering shared management instruments such as the JEREMIE programme and regional fund-to-fund schemes providing equity and debt finance to local SMEs;

51. Welcomes the ex post evaluation of EIB intermediated lending to SMEs in the EU for the period 2005-2011; acknowledges that in this area, over the period 2005-2012, the EIB signed EUR 64 billion in loans to around 370 financial institutions within the EU 27; notes that by the end of 2012, EUR 53 billion of this money had been disbursed to those financial institutions which, in turn, had lent nearly EUR 48 billion to SMEs through around 300 000 sub-loans;

52. Notes that the evaluation shows EIB-SME intermediate lending (via the L4SME product) to be consistent with EU objectives; calls, nonetheless, for a better assessment of complementarity between the EIB product and the national policy mixes, in order to improve further the operations' relevance; asks the EIB to bring forward proposals for enhancing the effect of the L4SME product so that it can be mobilised to fill specific gaps, instead of funding a broad spectrum of SMEs, thereby optimising EIB's contribution to growth and employment;

53. Notes with concern that during the period under review the EIB loans had 'some' impact on growth and employment, but with great variations across countries (only 1/3 of SMEs attributed the growth of turnover to the EIB funding); is concerned that there is only limited evidence that the EIB loans helped maintain employment; notes that the relative impact on growth and employment was found to be higher in the new Member States; acknowledges, however, that the period under review included the financial and economic crisis and that the relatively modest level of job creation was achieved despite a background of falling employment levels;

54. Is concerned that EIB funding, for a majority of operations, seems to have been used in support of SME 'champions', not as 'gap funding'; notes, however, that more than 80 % of the SMEs reached were companies with less than 50 employees, which proves that the EIB reaches out to the smaller segment of the SME universe;

55. Demands that the EIB make full use of the eligibility criteria in order to influence the targeting of financial beneficiaries in a more effective way;

56. Invites the EIB to identify and select higher-value-added and higher-risk projects, notably by identifying start-ups, micro-enterprises, cooperatives, clusters of enterprises, SMEs and mid-cap companies undertaking research, development and innovation projects in priority technologies area;

57. Emphasises the need to increase the level of awareness and understanding among potential investors and beneficiaries of the existence of innovative financial tools; encourages the setting up of a communication policy to promote the visibility of various actions carried out by the EU, through these new financial instruments, via the EIB; stresses, furthermore, that extensive and systematic access to project information, as well as greater involvement on the part of project beneficiaries and local civil society — which could be improved through EIB-financed investments — should be ensured;

58. Calls on the EIB to establish an action plan to simplify access to information and funding for SMEs, focusing in particular on the administrative formalities for access to funding;

59. Recalls that intermediate lending represents over 20 % of the total annual lending of the EIB;

60. Reiterates with concern that a considerable number of outstanding issues remain unresolved in this area, notably the lack of transparency (especially concerning information about the final beneficiaries), the difficulty in assessing the economic and social impact of the loans (resulting in a flawed targeted approach) and the reliance, via outsourcing of responsibilities, on financial intermediaries for carrying out the due diligence; urges the Bank to provide details on its approach to accelerate measures addressing these issues and asks for a stringent list of criteria for selection of these financial intermediaries to be established by the EIB jointly with the Commission and be made publicly available;

61. Urges the EIB to make an up-to-date and comprehensive evaluation of how the financial crisis has affected the final recipients of EIB funding, and to provide a thorough assessment of the effects and impact of the financial crisis on the current status of financial intermediaries used by the Bank, both within and outside of the EU;

62. Demands that the EIB ensure that its goal of generating employment for around a half a million people, through lending to infrastructure, resource efficiency and knowledge economy projects in 2013 alone, is accomplished;

63. Notes that, due to the difficult economic environment and tighter credit markets, the funding constraints on companies and the public sector continue to hold back the employment of young people and to limit the scope for improving vocational training;

64. Believes the EIB's Youth Employment programme (with a lending volume of EUR 6 billion), comprising the Jobs for Youth and Investing in Skills components, to be of utmost importance in addressing these issues; welcomes the interim implementation report showing important achievements in this sector, such as the EUR 4,9 billion provided in loans through the Investing in Skills sub-programme, complemented by the EUR 2,7 billion provided under the Jobs for Youth pillar; acknowledges the early accomplishment of its objectives;

65. Supports the Bank's objective of further maximising its lending targeting to SMEs in order to establish a clear link between EIB lending and the creation of new jobs for young people;

66. Invites the Bank to widen its scope of action and to make use of additional instruments in order to provide viable incentives for generating youth employment, especially in Member States with notoriously high rates of youth unemployment;

The EIB's contribution to EU external policies

67. Asks the EIB, in line with the review of EIB's mandate for operations outside the European Union, to support the European Union's foreign policy objectives as conceived by the Commission and the European External Action Service;

68. Welcomes the EU Guarantee for external lending, provided to the EIB by the EU budget, of a size similar to the current one, set at a maximum ceiling of EUR 30 billion (split into a General Mandate of EUR 27 billion and an optional EUR 3 billion subject to the Mid-Term Review) for the next financial period by using reflows from unused FEMIP (Facility for Euro-Mediterranean Investment and Partnership) operations dating back to before 2007;

69. Asks the European Court of Auditors (ECA) to carry out a special report on the performance and alignment with EU policies of EIB external lending activities before the mid-term review of the EIB's external mandate and to compare their added value with regard to the own resources used by the EIB; asks the ECA furthermore to differentiate in its analysis between the guarantees granted by the EU budget, the investment facility guaranteed by the EDF, the various forms of blending used in the EU-Africa infrastructural trust fund, the Caribbean investment fund and the investment facility for the Pacific and the usage of reflows for these investments;

70. Welcomes the increased flexibility provisions provided under the new external lending mandate of the EIB; calls on the EIB to maximise its support of EU policies and objectives;

71. Asks the EIB to make additional flexible use of the Guarantee Fund, and to focus more on own-risk lending, by extending its area of reach for bankable projects; insists that the EIB ensure a high level of visibility to the final beneficiaries of the projects of the European financial support it provides;

72. Notes that the pre-accession countries and the eastern and southern neighbourhood are at the top of the EIB's priority areas; emphasises, in particular, the need to maintain support to democratic and economic transitions following the Arab Spring, with specific focus on support for civil society's components, job creation and economic recovery in the Southern countries and Eastern partner countries; notes with satisfaction the focus on SMEs and access to finance;

73. Supports, in the context of the EU's external policies, the progressive development of new financial products with the Commission and the Member States, such as products blending EU grants, loans and risk sharing instruments in order to reach new categories of firms; demands that best practices and well-defined eligibility criteria be defined for the use of those instruments, accompanied by structured reporting, monitoring and control conditions; calls for the finalisation of allocation policy;

74. Expects, therefore, the governance report on the implementation of the platform for cooperation with international financial instruments on blending to include detailed and consistent information in this regard and to ensure an adequate role for the EIB; calls on the Commission to provide a full-fledged report on the impact and results of the implementation of financial facilities in the context of the platform for cooperation on blending;

75. Welcomes the EIB's support for projects, across several energy sectors, targeting growth and jobs; recalls the need to maintain consistency with the new developments in the EU's energy and climate policies; encourages the EIB, in the context of its renewed energy policy, to continue to support, both within and outside of the EU, projects dedicated to energy efficiency and sustainable renewable energies, and thereby pave the way towards a low carbon economy;

The EIB's cooperation with other international financial institutions

76. Recalls that structured cooperation between EU bodies (the Commission and the EIB) and other financial institutions is the only efficient means to prevent overlapping activities;

77. Welcomes the updated Memorandum of Understanding agreed between the EIB and the EBRD reflecting the willingness on the part of the EU to intensify the level of coordination and cooperation between these two major international financial institutions; encourages the EIB also to negotiate and conclude Memorandums of Understanding (MoUs) with regional development banks active in its regions of operation in order to foster synergies, share risks and costs, and ensure sufficient lending to the real economy;

78. Calls on both institutions to engage in the best possible operational coordination in terms of complementarity and division of labour, in order to research systematically the best opportunities and synergies, and to find optimal leverages in the support and implementation of EU policy objectives while respecting their respective comparative advantages and specificities;

79. Encourages the EIB and EBRD to strengthen, at the earliest possible stage (ex-ante evaluation or identification phases of action), their expertise, their strategic and programming approaches in the various fields of intervention and, in particular, their cooperation on risk management instruments (financial, operational or country risks), in order to enhance the supervision of risk;

80. Welcomes the new Joint Action Plan agreed in November 2012 between the EIB, the EBRD and the World Bank Group, aimed at supporting economic recovery and growth in Central and South Eastern Europe, noting that the action plan sets out more than EUR 30 billion in joint commitments for the period 2013-2014; calls on the EIB to commit a minimum of EUR 20 billion, as agreed;

81. Reiterates its proposal for the European Union to become a member of the EIB;

The EIB's governance, compliance and control framework

82. Calls on the EIB and other associated partners and stakeholders to further improve their governance mechanisms through, *inter alia*, the development of exhaustive and sound monitoring, reporting and control systems;

83. Welcomes the EIB's reinforcement of its commitment to transparency by joining the International Aid Transparency Initiative (IATI);

84. Demands that the Bank ensure the full independence and viable functionality of its complaints mechanism;

85. Calls on the EIB to comply with the provisions of the Aarhus Convention by setting up a public Register of documents, in order to guarantee the right of access to documents as enshrined in the EU Treaties; asks the Bank to keep its commitment and to make the Register public as of 2014;

86. Demands that the next annual report be complemented with a set of cross-cutting performance indicators on the impact of the financing operations for the main domains of EIB interventions, the expected multiplier effect when appropriate and the transfer of financial advantages in the programmes funded;

87. Reiterates and accentuates the Bank's responsibility in enhancing the level of transparency in the selection of financial intermediaries and partners for co-financed projects and as regards the final beneficiaries;

88. Stresses that the EIB should reduce bureaucracy in order to allocate funding more effectively and swiftly;

89. Calls on the EIB to further enhance transparency in its lending through financial intermediaries by reporting annually on its lending to SMEs, providing aggregated data on the level of disbursements made to SMEs, the number of SMEs targeted, average loan size and supported sectors, including an evaluation of the accessibility of the loans for SMEs and the effectiveness thereof;

90. Calls on the EIB to refrain from cooperation with financial intermediaries with a negative track record in terms of transparency, fraud, corruption and environmental and social impacts; encourages the EIB to form partnerships with transparent and accountable financial intermediaries with established links to the local economy in each country of operation; calls on the EIB, in this connection, to ensure greater transparency, especially in the intermediated loans business, as well as to exercise enhanced due diligence in preventing the use of tax havens, transfer pricing, tax fraud, tax evasion and aggressive tax avoidance or planning; calls for the establishment of a stringent, publicly available list of criteria for the selection of financial intermediaries; calls on the EIB to strengthen its cooperation with national public credit institutions in order to maximise the positive impact of its funding programmes for SMEs;

91. Calls on the EIB immediately to engage in an inclusive revision process of its Non-Cooperative Jurisdictions policy, duly taking into account recent developments in this respect at EU and international level; Calls for the EIB, therefore, to ensure that all companies and financial institutions involved in its projects publicly disclose the beneficial ownership of any legal structure directly or indirectly related to the company, including trusts, foundations and bank accounts;

92. Asks also for a public exclusion list for financial intermediaries to be developed jointly with the Commission, based on their track record in terms of transparency, fraud, links to offshore jurisdictions and social and environmental impacts;

93. Considers it to be fundamental that the EIB maintains its triple A rating, which enabled it to borrow EUR 71 billion on the international capital markets in 2012 at favourable rates; encourages the EIB, however, to strengthen its capacity to prioritise higher-value-added projects with higher risk;

94. Recalls and stresses, as in previous years, the need for prudential banking supervision of the EIB and calls for a legal study into ways of finding a possible solution to this issue;

95. Proposes that this regulatory supervision be:

(i) exercised by the ECB on the basis of Article 127(6) TFEU or

(ii) exercised in the context of the future Banking Union envisaged in the Commission's communication of 12 September 2012 or

(iii) failing that, and on the basis of a voluntary approach by the EIB, carried out by the European Banking Authority, with or without the participation of one or more national supervisors, or else by an independent auditor;

regrets that the Commission has proposed no action in this regard, despite Parliament's requests dating back to 2007;

96. Welcomes the new internal developments within the EIB related to the overall compliance with best banking practices; demands that the EIB's banking partners also comply with best banking practices which are compatible with Union law on financial services and with financial market stability, in the context of its operations both within and outside the EU; requests that the EIB, in its annual work plan, include an audit of one activity area in order to give assurance that best banking practices are part of the Bank's internal written procedures;

97. Calls on the EIB to increase further the transparency and accessibility of its activities, evaluations and outcomes through better access to information, both internally to EIB staff, by incorporating participation at relevant internal EIB meetings, and externally, for example on its website;

98. Welcomes the fact that the EIB has taken measures in the area of anti-money laundering and combating the financing of terrorism, and has reinforced the resources of its compliance function through the appointment of a new Group Chief Compliance Officer; requests that Parliament be updated regularly on the results presented in the Group Chief Compliance Officer's report;

99. Calls on the EIB to follow the country-by-country reporting in order to combat the financing of illegal activities; considers that, in order to be eligible for EIB financing, all beneficiaries, whether corporations or financial intermediaries, that are incorporated in different jurisdictions must be obliged to disclose country-level information about their sales, assets, employees, profits and tax payments in each country in which they operate in their audited annual reports; considers also that beneficiaries must make contracts with host governments public and, in particular, disclose the fiscal regime in each country in which they operate;

100. Requests that the control environment be adapted to accommodate future increase in the volume of funding requests generated as a result of the EIB capital increase and within other financial partnerships, notably for risk management functions;

The EIB's follow-up of Parliament resolutions

101. Calls on the EIB to report on the state of play and status of previous recommendations issued by Parliament in each annual report, especially as regards the impact of its lending activities in its various regions of operation on growth and job creation therein and in the EU, and on economic integration between the EU and candidate and neighbourhood countries;

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102. Instructs its President to forward this resolution to the Council, the Commission, the European Investment Bank and the governments and parliaments of the Member States.

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P7_TA(2014)0202

European System of Financial Supervision review

European Parliament resolution of 11 March 2014 with recommendations to the Commission on the European System of Financial Supervision (ESFS) Review (2013/2166(INL))

(2017/C 378/02)

The European Parliament,

— having regard to Article 225 of the Treaty on the Functioning of the European Union,

— having regard to Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board ([1]),

— having regard to Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) ([2]),

— having regard to Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) ([3]),

— having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) ([4]),

— having regard to Council Regulation (EU) No 1096/2010 of 17 November 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board ([5]),

— having regard to Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) ([6]),

— having regard to its position of 12 September 2013 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with Council Regulation (EU) No …/… conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ([7]),

— having regard to its position of 12 September 2013, with a view to the adoption of Council regulation (EU) No …/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ([8]),

([1]) OJ L 331, 15.12.2010, p. 1.
([2]) OJ L 331, 15.12.2010, p. 12.
([3]) OJ L 331, 15.12.2010, p. 48.
([4]) OJ L 331, 15.12.2010, p. 84.
([5]) OJ L 331, 15.12.2010, p. 162.
([6]) OJ L 331, 15.12.2010, p. 120.
([7]) Texts adopted, P7_TA(2013)0371.
([8]) Texts adopted, P7_TA(2013)0372.

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— having regard to the report of its Committee on Economic and Monetary Affairs of 3 June 2010 on the proposal for a regulation of the European Parliament and of the Council establishing a European Banking Authority ([1]) and to its position of 22 September 2010 on that proposal ([2]),

— having regard to the report of its Committee on Economic and Monetary Affairs of 3 June 2010 on the proposal for a regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority ([3]) and to its position of 22 September 2010 on that proposal ([4]),

— having regard to the report of its Committee on Economic and Monetary Affairs of 3 June 2010 on the proposal for a regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority ([5]) and to its position of 22 September 2010 on that proposal ([6]),

— having regard to the report of its Committee on Economic and Monetary Affairs of 18 May 2010 on the proposal for a directive of the European Parliament and of the Council amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets ([7]) and to its position of 22 September 2010 on that proposal ([8]),

— having regard to the report of its Committee on Economic and Monetary Affairs of 25 May 2010 on the proposal for a regulation of the European Parliament and of the Council on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board ([9]) and to its position of 22 September 2010 on that proposal ([10]),

— having regard to the report of its Committee on Economic and Monetary Affairs of 25 May 2010 on the proposal for a Council regulation entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board ([11]) and to its position of 22 September 2010 on that proposal ([12]),

— having regard to the opinion of its Committee on Economic and Monetary Affairs of 1 March 2013 on discharge in respect of the implementation of the budget of the European Banking Authority for the financial year 2011,

— having regard to the opinion of its Committee on Economic and Monetary Affairs of 1 March 2013 on discharge in respect of the implementation of the budget of the European Insurance and Occupational Pensions Authority for the financial year 2011,

— having regard to the opinion of its Committee on Economic and Monetary Affairs of 1 March 2013 on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2011,

— having regard to the opinion of its Committee on Economic and Monetary Affairs of 5 September 2013 on the General budget of the European Union for the financial year 2014 all sections,

— having regard to the Core Principles for Effective Banking Supervision endorsed by the Basel Committee on Banking Supervision on 13 to 14 September 2012 ([13]),

— having regard to the Key Attributes of Effective Resolution Regimes for Financial Institutions of Financial Stability Board published in October 2011,

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([1]) A7-0166/2010.
([2]) OJ C 50 E, 21.2.2012, p. 214.
([3]) A7-0170/2010.
([4]) OJ C 50 E, 21.2.2012, p. 209.
([5]) A7-0169/2010.
([6]) OJ C 50 E, 21.2.2012, p. 217.
([7]) A7-0163/2010.
([8]) OJ C 50 E, 21.2.2012, p. 212.
([9]) A7-0168/2010.
([10]) OJ C 50 E, 21.2.2012, p. 210.
([11]) A7-0167/2010.
([12]) OJ C 50 E, 21.2.2012, p. 216.
([13]) http://www.bis.org/publ/bcbs230.pdf.

— having regard to the Good practice principles on supervisory colleges issued by the Basel Committee on Banking Supervision in October 2010 ([1]),

— having regard to the judgment of the Court of Justice of the European Union of 22 January 2014 in Case C-270/12 *United Kingdom of Great Britain and Northern Ireland* v *Council of the European Union and European Parliament*,

— having regard to Rules 42 and 48 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs (A7-0133/2014),

A. whereas the financial crisis has demonstrated that inadequate risk management and inefficient, uneven and fragmented supervision of financial markets have contributed to financial instability and a lack of consumer protection in financial services;

B. whereas the European Parliament was strongly in favour of the creation of the European Supervisory Authorities (ESAs), has provided for more powers in coordination and direct supervision for the ESAs, and believes that they are key actors in the creation of more stable and safer financial markets and that the Union needs stronger and better coordinated supervision at Union level;

C. whereas the establishment of the European System of Financial Supervision (ESFS) has enhanced the quality and consistency of financial supervision in the internal market; whereas this is an evolutionary process in which Members of the Supervisory Board should focus on Union values and interests;

D. whereas, since the establishment of the ESFS, micro-prudential supervision in the Union has developed at a faster pace than macro-prudential surveillance;

E. whereas powers for micro-and macro-economic supervision are concentrated in the hands of the European Central Bank (ECB) that has to take appropriate measures to avoid conflicts of interest due to the ECB's tasks in monetary policy;

F. whereas the ESAs should prevent fragmentation of financial markets in the Union;

G. whereas the ESAs are tasked, inter alia, with convergence and with assisting raising the quality of day-to-day supervision, and there is a need to develop performance indicators that focus on the regulatory outcomes achieved in day to day supervision;

H. whereas the ESAs have largely fulfilled their mandate to contribute to legislative procedures and to propose technical standards;

I. whereas, although the regulations establishing the ESAs are almost identical, their scope has evolved very differently;

J. whereas in respect of regulatory technical standards (RTS) and implementing technical standards (ITS) the Commission has the responsibility to adopt, with or without amendment, the drafts proposed by the ESA, and should provide detailed reasons for departing from those drafts;

K. whereas direct supervision of credit rating agencies by the European Securities and Markets Authority (ESMA) may enhance the quality of supervision in this area;

L. whereas RTSs are adopted as delegated acts and guarantee the involvement of the ESAs in areas for which they have greater technical expertise for drafting lower levels of legislation;

M. whereas paragraph 2 of the Common Understanding between Parliament, the Council and the Commission on delegated acts states that the three institutions shall cooperate throughout the procedure leading to the adoption of delegated acts with a view to a smooth exercise of delegated power and an effective control of this power by Parliament and the Council;

([1]) http://www.bis.org/publ/bcbs177.pdf.

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N. whereas the establishment of the Single Supervisory Mechanism (SSM) was an important next step towards coherent supervision of banks in the euro area and in the other participating Member States;

O. whereas the creation of the SSM has very important implications for the institutional setting up of micro- and macro-prudential supervision in the Union given the powers attributed to the ECB in those fields;

P. whereas the European Systemic Risk Board (ESRB) has provided useful macroeconomic recommendations for the legislative process which were in the areas of money market funds, capital requirements, the mortgage credit directive or symmetrical long-term guarantee measures in Solvency II ([1]) only partly taken into account by the Commission and the co-legislators;

Q. whereas the ESRB does not have a mandatory role in legislation, even where macro-economic issues are concerned;

R. whereas the Advisory Scientific Committee has played an important and constructive role driving the ESRB's agenda, in particular by encouraging the ESRB to focus on controversial and fundamental issues;

S. whereas some of the ESRB proposals might have been taken into account by the co-legislators or the Commission, if they were issued at an earlier stage of the legislative process;

T. whereas in the course of the financial crisis the ESRB was established to prevent further crisis and to preserve financial stability;

U. whereas the systemic risk posed by very low interest rates kept for an excessively long period has never been mentioned by a statement issued by the ESRB;

V. whereas monetary policy can have significant influence on credit and asset price bubbles and therefore a conflict of interests between the monetary policy of the ECB and the ESRB's activity might arise;

W. whereas the ESRB following the first proposals of the Commission was supposed to have more than twice as many members of staff than it actually has and the fluctuation of qualified staff is detrimental to its work;

X. whereas the statements by the ESRB on the EMIR regulation have not been taken into account by ESMA;

Y. whereas the establishment of the ESRB outside the ECB would, due to Article 130 of the Treaty on the Functioning of the European Union (TFEU), not allow the ESRB to address the ECB in opinions, recommendations or warnings;

Z. whereas the structure of the ESRB and the size of its decision-making body hinder a swift decision-making process;

AA. whereas the ESRB Recommendation 2011/3 states that central banks should have a leading role in macro-prudential supervision and, accordingly, representatives of central banks should necessarily be members of the ESRB decision-making bodies;

AB. whereas the membership of the ESRB is strongly based around central banks which have an important role but also have similar perspectives;

AC. whereas major parts of the sectoral legislation conferring specific competences to the ESAs did not yet enter into force, thereby making it impossible for the ESAs to fulfil their tasks equally;

AD. whereas legislation relating to financial markets, financial services and financial products is highly fragmented and the multitude of legal texts causes loopholes, duplication of reporting obligations, institutional divergence and regulatory overlap and can cause unintended consequences and negative impacts on the real economy;

([1]) 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).

AE. whereas the United States of America created a federal Consumer Financial Protection Bureau with a strong mandate;

AF. whereas transparency and independence are an important ingredient of good governance and it is important to increase the transparency of the work of the ESAs and their independence;

AG. whereas even though the ESAs generally operate in a transparent way through information on their websites, there is a need for increased transparency regarding their work and progress on advice and proposals as well as more information regarding issues such as task forces and working groups;

AH. whereas the Commission is involved formally and informally in the operations of the ESAs, its involvement is not yet be on a transparent basis, and its role should be aligned with that of the Parliament and the Council, so that the independence of the ESAs is not called into question;

AI. whereas the benefit of stakeholder groups contributions to the work of the ESAs seems to have been limited;

AJ. whereas increased transparency is of utmost importance for the Stakeholder groups for creating well considered and workable rules for the financial markets and cooperation with market participants would work much better if those groups were more transparent regarding the composition of the group and the detailed duties assigned to the group;

AK. whereas the ESAs should support the Commission by making their expertise in financial services available in a transparent way;

AL. whereas the ESAs should assist the Commission and the co-legislators by assessing the extent to which legislation is meeting its regulatory objectives, and in the interests of transparency should make that assessment public. The ESAs should provide formal opinions on proposed Union legislation and assess the strength of the evidence and analysis contained in impact assessments of legislative proposal;

AM. whereas in Case C-270/12, the ruling of the Court of Justice of the European Union indicated a potentially enhanced scope for activities of the European System of Financial Supervisors under Article 114 TFEU in comparison to the prevailing interpretation of the judgment in Case C-9/56 *Meroni* ([1]) at the time when the ESFS was created and therefore the Commission should asses its potential implications in the forthcoming review of the ESFS;

AN. whereas supervision by the ECB of financial conglomerates active in banking and insurance business is limited by the legal basis for the SSM;

AO. whereas the creation of the SSM modifies the underlying supervisory scheme of the ESFS and creates a certain degree of asymmetry between the different authorities and their scopes of supervision;

AP. whereas after the entry into force of the SSM it is particularly important to avoid regulatory arbitrage, guarantee a level-playing field, ensure the good functioning of the internal market, prevent distortions and preserve fundamental freedoms;

AQ. whereas the ECB and the ESAs use different reporting standards and intervals and the creation of the SSM might pose a serious risk of duplication of reporting requirements, if national authorities do not cooperate sufficiently with the SSM and ESAs;

AR. whereas the right of investigation against possible breaches of Union law and the possibility of binding mediation has seldom been used and the ESAs have only very limited possibilities to initiate investigations into alleged breaches of law by national competent authorities;

([1]) Case 9/56 *Meroni* v *High Authority* [1957 and 1958] ECR 133.

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AS. whereas concerning possible breaches of Union law the decisions affecting national supervisory authorities are taken by national supervisors within the ESA's Boards of Supervisors;

AT. whereas under the influence of the binding mediation powers of the ESAs many useful solutions were found between national supervisory authorities;

AU. whereas it has been difficult for national representatives to separate their role of head of a national competent authority and European decision-making challenging their ability to genuinely adhere to the requirement to act independently and objectively in the sole interest of the Union as a whole in accordance with Article 42 of the ESA regulations;

AV. whereas peer pressure has not worked as envisaged during the original design of the ESAs and is necessary to enable the ESAs to stimulate its development;

AW. whereas some ESAs are still struggling to collect the information necessary for their work in the necessary format and whereas EBA had to carry out stress tests, but in some cases neither had the necessary legal power to collect the data required for the tests nor the legal powers to verify data which appeared to be imprecise;

AX. whereas the ESAs may refrain from certain necessary requests for information in anticipation of a rejection in their Boards of Supervisors;

AY. whereas recently agreed legislation has enhanced the powers of the ESAs to investigate alleged breaches or non-application of Union law obliging competent authorities to provide the relevant ESA with all information which is considered necessary, including how the legislation is applied in accordance with Union law;

AZ. whereas in course of the establishment of the SSM some progress was made in giving EBA the necessary powers to collect directly information but such capacity needs to be given to the other ESAs;

BA. whereas guidelines have proven to be a useful and necessary tool to fill gaps in regulation where no powers for the ESAs were provided for in the sectorial legislation;

BB. whereas the ESAs do have the mandate to monitor the implementation of Union law in the Member States but lack the resources to assess the actual enforcement;

BC. whereas MiFID I Directive ([1]) is implemented in all Member States, but some Member States refuse to apply and enforce the rules on consumer protection in practice;

BD. whereas the participation of ESA representatives in colleges of supervisors has improved the functioning of colleges, but the colleges have only made limited progress in enhancing supervisory convergence;

BE. whereas the voting rights in the Boards of Supervisors of the ESAs are not proportionate to the size of the relevant Member States, as is currently the case in the ECB and other European agencies;

BF. whereas the changes in the original voting system of EBA which has proven to ensure a fair treatment of Member States and smooth working conditions for the ESAs were a concession to some Member States and made the decision making procedures in the Board of Supervisors more onerous and cumbersome;

BG. whereas there should be no age or gender discrimination in the appointment of ESAs Chairpersons, a position that should be widely advertised across the Union;

([1]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

BH. whereas the Chair, Executive Director and the members of the Board of Supervisors and Management Boards should be in a position to act independently and only in the interest of the Union;

BI. whereas some national supervisors from Member States have had difficulties to meet their compulsory contributions to the ESAs' budgets;

BJ. whereas compulsory contributions of Member States conflict with the independence of the ESAs;

BK. whereas the ESAs stated having difficulties in employing staff members of a certain seniority and are limited in fulfilling their mandate by a lack of resources, staff and available resources do not reflect the tasks required to be carried out;

BL. whereas the current financing of ESAs, with a mixed-financing arrangement, is inflexible, creates administrative burden, and poses a threat to the agencies' independence;

BM. whereas the regulatory mandate to develop implementing and delegated acts has been a priority for the ESAs in their setting-up phase and has had a disproportionate weight in their workload compared to other responsibilities;

BN. whereas the ESAs have been unable to devote sufficient resources to the core function of undertaking economic analyses of financial markets (as prescribed by Article 8(1)(g) of Regulations (EU) No 1093/2010, (EU) No 1094/2010, and (EU) No 1095/2010), which is an essential foundation for drafting high quality rules;

BO. whereas the common mandate to produce a consumer trends report requires that all Member States collect information about those trends;

BP. whereas EBA still lacks a legal basis in payment services and in the consumer credit Directive ([1]) inter alia;

BQ. whereas some requirements foreseen by the ESAs for all market participants were considered by some market participants to be onerous, inappropriate and not proportional to the size and business model of the addressees and sectoral legislation did not always provide sufficient flexibility for the application of Union law;

BR. whereas the ECB has the right to participate in Council working groups while the ESAs are largely absent from the formal decision making process;

BS. whereas in the field of consumer protection, the efforts, deployed resources and results of the ESAs differed and were considerably low with regard to EBA;

BT. whereas a weak corporate governance and system of disclosure were significant contributing factors to the current crisis;

BU. whereas the new Basel supervisory principles include two new principles on corporate governance and transparency and disclosure;

BV. whereas misselling, unfair competition and rent seeking behaviour may harm consumers;

BW. whereas the European Insurance and Occupational Pensions Authority (EIOPA) and EBA did not provide substantial consumer trend reports;

BX. whereas the publication of the Financial Stability Report of the ESRB as promised by ECB's President Mr Mario Draghi is still due;

BY. whereas the need to take decisions on consumer protection issues requires an equivalent level of expertise among members of the ESAs even though some of them have not a parallel mandate in their home Member State;

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

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BZ. whereas the current safeguard clauses in Article 38(1) of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 limit the possibilities for mediation pursuant to Articles 18 and 19 thereof, in particular in cases of cross-border group resolution under the bank recovery and resolution Directive because final decision making powers are left with the Member State which has fiscal responsibility for the institution in question;

1. Requests the Commission to submit to Parliament, by 1 July 2014, legislative proposals for the revision of Regulations (EU) No 1092/2010, (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) No 1096/2010, following the detailed recommendations made in the Annex hereto, based on the experience gained since the ESAs were established and on an in-depth analysis of the legal basis and alternatives available to Article 114 TFEU, including recent case-law;

2. Confirms that the recommendations respect fundamental rights and the principle of subsidiarity;

3. Considers that the financial implications of the requested proposals should be covered by appropriate budgetary allocations from the Union budget, while taking into account the option for the ESAs to deduct fees from entities under their supervision;

4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council.

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ANNEX

DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

The European Parliament considers the legislative act or the legislative acts to be adopted should provide for the following:

The European System of Financial Supervision should be further adapted to the SSM as follows:

— Enhance the mandate for all ESAs for binding and non-binding mediation especially with regard to the ECB;

— clarify the mandate of the ESAs to carry out binding mediation in areas involving the exercise of supervisory judgement;

— Give the ESAs the possibility to trigger binding and non-binding mediation where provided for in sectorial legislation on the own initiative of the management board;

— Enhance the powers of all ESAs to conduct stress tests to have at least the possibilities comparable to those given to EBA in the course of the establishment of the SSM;

— Ensure that the ESAs, the ESRB, national supervisory authorities and the ECB in the case of those Member States participating in the SSM have access to the same supervisory information, which has to be provided where possible in the same frequency and a common electronic format which has to be determined by the ESAs, however, the common format does not entail any new requirement to supply data in accordance with international standards, such as IFRS, and in addition adequate transitional periods will be allowed for the compulsory introduction of the common format;

— Make sure the ESRB may further develop as a strong network ensuring a permanent monitoring and analysis of systemic risks among decision makers, developing a culture of dialogue between micro-prudential supervision and macro-prudential oversight;

— Provide for mechanisms enhancing the independence of the ESRB, while ensuring interaction with the ECB;

— Ensure the necessary operational changes to the ESRB as a consequence of the establishment of the SSM, including the possibility for the ESRB to address warnings and recommendations to the ECB and the SSM;

— Develop a single point of entry for any data collection, which will be responsible for the selection, validation and transmission of the supervisory and statistical data;

— Enlarge the role of the scientific committee of the ESRB;

— Appoint an executive Chairperson of the ESRB;

— Assess and clarify the mandate and tasks of the ESRB in order to avoid conflicts of interest arising between micro-prudential supervision and supervisory tools and macro-economic oversight;

— Strengthen the coordinating role of the Steering Committee of the ESRB and adjusting its composition;

— Expand the list of possible addressees of warnings and recommendations issued by the ESRB to include the ECB (in its roles as defined in the SSM) and national macro-prudential authorities;

— include the ESRB recommendations in the European Semester through country-specific recommendations and the recommendations to the Union as a whole;

Where experience has shown the necessity for revision, new legislative acts shall improve the functioning of the ESFS by:

Chairpersons

— enhancing the powers of the chairpersons of all three ESAs to take technical and operational decisions or to request information from other supervisory authorities in line with the mandate of the respective ESA and facilitating the delegation of further competences from the Boards of Supervisors to the chairperson;

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— empowering the chairpersons to issue peer reviews pursuant to Article 30 of the ESA Regulations;

— granting the chairpersons and the executive directors the right to vote in the Board of Supervisors;

— ensuring that the chairpersons of ESAs will be empowered to appoint the chairpersons of internal committees and working groups pursuant to Article 41 of the ESA Regulations;

— ensuring that the Chairpersons of the ESAs and the ESRB are formally invited to ECOFIN meetings at least twice per year to report on their activities and work programme;

— ensuring that gender balance is actively pursued within the framework of the selection procedures of chairpersons and their deputies, the process is transparent and is planned in a way that allows Parliament to exercise its role in such proceedings;

— ensuring not withstanding respect for the principle in the previous paragraph that ESA chairpersons are selected solely on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation;

Governance: organisation, decision making, independence and transparency

— amending Article 45 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 and transforming the Management Boards of the three ESAs into independent bodies, staffed by three professionals with a European mandate, appointed by Parliament, the chairperson of the ESAs and the executive directors and granting the members of the Management Board the right to vote on the Board of Supervisors to ensure more independence from national interests. The Chairperson of the Management Board shall coincide with the Chairperson of the Board of Supervisors and have a casting vote both in the Management Board and in the Board of Supervisors;

— amending Article 40 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 and modifying the composition of the Board of Supervisors which should be composed of the head of the national competent authorities plus the members of the Management Board;

— reallocating the tasks between the Management Board and the Board of Supervisors in a way that the Board of Supervisors will focus on giving strategic guidance to the ESAs work, adopting technical standards, general guidelines and recommendations and decisions on temporary interventions and other decisions are taken by the Management Board with, in certain cases a right for the Board of Supervisors to object to the Management Boards proposal;

— granting the ESAs an independent budget line as for the European Data Protection Supervisor funded by the contributions from market participants and the Union budget;

— enhancing the independence of the ESAs from the Commission, especially with regard to day-to-day operations;

— establishing more streamlined decision making processes within the Boards of Supervisors for all three ESAs;

— simplifying the voting mechanisms and reintroducing the same voting rules for all three ESAs, based on the current voting mechanisms of ESMA and EIOPA;

— enhancing and safeguarding the independence of the ESAs from the European Commission by establishing formal procedures and disclosure obligations on communications, legal opinions and formal or informal oral advice provided by the Commission;

— ensuring that on questions concerning consumer protection for members of the Board of Supervisors which do not have a mandate for consumer protection in their Member State are accompanied by a representative from the national authority in charge in the relevant board meetings;

— develop quick and effective decision making procedures within the Joint Committee to allow swifter decisions and reduce the possibilities for objections;

— enhancing the flexibility of the ESAs to employ specialised staff for specific tasks, also for limited periods;

— enhancing transparency of stakeholder involvement and potential conflicts of interest and developing a stricter regime on cooling-off periods, in particular through a greater outreach to retail groups, efficient consultations and more transparent processes;

— revising the system of the stakeholder groups including their structure, their composition and resources and rebalancing the composition of the stakeholder groups to ensure that input from consumers and non-industry stakeholders will be taken into account;

— establish an Economic Analysis Unit to provide fully evidenced cost benefit analysis of ITS, RTS and guidelines proposed, as well as to provide input to the opinions given to the Commission, Parliament and the Council in preparing new legislation as well as in reviews of existing legislation;

Single rule book and single market

— revising the scope of action and the list of sectorial legislation in Article 1(1) of the ESA Regulations;

— requiring the Commission and, where relevant, the ESAs to provide a timely response to comments from Members of the European Parliament on draft RTS, in particular where the views expressed by Members of the European Parliament are not reflected in the regulatory technical standards adopted by the Commission;

— requiring the Commission where it does not endorse the draft RTS or ITS proposed by the ESAs to publish its reasons and fully evidenced cost-benefit analysis to justify the decision;

— establish a formal method of communication with the Commission's Directorate-General for Competition to ensure that financial services legislation supports fair and sustainable competition in the single market and avoids anticompetitive imbalances occurring as a result of legislation, both at the level of consumers access to retail services and how they differ across the Union as well as at the level of professional counterparties and the wholesale markets;

— giving the ESAs the mandate to report to the Commission where national legislation or differences in national legislation hamper the functioning of the single market;

— giving the ESAs the mandate and the powers to identify price differences across Member States and analyse particular markets where rent seeking behaviour may be evident;

— enhancing the mandate of the ESAs for contributing to the dissemination of financial data and market discipline by requiring them to publish on their websites information concerning individual financial institutions which it considers is necessary to ensure the transparency of financial markets;

— clarifying that guidelines to improve common standards for the whole internal market pursuant to Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 can be issued only based on the respective empowerment in sectorial legislation and clarifying the relevant Recitals, which can secure democratic legitimacy;

— clarifying that guidelines pursuant to Article 9(1) of the ESA regulations are identical with guidelines pursuant to Article 16 thereof;

— ensuring a level playing field between all financial institutions within the Union and requiring the ESAs to respect the principal of proportionality especially with regard to small and medium-sized market participants when carrying out their tasks and developing their supervisory methods, practices and handbooks;

— requiring the ESAs to carry out assessments on the impact of proposed measures on small businesses and barriers to entry to the financial sector;

— enhancing the ESAs' investigatory powers with regard to possible breaches of Union law and the regulatory technical standards they have drafted;

— giving the ESAs a clear mandate in the field of corporate governance, transparency and disclosure in order to increase the comparability of information across the Union and market discipline, allow all stakeholders to understand and compare the risk profile and practices and to promote public confidence;

— ensuring that Parliament will have at least three months to consider a rejection of delegated or implementing acts;

— providing for the mandatory early involvement of the ESAs and of the ESRB in the preparation of legislative processes concerning their fields of expertise;

— ensure that Parliament have the possibility to benefit from the expertise of the ESAs and the ESRB including in the framing and timing of proposed technical standards and to ask questions;

Supervisory cooperation and convergence

— enhancing the balance in the supervision of the three sectors by fostering the role of ESMA and EIOPA in the ESFS in order to avoid that banking-oriented regulation will be adapted and applied to other sectors inappropriately while maintaining a level playing field;

— revising the ESAs peer review model and developing a more independent assessment model, such as that of the International Monetary Fund (IMF) (FSAP);

— establish an appropriate mechanism for, where deemed necessary, an assessment of supervisory practices in the Member States in dialogue with the competent authorities by means of onsite visits and, where appropriate, followed up by recommendations for improvements;

— enhancing the responsibility of EBA to develop and update the supervisory handbook on the supervision of financial institutions and giving ESMA and EIOPA similar responsibilities in order to improve consistent supervision and a common supervisory culture in Europe;

— ensuring that the consumer protection work of the ESAs is not hampered by differences between the legal bases of the ESAs, in their respective founding regulations and in the mandates assigned to them in the sectorial legislation;

— clarifying that the ESAs ability to settle disagreements is a separate power from their ability to investigate potential breaches of Union law and can be used to promote the coordination of supervisory consistency and convergence of supervisory practices without additional empowerment in sectorial legislation;

— expanding the mandate of supervisory colleges in supervision and improving the role of the ESAs as lead supervisor within the colleges;

— ensure, in cases where the SSM is the assigned coordinator for the supplementary supervision of financial conglomerates, that the supervision of the insurance undertaking or group being part of the conglomerate provides for an at least equal involvement of the supervisory authorities responsible for the insurance undertaking or group;

— requiring the ESAs to identify overlap in their mandates and to make recommendations for clustering revisions and reviews of legislation to enable stronger coherence and a streamlined approach towards cross-sector and cross-legislation consistency, in particular as regards consumer protection rules, in order to increase the coherence of the single rule-book;

— enhancing the role of the ESAs and the ESRB in representing the EU within international organisations and granting them the same membership status as national supervisory authorities;

— ensuring that ESAs, jointly within the joint committee, elaborate an structured policy and strategy, listing their priorities and defining their respective roles and its articulation with the NCAs, and issue annually a joint and horizontal report on consumer protection;

Enhanced powers

— enhancing the investigatory powers of the ESAs and increasing their resources in order to directly monitor the appropriate implementation of rules derived from legal acts and the compliance with other decisions adopted under the Union legal framework;

— introducing direct supervision, including stress tests, by the ESAs of highly integrated pan European entities or activities, giving ESMA and EIOPA the power, the mandate and the resources to perform these activities and to monitor the consistency of the relevant recovery and resolution planning;

— giving EBA the power, the mandate and the resources to develop measures to identify new risks for consumers in the banking sector;

— strengthening the legal basis for the ESAs work on consumer protection, by bringing legislation containing consumer protection measures into the ESAs' scope of action; extending the definition of financial institutions to ensure that the same activities are subject to the same regulation and updating references to competent authorities for the purposes of ESAs regulations;

— giving the ESAs a mandate and the power to set standards for national complaints handling and the collection of complaints data;

ESRB

— ensuring that the ESRB will be represented in the meetings of the Economic and Financial Committee;

— enabling the ESRB to issue EU-wide guidance to Members States on macro-prudential instruments as leverage, loan to value and debt to income ratios;

— enabling the ESRB to address warnings and recommendations to the ECB in its role in monetary policy as well as in its function as single supervisor (SSM);

— revising and simplifying Article 15 of the ESRB Regulation in order to facilitate data collection by the ESRB, establishing swifter and easier decision-making on data requests for the ESRB and ensuring that the ESRB will have access to real-time data;

— revising the structure of the ESRB to allow swifter decision-making and stronger accountability;

— strengthening the ESRBs contribution to international macro-prudential regulatory fora;

— expanding the analytical resources available to the ESRB Secretariat and providing the Advisory Scientific Committee of the ESRB with more resources;

— ensuring that the ESRB will be consulted where stress testing regimes are developed by competent authorities including the ECB or by the ESAs;

— ensuring that representatives from the ESRB will be invited as observers to relevant meetings and discussions within the ECB, including the meetings of the Financial Stability Committee;

— revising Article 18 of the ESRB Regulation on publication of warnings and recommendations in order to strengthen the ESRBs public profile and the follow up its warnings and recommendations;

Before the legislative act acts are adopted, the following questions should be assessed thoroughly, considering that even during the worst times of the financial crisis Member States were not willing to confer on the ESAs substantial supervisory power:

— whether the current model of three separate supervisory authorities is the best solution for coherent supervision;

— whether the European Commission has stepped beyond its role as observer on the ESAs' Board of Supervisors;

— whether in the light of the independence of the ESAs their strong dependence on the European Commission is hampering the development of the ESAs and whether transparency in this relationship should be enhanced;

— which consequences implicit in the establishment of the SSM on the financial supervision in the Union as a whole;

— whether, regarding banking supervision, the creation of the SSM requires a full revision of the tasks and the mandate of EBA;

— whether the multitude and partial overlapping in Union legislation on financial regulation creates loopholes and differing definitions and whether this could be overcome by a comprehensive European Financial Code;

— how reporting to the ESAs and national supervisors could be standardised, optimised and simplified for market participants;

— how the emergency powers of the ESAs should be maintained;

— whether the possibility for the ESAs to suspend temporarily the application of a particular rule could be useful to prevent unintended consequences due to extraordinary market developments;

— whether merging responsibilities of the ESAs i.e. for consumer protection in standing committees under the responsibility of the Joint Committee could enhance efficiency and minimise duplication of tasks;

— whether an Insurance Union following the model of the Banking Union is necessary and what roles the ESFS could take in an Insurance Union;

— whether EBA and EIOPA should receive further resources to monitor and promote supervisory convergence with regard to internal models for capital requirements;

— whether the recently created US financial consumer protection bureau's mandate, powers and resources could serve as a model for the ESFS;

— whether further fees from financial industry could be an additional source of revenue for the ESAs for example when accepting fees from central counterparties (CCPs) from third countries;

— whether the ESAs could contribute more efficiently to enhance financial literacy through the operation of a European financial Programme for International Assessment (PISA) in analogy to the OECD's PISA;

— whether the three ESAs and ESRB should issue a common newsletter.

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Public access to documents 2011-2013

European Parliament resolution of 11 March 2014 on public access to documents (Rule 104(7)) for the years 2011-2013 (2013/2155(INI))

(2017/C 378/03)

The European Parliament,

— having regard to Articles 1, 10 and 16 of the Treaty on European Union (TEU) and to Articles 15 and 298 of the Treaty on the Functioning of the European Union (TFEU),

— having regard to Article 11 of the TEU and the obligation of the institutions to maintain an open, transparent and regular dialogue with representative associations and civil society,

— having regard to the Charter of Fundamental Rights of the European Union, and notably to its Articles 41 (right to good administration) and 42 (right of access to documents),

— having regard to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ([1]),

— having regard to Council Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 amending Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community ([2]),

— having regard to its resolution of 14 September 2011 on public access to documents for the years 2009-2010 ([3]),

— having regard to the case-law of the Court of Justice of the European Union and of the General Court on access to documents, and notably to the judgments of the Court of Justice in the cases *Access Info Europe* (case C-280/11 P), *Donau Chemie* (C-536/11), *IFAW v Commission* (C-135/11) ([4]), *My Travel* (C-506/08 P), *Turco* (joined cases C-39/05 P and C-52/05 P), and to the judgments of the General Court in the cases of *In 't Veld v Council* (T-529/09), *Germany v Commission* (T-59/09), *EnBW v Commission* (T-344/08), *Sviluppo Globale* (T-6/10), *Internationaler Hilfsfonds* (T-300/10), *European Dynamics* (T-167/10), *Jordana* (T-161/04) and *CDC* (T-437/08),

— having regard to the Commission proposal of 30 April 2008 for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (COM(2008)0229),

— having regard to the Commission proposal of 20 March 2011 for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (COM(2011)0137),

— having regard to the Council of Europe Convention on Access to Official Documents of 2008,

— having regard to the Annual Reports for 2011 and 2012 from the Council, the Commission and the European Parliament on access to documents, submitted pursuant to Article 17 of Regulation (EC) No 1049/2001,

— having regard to the Framework Agreement on Relations between the European Parliament and the European Commission of 2010,

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([1]) OJ L 145, 31.5.2001, p. 43.
([2]) OJ L 243, 27.9.2003, p. 1.
([3]) OJ C 51 E, 22.2.2013, p. 72.
([4]) See *IFAW v Commission* (C-135/11 P), in whose paragraph 75 it is stated that, not having consulted the requested document, 'the General Court was not in a position to assess in the specific case whether the document could validly be refused on the basis of the exceptions'.

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— having regard to the Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy,

— having regard to its resolutions of 12 September 2013 on the annual report of the activities of the European Ombudsman in 2012 ([1]), and 17 December 2009 on improvements needed to the legal framework for access to documents following the entry into force of the Lisbon Treaty (Regulation (EC) No 1049/2001) ([2]),

— having regard to the European Ombudsman's Annual Report for 2012,

— having regard to Rules 48 and 104(7) of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0148/2014),

A. whereas the Treaty of Lisbon has been in force for four years; whereas Article 15 TFEU establishes a constitutional framework for EU institutional transparency and lays down the fundamental right of access to documents of EU institutions, bodies, offices and agencies for EU citizens and any natural or legal person residing in a Member State; whereas this right should be exercised in compliance with the general principles and limits laid down by the regulations adopted by Parliament and the Council;

B. whereas Article 298 TFEU provides for an open, efficient and independent European administration;

C. whereas it is a general rule that access to legislative documents should be fully provided, while exceptions regarding non-legislative documents should be narrowed;

D. whereas transparency is essential to a democratic European Union of citizens in which they can fully participate in the democratic process and exercise public scrutiny; whereas transparent administration benefits the interests of citizens, the fight against corruption and the legitimacy of the Union's political system and legislation;

E. whereas broad public access to documents is a key element of a lively democracy;

F. whereas in a healthy democracy citizens should not have to rely on whistleblowers in order to ensure transparency of their governments' competences and activities;

G. whereas citizens have a right to know how the decision-making process works and how their representatives act, to hold them accountable and to know how public money is allocated and spent;

H. whereas the EU legislation on access to documents is still not being properly applied by the Union's administration; whereas the exceptions of Regulation (EC) No 1049/2001 are being applied routinely rather than exceptionally by the administration;

I. whereas, according to case-law, if an institution decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and actually undermine the interest protected by the exception — among those provided for in Article 4 of Regulation (EC) No 1049/2001 (see *In 't Veld v Council* ([3]));

J. whereas a specific and foreseeable threat to the interest in question may not be established by a mere fear of disclosing to EU citizens differences of opinion between the institutions regarding the legal basis for the international activity of the European Union and, thus, of creating doubts as to the lawfulness of that activity (see *In 't Veld v Council* ([4]));

K. whereas six out of the ten European Ombudsman's 'star case' investigations of 2012 concerned transparency;

([1]) Texts adopted P7_TA(2013)0369.
([2]) OJ C 286 E, 22.10.2010, p. 12.
([3]) *In 't Veld v Council* (T-529/09), paragraph 19.
([4]) *In 't Veld v Council* (T-529/09), paragraph 75.

L. whereas the statistics for the application of Regulation (EC) No 1049/2001 show a decrease in the number of initial requests in all three institutions;

M. whereas the number of specified documents requested has decreased in Parliament (from 1 666 in 2011 to 777 in 2012); whereas, however, the percentage of requests for unspecified documents, e.g. 'all documents relating to …', has increased in Parliament (from 35,5 % in 2011 to 53,5 % in 2012); whereas the number of Council documents requested has decreased (from 9 641 in 2011 to 6 166 in 2012) ([1]);

N. whereas the quantitative data presented in the Annual Reports of 2012 indicate that both the Commission (from 12 % in 2011 to 17 % in 2012) and the Council (from 12 % in 2011 to 21 % in 2012) have increasingly fully refused access, while Parliament shows stable figures for full refusal of access (5 % in both 2011 and 2012);

O. whereas the Commission shows a significant increase in confirmatory applications (from 165 in 2011 to 229 in 2012), resulting in a slight increase in fully revised decisions, a decrease in partially revised decisions and an increase in confirmed decisions, while both the Council and Parliament show relatively stable figures for confirmatory applications (Council: from 27 in 2011 to 23 in 2012; Parliament: from 4 in 2011 to 6 in 2012);

P. whereas a number of applications have resulted in complaints being lodged with the European Ombudsman (Commission: from 10 in 2011 to 20 in 2012; Council: from 2 in 2011 to 4 in 2012; Parliament: 1 in both 2011 and 2012);

Q. whereas the European Ombudsman closed a number of complaints in 2011 and 2012 with critical remarks or suggesting further action (Commission: from 10 out of 18 in 2011 to 8 out of 10 in 2012; Council: no information; Parliament: from 0 out of 0 in 2011 to 1 out of 1 in 2012);

R. whereas a number of applications for access to documents have resulted in cases being lodged with the General Court or taken on appeal to the Court of Justice (Commission: from 15 cases and 3 appeals in 2011 to 14 cases and 1 appeal in 2012; Council: from 1 case and 2 appeals in 2011 to 1 appeal in 2012 ([2]); Parliament: none in 2011 or 2012);

S. whereas the General Court has largely ruled in favour of more transparency, or else has delivered clarification to Regulation (EC) No 1049/2001 in a number of cases (Commission: 5 out of 6 ([3]) in 2011 and 5 out of 5 in 2012 ([4]); Council: 1 out of 1 in 2011 (*Access Info Europe*, T-233/09) and 1 out of 4 in 2012 (*In 't Veld*, T-529/09); Parliament: 1 out of 2 in 2011 ([5]) (*Toland*, T-471/08) and 1 out of 1 in 2012 (*Kathleen Egan and Margaret Hackett*, T-190/10));

T. whereas the Court of Justice has largely ruled in favour of more transparency in the following cases: Commission: 1 out of 1 in 2011 (*My Travel*, C-506/08) and 1 out of 3 in 2012 (*IFAW*, C-135/11 P) ([6]); Council and Parliament: no rulings in 2011 or 2012;

U. whereas the annual reports of the Commission, the Council and Parliament do not provide comparable statistics; whereas the three institutions do not observe the same standards of completeness in presenting statistics;

([1]) The Commission does not specify the number of documents requested. The numbers of initial applications for Commission documents are 6 447 in 2011 and 6 014 in 2012.

([2]) *Council v In 't Veld* (intervention by European Parliament in support of In 't Veld).

([3]) Cases *Batchelor* (T-362/08), *IFAW II* (T-250/08), *Navigazione Libera del Golfo* (T-109/05 and T-444/05), *Jordana* (T-161/04), *CDC* (T-437/08) and *LPN* (T-29/08).

([4]) *Germany v Commission* (T-59/09), *EnBW v Commission* (T-344/08), *Sviluppo Globale* (T-6/10), *Internationaler Hilfsfonds* (T-300/10), *European Dynamics* (T-167/10).

([5]) The other case is *Dennekamp* (T-82/08), in which the General Court confirmed Parliament's decision on grounds of protection of personal data.

([6]) See the *IFAW* case concerning documents originating from a Member State and the obligation of the General Court to assess the documents concerned; and two other cases relating to merger control proceedings, *Agrofert* (C-477/10 P) and *Éditions Odile Jacob* (C-404/10 P). These three Court rulings are not described in the Commission's annual report.

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V. whereas the reason most often invoked for exception is 'the protection of the decision- making process', as used by the Commission and the Council following initial requests (Commission: 17 % in 2011 and 20 % in 2012; Council: 41 % in both 2011 and 2012); whereas 'the protection of international relations' was the second reason most often invoked by the Council; whereas in the case of Parliament, 'the protection of privacy and integrity of the individual' was the commonest exception;

W. whereas the institutions have failed to implement Articles 15(2) and 15(3), subparagraph 5 of the TFEU, regarding the obligation for the European Parliament and the Council to meet in public when considering a draft legislative act, and to publish the documents relating to the legislative procedures under the terms laid down by the regulations referred to in Article 15(3), subparagraph 2;

X. whereas Article 4(3) of Regulation (EC) No 1049/2001 provides for an exception to transparency 'if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure'; whereas this provision predates the Treaty of Lisbon and needs to be brought in line with Article 15 TFEU;

Y. whereas the ruling of the Court of Justice in the *Access Info Europe* case ([1]) has confirmed that publishing the names of Member States and their proposals is not harmful to the decision-making process; whereas the General Court had ruled in its earlier decision in this case that 'if citizens are to be able to exercise their democratic rights, they must be in a position to follow in detail the decision-making process';

Z. whereas international agreements have binding effects and impact on EU legislation; whereas documents related to them should be public in principle, without prejudice to legitimate exceptions; whereas the application of the exception for the protection of international relations applies as stated in paragraph 19 of *In 't Veld v Council* (T-529/09);

AA. whereas trilogues between the Commission, Parliament and the Council are defining for the formation of EU legislation; whereas trilogues are not public and documents regarding informal trilogues, including agendas and summary reports, are by default made available neither to the public nor to Parliament, which is in contradiction with Article 15 TFEU;

AB. whereas documents produced or possessed by the Presidency of the Council in relation to its work in that role should be accessible according to EU transparency rules;

AC. whereas the negotiations on the revision of Regulation (EC) No 1049/2001 have been in deadlock; whereas the new instrument will need to provide for significantly more transparency than the status quo;

AD. whereas requests for in camera meetings in Parliament should, in principle, be considered along the lines of Regulation (EC) No 1049/2001; whereas such requests shall be evaluated by Parliament on a case-by-case basis, and shall not be granted automatically;

AE. whereas the classification of documents into levels of confidentiality falling under the scope of the 2010 Framework Agreement on relations between Parliament and the Commission, or as 'sensitive documents' under Article 9 of Regulation (EC) No 1049/2001, should be made on the basis of careful and specific consideration; whereas overclassification leads to unnecessary and disproportionate secrecy of documents and to meetings being held in camera without proper justification;

AF. whereas transparency remains the rule, including in relation to a cartel leniency programme; whereas an automatic ban on disclosure is a violation of the rule of transparency, as laid down in the Treaties; whereas secrecy is the exception, and must be justified on a case-by-case basis by national judges with regard to actions for damages;

([1]) *Council v Access Info Europe*, Case C-280/11 P.

AG. whereas it is recommended that EU guidelines be drawn up as a helpful tool for judges; whereas such guidelines need to distinguish between company documents and cartel files held by the Commission;

Right of access to documents

1. Recalls that transparency is the general rule and that the Treaty of Lisbon lays down the fundamental right of access to documents;

2. Recalls that the widest possible public access to documents is needed to effectively allow citizens and civil society to comment on all aspects of EU activity;

3. Recalls that transparency enhances public trust in the European institutions by allowing citizens to be informed and to participate in the Union's decision-making process and, in this way, contribute to making the EU more democratic;

4. Recalls that any decision denying access to documents must be based on clearly and strictly defined legal exceptions, accompanied by reasoned and specific justification, allowing the citizen to understand the denial of access and to make effective use of the legal remedies available;

5. Recalls the need to establish an appropriate equilibrium between transparency and data protection, as made clear by the *Bavarian Lager* case-law, and stresses that data protection should not be 'misused', especially not for the purpose of covering conflicts of interest and undue influence in the context of EU administration and decision-making; points out that the judgment of the Court of Justice in the *Bavarian Lager* case is based on the current wording of Regulation (EC) No 1049/2001 and does not prevent the wording from being changed, which is necessary and urgent, notably after the clear proclamation in the Treaties and in the Charter of Fundamental Rights of the right of access to documents;

6. Calls on the institutions, bodies and agencies to strictly apply Regulation (EC) No 1049/2001, taking full account of the body of case-law relating thereto, and harmonising their existing internal rules to the letter and the spirit of the regulation, particularly with regard to deadlines to respond to requests for access to documents, while ensuring that this does not result in longer deadlines; calls on the Council to publish minutes of the meetings of Council working groups, including, in the light of the *Access Info Europe* case, the names of Member States and their proposals;

7. Calls on the institutions, bodies and agencies, when applying Regulation (EC) No 1049/2001, to strictly assess the possibilities for partial disclosure of a document, table, graphic, paragraph or phrase;

8. Calls on the EU institutions, bodies, offices and agencies to develop further a more proactive approach on transparency by making publicly accessible on their internet websites as many categories of documents as possible, including internal administrative documents, and by including these in their public registries; considers that this approach helps ensure effective transparency as well as prevent unnecessary litigation that may cause unnecessary costs and burdens for both the institutions and the citizens;

9. Calls on the institutions, bodies and agencies to implement fully Article 11 of Regulation (EC) No 1049/2001, and to put in place public document registers with clear and accessible structures, good search functionality, regularly updated information on new documents produced and registered, inclusion of references to non-public documents and, to assist public users, guidance on the types of documents held in a given registry;

10. Calls on the institutions, bodies and agencies to publish systematically and without delay in their document registers all documents previously not available to the public that have been disclosed via public access to documents requests;

11. Calls on the administrations to provide full indication of all documents falling within the scope of a request for access to documents under Regulation (EC) No 1049/2001, following the initial application;

12. Stresses that resort to the European Ombudsman represents a valuable option where denial of access to a document has been confirmed by the administration concerned; recalls, however, there is no means of enforcing the Ombudsman's decisions;

13. Stresses that litigation entails extremely lengthy processes, the risk of high, even prohibitive costs, and an uncertain outcome, putting an unreasonable burden on citizens who wish to challenge a decision to refuse (partial) access; emphasises that this means, in practice, that there is no effective legal remedy against a negative decision on a request for access to documents;

14. Calls upon the EU institutions, bodies and agencies urgently to adopt faster, less cumbersome and more accessible procedures for handling complaints against refusals to grant access, so as to reduce the need for litigation and create a true culture of transparency;

15. Stresses that the annual reports of the three institutions and of the bodies and agencies should present figures in a comparable format, which should include, for example, the number of documents requested, the number of applications, the number of documents to which (partial) access is granted, the number of applications granted before and after confirmatory application, and the figures for access granted by the Court, partial access granted by the Court and access denied;

16. Calls on the EU institutions to refrain from calling for the opposing party having to bear the costs of court cases, and to ensure that citizens are not prevented from challenging decisions for want of means;

17. Notes that Member States need to adapt to the new transparency framework established by the Treaty of Lisbon, as illustrated by the *Germany v Commission* case (T-59/09), in which Germany opposed the disclosure of documents relating to a formal notice to it, invoking the protection of the public interest in the context of 'international relations', while the General Court ruled that 'international relations' is to be considered a term of EU law and therefore not applicable to communications between the Commission and a Member State;

18. Calls on the EU institutions to improve their timeliness of response to requests for access to documents and confirmatory applications;

19. Resolves to examine how the deliberations in its Bureau and its Conference of Presidents can be made more transparent, such as by keeping detailed minutes and by disclosing these to the public;

Revision of Regulation (EC) No 1049/2001

20. Expresses its disappointment with the fact that since December 2011, when it adopted its first reading position on the revision of Regulation (EC) No 1049/2001, no progress has been made, as the Council and the Commission do not appear to have been ready to embark on substantive negotiations; calls, therefore, on the Council finally to move forward with the revision of Regulation (EC) No 1049/2001; calls on the Council and Parliament to agree on a new instrument that provides significantly more transparency, including the effective implementation of Article 15 TFEU;

21. Calls on all EU institutions, bodies, offices and agencies to apply Regulation (EC) No 1049/2001 in a way that is coherent with the provisions of the Aarhus Convention; fully supports the policy of the European Medicine's Agency to publish clinical trial reports of pharmaceuticals on the European market upon request, once the decision-making process for the medicine in question has been completed; stresses that any revision of Regulation (EC) No 1049/2001 should fully respect the Aarhus Convention and should define any exemption in full compliance with it;

22. Recommends that each EU institution or body appoint from within its management structures a Transparency Officer, to be responsible for compliance and for improving practices;

23. Calls on all the institutions to evaluate and, where necessary, review their internal arrangements for reporting wrongdoing, and calls for the protection of whistleblowers; calls, in particular, on the Commission to report to Parliament on its experiences with the new rules on whistleblowing for EU staff adopted in 2012 and with their implementing measures; calls on the Commission to come forward with a proposal to protect whistleblowers, not only morally but also financially, in order to properly protect and support whistleblowers as part of the democratic system;

Reporting

24. Calls on the EU institutions, bodies and agencies to harmonise their Annual Reports on access to documents, and to present similar statistics, in a compatible form and to the fullest and most inclusive extent possible (e.g. in tables in the Annex which allow for direct comparison);

25. Calls on the EU institutions, bodies and agencies to adopt the recommendations put forward by Parliament in its previous resolution on public access to documents;

26. Calls on the EU institutions to include in their annual transparency reports a reply to Parliament's recommendations;

Legislative documents

27. Calls on the Commission to enhance the transparency of expert groups and comitology groups, by holding their meetings in public and publishing the recruitment procedure for members, as well as information regarding membership, proceedings, documents considered, votes, decisions and minutes of meetings, all of which should be published online in a standard format; stresses that members of experts groups and comitology must declare in advance if they have a personal interest in the subjects discussed; calls on the Commission to improve and fully implement internal guidelines for all DGs for the recruitment procedure (concerning i.e. balanced composition, conflict of interest policy, public calls) and the rules for reimbursement, and to report on this matter not only in the annual access to documents report but also in the annual activity reports of DGs; calls on the Commission to report, in particular, on the Transatlantic Trade and Investment Partnership (TTIP) Stakeholder Advisory Group;

28. Calls on the Commission, the Council and Parliament to ensure the greater transparency of informal trilogues, by holding the meetings in public, publishing documentation including calendars, agendas, minutes, documents examined, amendments, decisions taken, information on Member State delegations and their positions and minutes, in a standardised and easy accessible online environment, by default and without prejudice to the exemptions listed in Article 4(1) of Regulation (EC) No 1049/2001;

29. Recalls that Article 9 of Regulation (EC) No 1049/2001 on sensitive documents is a compromise that no longer reflects the new constitutional and legal obligations in place since the Treaty of Lisbon entered into force;

30. Calls on the institutions, bodies and agencies of the EU to maintain up-to-date public figures on the number of classified documents they hold, according to their classification;

Classification of documents

31. Calls on the Commission to propose a regulation laying down clear rules and criteria for the classification of documents by the EU institutions, bodies and agencies;

32. Calls on the institutions to assess and justify requests for in camera meetings in accordance with Regulation (EC) No 1049/2001;

33. Calls on the Union institutions to set up an independent EU oversight authority for the classification of documents and the examination of requests for holding sessions in camera;

Financial information

34. Calls on the institutions to make publicly available and accessible to citizens documents relating to the European Union budget, its implementation and the beneficiaries of Union funds and grants, and stresses that such documents shall also be accessible via a specific website and database, and on a database dealing with financial transparency in the Union;

International negotiations

35. Expresses concern at the routine application of the exception for the protection of international relations as a justification for the classification of documents;

36. Recalls that when an institution decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and actually undermine the public interest as to international relations;

37. Emphasises that, regardless of these principles, this is still not implemented in practice, as shown by the General Court ruling in Case T-529/09 (*In 't Veld v Council*) regarding the refusal by the Council to provide access to an opinion of its legal service on the EU-US TFTP agreement;

Legal services' opinions

38. Emphasises that opinions of the institutions' legal services must, in principle, be disclosed, as underlined by the Court's ruling in *Turco* that 'Regulation (EC) No 1049/2001 seeks, as indicated in recital 4 of the preamble and Article 1, to give the public a right of access to documents of the institutions which is as wide as possible' ([1]);

39. Recalls that, before assessing whether or not the exception of Article 4(2), second indent on the protection of legal advice applies, the institution concerned must satisfy itself that the document it is asked to disclose does indeed relate to legal advice and, if so, must decide which parts of it are actually concerned and may therefore be covered by the exception (*Turco*, paragraph 38);

40. Calls on the institutions to abide by the *Turco* judgment on legal service opinions drafted in the framework of the legislative process, which ruled that 'it is precisely openness in this regard that contributes to conferring greater legitimacy on the institutions in the eyes of European citizens and increasing their confidence in them by allowing divergences between various points of view to be openly debated' and that 'it is in fact rather a lack of information and debate which is capable of giving rise to doubts in the minds of citizens, not only as regards the lawfulness of an isolated act, but also as regards the legitimacy of the decision-making process as a whole' ([2]);

41. Stresses that, as ruled in the *In 't Veld v Council* case (T-529/09) ([3]), a specific and foreseeable threat to the interest in question may not be established by a mere fear of disclosing to EU citizens differences of opinion between the institutions regarding the legal basis for the international activity of the European Union and, thus, of creating doubts as to the lawfulness of that activity;

Cartel leniency

42. Stresses that the Court of Justice has ruled in Case C-536/11, paragraph 43 that 'any request for access to the [cartel file] must be assessed on a case-by-case basis [by the national courts], taking into account all the relevant factors of the case';

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43. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the European Ombudsman, the European Data Protection Supervisor and the Council of Europe.

([1]) Joined cases *Sweden and Turco* v *Council and Commission* (C-39/05 P and C-52/05 P), paragraph 35.
([2]) Joined cases *Sweden and Turco* v *Council and Commission* (C-39/05 P and C-52/05 P), paragraph 59.
([3]) *In 't Veld* v *Council* (T-529/09), paragraph 75.

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Activities of the Committee on Petitions 2013

European Parliament resolution of 11 March 2014 on the activities of the Committee on Petitions 2013 (2014/2008(INI))

(2017/C 378/04)

The European Parliament,

— having regard to the significance of the right of petition and the importance for parliamentary bodies to be immediately aware of the specific concerns and views of the European citizen or resident, as provided for in Articles 24 and 227 of the Treaty on the Functioning of the European Union,

— having regard to the provisions of the Charter of Fundamental Rights of the European Union and notably Article 44 on the right to petition the European Parliament,

— having regard to the provisions of the of the Treaty on the Functioning of the European Union, which regard the infringement procedure, notably article 258 and 260,

— having regard to Rules 48 and 202(8) of its Rules of Procedure,

— having regard to the report of the Committee on Petitions (A7-0131/2014),

A. bearing in mind the petitions received in the year 2013, which was 'the Year of the European Citizen' number 2,885, representing an increase of almost 45 % on the year 2012; and noting that for the current legislature until now, almost 10,000 petitions have been registered;

B. whereas even though such a figure remains modest by comparison with the population of the European Union, it nevertheless denotes a marked increase in the awareness of the right of petition and legitimate expectations regarding the usefulness of the petitions process as a means of securing the attention of the European Institutions and the Member States for the concerns of individual citizens, local communities, NGOs, voluntary associations and private businesses;

C. whereas European citizens are directly represented by the only EU institution elected by them — the European Parliament; bearing in mind that the right to petition offers them the chance to address their representatives directly;

D. bearing in mind that the right of petition enhances the responsiveness of the European Parliament towards the citizens and residents of the Union, while it may at the same time provide people with an open, democratic and transparent mechanism for obtaining, where legitimate and justified, a non-judicial remedy for their complaints, notably when this relates to problems with the implementation of European legislation; whereas petitions provide valuable feedback to legislators and executive bodies both at EU and national level;

E. whereas further irreparable losses in biodiversity must be averted, especially inside Natura 2000 designated sites; whereas Member States have undertaken to ensure the protection of special conservation areas under the Habitats Directive (92/43/EEC) and the Birds Directive (79/409/EEC); whereas, although the Commission can fully check compliance with EU law only when a final decision has been taken by national authorities, it is important — particularly in relation to environmental matters — to verify at an early stage that local, regional and national authorities correctly apply all relevant procedural requirements under EU law, including implementation of the principle of precaution;

F. whereas it is necessary to increase citizen participation in the EU decision-making process, with a view to reinforcing its legitimacy and accountability; whereas the petitions process also constitutes a means to establish a reality check regarding the tensions which exist within European societies, particularly during times of economic crisis and social unrest, such as have resulted from the impact of the collapse of the world financial markets and banking systems on the people of Europe; recalling that the Committee on Petitions organised a public hearing involving petitioners on this subject in September 2013; whereas many petitions on financial malpractices and abuses towards consumer' rights in the banking sector and particularly the dramatic consequences of household evictions for entire families as a result of abusive mortgage clauses have attracted the attention of the committee;

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G. whereas such petitions as have been addressed to the Committee on Petitions have often provided useful inputs to other committees of the European Parliament which have the responsibility of formulating legislation designed to establish a socioeconomically and environmentally more secure, sound, fair and prosperous basis for the future of all European citizens and residents;

H. whereas each petition is assessed and treated on its merit, even when brought forth by only one EU citizen or resident, and each petitioner has a right to receive a reply in their own language;

I. bearing in mind that, depending on the nature and complexity of a petition received, its processing and response time will vary, but that every effort is to be made to duly respond to the concerns of petitioners within a reasonable time-frame and in an appropriate manner, in terms not only of procedure but also of substance;

J. whereas petitioners whose petitions are subsequently discussed during the regular meetings of the Committee on Petitions are able to participate fully, have the right to present their petition along with more detailed information, and thus actively contribute to the work of the Committee, providing additional and first-hand information to members of the Committee and to the European Commission as well as to the representatives of the Member States who may be present; and whereas in 2013, 185 petitioners attended and were actively involved in the Committee's deliberations;

K. bearing in mind that the activities of the Committee on Petitions are based entirely on the input and contributions received from petitioners, along with the results of its own investigations into each case as supplemented where necessary with additional expertise from the European Commission, Member States or other bodies; and that its agendas are prioritised and organised on the basis of decisions taken democratically by its members;

L. bearing in mind that the criteria established for the admissibility of petitions, under the terms of the Treaty and Parliament's rules, indicates that a petition must concern a matter which comes within the Union's fields of activity and which affects the petitioner directly; and that as a result of this a proportion of petitions received are declared inadmissible because they do not correspond to such criteria;

M. whereas the right of petition is a key tool for participation and democratic control by citizens, and its proper implementation must be ensured from the beginning to the end of the process; whereas this right must remain fully guaranteed, independently of governmental interests; whereas this principle must be upheld in an exemplary manner at EU level in the handling of petitions within this Parliament and by the Commission;

N. whereas the above-mentioned criteria have been tested before the courts and that rulings of the European Court of Justice, for example in case T-308/07, have upheld the criteria related to the right to petition and the fact that declarations regarding inadmissible petitions must be well-founded and require justification by the Committee in its subsequent correspondence with the petitioner; and for example in case T-280/09 and T-160/10, in relation to petitions that may be considered as too imprecise in their content;

O. whereas in addition to petitions received related to the impact of the crisis on European citizens and residents, other key issues of concern to petitioners relate to environmental law — notably issues concerning waste and water management, fundamental rights — notably regarding the rights of the child, the rights of the disabled and health-related issues, right to personal and real property, matters concerning free movement of persons, different forms of discrimination and in particular on ethnic, cultural or language grounds, visas, immigration and employment, and petitions on the application of justice, alleged corruption, delays in legal processes and many other areas of activity;

P. bearing in mind that because many petitioners, especially among the younger sectors of the population, make great use of the social media as a channel for communication, the Committee on Petitions has developed its own network under the auspices of the European Parliament and is regularly followed by a growing number of persons on mainstream social media, which are especially active and found useful around the times of Committee meetings; and whereas it has also developed a significant number of regular subscribers, currently 1 500, to the Committee's newsletter, the Péti Journal;

Q. whereas, in this same context, the Committee on Petitions has been working in conjunction with the relevant services of the European Parliament to develop a new multi-lingual web-portal which replaces the former, more limited, electronic facility for petition submission contained on the Europarl web-site; whereas the new portal is designed to increase administrative efficiency while enhancing the transparency and interactivity of the petitions process for the benefit of petitioners and Members of the European Parliament as well as for the public at large;

R. recalling, in this context, the position it upheld on the basis of the 2012 Annual Report which resolved to make the petition procedure more efficient, transparent and impartial while preserving the participatory rights of the members of the Committee on Petitions so that the handling of petitions will stand up to judicial review even at the procedural level;

S. whereas the Committee on Petitions maintains an active interest in the way in which the Regulation concerning the European Citizens' Initiative is being applied and is mindful of the many weaknesses and the rather cumbersome nature of the existing legal framework which does not fully translate the spirit of the Treaty provision in spite of the efforts of the AFCO and PETI Committees in its elaboration; and whereas the Parliament is to engage in discussions on the revision of this Regulation under the terms of the review clause after three years of its functioning;

T. whereas the provisions of the ECI Regulation regarding the organisation of a public hearing for a successful Initiative on the premises of the European Parliament are soon to be implemented, involving the lead committee with legislative competence for the subject matter of the Initiative alongside the Committee on Petitions, under the terms of Parliament's Rules of Procedure and the implementing rules adopted by the Bureau;

U. bearing in mind the valuable role of fact-finding visits regarding petitions under investigation, regularly organised by the Committee on issues to which it has given specific priority, and the need for reports of such visits to be of the highest level of quality and credibility and to be drawn up in faithful cooperation leading to a desirable consensus among participants; recalls the visits undertaken in 2013 to Spain — twice, to Poland, to Denmark, and to Greece; whereas more flexibility in the practical arrangements of these missions, mainly as regards the eligible weeks, would contribute to an even higher success of these visits particularly as regards the availability of members and reducing the risk of cancellation;

V. bearing in mind the Committee's responsibilities in relation to the office of the European Ombudsman, which is responsible for investigating complaints from EU citizens about possible maladministration within the EU Institutions and bodies, and about which it also produces an Annual Report, based upon the European Ombudsman's own Annual Report; and recalling that in 2013 the Committee was actively involved in the organisation of the election of a new European Ombudsman following the retirement of the then incumbent of this office, Mr Nikiforos Diamandouros;

W. whereas although a new European Ombudsman, Ms Emily O'Reilly, was successfully elected to serve as from 1 October 2013 by the members of this House, a new election must be organised at the beginning of the next legislature, as is provided for under the Rules of Procedure (Rule 204), and whereas it would be wise to ensure that clear and transparent rules for the process are published in good time which further clarify the responsibility of the Petitions Committee in this process and which ensure adequate transparency for the election, notably by means of an improved dedicated web facility;

X. whereas the Petitions Committee is a member of the network of European Ombudsmen, which includes some Petitions Committees of national parliaments where they exist, and whereas it appears to be important that cooperation between Petitions Committees themselves should be further highlighted and where practical, further reinforced and that the European Parliament could play a central role in this development in the interest of European citizens;

Y. whereas the Committee on Petitions intends to be a useful and transparent tool at the service of European citizens and residents, which exercises democratic control and scrutiny over many aspects of European Union activity, especially regarding the implementation of EU laws by the national authorities; and whereas it can contribute further, on the basis of petitions received, on the one hand to a more coherent and coordinated application of EU legislation and on the other to the improvement of future EU legislation by drawing attention to the lessons that should be learned from the substance of petitions received;

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Z. whereas this report is the last annual PETI Report of the 7th legislature of the European Parliament which is why it is outlining the Committee's activities in 2013, as well as overviewing the whole parliamentary term and assessing to what extent the PETI Committee managed to meet citizens' expectations, following the entry into force of the Lisbon Treaty;

1. Acknowledges the substantial and fundamental role of the Petitions Committee in defending and promoting the rights of EU citizens and residents, ensuring that through the petitions process the concerns of petitioners are better recognised and their legitimate grievances resolved wherever possible, in a reasonable time-frame;

2. Is determined to make the petition procedure more efficient, transparent, and impartial, while preserving the participatory rights of the Members of the Committee on Petitions, so that the handling of petitions will stand up to judicial review even at a procedural level;

3. Emphasises that the Committee on Petitions, along with other institutions and bodies, such as the committees of inquiry and the European Ombudsman, play an independent and clearly defined role as points of contact for each individual citizen; highlights the fact that these bodies, together with the European Citizens' Initiative, are fundamental tools for a democratic EU and the creation of a European demos, and that proper access to them and their reliable functioning must be guaranteed;

4. Underlines that throughout the current parliamentary term the Petitions Committee was taking up the challenges to meet the expectations of the citizens of the European Union; emphasises the importance of citizens direct involvement in the Parliament's activity and to have their concerns, proposals or complaints specifically addressed by the Committee members; points out the amount of work that had been done to resolve possible infringements of citizens' rights and by cooperating with national, regional and local authorities on issues related to the application of European laws; while maintaining a vital role in reconnecting with European citizens and reinforcing the democratic legitimacy and accountability of the EU decision-making process;

5. Recalls the Commission's significant role in assisting with the handling of the cases raised by petitions; considers that the Commission's investigation of petitions should go into greater depth and look into the substance of cases with regard to EU legislation; stresses the importance of transparency in these processes and of a proper public access to relevant documents and case-related information;

6. Stresses the importance of proactive monitoring and timely preventive action by the Commission, where there is well-founded evidence that certain planned and published projects may breach EU legislation;

7. Observes the variety of thematic key areas concerned in the citizens' petitions, such as fundamental rights, internal market, environmental law, public health issues, child welfare, transport and constructions, Spanish Coastal Law, new Regulation on good administration, persons with disabilities, age discrimination, public access to documents, European Schools, Fiscal Union, and the Steel Industry, animal rights and many more;

8. Considers that petitions which fall under said thematic areas lend proof to the issue that the frequencies of widespread situations of unsatisfactory transposition of EU legislation or misapplication of the law are still occurring;

9. Considers it important to enhance cooperation with Member States' parliaments and governments, based on reciprocity, and, where necessary, to encourage Member States' authorities to transpose and apply EU legislation with full transparency; stresses the importance of the Commission's cooperation with the Member States and deplores the negligence of some Member States with regard to full transposition and enforcement of European legislation, in particular on environmental matters;

10. Recalls that the Petitions Committee considers admissible petitions, related to the principles and the contents of the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union, as an inherent part of its activity, and it pursues its investigations on the merits of each case, reminds that, the European Commission has frequently felt itself unable to act when requested by the Committee because of the existence of Article 51 of the Charter; stresses the fact that the expectations of citizens are much greater than the Charter's strictly legal provisions allow for;

11. Congratulates the Committee on the work it has undertaken in relation to petitions received on issues related to disability, about which there has been a significant increase in 2013; notes the efforts which were made to ensure the successful launch of the EU framework under the terms of article 33 of the UN Convention on the Rights of Persons with Disability where the Petitions Committee was associated with the European Commission, the Fundamental Rights Agency and the European Disability Forum, and notes the willingness of the Committee to continue to support this activity; regrets that subsequently the involvement of the Petitions Committee within the UNCRPD Framework has been terminated and that it has been replaced by legislative committees which also have responsibility in this field, considers this latter decision to have been based on a misinterpretation of the functions attributed under the UNCRPD Framework;

12. Notes the amount of attention which was given to some major petitions received regarding the proposed development of a new airport at Notre Dame-des-Landes, near Nantes; acknowledges that significant contributions were received from petitioners which opposed the scheme on environmental grounds and that a substantial petition was also received from those who favoured the project which gave rise to an intensive debate in Committee at which the French authorities and the Director General for Environment at the Commission participated alongside the main petitioners; considers that such serious discussions not only improve public awareness and allow citizens to become actively and legitimately involved, but they also permit several controversial features associated with the project that allegedly conflict with EU law to be clarified and remedies identified which allow for the proper respect of European legislation as it should apply in such circumstances;

13. Acknowledges that in 2013, many petitioners voiced their alarm at the apparent injustices which occur in Denmark regarding the administrative and judicial procedures related to parental separation and divorce and the subsequent custody of young children; notes in this context that in the case of bi-national couples there are clear examples of discrimination on grounds of nationality in favour of the spouse from the Member State concerned with the proceedings and against the non-national of that state, with severe and often very negative and dramatic repercussions on the rights of the child; notes in this context severe violations of the fundamental rights of both the petitioner and the child; notes that the Petitions Committee undertook a fact-finding visit to Denmark to investigate such claims directly where the situation appears to be particularly acute; notes that some cases were also recorded from other countries, notably Germany (especially cases concerning the activities of the Jugendamt), France and the UK;

14. Recalls the investigations conducted on the basis of petitions related to the consequences of failed implementation of the Waste Framework Directive throughout the parliamentary term, and the adoption of the relevant report; recalls the recommendations concerning the lack of proper decision-making as regards landfills and the effect of this on local populations; stresses that the situation is far from having been resolved, given the petitions that have been considered subsequently, particularly in relation to the persistence of toxic fires caused by heavily pollutant industrial waste in some areas of Campania, and to the lack of transparency regarding plans and institutional management in Lazio over the last months, following the scheduled closure of the Malagrotta landfill, which is currently the subject of high-level judicial inquiries; recalls the intensive fact-finding visit to Greece conducted in the autumn of 2013 on this subject which has drawn attention to the shortcomings in the application of the relevant waste-related directives, the lack of progress in waste management as regards plans and systems high up in the waste hierarchy, as well as to the impact on the health of populations in certain areas of Greece; notes that several other petitions on waste management deficiencies have been recently submitted concerning other Member States, particularly in the Valencia region of Spain and in the UK;

15. Acknowledges the report of the fact-finding visit to Poland which investigated a proposed open-cast mine site in Lower Silesia; welcomed also the intensive discussions held on this occasion with petitioners and national authorities regarding the possible exploration and exploitation of shale-gas reserves about which the Committee had already conducted a workshop in 2012;

16. Highlights the very constructive work undertaken by the entire Committee as regards the petitions received which concern the Spanish law on coastal management (*Ley de Costas*) both as regards the results and conclusions of the fact-finding visit and as regards the cooperation with both petitioners and the responsible national authorities; recalls that a special ad hoc working group was established by the Committee to look at this complex issue in more detail and to ensure liaison with the very large number petitioners concerned; recognises that although some advances were obtained for petitioners in the new legislation adopted by the Spanish Parliament; requests the Commission to continue to actively monitor the issue;

17. Welcomes the fact that the fact-finding visit to Galicia, which took place in February 2013, was able to hold extensive discussions with petitioners and the regional authorities on issues related to the lack of proper waste-water treatment facilities in the region; ratifies the conclusions and recommendations of the report of the fact-finding mission approved in the Committee on Petitions on 17 December 2013 in the sense that the efforts for the culmination of the clean-up and regeneration of the rías object of the visit should continue;

18. Emphasises the role of reporting obligation of the Committee; draws attention to several resolutions adopted in 2013 in the form of reports such as the Special Report of the European Ombudsman on the Commission's handling of deficiencies in the environmental impact assessment in the Vienna Airport enlargement project, besides the Annual Report on the activities of the European Ombudsman as a whole; stresses the relevant input provided by the Committee thanks to the expertise achieved through the handling of many concrete cases over the years in the forms of opinions to lead committees and in particular to the revision of the EIA Directive as well as the opinion on the location of the seats of the European Union's Institutions; believes that thanks to such documents Petitions Committee can bring the issues of importance to European Citizens to plenary;

19. Recalls that, under Rule 202(2), the Petitions Committee is entitled to submit not only non-legislative own-initiative reports to plenary on matters relating to several petitions, but also short motions for resolutions to be voted on in plenary in relation to urgent matters;

20. Believes that the organisation of public hearings is a very important tool for examining problems raised by petitioners; draws attention to the public hearing held on the impact of the crisis on Europe's citizens and the reinforcement of democratic involvement in the governance of the Union, as well as to the public hearing on making the most of EU citizenship, which analysed the concerns raised in both respects by EU citizens based on petitions received; considers that the information provided in petitions demonstrates the personal impact of the austerity drive on the rights of the petitioners as well as showing the greater role and commitment of civil society; recognizes that to tackle tomorrow's financial challenge Europe needs credible, visible and accountable economic governance; underlines the importance of combating the remaining obstacles to EU Citizens' enjoyment of their rights under EU law as well as promoting EU citizens' political participation in the life of the EU;

21. Considers it essential to its work on particular subjects to use other forms of activity such as parliamentary questions for oral answer dealt with during plenary sittings; recalls they are a direct form of parliamentary scrutiny of other EU institutions and bodies; points out that it has used its right 9 times in 2013 tabling questions concerning, for instance, disabilities, animal welfare, waste management and European citizens' initiative; deeply regrets the fact that some of the initiatives proposed by the committee are kept in the pipeline for several months before being debated in plenary, thus preventing the recurrent concerns of EU citizens from being voiced and from receiving a direct answer from the Commission;

22. Notes the constant influx of correspondence from citizens who turn to Parliament for redress on issues that fall outside the EU's area of competence pursuant to Article 227 of the Treaty as well as Article 51 of the Charter of Fundamental Rights; calls for finding better solutions for dealing with these submissions from citizens while taking into account Parliament's obligations with regard to its correspondence with citizens; regrets, in this regard, the failure of the appropriate Parliament services to follow through on the recommendations on submissions from citizens on issues that fall outside the EU's area of competence presented in its resolution of 21 November 2012 on the activities of the Committee on Petitions 2011;

23. Acknowledges that environmental issues remain a priority for petitioners, thus highlighting the fact that Member States continue to fall short in this area; observes that many of the petitions focus on public health e.g. waste management, water safety, nuclear energy, and protected animals; points out that many petitions are concerned with new and upcoming projects which increase the dangers of effecting the aforementioned areas; recalls that as Member States strive to address these situations it is clear that finding a sustainable solution is still a hindrance; points to the case of the ILVA steel plant in Taranto that is of major concern, due to the severe deterioration in environmental conditions and the health situation of the local population; urges the Commission to use the mechanisms available to it in order to ensure, as far as possible, immediate compliance by the Italian authorities with the EU environmental legislation;

24. Calls on the Committee on Petitions to continue examining the effects of case law pertaining to the Hellenic Broadcasting Corporation (Ellinikí Radiofonía Tileórasi, ERT) on the interpretation of Article 51 of the Charter of Fundamental Rights of the European Union and its consequences concerning petitions and to investigate what actual obstacles lie in the way of EU citizens applying for a preliminary ruling from the European Court of Justice in order to obtain reliable interpretations of central issues under European legislation in cases before the national courts;

25. Welcomes the implementation of the European Citizens' Initiative (ECI) on 1 April 2012, as well as the registration of the first ECI, dedicated to policies for Europe's Youth — Fraternity 2020, and the recently successful ECI dedicated to the Right to Water; believes that the ECI constitutes the first instrument of transnational participatory democracy and will enable citizens to become actively involved in the framing of European policies and legislation; reconfirms its commitment to participate in the organisation of public hearings for successful European Citizens' Initiatives with the active involvements of all concerned parliamentary committees; underlines the need for regular review of the state of play with the European Citizens' Initiatives, with the aim of improving the procedure while limiting the red tape and other obstacles; is aware that the outcome of the first parliamentary hearings of the first successful ECIs taking place in 2014 are crucial in setting high procedural standards and meeting citizens' expectations regarding the exercise of this right in the future, and undertakes to give institutional priority to ensuring the effectiveness of the participatory process;

26. Appreciates the Commission's decision to declare 2013 the 'European Year of Citizenship' providing valuable information and insight for EU citizens regarding their rights and of the democratic instruments available to them to assert those rights; considers that the 'European Year of Citizenship' should be used for the broad dissemination of information on the new 'European Citizens' Initiative', therefore providing clear and understandable guidelines in order to curtail the high rate of inadmissibility comparable to the rate that is still to be found in the 'petitions' field; is convinced that the petitions web portal represents a concrete and valuable contribution by Parliament to European citizenship;

27. Calls on the Commission as guardian of the Treaty to ensure that the current inadequate implementation of EU law, as illustrated by the number of petitions submitted to Parliament, is remedied in order to allow EU citizens to take full advantage of their rights;

28. Calls on the Commission to propose legislation to resolve the issues surrounding mutual recognition by Member States of civil status documents, while respecting the competences of the Member States;

29. Deplores that European citizens continue to experience frequent problems caused by the misapplication of Internal Market law by public authorities while exercising their freedom of movement;

30. Deplores the fact that in the recent time the reports on fact-finding missions and other documents were not translated to the EU official languages, especially the national languages of petitioners;

31. Acknowledges the important role of the SOLVIT network, which regularly uncovers and resolves problems linked to the implementation of internal market legislation; urges for the reinforcement of this tool and for more active collaboration between the Petitions Committee and the SOLVIT network; recalls that 2013 was the Year of European Citizenship and pays tribute to the institutions and bodies both of the European Union and of the Member States that advertised more intensively their service to European citizens and residents during this year, in light of the principles contained in the Treaties and the facts revealed in this report;

New horizons and relations with other institutions

32. Points out the importance of making this Committee work more substantial inside the House by raising its profile as a scrutiny Committee; invites the newly elected Petitions Committee to nominate internal Annual Rapporteurs on the major policies, which are of concern of European petitioners, and to enhance cooperation with other parliamentary committees by systematically inviting their members to those debates in the Petitions Committee which concern their respective fields of legislative competence; invites the other parliamentary committees to involve the Petitions Committee more as an opinion giving committee on implementation reports and other instruments to monitor the correct transposition and implementation or eventual revision of the European legislation in the Member States; stresses the importance, also in view of the ever-increasing amount of petitions received and their related undertakings, of enjoying a de-neutralised status in the Parliament's committee portfolio; invites the Plenary Session of the European Parliament to dedicate more time to the work of the Petitions Committees;

33. Highlights the need to reinforce the Petitions Committee collaboration with the other EU Institutions and bodies, and the national authorities in the Member States; considers its importance to enhance structured dialogue and systematic cooperation with Member States especially with the National Parliaments' Petitions Committees, e.g. by holding regular meetings with the chairs of all national Petitions Committees; creating such a partnership will allow best exchange of experience and practices and more systematic and efficient 'referral of petitions to the competent level and body, and ultimately will bring the European Parliament closer to the European citizens' concerns; welcomes the establishment in Ireland of the Oireachtas Joint Committee on Investigation, Oversight and Petitions, and the useful links it has established with the European Parliament in the course of this year in order to bring about an even better service to citizens; notes that parliaments in other member states are currently considering creating petitions committees or similar bodies, or that some have other processes for dealing with petitions;

34. Calls on the Commission to duly recognise the role of petitions in monitoring the effective implementation of EU law, since petitions are usually the earliest indications that Member States are lagging behind in implementing legal measures; invites the European Parliament to recommend in its Interinstitutional Agreement with the Commission to reduce the time it takes to respond to the Committee's requests and to also keep the Petitions Committee informed of developments in infringement proceedings directly linked to petitions; believes, in general terms, that the European institutions ought to supply more information and be more transparent with regard to EU citizens, in order to combat the increasing perception of democratic deficits;

35. Stresses that close cooperation with the Member States is essential for the work of the Petitions Committee; encourages Member States to play a proactive role in responding to petitions related to the implementation and enforcement of European law, and considers the presence and the active cooperation of Member State representatives at Petitions Committee meetings to be of the utmost importance; is determined to maintain close cooperation and communication between EU Institutions and the citizens;

36. Stresses the importance of the reinforced collaboration with the European Ombudsman by putting in place a new inter institutional agreement; underlines the importance of the involvement of the European Parliament in the network of National Ombudsmen; applauds the excellent relations in the institutional framework between the Ombudsman and this Committee; especially appreciates the regular contributions by Ombudsman to the work of Petitions Committee through the legislative term; reminds that still not all EU citizens have a national ombudsman, which means that not all EU citizens have the equal access to redress; is of an opinion that office of national ombudsman in each Member State within the European Network of Ombudsmen would deliver substantial support for the European Ombudsman;

Working methods

37. Calls upon MEPs in the Petitions Committee to adopt final internal rules to ensure maximum efficiency and openness in the work of the Committee and to make proposals to revise accordingly the Rules of Procedure of the European Parliament in order to consolidate their continuous attempts during the whole seventh legislature to improve working methods; calls on the Petitions Committee to adopt clear deadlines in the process of petitions in order to speed up the petitions life-cycle in the European Parliament and make the whole process even more transparent and democratic; underlines that this could put in place a defined lifecycle of the petition from registration until their final closure in the European Parliament, similarly to the existing deadlines for the work in process on legislative and non-legislative files; considers that these deadlines should establish an alert mechanism which automatically draws Members' attention to petitions on which there has not been any action or correspondence for a considerable amount of time, in order to avoid old petitions staying open over years without substantial reason; recalls that fact-finding visits are one of the key investigative instruments of the Petitions Committee, therefore an urgent revision of the relevant rules is needed, in order to enable the newly elected Members to carry out efficient visits and report swiftly back to the petitioners and the Committee on their findings and recommendations;

38. Welcomes the presence of public authorities of the Member State concerned at meetings of the Petitions Committee, as well as of other interested parties; highlights the fact that the Petitions Committee is the only Committee which systematically provides a platform for citizens to voice their concerns directly to Members of the European Parliament and which enables a multiparty dialogue between the EU institutions, the national authorities and petitioners; suggests that in order to facilitate organisation of the meetings as well as to reduce the travel costs in the future, that the Petitions Committee and Parliament's administration explore the possibility for participation of the petitioners or the public authorities by means of video conference or similar facility;

39. Notes the growing number of petitions in the course of the legislative period and remains highly concerned that delays and response times are still too long throughout the registration phase and the admissibility phase in the process; calls for providing the Unit for Reception and Referral of Official Documents and the Petitions Committee Secretariat, respectively, with an additional administrator with juridical background, to issue recommendations related to whether the petition lies within the competence of European law; considers that, these recommendations, along with summaries of petitions, need to be provided to Members only in English first and then to be translated into all official languages only when being published; in order to further speed up the first decisions on admissibility; expects that the launch of the new petitions web-portal will diminish the number of questionable submissions which are occasionally registered as petitions;

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40. Instructs its President to forward this resolution and the report of the Committee on Petitions to the Council, the Commission, the European Ombudsman, and the governments and the parliaments of the Member States, their committees on petitions and their national ombudsmen or similar competent bodies.

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P7_TA(2014)0205

Horticulture

European Parliament resolution of 11 March 2014 on the future of Europe's horticulture sector — strategies for growth (2013/2100(INI))

(2017/C 378/05)

The European Parliament,

— having regard to Part Three, Titles III and VII of the Treaty on the Functioning of the European Union (TFEU),

— having regard to Regulation (EC) No 1107/2009 of 21 October 2009 concerning the placing of plant protection products on the market,

— having regard to Directive 2009/128/EC of 21 October 2009 on the Sustainable Use of Pesticides,

— having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products ([1]),

— having regard to Regulation (EC) No 1182/2007 of 26 September 2007 laying down specific rules as regards the fruit and vegetable sector ([2]) and to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ([3]),

— having regard to Regulation (EU) No 1169/2011 of 25 October 2011 on the provision of food information to consumers ([4]),

— having regard to Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products ([5]),

— having regard to Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms ([6]),

— having regard to its resolution of 21 June 1996 on a Community initiative for ornamental horticulture ([7]),

— having regard to the Commission Communication of 9 December 2008 on food prices in Europe (COM(2008)0821),

— having regard to the Commission Communication of 16 July 2008 on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan (COM(2008)0397),

— having regard to the Commission Communication of 28 October 2009 on a better functioning food supply chain in Europe (COM(2009)0591),

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) OJ L 273, 17.10.2007, p. 1.
([3]) OJ L 157, 15.6.2011, p. 1.
([4]) OJ L 304, 22.11.2011, p. 18.
([5]) OJ L 189, 20.7.2007, p. 1.
([6]) OJ L 106, 17.4.2001, p. 1.
([7]) OJ C 198, 8.7.1996, p. 266.

— having regard to the Commission Communication of 28 May 2009 on agricultural product quality policy (COM(2009)0234),

— having regard to the Commission Communication of 3 May 2011 entitled 'Our life insurance, our natural capital: an EU biodiversity strategy to 2020' (COM(2011)0244),

— having regard to Commission Decision 2008/359/EC of 28 April 2008 setting up the High Level Group on the Competitiveness of the Agro-Food Industry, and to the Report of that High Level Group of 17 March 2009 on the Competitiveness of the European Agro-Food Industry, along with the Group's recommendations and roadmap of key initiatives ([1]),

— having regard to the November 2012 study entitled 'Support for Farmers' Cooperatives' (SFC), which presents the findings of the SFC project launched by the Commission ([2]),

— having regard to the 2013 study by the Commission Joint Research Centre — Institute for Prospective Technological Studies entitled 'Short Food Supply Chains and Local Food Systems in the EU. A State of Play of their Socio-Economic Characteristics' ([3]),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Agriculture and Rural Development (A7-0048/2014),

A. whereas the fruit and vegetables (F&V) sector receives about 3 % of Common Agricultural Policy (CAP) aid yet accounts for 18 % of the total value of agricultural production in the EU, represents 3 % of the EU's usable agricultural area and is worth more than EUR 50 billion;

B. whereas horticulture includes fruit, vegetables, potatoes, salads, herbs and ornamentals, and whereas the horticulture sector incorporates nurseries, perennial nurseries, gardening services, cemetery gardening, gardening supplies retailers, garden centres, florists and landscape gardening;

C. whereas the F&V supply chain has an estimated turnover of more than EUR 120 billion, with approximately 550 000 employees, and is important for the economy of those areas within the EU that tend to have a high unemployment rate;

D. whereas the EU is the world's second-largest producer, and also the second-largest importer of F&V; whereas demand in this sector is growing and currently exceeds supply; whereas F&V trade rose from over USD 90 billion in 2000 to nearly USD 218 billion in 2010 and accounts for almost 21 % of global food and animal product trade; whereas the EU has opened up its markets considerably to imports from third countries with which it has concluded bilateral and multilateral agreements;

E. whereas the horticulture sector — primary production and processing industry — acts as an economic multiplier at European level, stimulating both demand and the creation of added value in other economic sectors such as trade, construction and financial services;

F. whereas the organic F&V sector is the fastest growing organic sector within any EU market, valued at EUR 19,7 billion in 2011 and with a growth rate of 9 % between 2010 and 2011, in a decade-long trend of annual growth of between 5-10 %; whereas in terms of area planted, the share of organic fruit increased by 18,2 % and that of organic vegetables by 3,5 % between 2010 and 2011;

G. whereas per capita F&V consumption in 2011 for the EU-27 decreased by 3 % compared with the average consumption of the previous five years, in spite of the substantial health benefits which eating F&V brings;

([1]) Available at http://ec.europa.eu/enterprise/sectors/food/competitiveness/high-level-group/documentation/
([2]) Available at http://ec.europa.eu/agriculture/external-studies/2012/support-farmers-coop/fulltext_en.pdf
([3]) Available at http://ftp.jrc.es/EURdoc/JRC80420.pdf

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H. whereas the EU is the world's biggest producer of flowers, bulbs and potted plants (44 % of global production), with the highest density per hectare; whereas the ornamental sector has an estimated turnover of EUR 20 billion in production, EUR 28 billion in wholesale trade and EUR 38 billion in retail trade, and employs approximately 650 000 people;

I. whereas the F&V regime is part of the CAP and seeks, among other objectives, to restore balance in the food chain, promote F&V, boost competitiveness and support innovation; whereas membership of producer organisations (POs) should be increased, including in those regions in which no operational funds have been available for some years and/or production methods are outdated, by making the system more attractive, in view of the fact that more than half of all EU growers still do not belong to a PO despite the Commission's objective of an average rate of 60 % PO membership by 2013; whereas the low rate of organisation in some Member States has been partly caused by the suspension of POs, which creates uncertainty among producers; whereas, given that POs play a key role in enhancing the negotiating power of F&V organisations, it is essential to prevent uncertainty among producers by clarifying European legislation on the recognition of POs;

J. whereas, according to Eurostat, total input costs for EU farmers climbed on average by almost 40 % between 2000 and 2010, while farm gate prices increased on average by less than 25 %; whereas the increase in input costs was almost 80 % for synthetic fertilisers and soil improvers, almost 30 % for seeds and planting stock and almost 13 % for plant protection products;

K. whereby the loss of soil fertility due to erosion, decreased input of organic matter leading to poor crumb structure and humus levels, decreased nutrient and water retention, and a reduction in ecological processes is a significant cost to both farmers and the public budget;

L. whereas the 'knowledge pipeline' to translate research into practice for horticulture is under strain, and whereas spending by the private sector on research is low overall, with research and development (R&D) accounting for only 0,24 % of total food industry expenditure across the EU-15 in 2004, the latest period for which figures are available;

M. whereas a large number of F&V varieties are under threat of extinction because they are not sufficiently profitable, and whereas farmers who continue to grow those varieties play an environmentally, socially and culturally valuable role in preserving important components of Europe's agricultural base;

N. whereas the growing difficulties being experienced in connection with plant pest prevention, control and eradication and the limited availability of plant protection products for vegetable crops could have an adverse effect on agricultural diversity and vegetable quality in Europe;

O. whereas businesses operating in the horticulture sector are often also involved in the areas of production, sales and services;

P. whereas cisgenesis can be defined as a genetic engineering technique which introduces into a subject plant a gene from its relatives of the same genus or species;

1. Stresses the importance of promoting the EU horticulture sector and enabling it to compete better in the global marketplace, through innovation, research and development, energy efficiency and security, adaptation to and mitigation of climate change and measures to improve marketing, as well as of continuing efforts to eliminate the imbalance between operators and suppliers;

2. Emphasises the need to make it easier for producers to gain access to third-country markets; calls on the Commission to increase its efforts to support exporters of fruit, vegetables, flowers and ornamental plants to overcome the increasing number of non-tariff barriers, such as some third-country phytosanitary standards that make export from the EU difficult, if not impossible;

3. Calls on the Commission to establish the same market access conditions, as regards marketing standards, designations of origin, etc. for all market participants in the EU and to carry out checks to ensure that those conditions are observed, in order to prevent distortions of competition;

4. Encourages the promotion of F&V consumption in Member States through educational activities such as the EU School Fruit Scheme, as well as, for example, the Grow Your Own Potato and Cook Your Own Potato industry schemes in the UK;

5. Notes that local and regional markets often have insufficient supplies of horticultural products produced therein and agricultural entrepreneurship should therefore be promoted in these regions, in particular through incentives for young entrepreneurship, which would provide employment opportunities in the agricultural sector as well as a guarantee regarding the supply of fresh local produce;

6. Emphasises the benefits of ornamental horticulture to human health and well-being in enhancing green spaces, thereby improving the urban environment with respect to climate change and the rural economy; stresses the need for more active support for this sector in terms of encouraging investment and career development;

7. Welcomes the measures in the EU F&V regime which are intended to increase market orientation among EU growers, encourage innovation, promote F&V, increase growers' competitiveness and improve marketing, product quality and the environmental aspects of production, through the provision of support to POs, PO associations and the recognition of inter-branch organisations, also promoting the formation of clusters that will generate new income streams, to be channelled into new investments; points out, at the same time, that steps must be taken to ensure that self- and direct marketers do not suffer discrimination but have the opportunity to implement innovative projects and enhance their competitiveness;

8. Points out that local and regional production and marketing help to create and safeguard economic activity and jobs in rural areas;

9. Points out that short value chains help to reduce emissions which are damaging to the climate;

10. Notes that urban farming offers new options to the horticulture sector;

11. Welcomes the report on the Commission public consultation entitled 'A Review of the EU Regime for the Fruit and Vegetables Sector', in particular section 3, 8 thereof, which acknowledges the need for simplification of the current rules governing POs, endorses its proposal to strengthen POs and notes that most of the replies are in favour of maintaining the basic philosophy of the current support arrangements;

12. Emphasises that cutting red tape is particularly important for small and medium-sized businesses, although such measures must not undermine the legal certainty upon which such businesses also rely;

13. Welcomes the fact that the CAP reform agreement retains the PO-based European F&V aid system, while acknowledging that existing instruments have not always been effective, as recognised by the Commission in its public consultation document entitled 'A Review of the EU Regime for the Fruit and Vegetables Sector', and therefore supports the work of the Newcastle Group aimed at improving the EU fruit and vegetables regime, which should take account of the specific nature of the legal arrangements governing cooperatives in the Member States, so as not to limit the creation of new POs, while respecting the fact that growers may opt to remain outside the PO system; notes, also the establishment of a Union instrument for managing serious crises affecting a number of Member States and stresses that it should be open to all producers, irrespective of whether or not they are members of a PO;

14. In order to strengthen the beneficial activities carried out by POs for producers, calls on the Commission, in its review of the EU F&V regime, to produce clear and practical rules on the design and working methods of POs and adjust the scheme to fit the market structures that exist in Member States, so that POs can play their intended role and so that growers have an incentive to join POs, provided that this does not jeopardise the achievement of the regime's fundamental objectives and that growers remain free to make their own decisions on these matters;

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15. Notes with concern that PO scheme rules are open to wide interpretation by the Commission's auditors, which leads to a high degree of uncertainty and can leave Member States at risk of disallowance and judicial review; stresses, also, that audit procedures and financial corrections must be carried out in a more timely manner and within an agreed audit time period;

16. Notes that unfair trading practices remain across the EU which undermine horticultural businesses and their POs, and diminish growers' confidence to invest in the future, Believes that codes of conduct agreed by all actors in the supply chain, backed by a legislative framework and overseen by a national adjudicator in each Member State to monitor trading practices, could significantly improve the functioning of the food chain and the internal market;

17. Takes the view that the private standards for pesticide residues that have been adopted by many large retail chains are anti-competitive and detrimental to the interests of F&V growers; calls on the Commission to put an end to such practices, given that the pesticide residue levels laid down in EU legislation provide adequate protection for the health of both consumers and producers;

18. Calls on the Commission and the Member States to promote integrated pest management (IPM), support innovation and entrepreneurship through increased research into and development of non-chemical alternatives, such as natural predators and parasites of pest species, and use the Horizon 2020 Framework Programme for Research and Innovation to fund applied research that supports the development of integrated strategies for pest, disease and weed control, provide producers with the necessary tools and information to address Directive 2009/128/EC in which it is stated in Article 14 thereof that Member States must 'take all necessary measures to promote low pesticide-input pest management, giving, wherever possible, priority to non-chemical methods' and 'establish, or support the establishment of necessary conditions for the implementation of integrated pest management';

19. Calls on the Commission and the Member States to promote and emphasise the intensification of ecological processes ensuring long-term soil health, fertility and formation, as well as managing and regulating pest populations; believes that this can lead to long-term productivity gains for farmers and reduced costs to public budgets;

20. Stresses that horticulture is reliant on a variety of plant protection products (PPPs), and urges the Commission to take a risk-based approach to the regulation of these products that is justified by peer-reviewed, independent, scientific evidence; emphasises that minor uses are particularly vulnerable owing to the scarcity of the relevant active substances; calls on the Commission to strengthen the co-ordination of data generation across the Member States, in particular residues data, which is an essential requirement for authorisations on edible speciality crops; calls on DG Agri, DG Sanco, DG Environment and DG Competition to work together strategically to take into account the impact of changes to PPP regulation from multiple perspectives;

21. Urges the Commission to review the operation of the arrangements for mutual recognition of PPP authorisations laid down in Article 40 of Regulation (EC) No 1107/2009, with a view to streamlining their implementation and removing any unnecessary red tape, and consider the long-term goal of global harmonisation for regulating PPPs and reducing non-tariff trade barriers to export trade;

22. Urges the Commission to submit, in accordance with Article 51(9) of Regulation (EC) No 1107/2009 and without further delay, a report to Parliament and the Council on the establishment of a European fund for minor uses and specialty crops; stresses that such a fund should be used to finance an ongoing European work programme for coordination and cooperation between agri-food operators, competent authorities and stakeholders, including research bodies, on carrying out and, where appropriate, funding research and innovation work geared to protecting specialty crops and minor uses;

23. Points out that imports are not required to meet the same phytosanitary requirements as European products; stresses that this ongoing disparity undermines the competitiveness of European producers and is detrimental to the interests of European consumers;

24. Recalls that both the Plant Protection Products Regulation (Regulation (EC) No 1107/2009 of 21 October 2009 ([1])) and the new Biocides Regulation (Regulation (EU) No 528/2012 of 22 May 2012 ([2])) require the Commission to specify scientific criteria for the determination of endocrine-disrupting properties by December 2013; emphasises how important it is that the procedure should be transparent, so that the market actors concerned understand the scientific basis for the decisions and are aware of the actors who were involved in developing new criteria; urges the Commission to fully consider the impact of different approaches when presenting proposals for endocrine disruptors;

25. Emphasises that the horticulture sector relies heavily on the use of high quality, well specified fertiliser materials; welcomes the current review of the EU fertilisers regulation, but notes with concern the Commission's aim to include the previously non-prescribed material soil improvers; stresses that this material does not require precision in manufacturing and use, and calls on the Commission not to include it within the scope of the fertilisers regulation;

26. Highlights the fact that the horticulture sector is leading the development and adoption of innovative precision farming systems and believes that such systems will reduce the use of pesticides and fertilisers, increase marketable yields and reduce waste, as well as improve continuity of supply and economic performance; stresses that plant cultivation methods, such as crop rotation and the planting of catch crops, as well as research and development, should be geared to minimising environmental damage;

27. Notes the Commission proposal for a regulation on plant reproductive material (COM(2013)0262) and is concerned that it would impact disproportionately on the horticultural sector, and in particular on ornamentals and fruit; stresses that any legislation should be proportional and recognise the principle of subsidiarity; stresses, also, that changes to legislation must not endanger traditional varieties and crops, and should contribute to genetic diversity of and within populations of crops, for long-term food security and resilience of food systems;

28. Notes the impact of non-native invasive horticultural species on the wider environment, but recommends that a regional, or country-based approach be taken in the Commission proposal for a regulation on the prevention and management of the introduction and spread of invasive alien species (COM(2013)0620), which recognises that some areas of Europe are more vulnerable than others and that different areas in Europe have different climates which will support a different array of plants;

29. Strongly urges the Commission to safeguard as a general principle the freedom of plant breeders to use existing plant materials freely to develop and market new ones, regardless of any patent claims extending to plant materials;

30. Calls on the Commission and the Member States to support the development of local fruit and vegetable markets and of short supply chains, thereby ensuring product freshness;

31. Calls on the Commission to differentiate between cisgenic and transgenic plants and to create a different approvals process for cisgenic plants; awaits the EFSA opinion demanded by DG Sanco evaluating the findings of the working group of new biotech breeding techniques;

32. Highlights the seasonally high labour needs of the horticulture sector and calls on the Member States to ensure that there are effective schemes in place to ensure that horticulture producers can access the labour they need for key periods of the year, while fully respecting the requirements of the seasonal workers directive, including the principle of fair wages;

([1]) OJ L 309, 24.11.2009, p. 1.
([2]) OJ L 167, 27.6.2012, p. 1.

33. Welcomes the renewed emphasis on workforce training and apprenticeships, but notes with concern that the numbers of people completing horticulture apprenticeships in some Member States remains low, restricting the openings for young people with an interest in this sector; recognises that not all young people taking apprenticeships are suited to them; emphasises that efforts to encourage young people to consider jobs in the horticulture sector and provide them with training should be supported by means of awareness-raising and information campaigns which enhance the sector's image;

34. Urges the agri-food sector and the research community to work together in a systematic way to attract and train the next generation of researchers and upskill the existing workforce;

35. Emphasises the benefits of strengthening and extending partnerships between government, industry and research organisations and the need to ensure that schemes to support such partnerships are structured in a way that maximises the impact and coherence of investments overall;

36. Stresses the vital importance of making efficient use of qualified scientific resources so as to speed up the application of research and innovation results through the transfer of innovatory agricultural production technology to the horticulture sector and the combination of research, innovation, training and expansion in the agricultural sector with economic policies meeting the requirements of horticultural production development while increasing its efficiency;

37. Is of the view that the floriculture and ornamental plant sector must be allowed to make better use of Union programmes for research, technological development and innovation, and calls on the Commission to include 'protected cultivation' in Horizon 2020 calls in order to stimulate innovation regarding, for example, sustainable crop protection, sustainable water and nutrient usage, energy efficiency, advanced cultivation and production systems, and sustainable transport;

38. Is of the view that with funding for agricultural and horticultural research under budgetary constraint in Member States, funding by third parties, including, but not limited to, retailers, should be encouraged, and should be in line with the total research interest of the sector;

39. Calls on the Commission and Member States to facilitate access to long-term funding for investment in modern horticultural production technologies, so as to enhance the competitiveness of horticultural products and services;

40. Underlines the crucial importance of a good-quality business plan in securing capital finance; recommends that growers make greater use of business support and advisory services and urges the Commission to work more closely with industry to ensure that such services are easily accessible to growers;

41. Urges the Commission to update, as part of a transparent process involving those working in the sector, the items in chapter six (live trees and other plants; bulbs, roots and the like; cut flowers; and ornamental foliage) of the combined nomenclature for 2012;

42. Is concerned by the prospect of horticultural production being transferred out of the EU;

43. Is deeply concerned that between a third and a half of edible produce is wasted because of its appearance and calls on the Commission to create, as a matter of urgency, possibilities for marketing, particularly in local and regional markets, a wider range of quality specifications of produce, while ensuring transparency and the proper functioning of the market; draws attention to trials conducted in Austria and Switzerland involving the sale of blemished fruit and vegetables; calls on supermarkets to take into account market research which shows that many consumers are not necessarily worried about the cosmetic appearance of fruit and vegetables and are happy to purchase lower grade produce, particularly if this may appear to be cheaper;

44. Notes with concern the overall loss and waste of fruit and vegetables intended for first market use and the significant economic loss to business; recognises that reducing systemic food waste is a key to increasing the supply of food to a growing world population; welcomes, nevertheless, the efforts being made by actors in the food supply chain to redirect this produce into a secondary market rather than to dispose of it;

45. Calls on the Commission and the Member States to make the legislative and political environment as supportive as possible for uses of horticultural waste; points out that there are a number of materials, such as spent mushroom compost, which could be used in the production of value-added growing media, were it not classified as 'waste';

46. Points out that aquaponic systems can make sustainable local food production possible and that the combination of freshwater fish farming and vegetable cultivation in a closed system can help to reduce resource consumption in comparison with traditional systems;

47. Underlines the importance of improving the monitoring of prices and the quantities produced and marketed, as well as the need to produce EU-wide horticultural user statistics to help producers better understand market trends, predict crises and prepare future harvests; calls on the Commission to include ornamentals in its forecast information;

48. Instructs its President to forward this resolution to the Council and the Commission.

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P7_TA(2014)0206

Eradication of torture in the world

European Parliament resolution of 11 March 2014 on the eradication of torture in the world (2013/2169(INI))

(2017/C 378/06)

The European Parliament,

— having regard to the Universal Declaration of Human Rights and other UN human rights treaties and instruments,

— having regard to the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly on 9 December 1975 ([1]),

— having regard to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Optional Protocol thereto (OPCAT),

— having regard to the UN Standard Minimum Rules for the Treatment of Prisoners and other relevant universally applicable UN standards,

— having regard to the reports of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment ([2]),

— having regard to the UN General Assembly resolutions on torture,

— having regard to the statement adopted by the UN Committee against Torture on 22 November 2001 in connection with the events of 11 September 2001, pointing out that the prohibition against torture is an absolute and non-derogable duty under international law and expressing its confidence that 'whatever responses to the threat of international terrorism are adopted by States parties [to the Convention], such responses will be in conformity with the obligations undertaken by them in ratifying the Convention against Torture',

— having regard to the UN General Assembly resolution of 20 December 2012 on a moratorium on the use of the death penalty ([3]),

— having regard to the UN General Assembly resolutions on the rights of the child, most recently its resolution of 20 December 2012 thereon ([4]),

— having regard to the European Convention on Human Rights, and in particular Article 3 thereof, which states that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment',

— having regard to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,

— having regard to the Convention relating to the Status of Refugees, adopted by the UN on 28 July 1951 ([5]),

([1]) http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeclarationTorture.aspx
([2]) http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx
([3]) (A/RES/67/176).
([4]) (A/RES/67/167).
([5]) http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx

— having regard to the 23rd General Report of the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, published on 6 November 2013 ([1]),

— having regard to the Convention on the Rights of the Child and the two Optional Protocols thereto, on the sale of children, child prostitution and child pornography ([2]) and on the involvement of children in armed conflict ([3]), respectively,

— having regard to the Geneva Conventions of 1949 and the Additional Protocol thereto ([4]),

— having regard to the Inter-American Convention to Prevent and Punish Torture, which entered into force in 1997 ([5]),

— having regard to the Statute of the International Criminal Court,

— having regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) ([6]),

— having regard to Article 21 of the Treaty on European Union (TEU),

— having regard to the EU Strategic Framework and Action Plan on Human Rights and Democracy ([7]), as adopted by the Foreign Affairs Council on 25 June 2012,

— having regard to the Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, as updated in 2012 ([8]),

— having regard to the EU Guidelines on the death penalty of 16 June 2008 ([9]),

— having regard to the EU Guidelines on Human Rights and International Humanitarian Law ([10]),

— having regard to the EU Annual Report on Human Rights and Democracy in the World in 2012, adopted by the Council on 6 June 2013 ([11]),

— having regard to its resolution of 13 December 2012 on the Annual Report on Human Rights and Democracy in the World 2011 and the European Union's policy on the matter ([12]),

— having regard to its resolution of 13 December 2012 on the review of the EU's human rights strategy ([13]),

— having regard to its resolution of 10 October 2013 on alleged transportation and illegal detention of prisoners in European countries by the CIA ([14]),

— having regard to its study of March 2007 entitled 'The Implementation of the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment' ([15]),

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([1]) http://www.cpt.coe.int/en/annual/rep-23.pdf
([2]) http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx
([3]) http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx
([4]) http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/
([5]) http://www.cidh.oas.org/Basicos/English/Basic9.Torture.htm
([6]) Published by the Office of the UN High Commissioner for Human Rights, Geneva, http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf
([7]) Council document 11855/2012.
([8]) http://www.consilium.europa.eu/uedocs/cmsUpload/8590.en08.pdf
([9]) http://www.consilium.europa.eu/uedocs/cmsUpload/10015.en08.pdf
([10]) http://eeas.europa.eu/human_rights/docs/guidelines_en.pdf
([11]) http://register.consilium.europa.eu/pdf/en/13/st09/st09431.en13.pdf
([12]) Texts adopted, P7_TA(2012)0503.
([13]) Texts adopted, P7_TA(2012)0504.
([14]) Texts adopted, P7_TA(2013)0418.
([15]) http://www.europarl.europa.eu/RegData/etudes/etudes/join/2007/348584/EXPO-DROI_ET(2007)348584_EN.pdf

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— having regard to Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment ([1]),

— having regard to its resolution of 17 June 2010 on implementation of Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment ([2]),

— having regard to its recommendation to the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, to the Council and to the Commission of 13 June 2013 on the 2013 review of the organisation and the functioning of the EEAS ([3]),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Foreign Affairs and the opinions of the Committee on Development and the Committee on Women's Rights and Gender Equality (A7-0100/2014),

A. whereas, although the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is a key international norm, provided for in both UN and regional human rights conventions, torture still persists worldwide;

B. whereas in this resolution the term 'torture' should be understood in accordance with the UN definition and also includes cruel, inhuman or degrading treatment or punishment;

C. whereas the CAT and the OPCAT have created an international framework with real potential to move towards the eradication of torture, especially through the creation of independent and effective national preventive mechanisms (NPMs);

D. whereas the EU has reinforced the commitment made in the EU Strategic Framework on Human Rights to continue to campaign vigorously against torture and cruel, inhuman and degrading treatment;

E. whereas the eradication of torture, ill-treatment and inhuman or degrading treatment or punishment is an integral part of EU human rights policy, closely interlinked with other areas and instruments of EU action;

F. whereas the EU Guidelines on torture were updated in 2012, while the last comprehensive public stocktaking and review of implementing measures took place in 2008;

G. whereas, according to the updated guidelines, in the fight against terrorism the Member States are determined to comply fully with international obligations prohibiting torture and other cruel, inhuman or degrading treatment or punishment;

H. whereas torture can be both physical and psychological; whereas there is a growing number of cases in which psychiatry has been used as a tool for the coercion of human rights defenders and dissidents, who are placed in psychiatric institutions in order to prevent them from carrying out their political and community activities;

I. whereas the Member States' judiciaries should have the tools to prosecute those torturers who have never been judged, and whereas particular attention should be given to cases of torture under dictatorships in Europe, as many of these crimes have gone unpunished;

([1]) OJ L 200, 30.7.2005, p. 1.
([2]) OJ C 236 E, 12.8.2011, p. 107.
([3]) Texts adopted, P7_TA(2013)0278.

J. whereas the erosion of the absolute prohibition of torture remains a persistent challenge in the context of antiterrorism measures in many countries;

K. whereas there are significant policy challenges as regards the specific protection needs of vulnerable groups, in particular children;

L. whereas the police in some countries use torture as their interrogation method of choice; whereas torture cannot be regarded as an acceptable way to solve crimes;

1. Stresses that the prohibition of torture is absolute under international and humanitarian law and under the CAT; stresses that torture constitutes one of the ultimate violations of human rights and fundamental freedoms, takes a terrible toll on millions of individuals and their families, and cannot be justified under any circumstances;

2. Welcomes the inclusion of three actions relating to the eradication of torture in the EU Action Plan on Democracy and Human Rights, but emphasises the need for specific and measurable benchmarks to assess their timely implementation, in partnership with civil society;

3. Pays tribute to all those civil society organisations, national human rights institutions, NPMs and individuals striving to provide redress and reparation to victims, fighting impunity and actively preventing the scourge of torture and ill-treatment around the world;

4. Notes that, according to the CAT, the term 'torture' means any act by which 'severe pain or suffering, whether physical or mental, is intentionally inflicted on a person … by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'; considers, however, that situations in which acts of torture or other cruel, inhuman or degrading treatment or punishment occur with the involvement of actors other than state or public officials also need to be addressed through policy measures for prevention, accountability and rehabilitation;

5. Denounces the continued prevalence of torture and other forms of ill-treatment throughout the world and reiterates its absolute condemnation of such acts, which are and must remain prohibited at any time and in any place whatsoever and can thus never be justified; observes that the implementation of the EU guidelines on torture remains insufficient and at odds with EU statements and commitments to addressing torture as a matter of priority; urges the European External Action Service (EEAS) and the Member States to give renewed impetus to the implementation of those guidelines, namely by identifying priorities, best practices and public diplomacy opportunities, consulting relevant stakeholders, including civil society organisations and reviewing the implementation of the torture-related issues mentioned in the Action Plan; calls, in this connection, for the full and timely implementation of the three actions in the Action Plan that relate to the eradication of torture;

6. Recommends that a forthcoming revision of the Action Plan define more ambitious and specific actions to eradicate torture, such as more efficient information- and burden-sharing, training and joint initiatives with UN field offices and the relevant UN Special Rapporteurs and other international actors, such as the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe, along with support for the establishment and strengthening of regional torture prevention mechanisms;

7. Welcomes the 2012 update of the EU Guidelines on torture; underlines the importance of effective and results-oriented implementation of those Guidelines in conjunction with other guidelines and policy initiatives;

8. Welcomes the fact that the guidelines reflect a holistic policy approach, including the promotion of an adequate legislative and judicial framework for the effective prevention and prohibition of torture, monitoring of places of detention, efforts to address impunity, and the full and effective rehabilitation of torture victims, backed up by credible, consistent and coherent action;

9. Calls on the Council, the EEAS and the Commission to take more effective steps to ensure that Parliament and civil society are involved, at the very least, in the assessment exercise in respect of the EU Guidelines on torture;

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10. Reiterates the vital importance of rehabilitation centres for torture victims, both inside and outside the EU, in addressing not only the physical, but also the long-term psychological, problems experienced by torture victims; welcomes the EU's provision of financial aid to rehabilitation centres for torture victims throughout the world and suggests that they adopt a multidisciplinary approach in their activities, encompassing counselling, access to medical treatment, and social and legal support; remains convinced that the funding provided by the European Instrument for Democracy and Human Rights (EIDHR) to such centres in third countries should not be cut, even in the current financial and economic crisis, since national healthcare systems in those countries are often not in a position to address the specific problems of torture victims adequately;

11. Regrets the fact that no comprehensive public stocktaking and review of the implementation of the guidelines has been carried out since 2008 and stresses the need for regular and comprehensive assessment of their implementation;

12. Recommends that the Guidelines be accompanied by detailed implementing measures to be circulated to EU heads of mission and Member State representations in third countries; calls on heads of mission to include individual cases of torture and ill-treatment in their implementation and follow-up reports;

13. Stresses that EU policy should be based on the efficient coordination of initiatives and actions at EU and Member State level so as to exploit the full potential of available political instruments and their synergy with EU-funded projects;

14. Calls on the Commission, the EEAS and the Member States to undertake periodic reviews of the implementation of Council Regulation (EC) No 1236/2005 banning the trade of torture and capital punishment equipment, and to promote that regulation worldwide as a viable model for enforcing an effective ban on torture tools;

15. Takes note of the recent Commission proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (COM(2014)0001); stresses the importance of addressing brokering services, technical assistance and the transit of relevant goods; reiterates Parliament's earlier call for the insertion of a 'torture end-use catch-all clause' into the regulation in order to allow Member States, on the basis of prior information, to license or refuse the export of any items which pose a substantial risk of being used for torture, ill-treatment or capital punishment;

16. Considers that the death penalty, as a violation of the right to personal integrity and human dignity, is incompatible with the prohibition of cruel, inhuman or degrading punishment under international law and calls on the EEAS and the Member States formally to acknowledge this incompatibility and to adapt EU policy on capital punishment accordingly; emphasises the need to interpret the respective EU guidelines on the death penalty and torture as cross-cutting; considers deplorable the physical and psychological isolation of, and pressures on, prisoners on death row; reiterates the need for a comprehensive legal study and discussions at UN level on the links between the application of the death penalty, including the death row phenomenon of severe mental trauma and physical deterioration, and the prohibition on torture and cruel, inhuman or degrading treatment or punishment;

17. Supports an immediate ban on stoning; stresses that it is a brutal form of execution;

18. Encourages the resumption of the Council's torture task force, which should give renewed impetus to the implementation of the EU guidelines by identifying priorities, best practices and public diplomacy opportunities, undertaking consultation with relevant stakeholders and civil society organisations and contributing to the regular review of implementation in respect of the torture-related issues mentioned in the Action Plan;

19. Is particularly concerned about the torture of human rights defenders in prisons, including community activists, journalists, human rights lawyers and bloggers; recognises that it is often the people who are most involved in the fight for human rights and democracy who suffer the most through unlawful detention, intimidation, torture and the exposure of their families to danger; insists that both EU missions on the ground and high-level EU officials systematically and consistently raise this issue in meetings with their third-country counterparts, including by mentioning the names of specific human rights defenders who are in prison;

20. Notes with grave concern the existence of secret detention centres and the practice of incommunicado detention and prolonged solitary confinement in several countries, which represent some of the most worrying examples of torture and ill-treatment; believes that these cases should be systematically raised in statements and démarches and included in the list of individual cases discussed during human rights dialogues and consultations between the EU and third countries;

21. Reiterates its concern about widespread and systematic human rights abuses in the Democratic People's Republic of Korea (DPRK), in particular the use of torture and labour camps for political prisoners and repatriated citizens of the DPRK; calls on the DPRK authorities, as a first step, to allow inspections of all types of detention facility by independent international experts;

22. Stresses that no exceptions from the absolute prohibition of torture and practices involving cruel, inhuman or degrading treatment or punishment can be justified, and that states have an obligation to implement safeguards to prevent the perpetration of torture and ill-treatment, and to ensure accountability and access to effective remedies and reparations at all times, including in the context of national security concerns and counterterrorism measures; considers it worrying that some countries are assigning parallel policing tasks to paramilitary groups in an attempt to elude their international obligations; emphasises that the prohibition also applies to the transfer and use of information where it is either obtained by or likely to result in torture; recalls that the prohibition of torture is a binding norm under international human rights law and international humanitarian law, which means that it is valid both in peacetime and in wartime;

23. Expresses its concern at police brutality in certain countries and considers this issue to be central to the prevention of torture and degrading treatment, especially in cases where peaceful demonstrations are put down, bearing in mind that according to the international definitions violence of this kind constitutes ill-treatment, at the very least, if not torture;

24. Welcomes the joint project of the Council of Europe and the Association for the Prevention of Torture aimed at drawing up a practical guide for parliamentarians on visiting immigration detention centres;

25. Calls for the adoption of a practical guide for parliamentarians on visiting places of detention as part of regular visits to third countries by European Parliament delegations; considers that the guide should include specific advice on visits to detention centres and other places where children and women may be detained, and should secure the application of the 'do no harm' principle in accordance with the UN Training Manual on Human Rights Monitoring, in particular with a view to avoiding reprisals against detainees and their families following such visits; calls for such visits to be undertaken in consultation with the EU delegation in the country concerned, NGOs and organisations active in prisons;

26. Calls on the EEAS, the Human Rights Working Group (COHOM) and other relevant actors jointly to undertake a survey of EU support for the establishment and functioning of NPMs, and to identify best practices as outlined in the Action Plan;

27. Calls on the EEAS, the Member States and the Commission to facilitate the establishment and functioning of independent and effective NPMs, and particularly the professional training of their staff;

28. Calls on COHOM, the torture task force and the Commission's DG HOME to develop measures integrating torture prevention into all freedom, security and justice activities;

Addressing protection gaps, in particular vis-à-vis the torture of children

29. Expresses its particular concern regarding acts of torture and ill-treatment committed against members of vulnerable groups, in particular children; calls for the EU to take political, diplomatic and financial measures to prevent the torture of children;

30. Calls for the EU to address various forms of human rights violation affecting children, especially those linked to child trafficking, child pornography, child soldiers, children in military detention, child labour, accusations of child witchcraft, and cyber bullying, where they amount to torture, including in orphanages, detention centres and refugee camps, and to implement effective safeguards to protect children wherever authorities are involved in any way in torture affecting children;

31. Points out that unaccompanied migrant children should never be sent back to a country where they may be in danger of being tortured or of suffering inhuman or degrading treatment;

32. Notes that the abusive deprivation of children's liberty, especially in the context of preventive detention and the detention of migrant children, has resulted in overcrowded detention centres and an increase in torture and ill-treatment of children; calls on states to ensure that the deprivation of children's liberty is, as required by universal human rights standards, genuinely used only as a measure of last resort, for the minimum necessary period and always taking into account the best interest of the child;

33. Calls on states to develop a more child-friendly justice system, comprising free and confidential child-friendly reporting mechanisms, including in detention centres, that empower children not only to assert their rights, but also to report violations;

34. Stresses the need for the EU to address the use of the internet by adults and children for the psychological torture of children and harassment through social media; notes that, despite the existence of its Safer Internet programme, the EU's response to the phenomenon of internet bullying has been inadequate; highlights the recent spate of incidents involving children taking their lives as a result of online bullying, and the continued existence of websites, hosted in Member States, which have been directly or indirectly implicated in these actions; stresses, therefore, the urgency of the EU taking clear and firm action against online bullying and harassment and the websites facilitating it;

35. Recommends focusing EU policy efforts on rehabilitation and psychological support centres for children who are victims of torture, with a child-friendly approach that takes account of cultural values;

36. Recommends including the torture of children in the planned targeted campaign on the rights of the child, as set out in the Action Plan;

37. Recommends that the EEAS and the Commission pay special attention to torture and cruel, inhuman or degrading treatment targeting artists, journalists, human rights defenders, student leaders, health professionals and individuals belonging to other vulnerable groups, such as ethnic, linguistic, religious and other minorities, especially when they are being held in detention or in prison;

38. Calls on the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy and the heads of the EU delegations, in their dialogue with authorities of third countries, to raise the issue of gender-based forms of torture that make girls a particularly vulnerable group, in particular female genital mutilation and early or forced marriages, as specified in the Strategic Framework and Action Plan;

39. Calls on the EEAS and COHOM specifically to address the torture of children in the forthcoming updates of the EU guidelines on torture and the Action Plan;

40. Expresses concern at the fact that women are particularly likely to be subjected to specific acts of torture and forms of inhuman or degrading treatment (rape, sexual mutilation, sterilisation, abortion, enforced birth control and deliberate impregnation), especially during armed conflicts, in which such acts are used as a type of warfare, even against those who are under age;

41. Similarly condemns acts of torture, violence and abuse perpetrated on account of a person's sexual orientation or gender identity;

42. Points to the need to support the work of NGOs involved in preventing violence in conflict situations, and hence the torture and ill-treatment inflicted on the civilian population in such situations, and, to this end, to raise awareness within armed groups of the need to comply with international humanitarian standards, especially as regards gender-based violence;

Fight against torture in the EU's relations with third countries

43. Calls on the EEAS, the EU Special Representative for Human Rights (EUSR) and COHOM to make sure that human rights country strategies (HRCSs) contain country-specific objectives and benchmarks relating to the fight against torture, including the identification of groups requiring special protection, such as children, women, displaced people, refugees and migrants, and those facing discrimination on the grounds of ethnicity, caste or cultural background, religious or other beliefs, sexual orientation or gender identity;

44. Appeals to the EU and the international community as a whole to observe the principle of non-refoulement, whereby no asylum-seekers should be sent back to a country where they may be in danger of torture or of suffering inhuman or degrading treatment as defined in the Convention of 28 July 1951 relating to the Status of Refugees;

45. Stresses that HRCSs should identify protection gaps, appropriate interlocutors and entry points such as the UN framework or security sector or judiciary reform, with a view to addressing torture-related concerns in each country;

46. Recommends that HRCSs address the root causes of violence and ill-treatment by government agencies and in private settings, and define assistance needs with a view to offering EU technical assistance for capacity-building, legal reform and training, so as to help third countries comply with international obligations and norms, in particular in the context of signing and ratifying the CAT and the OPCAT and complying with their provisions on prevention (specifically the establishment of NPMs), fighting impunity, and the rehabilitation of victims;

47. Further recommends that HRCSs include measures to encourage the establishment and operation, or where appropriate the strengthening, of national institutions which can effectively address the prevention of torture and ill-treatment, including the possibility of financial and technical assistance where necessary;

48. Underlines the need for the EEAS and the EU delegations to make available specific information regarding the availability in third countries of support and possible legal remedies for victims of torture and ill-treatment;

49. Calls on the EEAS and the EU delegations to make full, but carefully targeted and country-specific, use of the political instruments at their disposal as outlined in the EU guidelines on torture, including public statements, local démarches, human rights dialogues and consultations, to raise individual cases, the legislative framework relating to torture prevention and the ratification and implementation of relevant international conventions; calls on the EEAS and the Member States to resume their past practice of carrying out targeted global campaigns on thematic issues relating to torture;

50. Calls on the EU delegations and Member State embassies on the ground to implement the provisions of the EU guidelines on torture, and on the EEAS and COHOM regularly to monitor their implementation;

51. Urges the EU delegations and Member States embassies throughout the world to mark the International Day in Support of Victims of Torture on 26 June each year by organising seminars, exhibitions and other events;

52. Calls on the EEAS and the EUSR systematically to raise the issue of torture and ill-treatment in EU human rights dialogues and consultations with third countries;

53. Recommends making torture-related issues the focus of local and regional civil society forums and seminars, with the potential for follow-up as part of the regular human rights consultations and dialogues;

54. Calls on the EU, in its human rights dialogues, to promote the implementation of the UN Standard Minimum Rules for the Treatment of Prisoners with a view to ensuring that prisoners' inherent dignity is respected and that fundamental rights and guarantees are upheld, and also to ensure that the application of these rules is extended to all places of deprivation of liberty, including mental hospitals and police stations;

55. Calls on the EU delegations and on Parliament delegations to carry out visits to prisons and other places of detention, including juvenile detention centres and places where children may be detained, to observe trials where there is reason to believe that defendants may have been subjected to torture or ill-treatment and to ask for information on and the independent investigation of individual cases;

56. Calls on the EU delegations to provide support for members of civil society who are prevented from visiting prisons and observing trials;

57. Calls on the EEAS, the Commission and the Member States to meet the commitments made in the Action Plan to facilitate the establishment and functioning of independent and effective NPMs; calls on the Member States to review and analyse with diligence and transparency the existing NPMs and national human rights institutions in the EU and in third countries, and to identify best practices among them, making sure that they include a child rights perspective, with a view to strengthening the existing mechanisms, making improvements and promoting these examples to partner countries;

58. Invites the EU delegations to call for detention to be used as a last resort, and to seek alternatives, particularly for people in vulnerable situations such as women, children, asylum-seekers and migrants;

59. Is deeply concerned at recent reports of EU-based companies supplying chemicals used for lethal injection drugs in the USA; welcomes, in this connection, the development by a number of European pharmaceutical companies of a contractual export and control system aimed at ensuring that the product Propofol is not used for lethal injections in countries still applying the death penalty, including the USA;

EU action in multilateral fora and international organisations

60. Welcomes the EU's persistent efforts to initiate and support the regular adoption of UN General Assembly and Human Rights Council resolutions and to treat the issue as a priority under the UN framework; suggests that the VP/HR and the EUSR maintain regular contact with the UN Special Rapporteur on torture with a view to sharing information relevant to the EU's foreign policy relations with third countries; suggests also that the Committee on Foreign Affairs and its Subcommittee on Human Rights regularly invite the UN Special Rapporteur on torture to brief Parliament on torture-related matters in specific countries;

61. Points out that, as stipulated in Articles 7 and 8 of the Rome Statute of the International Criminal Court (ICC), torture, if committed systematically or on a large scale, can constitute a war crime or a crime against humanity; maintains that, by virtue of the responsibility to protect, the international community has a duty to protect populations who fall victim to such crimes, and, accordingly, calls for the decision-making procedure in the UN Security Council to be reviewed in order to avert deadlock in cases involving the responsibility to protect;

62. Calls on third countries to cooperate fully with the UN Special Rapporteur, the Committee against Torture and regional anti-torture bodies such as the Committee for the Prevention of Torture in Africa, the European Committee for the Prevention of Torture (CPT) and the Organisation of American States (OAS) Rapporteur on the Rights of Persons Deprived of Liberty; encourages the Member States and the EEAS systematically to take into account the recommendations of the Special Rapporteur and other bodies for follow-up in contacts with third countries, including as part of the Universal Periodic Review (UPR) process;

63. Urges the EEAS, the EUSR and the Member States actively to promote the ratification and implementation of the CAT and the OPCAT as a priority and to step up their efforts to facilitate the establishment and functioning of effective and independent NPMs in third countries;

64. Calls on the EEAS, the Commission and the Member States to support the establishment and functioning of regional torture prevention mechanisms, including the Committee for the Prevention of Torture in Africa and the OAS Rapporteur on the Rights of Persons Deprived of Liberty;

65. Calls on the EEAS, the EUSR and the Commission to step up their support for third countries, enabling them to implement effectively the recommendations of the relevant UN treaty bodies, including the Committee against Torture and its Subcommittee on the Prevention of Torture, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women;

66. Calls on the EEAS, within its capacity, to provide technical assistance for the rehabilitation of torture victims and their families with the aim of empowering them to rebuild their lives;

67. Underlines the importance of the Member States' active participation in implementing the provisions of the Action Plan and providing the EEAS with regular updates on the action they have undertaken in this regard;

68. Calls on the EU to cooperate more efficiently with the CPT and the Commissioner for Human Rights of the Council of Europe;

European Instrument for Democracy and Human Rights (EIDHR)

69. Welcomes the existing initiatives and projects under the EIDHR, 7 % of whose funds have been allocated to torture-related projects, and underlines the need to continue earmarking specific funds for the fight against torture and cruel or degrading treatment or punishment, with a focus on awareness-raising, prevention, addressing impunity, and the social and psychological rehabilitation of torture victims, priority being given to projects of a holistic nature;

70. Stresses that the funds allocated to projects under the upcoming programming period should take into account the EU priorities outlined in the Action Plan;

71. Calls on the Member States to provide an overview of bilateral assistance programmes in the field of torture prevention and rehabilitation with a view to sharing best practices, achieving efficient burden-sharing and creating synergies and complementarity with EIDHR projects;

Credibility, coherence and consistency of EU policy

72. Points out that the EU and its Member States need to set an example in order to establish their credibility; calls, therefore, on Belgium, Finland, Greece, Ireland, Latvia and Slovakia to ratify the OPCAT as a matter of priority and establish independent, well-resourced and effective NPMs; notes the importance of individual communications as an instrument for the prevention of torture and ill-treatment and urges the Member States to accept individual jurisdictions in compliance with Article 21 of the CAT; calls on the signatories to the UN Convention on the Rights of the Child to sign and ratify the 3rd Protocol thereto; also calls on the 21 Member States which have yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance to do so as a matter of urgency;

73. Calls on those Member States which have not made declarations recognising the Article 22 jurisdiction of the CAT to do so as a matter of priority;

74. Calls on all those Member States which have NPMs to engage in a constructive dialogue with a view to implementing NPM recommendations, along with the recommendations of the CPT, the CAT and its Subcommittee for the Prevention of Torture, in a coherent and complementary way;

75. Urges the EU to strengthen its commitment to the universal values of human rights and, accordingly, calls for it to use its neighbourhood policy and the principle of 'more for more' to encourage neighbouring countries to embark on reforms with a view to intensifying their action against torture;

76. Regrets the very limited support provided by the Member States to the UN Voluntary Fund for Victims of Torture and the OPCAT Special Fund; calls on the Member States and the Commission to support the work of these funds through substantial and regular voluntary contributions, in line with their commitments under the Action Plan;

77. Maintains that the EU should take a more determined stand, and calls on the EU institutions and the Member States to strengthen their commitment and political will with a view to securing a worldwide moratorium on capital punishment;

78. Calls on the Commission to draw up an action plan with a view to creating a mechanism for listing and imposing targeted sanctions (travel bans, freezing of assets) against officials of third countries (including police officers, prosecutors and judges) involved in grave human rights violations, such as torture and cruel, inhuman or degrading treatment; stresses that the criteria for inclusion in the list should be based on well-documented, converging and independent sources and convincing evidence, allowing for mechanisms for redress for those targeted;

79. Recalls the obligation of all states, including the EU Member States, to adhere strictly to the principle of non-refoulement, under which states must not deport or extradite people to a jurisdiction where they run the risk of persecution; considers that the practice of seeking diplomatic assurances from the receiving state does not relieve the sending state of its obligations, and denounces such practices, which seek to circumvent the absolute prohibition of torture and refoulement;

80. Notes the EU's vital position on the world stage when it comes to combating torture, in close cooperation with the UN; stresses that strengthening the principle of zero tolerance for torture remains at the core of EU policies and strategies to promote human rights and fundamental freedoms, both outside and inside the EU; regrets the fact that not all the Member States comply fully with Council Regulation (EC) No 1236/2005 and that some companies based in industrialised countries may have illegally sold to third countries policing and security devices that can be used for torture;

81. Calls on the Council and the Commission to complete the current review of Council Regulation (EC) No 1236/2005, including the annexes thereto, with a view to more effective implementation in line with Parliament's recommendations as set out in its resolution of 17 June 2010 on the implementation of Council Regulation (EC) No 1236/2005; calls on the Member States to comply fully with the provisions of that regulation, in particular the obligation of all Member States under Article 13 thereof to compile timely annual activity reports and make them public, and to share information with the Commission regarding licensing decisions;

Considerations on fighting torture and development policy

82. Recalls the need to set up an integrated and comprehensive strategy to fight torture by addressing its root causes; believes that this should include overall institutional transparency and a stronger political will at state level to fight ill-treatment; underlines the urgent need to tackle poverty, inequality, discrimination and violence by using NPMs and strengthening local authorities and NGOs; stresses the need to further enhance the EU's development cooperation and human rights implementation machinery in order to address the root causes of violence;

83. Stresses that access to justice, the fight against impunity, impartial investigations, the empowerment of civil society and the promotion of education against ill-treatment are essential for combating torture;

84. Stresses that the use of the term 'torture', and hence the absolute prohibition, prosecution and punishment of this practice, should not be ruled out when such acts are inflicted by irregular armed forces or tribal, religious or rebel groups;

85. Recalls the importance and specificity of the dialogue on human rights as a component part of the political dialogue under Article 8 of the Cotonou Partnership Agreement; recalls also that every dialogue with third countries on human rights should include a robust anti-torture component;

86. Urges the Council and the Commission to encourage their partner countries to adopt a victim-oriented approach in the fight against torture and other cruel, inhuman or degrading treatment, by paying special attention to the needs of victims in development cooperation policy; stresses that introducing aid conditionality is an effective way of addressing the problem, but that high-level dialogue and negotiation, civil society involvement, strengthening of national capacity and a focus on incentives can achieve better results;

Considerations on the fight against torture and women's rights

87. Urges the EU to ensure, by means of aid conditionality, that third countries protect all human beings from torture, especially women and girls; calls on the Commission to reconsider its aid policy towards countries practising torture and to divert aid to support victims;

88. Welcomes the measures contemplated by the Commission in its communication entitled 'Towards the elimination of female genital mutilation'(COM(2013)0833), and reiterates the need for consistency between the Union's internal and external policies with regard to this problem; restates, moreover, the continuing need for the EU to work with third countries to eradicate the practice of female genital mutilation; encourages those Member States which have not yet done so to criminalise female genital mutilation in their national legislation and to ensure that the relevant legislation is implemented;

89. Expresses its concern over cases involving the execution of women with mental health problems or learning difficulties;

90. Condemns all forms of violence against women, in particular honour killings, violence entrenched in cultural or religious beliefs, forced marriage, child marriage, gendercide and dowry deaths; affirms that the EU must treat these as forms of torture; calls on all stakeholders to work actively to prevent torture practices through education and awareness-raising measures;

91. Condemns all forms of torture of women related to charges of sorcery or witchcraft, as practised in various countries around the world;

92. Welcomes the Rome Statute's progressive and innovative approach in recognising sexual and gender-based violence, including rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilisation and other forms of sexual violence of comparable gravity, as a form of torture and, as such, as a war crime and a crime against humanity; also welcomes the implementation by the ICC's victim support fund of programmes to rehabilitate women who have suffered torture, notably in post-conflict situations;

93. Calls for the EU to encourage those countries which have not yet done so to ratify and implement the CAT and the Rome Statute, and to incorporate the relevant provisions on gender-based violence into their domestic legislation;

94. Urges states to condemn strongly torture and violence against women and girls committed in armed conflict and post-conflict situations; recognises that sexual and gender-based violence affects victims and survivors, relatives, communities and societies, and calls for effective measures for accountability and redress and for effective remedies;

95. Regards it as crucial that national prosecutors and judges have the capacity and expertise properly to prosecute and try individuals for gender-based crimes;

96. Considers that the failure to separate transgender women prisoners from male prisoners in detention is cruel, inhuman, degrading and unacceptable;

97. Calls for the EU, in its human rights dialogues, to promote the implementation of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), with a view to strengthening international norms for the treatment of women prisoners, encompassing the aspects of health, gender sensitivity and childcare;

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98. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the EU Special Representative for Human Rights, the governments of the Member States, the UN High Commissioner for Human Rights and the UN Special Rapporteur on torture.

Tuesday 11 March 2014

P7_TA(2014)0207

Saudi Arabia

European Parliament resolution of 11 March 2014 on Saudi Arabia, its relations with the EU and its role in the Middle East and North Africa (2013/2147(INI))

(2017/C 378/07)

The European Parliament,

— having regard to the cooperation agreement of 25 February 1989 between the European Union and the Gulf Cooperation Council (GCC),

— having regard to its resolution of 13 July 1990 on the significance of the free trade agreement to be concluded between the EEC and the Gulf Cooperation Council ([1]),

— having regard to its resolution of 18 January 1996 on Saudi Arabia ([2]),

— having regard to the Economic Agreement between the GCC member states, adopted on 31 December 2001 in Muscat (Oman), and to the GCC's Doha declaration on the launch of the customs union for the Cooperation Council of the Arab States of the Gulf, of 21 December 2002,

— having regard to the ratification in October 2004 by Saudi Arabia of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), with particular reference to Article 7 thereof on political and public life,

— having regard to its resolution of 10 March 2005 on Saudi Arabia ([3]),

— having regard to its resolution of 6 July 2006 on the freedom of expression on the Internet ([4]),

— having regard to its resolution of 10 May 2007 entitled 'Reforms in the Arab world: what strategy should the European Union adopt? ([5]),

— having regard to its resolution of 13 December 2007 on women's rights in Saudi Arabia ([6]),

— having regard to the report on 'Implementation of the European Security Strategy: Providing Security in a Changing World', adopted by the Council in December 2008,

— having regard to the joint communiqué of the 19th EU-GCC Joint Council and Ministerial Meeting of 29 April 2009, held in Muscat,

— having regard to the Joint Action Programme (2010-2013) for implementation of the EU-GCC Cooperation Agreement of 1989,

— having regard to its resolution of 20 May 2010 on the Union for the Mediterranean ([7]),

([1]) OJ C 231, 17.9.1990, p. 216.
([2]) OJ C 32, 5.2.1996, p. 98.
([3]) OJ C 320 E, 15.12.2005, p. 281.
([4]) OJ C 303 E, 13.12.2006, p. 879.
([5]) OJ C 76 E, 27.3.2008, p. 100.
([6]) OJ C 323 E, 18.12.2008, p. 529.
([7]) OJ C 161 E, 31.5.2011, p. 126.

— having regard to the joint communiqué of the 20th EU-GCC Joint Council and Ministerial Meeting of 14 June 2010, held in Luxembourg,

— having regard to its resolution of 24 March 2011 on the relations of the European Union with the Gulf Cooperation Council ([1]),

— having regard to its resolution of 7 April 2011 on the situation in Syria, Bahrain and Yemen ([2]),

— having regard to its resolution of 7 July 2011 on the situation in Syria, Yemen and Bahrain in the context of the situation in the Arab world and North Africa ([3]),

— having regard to its resolution of 15 September 2011 on the situation in Syria ([4]),

— having regard to its resolution of 27 October 2011 on Bahrain ([5]),

— having regard to its resolutions on the annual meetings of the UN Commission on Human Rights in Geneva (2000-2012),

— having regard to the visit of the European Parliament's Chair of the Subcommittee on Human Rights on behalf of President Martin Schulz to Saudi Arabia from 24-25 November 2013,

— having regard to its annual human rights reports,

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Foreign Affairs and the opinion of the Committee on Women's Rights and Gender Equality (A7-0125/2014),

A. whereas the Kingdom of Saudi Arabia (KSA) is an influential political, economic and religious actor in the Middle East and the Islamic world, the world's leading oil producer, and a founder and leading member of the Gulf Cooperation Council (GCC) and of the G-20 group; whereas the Kingdom of Saudi Arabia is an important partner for the EU;

B. whereas the EU is Saudi Arabia's main trading partner with 15 % of total trade and KSA is the 11th-largest trade partner for the EU; whereas a large number of EU companies are investors in the Saudi economy, especially in the country's petroleum industry and KSA is an important market for the export of EU industrial goods in areas such as defence, transport, automotive, medical and chemical exports;

C. whereas the imports of goods from KSA to the EU, and the exports of goods from the EU to KSA increased considerably from 2010 to 2012;

D. whereas the negotiations on a free trade agreement between the EU and the GCC, which were opened 20 years ago, are still not concluded;

E. whereas the EU and KSA face common challenges that are global in origin and impact, such as a rapidly changing economy, migration, energy security, international terrorism, the spread of weapons of mass destruction (WMD) and environmental degradation;

F. whereas the changing political and strategic context in the Middle East and North Africa (MENA) region necessitates a reassessment of EU-KSA relations;

G. whereas KSA is a hereditary absolute monarchy without an elected parliament; whereas it faces the challenge of royal succession; whereas KSA has a population of 28 million, including 9 million foreigners and 10 million young people aged under 18; whereas modest and gradual reforms have been implemented in KSA since 2001, but are not institutionalised and can thus be easily reversed; whereas the country's record in the field of human rights remains dismal, with fundamental gaps between its international obligations and their implementation;

([1]) OJ C 247 E, 17.8.2012, p. 1.
([2]) OJ C 296 E, 2.10.2012, p. 81.
([3]) OJ C 33 E, 5.2.2013, p. 158.
([4]) OJ C 51 E, 22.2.2013, p. 118.
([5]) OJ C 131 E, 8.5.2013, p. 125.

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H. whereas Saudi Arabia's first-ever municipal elections in 2005 constituted the first electoral process in the history of the country; whereas in 2015 only half of the members of the municipal councils will be elected, while the other half will still be appointed by the King;

I. whereas only this year 30 women were appointed, for the first time, to the consultative Shura Council, and whereas only in 2015 will women be allowed to vote in municipal elections;

J. whereas the World Bank report entitled 'Women, Business and the Law 2014 — Removing Restrictions to Enhance Gender Equality' ([1]) places Saudi Arabia as the first in the list of countries whose laws limit the economic potential of women;

K. whereas KSA is the only country in the world in which women are not allowed to drive and, although there is no official law banning women from driving, a ministerial decree in 1990 formalised an existing customary ban and women who attempt to drive face arrest;

L. whereas the UNDP 2012 Gender Inequality Index (GII) ranks Saudi Arabia 145th out of 148 countries, making it one of the world's most unequal countries; whereas the Global Gender Gap Report 2012 (World Economic Forum) ranks women's labour market participation in KSA as one of the weakest in the world (133rd out of 135 countries);

M. whereas the death penalty is carried out in KSA for a variety of crimes and at least 24 individuals were executed in 2013; whereas at least 80 people were executed in 2011 and a similar number in 2012 — more than triple the figure for 2010 — including minors and foreign nationals; whereas KSA is one of the rare countries to still carry out public executions; whereas there have been reports of women being executed by stoning in Saudi Arabia, contravening the standards laid down by the UN Commission on the Status of Women, which has condemned this as a barbaric form of torture;

N. whereas KSA has taken strong and decisive action and enforced severe measures to combat terrorism and financial activities linked to terrorism; whereas, at the same time, KSA plays a leading role in disseminating and promoting worldwide a particularly rigorous Salafi/Wahhabi interpretation of Islam; whereas the most extreme manifestations of Salafism/Wahhabism have inspired terrorist organisations such as Al-Qaeda and pose a global security threat, including for KSA itself; whereas KSA has developed a system to control financial transactions to ensure that no funds are being channelled into terrorist organisations, which must be further reinforced;

O. whereas UN human rights experts have expressed long-standing concerns about overly broad counter-terrorism measures, involving secret detention, which have also exposed peaceful dissidents to detention and imprisonment under terrorism charges; whereas international human rights organisations have urged King Abdullah to reject the counter-terrorism law adopted by the Council of Ministers on 16 December 2013, because of its overly broad definition of terrorism imposing unfair restrictions on free speech by potentially criminalising any speech critical of the Saudi Arabian government or society;

P. whereas freedom of expression and freedom of the press and media, both online and offline, are crucial preconditions and catalysts for democratisation and reform and are essential checks on power;

Q. whereas KSA has a lively community of online activists and the highest number of Twitter users in the Middle East;

R. whereas the work of human rights organisations in KSA is severely restricted, as evidenced by the authorities' refusal to register the Adala Centre for Human Rights or the Union for Human Rights; whereas charities are still the only type of civil society organisations allowed in the kingdom;

S. whereas KSA needs to ensure the real freedom of religion, particularly regarding public practice and religious minorities, in line with an important role that KSA plays as custodian of the Two Holy Mosques of Islam in Mecca and Medina;

([1]) http://wbl.worldbank.org/~/media/FPDKM/WBL/Documents/Reports/2014/Women-Business-and-the-Law-2014-Key-Findings.pdf

T. whereas KSA continues to commit widespread violations of basic human rights despite its declared acceptance of numerous recommendations in the 2009 Universal Periodic Review before the UN Human Rights Council; whereas these recommendations include reform of its criminal justice system, which violates the most basic international standards with detainees routinely facing systematic violations of due process, because there is no written penal code which clearly defines what constitutes a criminal offence and judges are free to rule according to their interpretations of Islamic law and prophetic traditions; whereas the current Minister of Justice has emphasised his intent to codify Shari'a and to issue sentencing guidelines;

U. whereas a number of gradual judicial reforms were initiated in 2007 by King Abdullah when he approved the plan for a new judicial system, including the establishment of a Supreme Court and special commercial, labour and administrative courts;

V. whereas over one million Ethiopians, Bangladeshis, Indians, Filipinos, Pakistanis and Yemenis have been sent home in the last few months after a labour law reform was introduced to reduce the high number of migrant workers with the aim of combating unemployment among Saudi citizens; whereas the accelerated influx of huge numbers of returnees puts an extraordinary strain on the often poor and fragile countries of origin;

W. whereas on 12 November 2013 the United Nations General Assembly elected KSA to serve a three-year term, beginning on 1 January 2014, on the Human Rights Council;

X. whereas the opening of a dialogue between KSA and the EU on human rights could provide a very useful opportunity to enhance mutual understanding and promote further reforms in the country;

1. Recognises the interdependence between the EU and KSA in terms of regional stability, relations with the Islamic world, the fate of the transitions in the Arab Spring countries, the Israel-Palestine peace process, the war in Syria, improving relations with Iran, counter-terrorism, stability of the global oil and financial markets, trade, investment and global governance issues, especially through the World Bank, the International Monetary Fund and the G-20 framework; underlines that the geopolitical environment makes KSA and other GCC member states a focus of security challenges that have regional and global implications;

2. Shares some of the concerns expressed by KSA, but urges the government to actively and constructively engage with the international community; welcomes in this context notably the agreement between the United States and Russia on ridding Syria of chemical weapons while avoiding a military confrontation;

3. Appeals also to KSA to actively support the recent interim agreement between the E3+3 and Iran and to help secure a diplomatic resolution of outstanding nuclear issues in a more comprehensive agreement within the next 6 months in the interests of peace and security for the whole region;

4. Underlines the European interest in a peaceful and orderly evolution and political reform process in KSA, as a key factor for long-term peace, stability and development in the region;

5. Calls on the KSA authorities to open a dialogue on human rights with the EU, so as to enable better understanding and identification of the changes needed;

6. Calls on the KSA authorities to enable the work of human rights organisations by facilitating the licence registration process; regrets the harassment of human rights activists and their detention without charges;

7. Calls on the KSA authorities to allow its National Human Rights Association to operate with independence and to comply with the UN standards on national human rights institutions (the Paris Principles);

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8. Recalls that KSA's human rights record was assessed under the Universal Periodic Review (UPR) of the UN Human Rights Council in February 2009, and that the KSA authorities formally accepted a significant number of the recommendations put forward by EU Member States during the review, including, for example, those calling for the abolition of male guardianship and those aimed at limiting the application of the death penalty and corporal punishment; awaits more substantive progress in implementing these recommendations and urges KSA to adopt a constructive approach with regard to the recommendations presented in the context of the ongoing 2013 Universal Periodic Review;

9. Expresses grave concern that human rights violations such as arbitrary arrests and detention, torture, travel bans, judicial harassment and unfair trials continue to be widespread; is particularly concerned that alleged counter-terrorism measures are being increasingly used as a tool to arrest human rights defenders and that impunity for human rights violations is reportedly increasing; calls on the Saudi government to urgently act upon the recommendations of the 2009 UPR, including by continuing and intensifying its reform of the judicial system;

10. Welcomes the engagement of KSA with the UN human rights system through the Human Rights Council and the universal human rights conventions it has ratified so far; calls, however, on KSA to sign and ratify the other core UN human rights treaties and agreements such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

11. Believes that being a member of the UN Human Rights Council raises worldwide expectations to show particular respect for human rights and democracy, and appeals to KSA to increase its reform efforts; expects Human Rights Council members to fully cooperate with its special procedures and to allow unhampered visits by all UN Special Rapporteurs, notably to accept the visit of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;

12. Notes that KSA has, reportedly, the highest ratio of Twitter users in the world indicating the strong role of internet-based social networks in the country and the increasing use of the internet and social networks among women; calls on the KSA authorities to allow independent press and media and ensure freedom of expression, association and peaceful assembly for all inhabitants of KSA; regrets the repression of activists and protesters when they demonstrate peacefully; stresses that the peaceful advocacy of basic legal rights or making critical remarks using social media are expressions of an indispensable right, as Parliament has stressed in its report on digital freedom; emphasises that freedom of the press and media, both online and offline, is essential in a free society and forms a crucial check on power;

13. Calls on the Government of the Kingdom of Saudi Arabia to honour its commitments to several human rights instruments, including the Arab Charter on Human Rights, the Convention on the Rights of the Child, the Convention against Torture, and the Convention on the Elimination of All Forms of Discrimination against Women;

14. Calls on KSA to sign and ratify the Rome Statute of the International Criminal Court (ICC);

15. Calls on the KSA authorities to improve their Shari'a-based criminal justice system in order to meet the international standards governing procedures for arrest, detention and trials, as well as prisoners' rights;

16. Calls on the KSA authorities to release prisoners of conscience, to end judicial and extra-judicial harassment of human rights defenders and to speed up the implementation of the new legislation on NGOs, ensuring their registration, freedom to operate and ability to operate legally;

17. Calls on the EEAS to actively support civil society groups who work to enhance human rights and democracy in Saudi Arabia; calls on the EU Delegation in Riyadh to pursue an active human rights agenda by following law suits as observers and carrying out prison visits;

18. Reiterates its call for the universal abolition of torture, corporal punishment, and the death penalty, and calls for an immediate moratorium on the carrying out of death sentences in KSA; regrets that KSA continues to apply the death penalty for a wide variety of crimes; calls also on the Saudi authorities to reform the justice system in order to eliminate all forms of corporal punishment; welcomes in this context the fact that KSA has recently passed legislation making domestic abuse a crime;

19. Deplores the beheading in KSA last January of a Sri Lankan domestic worker, Rizana Nafeek, for a crime she allegedly committed while still a child, this being a clear violation of the Convention of the Rights of the Child which specifically prohibits capital punishment of persons under 18 at the time of the offence;

20. Calls on the KSA authorities to ensure that all allegations of torture and other ill-treatment are thoroughly and impartially investigated, that all alleged perpetrators are prosecuted, and that any statement that may have been extracted under torture is not used as evidence in criminal proceedings;

21. Deplores the fact that, despite ratification of the International Convention against Torture, confessions obtained under duress or as a result of torture are common; urges the KSA authorities to ensure the complete eradication of torture from the Saudi justice and prison system;

22. Expresses its grave consternation that KSA is one of the countries in the world that still practises public executions, amputations and flogging; calls on the KSA authorities to pass legislation outlawing these practices, which constitute a gross violation of a number of international human rights instruments to which KSA is a party;

23. Regrets that the KSA authorities have not extended an invitation to the UN Special Rapporteur on Torture and the UN Special Rapporteur on Human Rights Defenders, despite the recommendation of the UN Office of the High Commissioner for Human Rights (OHCHR) for all states to extend official invitations to UN Special Rapporteurs;

24. Calls on the KSA authorities to respect the public worship of any faith; welcomes the establishment of the 'King Abdullah Bin Abdulaziz International Centre for Interreligious and Intercultural Dialogue (KAICIID)' in Vienna, which seeks to encourage dialogue among followers of different religions and cultures around the world; encourages the authorities to foster moderation and tolerance of religious diversity at all levels of the education system, including in religious establishments, as well as in the public discourse of officials and civil servants;

25. Emphasises the need to respect the fundamental rights of all religious minorities; calls on the authorities to make greater efforts to ensure tolerance and coexistence among all religious groups; urges them to continue reviewing the education system, in order to eliminate existing discriminatory references to believers in other religions or beliefs;

26. Calls on the KSA authorities to define a minimum age for marriage and take steps to ban child marriage in line with the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which were both ratified by KSA;

27. Notes the King's appointment in 2013 of the first women to serve in the Consultative Assembly (Shura council) of KSA, occupying 30 seats out of 150, and looks forward to further developing the contacts and institutional links between the European Parliament and the Shura Council; expects the implementation of the King's declaration that women will be allowed to vote and stand for office in the next municipal elections, to be held in 2015, and that they will subsequently be allowed to vote and stand for office in all other elections;

28. Urges the KSA authorities to revoke the male guardianship system, and warns that the implementation of the law protecting women against domestic violence, adopted on 26 August 2013, will only be effective if the male guardianship system is removed, since the latter impedes the ability of women to report incidents of domestic or sexual abuse; urges the KSA authorities to also eliminate all restrictions on women's human rights, freedom of movement, health, education, marriage, employment opportunities, legal personality and representation in judicial processes, and all forms of discrimination against women in family law and in private and public life in order to promote their participation in the economic, social, cultural, civic and political spheres; welcomes the global campaign in support of lifting the ban on women driving; calls on the authorities to stop exerting pressure on those who campaign for the right of women to drive; further reminds the Saudi Government of its commitments under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child and of those which are incumbent upon it under UN General Assembly resolution 53/144 adopting the Declaration on Human Rights Defenders; draws attention to the need to promote awareness-raising campaigns and to also direct these at men, so that they too are aware of women's rights and of the overall repercussions on society if those rights are not respected; stresses that this information should also reach rural areas and areas that are isolated from the rest of the country;

29. Welcomes the recent legislation allowing Saudi girls in private schools to play sports, while regretting that girls in public schools are left out; welcomes also the great number of female university graduates who nowadays outnumber male graduates and encourages the government to intensify efforts to promote women's education; stresses, however, that, while Saudi women make up 57 % of the country's graduates, only 18 % of Saudi women over the age of 15 are employed — one of the lowest rates in the world; thus, calls on the Saudi Government to review and reform women's education in order to increase their economic participation, ensure greater focus on fostering entrepreneurship competencies and address gender-specific challenges in the regulatory environment to improve women's access to government business licensing services; welcomes the training programme established with the National Organisation for Joint Training, aimed at preparing girls to enter the labour market, and underlines the efforts made by the Saudi authorities to improve the status of girls in relation to training and to expanding their opportunities in new, usually male, sectors;

30. Encourages efforts in KSA to promote higher education for women, resulting in new education trends in the Kingdom; notes that the number of women enrolled in institutions of higher education in 2011 amounted to 473 725 (429 842 males), whereas in 1961 only 4 women were enrolled, and that the number of women graduating from these institutions amounted to 59 948 (55 842 males); notes also that the percentage of female students at all school levels increased from 33 % in 1974-75 to 81 % in 2013; welcomes the international scholarship programme which allowed the number of female scholarship students abroad to stand at 24 581;

31. Welcomes the first licences issued to women lawyers, but deplores the fact that the legal system is in the hands of male judges of religious background; takes note of the gradual codification of the Sharia which is underway and urges that it be speeded up, since lack of codification and the judicial precedent tradition often result in considerable uncertainty in the scope and content of the country's laws and in miscarriages of justice; asserts the crucial importance of securing judicial independence and adequate legal training for judges;

32. Welcomes KSA's ratification of four UN human rights treaties, namely: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, ratified in 2000), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1997), the Convention on the Rights of the Child (1996), and the International Convention on the Elimination of All Forms of Racial Discrimination (1997);

33. Stresses the importance of the debate opened among Islamic women scholars with a view to interpreting religious texts from the perspective of women's rights and equality;

34. Stresses that any negotiations on an EU free trade agreement that includes Saudi Arabia must first provide for strict obligations that safeguard the protection of women and girls;

35. Welcomes the recent decision by the Ministry of Labour to accelerate the recruitment of women in various private-sector spheres, which has led to an increase in the number of Saudi women working in the private sector from 55 600 in 2010 to about 100 000 in 2011 and 215 840 at the end of 2012; welcomes the decision by the Ministry of Labour in conjunction with the Human Resources Development Fund to introduce programmes to promote women's employment;

36. Calls on the authorities to improve the working conditions and treatment of immigrant workers, with special attention to the situation of women working as domestic helpers, who are at particular risk of sexual violence and who often find themselves in conditions of virtual slavery; encourages the Saudi government to continue the reforms of the labour laws and notably to fully abolish the sponsorship ('Kafala') system, and welcomes the recent appeal by the National Society for Human Rights to the government to recruit foreign workers under a Labour Ministry agency instead; welcomes recent efforts to introduce national labour laws in order to provide standardised protection for domestic workers and ensure the prosecution of employers responsible for sexual, physical and labour rights abuses;

37. Calls on the Saudi authorities to stop the recent violent attacks against migrant workers and to release the thousands who have been arrested and are being kept in makeshift centres, reportedly often without adequate shelter or medical attention; urges the home countries to cooperate with the Saudi authorities in order to organise the return of these workers in as humane a manner as possible; deplores the fact that the implementation of labour laws is often not conducted in line with international standards and that unjustified violence is used against irregular migrants, such as in the crackdown of November 2013 which ended with the deaths of three Ethiopian citizens, 33 000 persons in detention and the deportation of around 200 000 irregular migrants;

38. Welcomes the ratification by KSA of some of the main ILO conventions, namely Convention No 182 concerning elimination of the worst forms of child labour; applauds its accession to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol); expects the implementation of legal and political reforms to ensure that all those international treaties are enacted;

39. Takes note of the fact that KSA has recently rejected a non-permanent seat at the UN Security Council;

40. Believes that the solution to the region's escalating security problems lies in establishing a common security framework, from which no country is excluded and in which the legitimate security interests of all countries are taken into consideration;

41. Underlines the critical importance of EU-KSA cooperation in countering terrorism and violent extremism, and stresses that in order for it to be effective it must respect basic human rights and civil liberties; calls on the KSA authorities to improve control over the funding of radical militant groups abroad by Saudi citizens and charities; welcomes contribution agreement to launch the United Nations Counter-Terrorism Centre signed by the United Nations and KSA on 19 September 2011, and the decision of KSA to fund it for three years;

42. Is concerned that some of the KSA's citizens and organisations provide financial and political support for some religious and political groups notably in North Africa, the Middle East, Asia, and in particular in South Asia (namely Pakistan and Afghanistan), Chechnya and Dagestan, which may result in reinforcing fundamentalist and obscurantist forces that undermine efforts to nurture democratic governance and oppose the participation of women in public life;

43. Calls on the KSA authorities to work with the EU and internationally to stop Salafi movements supporting the anti-state activities of the military rebels in Mali, which are leading to the destabilisation of the entire region;

44. Stresses that KSA is a key member of the 'Friends of Syria Group'; calls on KSA to contribute to a peaceful, inclusive solution to the Syrian conflict notably through support for the Geneva II talks, without preconditions; calls also for more active support and the provision of all possible humanitarian assistance to the Syrian people affected by the Syrian civil war; calls on KSA to stop any financial, military and political support of extremist groups and to encourage other countries to do the same;

45. Reiterates its call on KSA to contribute constructively and to mediate in the interests of peaceful reforms and national dialogue in Bahrain;

46. Calls on the KSA authorities to engage in peaceful dialogue with Iran over bilateral relations and the future of the region; further welcomes the 24 November 2013 statement by the KSA Government on the outcome of the Geneva Agreement with Iran;

47. Calls on the EU and KSA to collaborate effectively with a view to bringing about a just and sustainable outcome for ending the Israeli-Palestinian conflict;

48. Urges the EU institutions to increase their presence in the region and to strengthen working relations with KSA, by increasing resources to the Delegation in Riyadh and by planning regular visits to the Kingdom, namely by the High Representative for Foreign Affairs and Security Policy;

49. Instructs its President to forward this resolution to the Council, the Commission, the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission, the European External Action Service, the UN Secretary General, the UN High Commissioner for Human Rights, H.M. King Abdullah Ibn Abdul Aziz, the Government of the Kingdom of Saudi Arabia, and the Secretary-General of the Centre for National Dialogue of the Kingdom of Saudi Arabia.

P7_TA(2014)0208

Pakistan's regional role and political relations with the EU

European Parliament resolution of 12 March 2014 on Pakistan's regional role and political relations with the EU (2013/2168(INI))

(2017/C 378/08)

The European Parliament,

— having regard to Articles 2 and 21 of the Treaty on European Union (TEU) and to the Treaty on the Functioning of the European Union (TFEU),

— having regard to the EU-Pakistan 5-year Engagement Plan of February 2012 ([1]),

— having regard to the EU Strategic Framework and Action Plan on Human Rights and Democracy (11855/2012), as adopted by the Foreign Affairs Council on 25 June 2012 ([2]),

— having regard to the European Security Strategy entitled 'A Secure Europe in a Better World', adopted by the European Council on 12 December 2003, and to the report on its implementation entitled 'Providing Security in a Changing World', endorsed by the European Council of 11-12 December 2008,

— having regard to Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences ([3]), and providing, in particular, for the special incentive arrangement for 'sustainable development and good governance' ('GSP+'),

— having regard to Annex VIII of the above regulation, which lists the UN/ILO conventions on core human and labour rights and those related to the environment and to governance principles which Pakistan has ratified and has agreed to effectively implement,

— having regard to the Foreign Affairs Council conclusions on Pakistan of 11 March 2013,

— having regard to its resolution of 7 February 2013 on recent attacks on medical aid workers in Pakistan ([4]), its position of 13 September 2012 on the proposal for a regulation of the European Parliament and of the Council introducing emergency autonomous trade preferences for Pakistan ([5]), and its resolution of 15 December 2011 on the situation of women in Afghanistan and Pakistan ([6]), and to the visit to Pakistan by a delegation from its Subcommittee on Human Rights in August 2013,

— having regard to the report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedom while countering terrorism, Ben Emmerson of 18 September 2013, and the report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, of 13 September 2013,

— having regard to UN General Assembly resolution 68/178 of 18 December 2013 on protection of human rights and fundamental freedoms while countering terrorism,

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Foreign Affairs and the opinion of the Committee on Development (A7-0117/2014),

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([1]) http://eeas.europa.eu/pakistan/docs/2012_feb_eu_pakistan_5_year_engagement_plan_en.pdf
([2]) http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf
([3]) OJ L 303, 31.10.2012, p. 1.
([4]) Texts adopted, P7_TA(2013)0060.
([5]) OJ C 353 E, 3.12.2013, p. 323.
([6]) OJ C 168 E, 14.6.2013, p. 119.

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A. whereas Pakistan's strategic role in the region, its relationship to its neighbours and EU-Pakistan relations are of major and growing importance to the EU, given the country's pivotal location at the heart of a volatile neighbourhood, its centrality to security and development in Central and South Asia, and its crucial role in combating terrorism, non-proliferation, drug trafficking, human trafficking and other transnational threats, all of which affect the security and well-being of European citizens;

B. whereas parliamentary elections in May 2013 marked the first transfer of power from one elected civilian government to another in the modern history of Pakistan; whereas Pakistan's democratic process is underpinned by wider societal changes, including a growing urban middle class and an increasingly vibrant civil society and independent media;

C. whereas the country's political and economic progress is hampered by pervasive internal and regional security problems, such as extremism, sectarian strife, suicide and targeted killings, and lawlessness in the tribal areas, compounded by the weakness of law enforcement agencies and the criminal justice system;

D. whereas Pakistan has one of the highest out-of-school populations in the world, with an estimated 12 million children not attending school and about two thirds of Pakistani women and half of Pakistani men being illiterate; whereas the country is still ranked 134th out of 135 countries in the World Economic Forum's 'gender gap' report;

E. whereas, according to the Global Climate Risk Index, Pakistan is among the twelve countries most affected by climate change in the last twenty years, has suffered severe flooding and water shortages and is directly affected by the glacial retreat on the Himalayas and Karakorum ranges;

F. whereas Pakistan is a semi-industrialised, lower middle-income country, with around one third of its population living below the poverty line; whereas Pakistan is ranked in 146th place among the 187 countries listed in the 2012 Human Development Index (HDI), down from 145th place in the listing for 2011; whereas the economic situation of Pakistan has been harmed by successive natural disasters, and whereas a high level of insecurity, instability and widespread corruption in the country weaken its economic growth and limit the government's ability to develop the state;

G. whereas Pakistan is vulnerable to a wide range of hazards, predominantly floods and earthquakes; whereas the volatile security situation, together with Pakistan's social challenges, are working as a catalyst in increasing its vulnerability; whereas multiple years of disasters have exhausted the coping strategies of already impoverished communities and severely reduced their resilience to future disasters;

H. whereas Pakistan's constructive contribution is vital for achieving reconciliation, peace and political stability in its neighbourhood and, most notably, in Afghanistan, especially in the context of the planned withdrawal of NATO combat troops in 2014;

I. whereas Pakistan is one of the largest recipients of EU development and humanitarian assistance, and whereas the EU is Pakistan's largest export market;

J. whereas Pakistan is an increasingly important partner of the EU in combating terrorism, nuclear proliferation, human and drug trafficking, and organised crime, and in the pursuit of regional stability;

K. whereas the EU and Pakistan have recently chosen to deepen and broaden their bilateral ties, as exemplified by the five-year engagement plan, launched in February 2012, and the first EU-Pakistan Strategic Dialogue, held in June 2012;

L. whereas the aim of the EU-Pakistan five-year engagement plan of 2012 is to build a strategic relationship and forge a partnership for peace and development rooted in shared values and principles;

M. whereas, as from 1 January 2014, Pakistan is now integrated into the EU's special generalised scheme of trade preferences (GSP+);

N. whereas in September 2012 the Ali Enterprises factory in Karachi, which produces jeans for the European market, was devastated by a fire, resulting in the death of 286 trapped workers; whereas the integration of Pakistan into the GSP+ scheme could boost production in the textile sector and make the improvement of labour rights and production conditions ever more important;

1. Underscores the significance of the May 2013 elections for the consolidation of democracy and civilian rule in Pakistan; encourages Pakistani political elites to use this momentum to further strengthen democratic institutions, the rule of law and civilian control over all areas of public administration, especially the security forces and the judiciary, to promote internal and regional security, to enact governance reforms to revive economic growth, strengthen transparency and the fight against organised crime and alleviate social injustices, and to halt and remedy all human rights abuses;

2. Takes the view, however, that building a sustainable democracy and a pluralistic society — as well as achieving greater social justice, eradicating deep poverty and malnutrition in parts of the country, raising the basic education level and preparing the country for the effects of climate change — will entail deep and difficult reforms of Pakistan's political and socio-economic order, which remains characterised by feudalistic structures of land ownership and political allegiances and imbalances in priorities between military spending on the one hand and welfare provision, education and economic development on the other, and a dysfunctional revenue collection system that systematically undercuts the state's capacity to deliver public goods;

3. Supports and encourages the efforts of the Pakistani Government to develop effective means to prevent and monitor the possibility of future natural disasters and for more effective coordination and cooperation of humanitarian aid with local actors, international NGOs and fundraisers;

4. Reiterates that good governance, accountable and inclusive institutions, separation of powers and respect for fundamental rights are important elements to address the nexus of development and security in Pakistan; further believes that elected civilian governments, endowed with democratic legitimacy, devolution of power to the provinces and effective local government are the best means of containing the tide of violence and extremism, restoring state authority in the FATA areas, and ensuring Pakistan's sovereignty and territorial integrity;

5. Supports, in this context, the intent of the Pakistani Government to enter into a peace dialogue with the Tehreek-e-Taliban Pakistan (TTP), provided this paves the way for a political and lasting solution to the insurgency and a stable democratic order, respecting human rights; appeals to the negotiators, however, to take account of the fact that the level of education — particularly among women — is an absolutely decisive factor for the advancement of societies and to make schooling for girls an essential element in the negotiations;

6. Appreciates Pakistan's continued commitment to fight terrorism on both sides of its border, and encourages the authorities to take bolder steps to further limit the possibilities for the recruitment and training of terrorists on Pakistan's territory, which constitutes a phenomenon that is making certain areas of Pakistan a safe haven for terrorist organisations, whose aim is to destabilise the country and the region, most importantly Afghanistan;

7. Notes that the Pakistani Taliban leader Hakimullah Mehsud was killed by a US-operated drone on 1 November 2013 and that the Pakistani Parliament and the new government have formally opposed such interventions and that limits to the use of drone attacks should be framed more clearly in international law;

8. Calls on the Pakistani Government to fulfil its security obligations and responsibilities by further engaging in the fight against extremism, terrorism and radicalisation, with the implementation of strict and uncompromising security measures and law enforcement, as well as by addressing inequality and socio-economic issues likely to fuel the radicalisation of Pakistani youth;

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9. Notes that the Pakistani Government has clearly expressed its opposition to US drone strikes on its territory; welcomes the UN General Assembly resolution which calls for further clarification of the legal framework applicable for the use of armed drones;

10. Welcomes Pakistan's contribution to state-building and reconciliation processes in Afghanistan, including assistance in facilitating the restart of peace talks; expects Pakistan's positive attitude to continue in the run-up to Afghanistan's presidential elections and beyond; expresses concern about geopolitical competition among neighbouring powers over influence in Afghanistan after the withdrawal of NATO combat troops;

11. Sets its hope in Pakistan's constructive role in promoting regional stability, including when it comes to the presence of NATO and EU Member States in post-2014 Afghanistan, by further advancing the trialogue format of engagement in Afghanistan with India, Turkey, China, Russia and the United Kingdom, and by fostering regional cooperation in the fight against trafficking in people, drugs, and goods;

12. Is encouraged by recent tangible progress in the dialogue between Pakistan and India, especially as regards trade and people-to-people contacts, made possible by the constructive attitude of both parties; regrets that the dialogue's achievements remain vulnerable to contingent events, such as ongoing incidents on the Line of Control separating Pakistan-occupied and Indian-occupied parts of Kashmir; asks both governments to ensure appropriate chains of command, accountability of military staff, and military-to-military dialogue, in order to avoid similar incidents in the future;

13. Recognises Pakistan's legitimate interest in building up strategic, economic and energy ties with China; considers it important that closer Pakistani-Chinese relations reinforce geopolitical stability in South Asia;

14. Notes Pakistan's pursuit of full membership of the Shanghai Cooperation Organisation (SCO) as a welcome sign of the country's ambition to become more involved in multilateral initiatives; notes, however, the absence of any formal cooperation mechanism between the SCO and the EU, and points to divergences in their respective normative bases and outlooks on global issues;

15. Is concerned by reports that Pakistan is considering exporting nuclear weapons to third countries; expects the EU and its Members States, despite official denials of the reports, to make clear to Pakistan that the export of nuclear weapons is unacceptable; calls on Pakistan, as a nuclear weapon state, to legally ban exports of all nuclear weapons-related material or know-how and to actively contribute to international non-proliferation efforts; considers that the signing and ratification of the Non-Proliferation Treaty (NPT) by Pakistan — as well as India — would demonstrate a strong commitment to peaceful regional co-existence and enormously contribute to the security of the whole region;

16. Believes that the battle against extremism and radicalism is directly linked to stronger democratic processes and reaffirms the EU's strong interest in, and continued support for, a democratic, secure and well-governed Pakistan, with an independent judicial system and good governance, that upholds the rule of law and human rights, enjoys friendly relations with neighbours and projects a stabilising influence in the region;

17. Recalls that EU-Pakistan relations traditionally developed inside a framework focused on development and trade; appreciates the significant and enduring contribution of EU development and humanitarian cooperation and welcomes the decision to grant Pakistan the benefit of the EU's GSP+ as from 2014; calls on Pakistan to fully comply with the relevant conditions attached thereto and invites the Commission to guarantee that enhanced monitoring is strictly applied, as provided for under the new GSP Regulation and underlines the fact that cooperation, particularly in the education, democracy-building and climate change adaption sectors, should continue to receive primary focus;

18. Is convinced that EU-Pakistan relations need to grow deeper and more comprehensive by developing political dialogue, thereby maintaining a relationship of mutual interest amongst equal partners; welcomes, in this context, the adoption of the five-year engagement plan and the commencement of the EU-Pakistan Strategic Dialogue, reflecting the increased weight of political and security cooperation, including on counter-terrorism policy, disarmament and non-proliferation, as well as on migration, education and culture; expects, however, more progress in all areas of the engagement plan;

19. Encourages both the EU and Pakistan to cooperate in the implementation process and to monitor progress on a regular basis by strengthening the dialogue between both parties in the long term;

20. Considers that Pakistan's democratic transition has engendered an opportunity for the EU to follow a more explicitly political approach in bilateral relations and provision of assistance; believes that EU support to Pakistan should prioritise the consolidation of democratic institutions at all levels, the strengthening of state capacity and good governance, the building of effective law enforcement and civilian counter-terrorism structures, including an independent judiciary, and the empowerment of civil society and free media;

21. Welcomes, in this regard, the already existing comprehensive democracy support programmes in connection with the implementation of the 2008 and 2013 recommendations of the EU election observation missions;

22. Invites the EEAS and the Commission to pursue a nuanced and multi-dimensional policy towards Pakistan that synergises all the relevant instruments at the EU's disposal, such as political dialogue, security cooperation, trade and assistance, in line with the EU's comprehensive approach to external action and with a view to preparations for the next EU-Pakistan summit;

23. Asks the EEAS, the Commission and the Council also to ensure that EU policy towards Pakistan is contextualised and embedded in a broader strategy for the region, thereby reinforcing EU interests across South and Central Asia; considers it important that EU bilateral relations with Pakistan and neighbouring countries, in particular India, China and Iran, also serve to discuss and coordinate policies with respect to the situation in Afghanistan, in order to ensure a targeted approach; stresses, in this regard, the need for increased EU-US policy coordination and dialogue on regional issues;

24. Believes that the future of EU-Pakistan relations should also be considered in the context of the EU's evolving institutional toolbox for engagement with third countries, in particular through the format of strategic partnerships; reiterates its call for a conceptual refinement of the format, and for clearer and more consistent benchmarks to assess, inter alia, whether, and under what conditions, Pakistan might qualify as a strategic partner of the EU at some point in the future;

25. Firmly reiterates that progress in bilateral relations is linked to improvement in Pakistan's human rights record, in particular as regards eradicating bonded labour, child labour and human trafficking, curbing gender-based violence, enhancing women and girls' rights, including that of access to education, ensuring freedom of speech and independent media, promoting tolerance and protection of vulnerable minorities by effectively fighting all forms of discrimination; recognises that this requires the end of the culture of impunity and the development of a reliable legal and judicial system at all levels, which is accessible to all;

26. Remains deeply concerned about the quality of education and, in a related manner, the alarming situation of women in many parts of Pakistan; calls for concrete and visible measures to enforce women's fundamental rights in the society, including the enactment of legislation against domestic violence, steps to improve the investigation and prosecution of honour killings and acid attacks, and a revision of the legislation that facilitates impunity; points to the need to ensure better access to education, better integration of women in the labour market and better maternal healthcare;

27. Reiterates its deep concern that Pakistan's blasphemy laws — which can carry the death sentence and are often used to justify censorship, criminalisation, persecution and, in certain cases, the murder of members of political and religious minorities — are open to a misuse that affects people of all faiths in Pakistan; underlines that the refusal to reform or repeal the blasphemy laws creates an environment of persistent vulnerability for minority communities; calls on the Pakistani government to implement a moratorium on the use of these laws, as a first step towards revising or revoking them, and to investigate and prosecute, as appropriate, campaigns of intimidation, threats, and violence against Christians, Ahmadis, and other vulnerable groups;

28. Calls particularly on the Pakistani authorities: to apprehend and prosecute those inciting violence, or who are responsible for violent attacks on schools or minority groups such as Shia, including the Hazara community, Ahmadis and Christians, and to instruct the security forces to actively protect those facing attacks from extremist groups; to enact laws against domestic violence; to end enforced disappearances, extrajudicial killings and arbitrary detentions notably in Balochistan;

29. Condemns all attacks on Christians and other religious minorities living in Pakistan and expects Pakistan to intensify its efforts to preserve freedom of religion and belief, including by easing the strict anti-blasphemy legislation and moving towards abolition of the death penalty;

30. Welcomes the adoption in 2012 of the bill to create a National Human Rights Commission and urges the government to set up the commission so that it can start functioning;

31. Notes that the EU is the major export partner for Pakistani goods (22,6 % in 2012); takes the view that EU trade-related support to Pakistan should help promote the diversification and development of production modes, including processing, provide assistance to regional integration and technology transfers, help facilitate the establishment or development of domestic productive capacity, and reduce income inequality;

32. Recalls that the EU's GSP+, which Pakistan benefits from as of 2014, is only granted to countries which have agreed in a binding manner to implement international human rights, labour rights and environment and good governance conventions; underlines notably Pakistan's obligations under the conventions listed in Annex VIII and reminds the Commission of its obligation to monitor their effective implementation; recalls also that where a country 'does not respect its binding undertakings' the GSP+ will be temporarily withdrawn;

33. Calls on the Pakistani authorities to take effective steps towards the implementation of the 36 ILO conventions which the country has ratified in order, notably, to allow labour unions to operate, to improve work conditions and safety standards, to eradicate child labour and to combat the most severe forms of exploitation of the three million female domestic workers;

34. Calls on the Pakistani Government to sign up to the ILO/IFC-led 'Better Work Programme', as promised, in order to give added impetus to improvements in health and safety standards for workers; calls on all those directly or indirectly responsible for the factory fire at the Ali Enterprises garment factory, including the Social Accountability auditing company and European retailers involved, to finally pay the survivors of the fire full, long-term and fair compensation;

35. Instructs its President to forward this resolution to the Government and National Assembly of Pakistan, the Council, the Commission, the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the EU Special Representative for Human Rights and the governments of the Member States.

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P7_TA(2014)0209

Anti-missile shield for Europe

European Parliament resolution of 12 March 2014 on an anti-missile shield for Europe and its political and strategic implications (2013/2170(INI))

(2017/C 378/09)

The European Parliament,

— having regard to Article 42(7) of the Treaty on European Union (TEU) and to Article 222 of the Treaty on the Functioning of the European Union (TFEU),

— having regard to Articles 24 and 42(2) TEU, Articles 122 and 196 TFEU and Declaration 37 on Article 222 TFEU,

— having regard to the European Security Strategy, adopted by the European Council on 12 December 2003, and to the report on its implementation, endorsed by the European Council on 11-12 December 2008,

— having regard to the European Union Internal Security Strategy, endorsed by the European Council on 25-26 March 2010,

— having regard to the European Council conclusions of 19 December 2013 on the Common Security and Defence Policy,

— having regard to the Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation, adopted at the NATO Summit in Lisbon on 19-20 November 2010,

— having regard to the Chicago Summit Declaration Issued by the heads of state and government participating in the meeting of the North Atlantic Council in Chicago on 20 May 2012,

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Foreign Affairs (A7-0109/2014),

A. whereas the issue of Ballistic Missile Defence (BMD) was already raised in the past but has become more topical in recent years in view of the multiplication of threats stemming from the proliferation of nuclear weapons and other weapons of mass destruction, and the proliferation of ballistic missiles to which the North Atlantic Treaty Organisation (NATO) and its European allies must be able to respond effectively;

B. whereas defence against ballistic or other types of missile attacks can constitute a positive development in European security in the context of a rapid international security dynamic, with several state and non-state actors developing missile technologies and various chemical, biological, radiological and nuclear defence (CBRN) capabilities with the potential to reach European territory;

C. whereas NATO is developing a BMD capability to pursue its core task of collective defence, aiming to provide full coverage and protection to all European populations, territories and forces which are members of NATO against the increasing threats posed by the proliferation of ballistic missiles;

D. whereas the essential contribution of the United States to BMD is confirmation of its commitment to NATO and the security of Europe and Europe's allies, and highlights the importance of the transatlantic bond, with equipment already in place in Romania and more expected to be placed in Poland in the near future;

E. whereas the Common Security and Defence Policy will be developed in full complementarity with NATO, under the agreed framework for the EU-NATO strategic partnership, as confirmed by the European Council on 19 December 2013;

1. Argues that as BMD technologies develop and are implemented, new dynamics are brought about in European security, resulting in a need for the Member States to take into account the implications of BMD for their security;

2. Recalls that NATO BMD measures are developed and constructed to defend its member states from potential ballistic missile attacks; calls on the Vice-President/High Representative to pursue a strategic partnership with NATO, taking account of the issue of BMD, which should lead to the provision of full coverage and protection for all EU Member States, thus avoiding a situation in which the security afforded to them would be in anyway differentiated;

3. Welcomes the achievement of interim NATO BMD capability, which will provide maximum coverage within the means available to defend populations, territories and forces across southern European NATO member states against a ballistic missile attack; welcomes, also, the aim to provide full coverage and protection for European NATO member states by the end of the decade;

4. Stresses that EU initiatives, such as Pooling & Sharing, may prove helpful in strengthening cooperation between Member States in the areas of BMD and in carrying out joint research and development work; notes that, in the long term, such cooperation could also lead to the further consolidation of the European defence industry;

5. Calls on the European External Action Service, the Commission, the European Defence Agency and the Council to include BMD issues in future security strategies, studies and white papers;

6. Stresses that, due to the financial crisis and budget cuts, not enough resources are being used to maintain sufficient defence capabilities, thereby leading to a reduction in the EU's military capabilities and industrial capacity;

7. Stresses that the NATO BMD plan is in no way aimed at Russia and that NATO is prepared to cooperate with Russia based on the assumption of cooperation between two independent missile defence systems — NATO's BMD and that of Russia; highlights the fact that while effective cooperation with Russia could bring measurable benefits, it must be pursued on the basis of full reciprocity and transparency, as increasing mutual trust is vital for the gradual development of such cooperation; notes, in this connection, that moving Russian missiles closer to NATO and EU borders is counterproductive;

8. Instructs its President to forward this resolution to the President of the European Council, the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the Council, the Commission, the parliaments of the Member States, the NATO Parliamentary Assembly and the Secretary-General of NATO.

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P7_TA(2014)0210

European fishing sector and the EU-Thailand free trade agreement

European Parliament resolution of 12 March 2014 on the situation and future prospects of the European fishing sector in the context of the Free Trade Agreement between the EU and Thailand (2013/2179(INI))

(2017/C 378/10)

The European Parliament,

— having regard to Article 3(5) of the Treaty on European Union on the EU's relations with the rest of the world,

— having regard to Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing ([1]) (the IUU Regulation),

— having regard to the Commission Communication of 25 October 2011 entitled 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (COM(2011)0681),

— having regard to Written Questions E-000618/2013 of 22 January 2013 on abuses in retail trade supply chains and E-002894/2013 of 13 March 2013 on the free trade agreement with Thailand and child labour in the canning industry, and the Commission's answers thereto,

— having regard to its resolution of 22 November 2012 on the external dimension of the common fisheries policy ([2]),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Fisheries and the opinion of the Committee on International Trade (A7-0130/2014),

A. whereas the European fishing sector is exiting a period of crisis that has affected the catch, processing and aquaculture sectors, and this situation has dramatically weakened its competitiveness, particularly when the global market is being liberalised and at the same time, certain developing countries with abundant marine resources are starting to emerge as new fishing powers;

B. whereas the European fishing and processing industry is vital in terms of securing the supply of food to European citizens and a basis for the livelihood of coastal areas that largely depend on those activities; whereas the survival of the sector will be jeopardised if the EU liberalises trade in fishery products with developing countries that wish to export their products to the key Community market, especially if they are offered zero duty;

C. whereas the EU is the world's largest importer of fishery products and its dependence on imports makes the Community market highly attractive to exporters, in particular bearing in mind that demand for fishery products in the EU is rising by 1,5 % each year;

D. whereas Thailand is the world's main producer of canned tuna, with 46 % of world production, and its exports of canned tuna to the EU, more than 90 000 tonnes each year, amount to almost 20 % of all Community imports from third countries, with the US, the EU and Japan being the main destination markets for exports of fishery products from Thailand;

([1]) OJ L 286, 29.10.2008, p. 1.
([2]) Texts adopted, P7_TA(2012)0461.

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E. whereas Thailand is the world's main importer of fresh, chilled and frozen tuna for its canning industry;

F. whereas 80 % of tuna is consumed in tinned form and, according to the most recent data available from the Food and Agriculture Organisation's (FAO) FISHSTAT database, 21 % of the global output of canned and prepared tuna is produced in the EU, whilst the remaining 79 % is produced in third countries, most of them developing countries;

G. having regard to the trade, economic and strategic importance of Thailand for the EU, and the substantial benefits of the Free Trade Agreement (FTA) between the EU and Thailand for the EU economy as a whole;

H. whereas the EU supports regional integration among ASEAN (Association of Southeast Asian Nations) member countries whereas the FTA with Thailand constitutes an essential pillar in this integration process, of which the ultimate objective is to conclude a region-to-region FTA in the future;

I. whereas the signing of an EU-ASEAN FTA has been a priority objective for the EU since 2007, with the hope of including Indonesia, Malaysia, the Philippines, Singapore, Thailand, Brunei and Vietnam; whereas the lack of progress in the negotiations on this regional agreement has led to the opening of bilateral negotiations with ASEAN member countries, including Thailand, with a political commitment to conclude the FTA within two years;

J. whereas if Thailand, Indonesia and the Philippines are included in the central and western Pacific region, the production of canned tuna in the region accounts for almost half of global production;

K. whereas the changes that have occurred in relation to producers of canned tuna and the production of tuna loins have been accompanied by a trend towards global supply to processing countries with low production costs which are located close to the raw material (such as Thailand, the Philippines, Indonesia, Papua New Guinea and Ecuador), and the number of countries involved in the production and export of canned tuna is rising;

L. whereas Thailand and the Philippines are the main exporting countries of prepared and canned tuna to the EU, with imports from Thailand having risen by 20 % whilst those from the Philippines have fallen by 5 %;

M. whereas any tariff reduction for canned and prepared tuna could have an impact on the preferences enjoyed by the countries of the African, Caribbean and Pacific Group of States (ACP) and the beneficiaries of the generalised system of preferences (GSP+), under which third countries undertake to comply with certain policies on matters such as respect for human rights, labour, the environment and good governance in exchange for tariff preferences;

N. whereas a tariff reduction would also distort the European market, given that the bulk of the EU tuna canning industry is located in regions that are heavily dependent on fisheries, such as Galicia, Brittany, the Azores (an outermost region), the Basque Country and Sardinia; whereas the EU tuna industry is the world's second largest producer of canned tuna and its long-established activity is crucial in terms of creating added value and generating employment within the EU, guaranteeing the highest possible social, environmental and health and hygiene protection standards;

O. whereas the main aim of the preferential rules of origin is to establish the existence of a sufficient economic link between the products imported into the EU and the countries benefiting from the preferences granted by it, in order to ensure that those preferences are not wrongfully diverted to other countries for which they were not intended;

P. whereas a discussion of trade in fishery products refers to trade in a natural resource the sustainability of which is influenced by a wide range of factors, including the sound management and sustainable exploitation of fishery resources and the control of illegal fishing, pollution, climate change and market demand; whereas all of these external factors affect international trade in fishery products and, consequently, fishery products should be considered as sensitive products that may be given special protection;

Q. whereas an adequate and constant supply of raw material is essential for the continued existence and economic development of tuna processing companies in the EU;

R. whereas the World Trade Organisation (WTO) argues that free trade is an instrument for growth the objective of which is sustainable development in social, economic and environmental terms;

S. whereas, in this connection, trade rules represent a basic and fundamental tool for ensuring that trade is beneficial and achieve the objectives of protecting health and the environment and guaranteeing the proper management of natural resources;

T. whereas globalisation has significantly increased the volume of fish traded internationally and there is widespread concern that many producer countries lack sufficient resources to manage and/or exploit fish stocks in a sustainable manner, guarantee an adequate level of health and hygiene protection, mitigate the environmental impact of fishing and aquaculture, and guarantee respect for human rights in general as well as promote labour rights and social conditions in particular;

U. whereas some of the EU's trade partners show weaknesses in relation to the three aspects of the sustainable development of fisheries: social, economic and environmental;

V. whereas the sustainable management of tuna stocks is guaranteed by the five regional fisheries organisations (RFOs) for tuna; whereas international cooperation between states and with the RFOs is vital in order to safeguard the sustainability of tuna stocks;

W. whereas both the ILO and various NGOs have recently uncovered serious shortcomings with regard to social and labour conditions and respect for human rights in the Thai fishing industry; whereas the media have reported and the Government of Thailand has acknowledged that a section of the Thai fishing industry uses forced labour carried out by immigrants who are victims of human trafficking, and that two multinational tuna canning companies in Thailand use child labour;

X. whereas according to the FAO, it is common practice for Thai fishing vessels to be seized by neighbouring coastal states and their captains accused of illegal fishing in or illegal intrusion into their exclusive economic zone;

Y. whereas in 2013 the Spanish authorities refused permission for tuna from tuna vessels flying the Ghanaian flag to be landed and marketed on the grounds that those vessels were involved in illegal, unreported and unregulated (IUU) fishing, given that they had failed to comply with International Commission for the Conservation of Atlantic Tunas management measures, and whereas private companies based in Thailand had a stake in most of the tuna vessels concerned;

Z. whereas numerous consignments of canned tuna imported from Thailand have been rejected in the EU in recent months owing to their inadequate heat treatment, which is essential in order to neutralise microorganisms which would otherwise pose a risk to human health;

1. Requests that fish products, such as canned tuna imported from Thailand, which have the potential to disrupt the EU's production of and market for these products, be treated as sensitive products; Believes, furthermore, that any decision concerning greater access for Thai canned and processed tuna should only be taken following rigorous impact assessments and in close consultation with industry, in order to analyse and evaluate the impact that greater access may have in the processing industry and the marketing of seafood products in the EU;

2. Calls for access to the EU market for canned and prepared fish and shellfish from Thailand to remain subject to the current tariff and thus to be excluded from tariff reductions; recommends that long transitional periods and partial liberalisation commitments, including the imposition of quotas, be established for canned and prepared fish and shellfish products should tariff reductions be introduced, so as to safeguard the competitiveness of the Community tuna industry and preserve the significant activity and social dimension associated with the tuna industry in the EU, which provides 25 000 direct and 54 000 indirect jobs;

3. Calls for rigorous impact assessments to be carried out where appropriate, before any type of tariff concessions or any other rules are applied, in order to analyse and assess the impact that those concessions or rules may have on the EU seafood processing and marketing industry;

4. Calls, in the case of sensitive products, for full compliance with solid and coherent strict rules of origin, to be enforced without exception and for cumulation to be strictly limited to those products for which Thailand is mainly a processor rather than a fishing country;

5. Demands that imports of canned tuna and other fish products from Thailand be subject, insofar as is possible, to the same competitive conditions as fish products of EU origin; considers this demand to imply in particular that the FTA must contain an ambitious trade and sustainable development chapter, whereby Thailand undertakes to respect, promote and implement internationally recognised labour standards, as enshrined in the fundamental ILO conventions, including those on forced labour and child labour; considers, furthermore, that respect for human rights, the protection of the environment and the conservation and sustainable exploitation of fisheries resources, the fight against illegal, unreported and unregulated fishing and conformity with the EU's sanitary and phytosanitary rules should be strictly enforced; believes, in this connection, that the Commission should regularly report to Parliament on Thailand's compliance with the above-mentioned obligations;

6. Calls on the Commission to ensure that the IUU Regulation is effectively implemented and that the FTA negotiations result in an explicit reference thereto within the body of the text of the agreement;

7. Considers that the best way to ensure Thailand's full cooperation in the fight against IUU fishing is to include an explicit reference to the IUU Regulation in the text of the FTA;

8. Calls for the FTA to include a requirement for compliance with International Labour Organisation conventions and greater transparency, surveillance, oversight, and traceability in the Thai fisheries sector, so that fishing activities can be monitored;

9. Insists that product traceability be guaranteed as a vital element in protecting human health and the environment, as well as a fundamental factor and basic tool in controlling illegal fishing;

10. Calls for the FTA to remain consistent with other Community policies and with the promotion of corporate social responsibility strategies; calls for safeguard clauses to be set out;

11. Stresses that Parliament's decision to give its consent on the FTA will take into account the overall outcome of the negotiations, including those of the fisheries sector;

12. Calls for reciprocity in market access and the elimination of any kind of discrimination in the services sector;

13. Hopes that Thailand, as the world's largest exporter of canned tuna, will participate in and cooperate with the three RFOs for tuna in the region, i.e. the Inter-American Tropical Tuna Commission, the Western and Central Pacific Fisheries Commission and the South Pacific Regional Fisheries Management Organisation, as well as the Indian Ocean tuna RFO, of which it is a member;

14. Supports the existence of a policy for the conservation and sustainable management of fishery resources;

15. Instructs its President to forward this resolution to the Council and Commission.

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P7_TA(2014)0211

European gastronomic heritage: cultural and educational aspects

European Parliament resolution of 12 March 2014 on the European gastronomic heritage: cultural and educational aspects (2013/2181(INI))

(2017/C 378/11)

The European Parliament,

— having regard to the report of its Committee on the Environment, Public Health and Food Safety on the proposal for a regulation of the European Parliament and of the Council on the provision of food information to consumers (COM(2008)0040),

— having regard to the 2002 United Nations Educational, Scientific and Cultural Organisation (UNESCO) report on nutrition,

— having regard to the World Health Organisation (WHO) Report on Food and Nutrition Policy for Schools,

— having regard to the Commission White Paper of 30 May 2007 on 'A Strategy for Europe on nutrition, overweight and obesity related health issues' (COM(2007)0279),

— having regard to the conclusions of the WHO European Ministerial Conference on Nutrition and Non-communicable Diseases in the Context of Health 2020, held on 4 and 5 July 2013 in Vienna,

— having regard to the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage of 17 October 2003,

— having regard to the inclusion of the Mediterranean diet in the UNESCO Representative List of the Intangible Cultural Heritage of Humanity of 16 November 2010 and of 4 December 2013,

— having regard to the inclusion of the gastronomic meal of the French in the UNESCO Representative List of the Intangible Cultural Heritage of Humanity (Decision 5.COM 6.14),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Culture and Education (A7-0127/2014),

Educational aspects

A. whereas the present and future health and wellbeing of the population is determined by diet and the environment and hence by farming, fishing and livestock breeding methods;

B. whereas the WHO's Global School Health Initiative sees educational centres as important spaces for the acquisition of theoretical and practical knowledge about health, nutrition, food and gastronomy;

C. whereas a poor diet may have disastrous consequences; whereas, at the WHO European Ministerial Conference in July 2013, European health ministers called for coordinated action 'to tackle obesity and poor diets', which are the causes of an epidemic of non-communicable diseases, such as heart complaints, diabetes and cancer;

D. whereas the stereotypical ideas about body image and food which are prevalent in society can cause serious eating and psychological disorders, such as anorexia and bulimia; whereas it is important to talk openly about these issues, in particular with adolescents;

E. whereas, according to the European Food Information Council, in 2006 some 33 million people in Europe were at risk of malnutrition; whereas the situation has worsened since the start of the crisis;

F. whereas childhood is a decisive period in terms of providing education in healthy behaviour, and knowledge leading to the adoption of a healthy lifestyle, and whereas school is an area in which effective action can be taken to shape healthy long-term behaviour in future generations;

G. whereas educational centres offer spaces and instruments that can promote the knowledge and preparation of foodstuffs and help to establish dietary patterns which, together with the regular practice of moderate exercise, can create the basis for a healthy lifestyle;

H. whereas information, education and awareness-raising form part of the EU strategy to support Member States in reducing alcohol-related harm (COM(2006)0625), and whereas this strategy recognises appropriate consumption patterns; whereas the Council issued a recommendation on 5 June 2001 on the drinking of alcohol by young people, in particular children and adolescents, which envisaged fostering a multisectoral approach to education;

I. whereas the need to include food in school curricula, in terms of both nutritional aspects and gastronomy, was recognised by the European Nutrition Foundations (ENF) network at its meeting on 'Nutrition in schools across Europe and the role of foundations', which unanimously agreed to convey this concern to bodies such as the European Parliament and the Commission;

J. whereas different countries have, through various domestic bodies, pushed through recognition of the Mediterranean diet as part of UNESCO's Intangible Cultural Heritage of Humanity, resulting in the promotion and establishment of patterns of behaviour that ensure a healthy lifestyle thanks to a holistic approach that takes into account aspects relating to education, food, school, family life, nutrition, territory, landscape, etc.;

K. whereas the Mediterranean diet offers a balanced and healthy combination of eating habits and lifestyle that is directly related to the prevention of chronic illnesses and to health promotion in both the school and the family environment;

L. whereas European 'food at school' programmes seek to ensure that the food served in school canteens includes all the necessary elements of a high-quality, balanced diet; whereas education in the broadest sense of the term, including in the area of food, consolidates the concept of a healthy lifestyle based on a balanced diet among schoolchildren;

M. whereas serious education in nutritional matters ensures public awareness of matters such as the correlation between foods, food sustainability and the health of the planet;

N. whereas increases in the prices charged in school canteens and for food in general are denying many households, and in particular children, access to a balanced, high-quality diet;

O. whereas media reporting and advertising have a bearing on consumption patterns;

P. whereas if people are to have the chance to acquire a detailed knowledge of the products used and their intrinsic quality and taste, it is essential to develop suitable labelling schemes which provide all consumers with clear information about the composition and origin of products;

Q. whereas the training given to gastronomy-sector workers contributes to the process of passing on knowledge about, raising the profile of, safeguarding and developing European gastronomy;

Cultural aspects

R. whereas gastronomy is the combination of knowledge, experience, art and craft, which provides a healthy and pleasurable eating experience;

S. whereas gastronomy forms part of our identity and is an essential component of the European cultural heritage and of the cultural heritage of the Member States;

T. whereas the EU has encouraged the identification, defence and international protection of geographical indications, designations of origin and traditional specialities in respect of agri-food products;

U. whereas gastronomy is not only an elite art form based on the careful preparation of food, but also reflects an acknowledgement of the value of the raw materials it uses, of their quality and of the need for excellence at all stages in the processing of foodstuffs, a concept which incorporates respect for animals and nature;

V. whereas gastronomy is closely bound up with farming practices in European regions and with their local products;

W. whereas it is important to preserve the rites and customs linked to local and regional gastronomy, for example, and to foster the development of European gastronomy;

X. whereas gastronomy is one of the most important cultural expressions of human beings and the term should be understood as referring not only to what is known as 'haute cuisine', but to all culinary forms from the various regions and social strata, including those deriving from traditional local cuisine;

Y. whereas the survival of typical cuisine forming part of our culinary and cultural heritage is very frequently jeopardised by the invasion of standardised foods;

Z. whereas the quality, reputation and diversity of European gastronomy make it essential that sufficient food of sufficient quality be produced in Europe;

AA. whereas gastronomy is identified with the various aspects of diet, and whereas its three primary pillars are health, eating habits and pleasure; whereas in many countries the culinary arts are an important aspect of social life and help to bring people together; whereas experiencing different gastronomic cultures is one form of cultural exchange and sharing; whereas it also has a positive influence on social and family relations;

AB. whereas UNESCO's recognition of the Mediterranean diet as an intangible cultural heritage is important because it considers this diet to comprise a set of knowledge, skills, practices, rituals, traditions and symbols that are related to agricultural crops, fisheries and livestock farming, and to methods of conserving, processing, cooking, sharing and eating food;

AC. whereas the eating habits of the European peoples offer a rich sociocultural heritage which we have an obligation to hand down to future generations; whereas schools, together with family homes, are the ideal places in which to acquire this knowledge;

AD. whereas gastronomy is becoming a leading element in attracting tourism and the interaction between tourism, gastronomy and nutrition is having an extremely positive effect in terms of promoting tourism;

AE. whereas it is important to pass on to future generations an awareness of the gastronomic riches of their regions and of European gastronomy in general;

AF. whereas gastronomy helps to promote the regional heritage;

AG. whereas it is essential to promote local and regional products in order to preserve our gastronomic heritage, on the one hand, and guarantee fair remuneration for producers and the widest possible availability of the products in question, on the other;

AH. whereas gastronomy is a source of both cultural and economic wealth for the regions which make up the EU;

AI. whereas the European heritage is made up of a set of tangible and intangible elements and, in the case of gastronomy and food, is also formed by the locality and landscape from which the products for consumption originate;

AJ. whereas the longevity, diversity and cultural richness of European gastronomy are founded on the availability of high-quality local produce;

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Educational aspects

1. Asks the Member States to include the study and sensory experience of food, nutritional health and dietary habits, including historical, geographical, cultural and experiential aspects, in school education from early childhood as a means of improving the health and wellbeing of the population, the quality of food and respect for the environment; welcomes the gastronomic education programmes being conducted in schools in a number of Member States, some in cooperation with leading chefs; emphasises the importance of combining education in healthy eating habits with measures to combat the stereotypes which can cause serious eating and psychological disorders, such as anorexia or bulimia;

2. Stresses, by the same token, the importance of implementing the WHO's recommendations on tackling obesity and poor diets; expresses alarm at the ongoing problem of malnutrition in Europe and its increased prevalence since the start of the crisis, and urges the Member States to do everything they can to make a healthy diet a feasible option for everyone, for example by ensuring that school or municipal canteens offer high-quality food and are open to the public;

3. Points to the need also to enhance the school curriculum with information about gastronomic culture (in particular at local level), food preparation, production, conservation and distribution processes, the social and cultural influence of foodstuffs, and consumer rights; urges the Member States to incorporate into their school curricula workshops on the development of the senses, in particular taste, which combine instruction on the nutritional benefits of foodstuffs with the provision of information on the regional and national gastronomic heritage;

4. Recalls that in some countries nutrition is already included in school curricula, while in others it is not compulsory per se but is taught by various means, such as programmes offered by local authorities or private bodies;

5. Reiterates the need for education in schools about nutrition and a good, healthy and enjoyable diet;

6. Points out that sport and physical exercise should be stepped up in primary and secondary schools throughout the EU;

7. Recalls that good nutrition enhances children's wellbeing and improves their capacity to learn, as well as making them more resistant to disease and helping them to develop healthily;

8. Points out that dietary habits acquired in childhood can influence food preferences and choices — and methods of cooking and eating foods — in adulthood, that childhood is therefore the best time to educate a person's taste and that school offers an ideal opportunity to introduce pupils to the diversity of products and gastronomies;

9. Considers that programmes should be offered with a view to providing education about, and raising awareness of, the consequences of inappropriate alcohol consumption, and encouraging proper and intelligent consumption patterns thanks to an understanding of the special characteristics of wines, their geographical indications (GIs), grape varieties, production processes and the meaning of traditional terms;

10. Asks the Commission to encourage projects which involve exchanges of information and practices in the area of nutrition, food and gastronomies, for example as part of the Comenius (school education) strand of the Erasmus+ programme; calls for the EU and its Member States, furthermore, to promote intercultural exchange in sectors related to catering, food and gastronomy, taking advantage of the opportunities offered by the Erasmus+ programme for high-quality training, mobility and apprenticeships for learners and professionals;

11. Points out that education in nutrition and gastronomy, including respect for nature and the environment, should include the participation of families, teachers, the educational community, information channels and all education professionals;

12. Highlights the usefulness of information and communication technologies (ICT) as an educational tool to assist learning; encourages the creation of interactive platforms to facilitate access to, and dissemination of, the European, national and regional gastronomic heritage in order to promote the preservation and transmission of traditional knowledge among professionals, artisans and citizens;

13. Calls on the Commission, the Council and the Member States to consider stricter control of content and advertising dealing with food products, especially in terms of nutrition;

14. Reminds the Member States to make sure that all advertising and sponsorship of junk food is banned in schools;

15. Calls on the Member States to ensure that teachers are properly trained, in collaboration with nutritionists and doctors, to teach food sciences correctly in schools and universities; points out that nutrition and the environment are co-dependent and also calls, therefore, for the updating of knowledge about the natural environment;

16. Calls on the Commission and the Council to study programmes for training gastronomy professionals; encourages the Member States to promote such training; stresses the importance of this training covering local and European gastronomy, the diversity of products, and processes for the preparation, production, conservation and distribution of food;

17. Stresses the importance of training for gastronomy professionals highlighting 'homemade', local and varied produce;

18. Calls on the Member States to exchange knowledge and best practices concerning gastronomy-related activities in education and to promote gastronomic awareness in the various regions; calls also for an exchange of best practices or for thought to be given to shortening the food chain by focusing on local seasonal produce;

19. Points to the need to make use of funding programmes under the common agricultural policy for 2014-2020 with a view to promoting healthy eating in schools;

20. Recalls that the boost given by recognition of the Mediterranean diet and the gastronomic meal of the French as part of UNESCO's Intangible Cultural Heritage of Humanity has led to the creation of institutions and bodies promoting knowledge, practice and education in relation to the values and habits of a healthy and balanced diet;

Cultural aspects

21. Emphasises the need to create awareness of the diversity and quality of the regions, landscapes and products that are the basis of Europe's gastronomy, which forms part of our cultural heritage and also constitutes a unique and internationally recognised lifestyle; stresses that this sometimes requires respect for local habits;

22. Points out that gastronomy is an instrument which can be used to develop growth and jobs in a wide range of economic sectors, such as the restaurant, tourism, agri-food and research industries; notes that gastronomy can also develop a keen sense for the protection of nature and the environment, which ensures that food has a more authentic taste and is less processed with additives or preservatives;

23. Stresses the importance of gastronomy in promoting the hospitality sector across Europe and vice versa;

24. Recognises the role played by our skilled and talented chefs in preserving and exporting our gastronomic heritage, and the importance of maintaining our culinary expertise as a key factor adding value in both educational and economic terms;

25. Welcomes initiatives to promote Europe's gastronomic heritage, such as local and regional gastronomic fairs and festivals that reinforce the concept of proximity as an element in respect for the environment and our surroundings and guarantee greater consumer confidence; encourages the inclusion of a European dimension in these initiatives;

26. Welcomes the three EU schemes relating to geographical indications and traditional specialities, known as protected designation of origin (PDO), protected geographical indication (PGI), and traditional specialities guaranteed (TSG), which enhance the value of European agricultural products at EU and international level; calls on the Member States and their regions to develop PDO labels, especially common PDO labels for products of the same kind emanating from cross-border geographical areas;

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27. Welcomes initiatives such as the 'slow food' movement, which helps to engender general public appreciation of the social and cultural importance of food, and the 'Wine in Moderation' initiative, which promotes a lifestyle and a level of alcohol consumption associated with moderation;

28. Emphasises also the role played by the Academies of Gastronomy, the European Federation of Nutrition Foundations and the Paris-based International Academy of Gastronomy in the study and dissemination of the gastronomic heritage;

29. Calls on the Member States to draw up and implement policies to qualitatively and quantitatively improve the gastronomic industry, both intrinsically and in terms of its contribution to tourism, within the framework of the cultural and economic development of the regions;

30. Stresses that gastronomy is a strong cultural export for the EU and for individual Member States;

31. Calls on the Member States to support initiatives related to agri-tourism that foster knowledge of the cultural and landscape heritage, offer regional support and promote rural development;

32. Urges the Member States and the Commission to develop the cultural aspects of gastronomy and to foster eating habits which maintain consumer health, further the exchange and sharing of cultures and promote the regions, while at the same time retaining the pleasure associated with eating, conviviality and sociability;

33. Invites the Member States to collaborate with each other and support initiatives to maintain the high quality, diversity, heterogeneity and singularity of local, regional and national traditional products in order to combat homogenisation, which in the long term will diminish Europe's gastronomic heritage;

34. Encourages the Commission, the Council and the Member States to make the importance of supporting sustainable and varied European food production of high quality and in sufficient quantity an integral part of their deliberations on food policy, with a view to sustaining European culinary diversity;

35. Calls on the Commission and the Member States to strengthen measures for the recognition and labelling of European food production in order to enhance the value of those products, provide better information to consumers and protect the diversity of European gastronomy;

36. Points out that it is important to recognise and enhance the value of high-quality gastronomic produce; urges the Commission, the Council and the Member States to consider the introduction of consumer information from caterers on dishes prepared on the spot from raw products;

37. Encourages the Commission, the Council and the Member States to study the impact of the laws they adopt on the capacity, diversity and quality of food production in the EU and to take measures to combat the counterfeiting of products;

38. Supports such initiatives as may be developed by Member States and their regions to promote and preserve all the territories, landscapes and products that make up their local gastronomic heritage; urges the regions to promote local and dietetic gastronomy in schools and collective catering in association with local producers in order to preserve and enhance the regional gastronomic heritage, stimulate local agriculture and shorten supply chains;

39. Calls on the Member States to take measures to preserve the European gastronomy-related heritage, such as protection of the architectural heritage of traditional food markets, wineries or other facilities, and of artefacts and machinery related to food and gastronomy;

40. Highlights the importance of identifying, cataloguing, transmitting and disseminating the cultural richness of European gastronomy; advocates the establishment of a European observatory for gastronomy;

41. Recommends to the Commission that it include European gastronomy in its cultural initiatives and programmes;

42. Welcomes the inclusion in UNESCO's Representative List of the Intangible Cultural Heritage of Humanity of the gastronomic meal of the French, the Mediterranean diet, the Croatian gingerbread craft and traditional Mexican cuisine, and encourages the Member States to request the inclusion of their gastronomic traditions and practices in the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, in order to help preserve them;

43. Encourages European cities to apply for the title of UNESCO City of Gastronomy, promoted by the organisation's Creative Cities Network;

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44. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

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P7_TA(2014)0218

Provision of food information to consumers as regards the definition of 'engineered nanomaterials'

European Parliament resolution of 12 March 2014 on the Commission delegated regulation of 12 December 2013 amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers as regards the definition of 'engineered nanomaterials' (C(2013)08887 — 2013/2997(DEA))

(2017/C 378/12)

The European Parliament,

— having regard to the Commission delegated regulation (C(2013)08887),

— having regard to Article 290 of the Treaty on the Functioning of the European Union,

— having regard to Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers ([1]), and in particular Article 2(2)(t), Article 18(3) and (5) and Article 51 (5) thereof,

— having regard to the Commission proposal for a regulation of the European Parliament and the Council on novel foods (COM(2013)0894),

— having regard to Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives ([2]),

— having regard to the Union lists that were established by Commission Regulation (EU) No 1129/2011 of 11 November 2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council by establishing a Union list of food additives ([3]) and Commission Regulation (EU) No 1130/2011 of 11 November 2011 amending Annex III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives by establishing a Union list of food additives approved for use in food additives, food enzymes, food flavourings and nutrients ([4]),

— having regard to Commission Regulation (EU) No 257/2010 of 25 March 2010 setting up a programme for the re-evaluation of approved food additives in accordance with Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives ([5]),

— having regard to the motion for a resolution by the Committee on the Environment, Public Health and Food Safety,

— having regard to Rule 87a(3) of its Rules of Procedure,

A. whereas Article 18(3) of Regulation (EU) No 1169/2011 on Food Information to Consumers ('FIC') provides that all food ingredients present in the form of engineered nanomaterials must be clearly indicated in the list of food ingredients to ensure consumer information; whereas, accordingly, FIC provides for a definition of 'engineered nanomaterials';

B. whereas Article 18(5) of the FIC Regulation empowers the Commission to adjust and adapt the definition of 'engineered nanomaterials' referred therein to technical and scientific progress or to definitions agreed at international level, by means of delegated acts, for the purposes of achieving the objectives of that regulation;

([1]) OJ L 304, 22.11.2011, p. 18.
([2]) OJ L 354, 31.12.2008, p. 16.
([3]) OJ L 295, 12.11.2011, p. 1.
([4]) OJ L 295, 12.11.2011, p. 178.
([5]) OJ L 80, 26.3.2010, p. 19.

C. whereas Commission Recommendation 2011/696/EU sets out a general definition of nanomaterials;

D. whereas comprehensive Union lists were established by Commission Regulations (EU) No 1129/2011 and (EU) No 1130/2011, setting out the food additives that were permitted for use prior to the entry into force of Regulation (EC) No 1333/2008 after a review of their compliance with the provisions thereof;

E. whereas the Commission delegated regulation excludes all food additives included in the Union lists from the new definition of 'engineered nanomaterial' and instead suggests that the need for specific nano-related labelling requirements relating to those additives should be addressed in the context of the re-evaluation programme in accordance with Commission Regulation (EU) No 257/2010, by amending, if necessary, the conditions of use in Annex II to Regulation (EC) No 1333/2008 and the specifications of those food additives, set out in Commission Regulation (EU) No 231/2012 ([1]);

F. whereas currently, it is precisely food additives that may be present as nanomaterials in food;

G. whereas this blanket exemption annuls the labelling provisions for all food additives that are engineered nanomaterials; whereas this deprives the law of its main 'effet utile' and runs contrary to the basic aim of the directive to pursue a high level of protection of consumers' health and interests by providing a basis for final consumers to make informed choices;

H. whereas the Commission justifies this blanket exemption for all existing food additives by stating that 'indicating such food additives in the list of ingredients followed by the word "nano"' in brackets may confuse the consumers as it may suggest that those additives are new while in reality they have been used in foods in that form for decades';

I. whereas this justification is erroneous and irrelevant, as the FIC Regulation does not provide for a distinction between existing and new nanomaterials, but explicitly requires labelling of all ingredients present in the form of engineered nanomaterials;

J. whereas the Commission's stated intention to address the need for specific nano-related labelling requirements concerning food additives on the Union lists in the context of the re-evaluation programme is inappropriate as it confuses safety issues with general labelling requirements for consumer information purposes; whereas this also suggests that the Commission questions the very need for specific nano-labelling, which violates the provisions of Article 18(3) of the FIC Regulation; whereas either a food additive is a nanomaterial or it is not, and such labelling requirements are to be implemented for all authorised food additives that are nanomaterials irrespective of the conditions of use or other specifications;

K. whereas, moreover, it is unacceptable to refer to an unrelated re-evaluation programme that already existed at the time when the legislator decided to introduce explicit labelling requirements into the FIC Regulation in an attempt to undo those labelling requirements three years later;

1. Objects to the Commission delegated regulation;

2. Considers that the Commission delegated regulation is not compatible with the aim and content of Regulation (EU) No 1169/2011and that it exceeds the delegated powers conferred on the Commission under the latter;

([1]) Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council (OJ L 83, 22.3.2012, p. 1).

3. Calls on the Commission to submit a new delegated act which takes into account the position of Parliament;

4. Instructs its President to forward this resolution to the Commission and to notify it that the delegated regulation cannot enter into force;

5. Instructs its President to forward this resolution to the Council and to the governments and parliaments of the Member States.

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P7_TA(2014)0229

Priorities for EU relations with the Eastern partnership countries

European Parliament resolution of 12 March 2014 on assessing and setting priorities for EU relations with the Eastern Partnership countries (2013/2149(INI))

(2017/C 378/13)

The European Parliament,

— having regard to the launch of the Eastern Partnership in Prague on 7 May 2009,

— having regard to the commencement of activities by the Euronest Parliamentary Assembly on 3 May 2011 during the seventh legislative term of the European Parliament,

— having regard to the establishment of the Eastern Partnership's Civil Society Forum and its work so far, including recommendations and other documents drafted by the five working groups or during its annual meetings, which comprise: Brussels, Belgium, 16-17 November 2009; Berlin, Germany, 18-19 November 2010; Poznań, Poland, 28-30 November 2011; Stockholm, Sweden, 28-30 November 2012; and Chișinău, Moldova, 4-5 October 2013,

— having regard to the establishment by the Committee of the Regions of the Conference of Regional and Local Authorities for the Eastern Partnership (CORLEAP), whose inaugural meeting was held on 8 September 2011 in Poznań, Poland, and the opinions drafted by CORLEAP thus far,

— having regard to the conclusions of the Warsaw Summit held on 29-30 October 2011,

— having regard to the conclusions of the Vilnius Summit held on 28-29 November 2013,

— having regard to the Commission communications of 11 March 2003 entitled 'Wider Europe — Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours' (COM(2003)0104), of 12 May 2004 entitled 'European Neighbourhood Policy — Strategy Paper' (COM(2004)0373), of 4 December 2006 entitled 'Strengthening the European Neighbourhood Policy' (COM(2006)0726), of 5 December 2007 entitled 'A Strong European Neighbourhood Policy' (COM(2007)0774), of 3 December 2008 entitled 'Eastern Partnership' (COM(2008)0823), and of 12 May 2010 entitled 'Taking Stock of the European Neighbourhood Policy' (COM(2010)0207),

— having regard to the Joint Communications of the Commission and of the High Representative of the Union for Foreign Affairs and Security Policy of 20 March 2013 entitled 'European Neighbourhood Policy: Working towards a Stronger Partnership (JOIN(2013)0004), and of 25 May 2011 entitled "A new response to a changing Neighbourhood" (COM (2011)0303),

— having regard to the conclusions of the Foreign Affairs Council of 26 July 2010 and 20 June 2011 on the European Neighbourhood Policy (ENP) and of 18-19 November 2013 on the Eastern Partnership, and to the conclusions of the Foreign Affairs Council (Trade) of 26 September 2011 and of the European Council of 7 February 2013,

— having regard to the European Council conclusions on the Eastern Partnership of 19-20 December 2013,

— having regard to the Joint Communications of the Commission and of the High Representative of the Union for Foreign Affairs and Security Policy of 15 May 2012 entitled "Eastern Partnership: A Roadmap to the autumn 2013 Summit" (JOIN(2012)0013) and "Delivering a new European Neighbourhood Policy" (JOIN(2012)0014) and their accompanying joint staff working documents of 20 March 2013 ("Regional reports", SWD(2013)0085 and 0086),

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— having regard to the joint communication of 12 December 2011 of the High Representative of the Union for Foreign Affairs and Security Policy and the Commission to the European Parliament and the Council entitled "Human rights and democracy at the heart of EU external action — Towards a more effective approach" (COM(2011)0886),

— having regard to the regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument 2014-2020,

— having regard to the Euronest Parliamentary Assembly Resolution of 28 May 2013 on energy security in connection with energy market and harmonisation between the Eastern European partner and the EU countries ([1]),

— having regard to its resolutions of 23 October 2013 on "European Neighbourhood Policy, working towards a stronger partnership — EP's Position on the 2012 Progress reports" ([2]), of 14 December 2011 on the review of the European Neighbourhood Policy ([3]), and of 7 April 2011 on the review of the European Neighbourhood Policy — Eastern Dimension ([4]),

— having regard to its position of 11 December 2013 on the proposal for a regulation of the European Parliament and of the Council establishing common rules and procedures for the implementation of the Union's instruments for external action ([5]),

— having regard to its position of 11 December 2013 on the proposal for a regulation of the European Parliament and of the Council establishing a financing instrument for the promotion of democracy and human rights worldwide ([6]),

— having regard to its resolution of 7 July 2011 on EU external policies in favour of democratisation ([7]),

— having regard to its annual resolutions on the Annual Report on Human Rights in the World and the European Union's policy on the matter, including, in particular, the most recent resolutions on events in the EU's southern and eastern neighbourhood, namely: its resolution of 18 April 2012 on the Annual Report on Human Rights in the World and the European Union's policy on the matter, including implications for the EU's strategic human rights policy ([8]); its resolution of 13 December 2012 on the annual report on Human Rights and Democracy in the World 2011 and the European Union's policy on the matter ([9]); and its resolution of 11 December 2013 on the annual report on Human Rights and Democracy in the World 2012 and the European Union's policy on the matter ([10]),

— having regard to its recommendation of 29 March 2012 to the Council on the modalities for the possible establishment of a European Endowment for Democracy (EED) ([11]) and the establishment in 2012 and commencement of full activities of the EED in 2013,

— having regard to its resolution of 13 December 2012 on the review of the EU's human rights strategy ([12]),

— having regard to its resolution of 11 December 2012 on a Digital Freedom Strategy in EU Foreign Policy ([13]),

— having regard to its resolution of 13 June 2013 on the freedom of press and media in the world ([14]),

([1]) OJ C 338, 19.11.2013, p. 3.
([2]) Texts adopted, P7_TA(2013)0446.
([3]) OJ C 168 E, 14.6.2013, p. 26.
([4]) OJ C 296 E, 2.10.2012, p. 105.
([5]) Texts adopted, P7_TA(2013)0565.
([6]) Texts adopted, P7_TA(2013)0570.
([7]) OJ C 33 E, 5.2.2013, p. 165.
([8]) OJ C 258 E, 7.9.2013, p. 8.
([9]) Texts adopted, P7_TA(2012)0503.
([10]) Texts adopted, P7_TA(2013)0575.
([11]) OJ C 257 E, 6.9.2013, p. 13.
([12]) Texts adopted, P7_TA(2012)0504.
([13]) Texts adopted, P7_TA(2012)0470.
([14]) Texts adopted, P7_TA(2013)0274.

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Foreign Affairs (A7-0157/2014),

A. whereas the European Neighbourhood Policy (ENP), in particular the Eastern Partnership (EaP), is based on a community of values and on a shared commitment to international law and fundamental values and to the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, the market economy, sustainable development and good governance; whereas the EaP aims to extend, share and promote the values and the principles upon which the EU is founded, notably those of peace, friendship, solidarity and prosperity, in order to contribute to building and consolidating healthy democracies, pursuing sustainable economic growth and managing cross-border links, with a view to accelerating the partnership countries' political association and economic integration with the EU; whereas at the Vilnius Eastern Partnership Summit all the participants reconfirmed their commitment to implementing these guiding principles;

B. whereas successive EU enlargements have brought Armenia, Azerbaijan, Georgia, Moldova, Ukraine and Belarus closer to the EU, and, therefore, their security, stability and prosperity increasingly impact upon those of the EU and vice versa;

C. whereas freedoms, democratic values and human rights can only develop within an appropriate environment characterised by economic and social stability, as well as national and international security, as proven by the EU's own history;

D. whereas while the underlying principles and objectives of the ENP apply to all partners, the EU's relationship with each one of its partners is unique, and the instruments of the ENP are tailored to serve each of those relationships;

E. whereas the Eastern Partnership Summit in Vilnius demonstrated a need to reflect on the EU's policies towards the Eastern partners;

F. whereas the EaP is directed at Eastern European countries as understood by Articles 8 and 49 of the Treaties; whereas it should support the democratic transitions and reform process and is a response to the European aspirations of the societies of the partner countries;

G. whereas the EaP countries have deeply rooted European aspirations and are still undergoing difficult transformation processes towards a democratic system based on the rule of law and respect for human rights and civil liberties, following decades of existence within the USSR; whereas in some EaP countries there is a lack of consensus on the issue of their European future;

H. whereas the current momentum in relations with the Eastern Partners should be used to encourage the peoples of the EaP countries to strive for further democratic reforms; whereas the process of association with the EU has precisely this objective and should be pursued despite current setbacks in some EaP countries;

I. whereas the EaP should promote the political, economic, geopolitical security, social and cultural dimensions of cooperation;

J. whereas the European Neighbourhood Instrument is the main tool of delivery of Union's support and assistance to the Eastern Partnership countries; whereas it reflects differentiation and the 'more for more' approach, and provides for significant financial incentives to those neighbouring countries undertaking democratic reforms;

K. whereas the EaP countries are still looking for political development, and the partnership offered by the EU has been based on their own political will, but has proven an insufficient driver of change and reforms, despite the clear European aspirations of the people of the EaP countries; whereas the recent developments in the EaP countries, as well as the outcome of the Vilnius Summit, highlight the need to strengthen the strategic character of the Eastern Partnership and to make increased efforts to promote and increase awareness of the mutual benefits of the Association Agreements, and are an indication that these countries are still exposed to strong pressure and blackmail by third parties in their sovereign decisions; whereas the EaP countries must be free and sovereign so as to fully exercise their right to determine their future without being subjected to undue external pressure, threats or intimidation; whereas every country has the sovereign right to join any international organisation or alliance and to define its own future without any external influence;

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L. whereas recent developments have demonstrated that the EU's EaP policy is considered wrongly by some geopolitical players as a zero-sum game, and their negative role should therefore be taken into account;

M. whereas the Eastern Partnership is in no way aimed at damaging or hampering bilateral relations with the Russian Federation, but, on the contrary, is open to developing synergies with Moscow in order to create the most favourable conditions for the sustainable development of the common neighbours;

1. Recalls the purpose of the EaP, which is the strengthening of the political, economic and cultural European integration of the Eastern Partners, founded on mutual values, interests and the commitment to international law, fundamental values, good governance and the market economy and based on shared ownership and joint responsibility; welcomes, in this connection, the establishment of and the work carried out by the EaP stakeholders — the Euronest Parliamentary Assembly, the EaP Civil Society Forum and CORLEAP — as well as other initiatives such as the Eastern Europe Initiatives Congress; notes, however, that the recent developments in some EaP countries have drawn attention to the fragility of the political, economic and social integration process; stresses the importance of engaging with the broader society as a means of transformation; encourages more frequent and effective engagement with local and regional authorities as well as with parliaments, business leaders and civil society, in order to build constituencies for reform able to influence national decision-making;

2. Expresses its concern at the fact that the EaP as a whole has recently been seriously challenged by third parties, and calls for all participants involved to maintain their commitment to and engagement in the project;

3. Stresses that a European perspective, including the right to apply for membership under Article 49 of the Treaty on European Union, could constitute a driving force for reforms in these countries and further strengthen their commitment to shared values and principles such as democracy, the rule of law, respect for human rights and good governance, and that the EaP countries most committed to deepening relations with the EU and willing to undertake and implement the necessary reforms at both political and economic level should be duly taken into account and supported, thus creating an incentive for further European integration;

4. Recognises that now more than ever the EaP societies in favour of integration with the European Union need strong, proactive and immediate support from the EU, which should be provided via different channels and policy sectors ranging from financial assistance to visa facilitation schemes;

5. Considers that the Eastern Partnership project requires a thorough assessment of its effectiveness, including an accurate evaluation of its successes and failures, and that it needs further reflection, a new impetus and a clear vision of the way forward, focusing equally on political cooperation and partnership with the societies of the EaP countries and on aiming to provide a European choice for those societies; urges the EU, therefore, to focus particularly on investing in immediate progress for citizens, and in this context to establish visa-free regimes, to support youth and future leaders, and to devote greater attention to the empowerment of civil society; highlights the importance of the energy, transport and research sectors for the scope of the European integration of the EaP countries;

6. Believes that the outcome of the Vilnius Summit highlights the need to enhance the strategic character of the Eastern Partnership; recommends, therefore, making flexible use of the tools at the EU's disposal, such as macroeconomic assistance, easing of trade regimes, projects to enhance energy security and economic modernisation, and swift implementation of visa liberalisation, in line with European values and interests;

7. Calls on the Commission to produce a green paper on the post-Vilnius future of the Eastern Partnership;

8. Calls on the Commission and the EEAS to reflect on the lessons of the recent evolutions of the Eastern Partnership in terms of the definition of bilateral and multilateral priorities of Union as well as funding under the ENI;

9. Considers that democratic transition processes based on the rule of law and respect for human rights and fundamental freedoms are key to building a strong and lasting partnership with the EaP countries;

10. Emphasises the important role played by civil society in transition and reform processes and political dialogue in the EaP countries; calls on the EU to strengthen cooperation with civil society and provide it with support through a range of different funding instruments;

11. Welcomes the 2013 allocations under the 'Eastern Partnership integration and cooperation' (EaPIC) programme, (falling under ENPI), distributed among Moldova, Georgia and Armenia as additional funding to those EaP countries which are making progress in reforms for deep democracy and human rights;

12. Welcomes the Commission's proposal to allow visa-free travel to the Schengen area for Moldovan citizens; highlights that visa liberalisation should be a priority, and calls for more efforts in this area; notes in this connection that visa liberalisation is only one of a number of processes aimed at bringing the societies closer together, and that more efforts are required in this area, particularly with regard to advancing cooperation in the fields of education, science, culture and sport; highlights that the proposal for a directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing is a tool which will have a great impact in the field of education and culture; calls for the prompt adoption of this directive offering the long-term visas and residence permits for third-country nationals for the above-mentioned purposes;

13. Highlights the importance of investing in projects for youth and future leaders, by making full use of the scholarship opportunities under the 'Erasmus +"programme to foster student and teacher exchanges between EaP countries and the EU Member States, by continuing financial support for the European Humanities University in exile, and establishing an Eastern Partnership University and the Black Sea European College, which would provide opportunities for the development of educational programmes on different levels, aiming at the formation of future leaders from EaP countries and the EU Member States, as well as further promoting academic and educational projects which have already proven their value in this field, such as the College of Europe;

14. Urges that more school exchanges be organised between EU Member States and EaP countries, and considers that special funding should be provided for to this end;

15. Stresses the need to enhance youth cooperation within the framework of the Youth in Action Programme's EaP Youth Window, thus strengthening young people's active citizenship, developing solidarity and promoting tolerance among young people; welcomes in this regard the Eastern Partnership Youth Summit that took place in October 2013, facilitating political dialogue and networking with decision-makers and young people from EU and EaP countries;

16. Considers that the difficulties involved in promoting and implementing the Eastern Partnership can be overcome by a rebalanced and reinforced EU engagement that goes beyond political dialogue to tackle and develop the social, economic and cultural spheres as well; calls on the EU to increase its presence in the partner countries using more interactive audiovisual means and social media in the respective local languages in order to reach all of society; calls on the Commission to prepare a clear communication strategy for the societies in the EaP countries, in order to explain to them the benefits of the Association Agreements, including Deep and Comprehensive Trade Areas (DCFTAs), as tools for modernising their political systems and economies;

17. Emphasises that the EU and the Eastern European partners face common political challenges with regard to ensuring a reliable and safe energy supply; recalls that energy security cooperation is clearly identified as a priority under the Eastern Partnership and the ENP; recalls that the Energy Community Treaty lays the basis for establishing a fully integrated regional energy market favouring growth, investment and a stable regulatory framework; considers further progress in the integration of the gas and electricity networks, including reverse-flows, in the region to be essential to achieving the goals of the Energy Community; underlines the importance of focusing more on the consolidation, improvement and efficiency of the energy sector, as one of the main conditions for modernisation of the economy, strengthening energy security and competitiveness as well as developing energy strategies in line with European Energy Community obligations and EU targets; calls for the continuation of gas and electricity market reforms and an adequate share of energy from renewable resources, in line with EU policies and standards; recognises that Eastern Partnership countries" energy dependence on third countries and inadequate diversification of supply complicate the dynamics of European integration, in this regard reminds that projects such as South Stream increase the EU's dependency on Russian gas, and calls on the Commission and the

Member States to fast-track projects that will help mitigate the situation; calls on the Commission and Council to make solidarity a fundamental principle of the Energy Community that is expected to be fully respected by all the players active in the EU market;

18. Calls for the insertion of an energy security clause in every agreement with the Eastern Partnership countries, so as to guarantee full respect for the EU internal energy market legislation, as well as the inclusion of an Early Warning Mechanism in such agreements in order to guarantee an early evaluation of potential risks and problems relating to transit and supply of energy from third countries, as well as establishing a common framework for mutual assistance, solidarity and dispute settlement;

19. Calls for a more tailored approach to individual partner countries, also by better taking into account their specific geopolitical vulnerabilities, implementing the principles of differentiation and "more for more" but with overall coordination; strongly believes that the depth and scope of relations with each partner country should reflect its own European ambition, commitment to shared values, and progress in aligning with EU legislation, assessed on the basis of clear benchmarks and on its own merits; takes the view that the Eastern Partnership architecture must be forward-looking and flexible — institutionally and conceptually — in order to provide long-term incentives for all partners, including the most advanced ones and thus further intensify relations with the EU; further believes that the EaP should not only focus on normative objectives but also reach the citizens through bottom-up approaches aimed at anchoring the benefits of prospective association to public opinion; recalls that the advancement of the partnership will depend on progress and substantial efforts being made with regard to respect for human rights, reform of the judiciary, public administration reforms, the fight against corruption, and increased citizens' participation in public decision-making;

20. Calls on the Commission to look further into the possibilities of easing trade barriers, where appropriate and even prior to signing and implementing DCFTAs, to enable the societies and businesses of the respective EaP countries to feel more immediately the economic benefits of closer cooperation with the EU;

21. Recognises the importance of inclusiveness in ensuring that the Partnership advances with the participation of all six partners; highlights, therefore, the need to further enhance the multilateral dimension, and encourages the holding of regular meetings at ministerial level across the policy spectrum;

22. Stresses, in this regard, as in the case of Ukraine, the importance of the Council taking immediate action, including increased diplomatic pressure and the introduction of individual targeted measures, travel bans and asset and property freezes directed at officials, legislators and their business sponsors responsible for human rights violations, and of stepping up efforts to stop money laundering and tax evasion by companies and businesspeople of the country concerned in European banks;

23. Expresses its concern at the lack of shared understanding of the essence of cooperation between the EU and the EaP countries; notes with concern that the EU is frequently seen as a donor and partner countries as beneficiaries, while all should perform a double role; warns that this kind of public perception might create unrealistic expectations among the societies of the Eastern Partners;

24. Regrets that the Member States often have divergent views and do not take a common position in relations with, and developments in, EaP countries; notes with concern the lack of understanding among the Member States about the strategic importance of cooperation and of a common position on some issues; calls for a comprehensive review of the ENP, especially as regards the Eastern Neighbours, in the light of recent events and also in terms of concrete and tangible measures, especially concerning EaP citizens;

25. Recommends the further strengthening of the multilateral track of the Eastern Partnership in order to foster a climate of cooperation, friendship and good neighbourly relations that will support the objectives of political association and particularly economic integration and the encouragement of multilateral initiatives for cooperation and joint projects, as well as making further progress on cross-border and regional cooperation, especially in areas such as transport, people-to-people contacts, the environment, border security, and energy security, and recalls the high importance the EU attaches to the Euronest Parliamentary Assembly in this regard; believes that cooperation should nevertheless continue, where possible, on a bilateral basis between the EU, on the one side, and the partner countries, on the other;

26. Stresses that more efforts should go into sharing experiences of democratic reforms, drawing on the rich experience that European countries have in the process of establishing and protecting democratic regimes based on respect for fundamental values and the rule of law, especially by Member States who could build both on their experience of EU integration and on their close relations with EaP countries, while acknowledging the specificities of individual countries, highlighting the expected mutual benefits and reaching a balance between conditionality and solidarity, also in the interests of the EU's own further development; suggests looking into possibilities of peer-to-peer learning at both political and technical level which would increase awareness and knowledge of democracy-building and the rule of law;

27. Takes the view that the EU should more proactively encourage the partner countries to combat human rights violations; calls on the Member States to implement the EU guidelines on Human Rights Defenders, and recalls that for serious violations of human rights and fundamental freedoms the EU itself can, in line with the Treaties, consider the introduction of restrictive measures or sanctions in the framework of the CFSP, including an arms embargo, a ban on exports of equipment for internal repression, and visa restrictions or travel bans directed at persons directly or indirectly responsible for serious violations of human rights or the repression of civil society and democratic opposition, or whose activities otherwise seriously undermine democracy or the rule of law, as well as the freezing of assets and financial resources; stresses the need to ensure that sanctions are selective and targeted in order to avoid affecting the lives of ordinary citizens;

28. Welcomes, as a positive conclusion of the Vilnius summit, the initialling of the Association Agreements including a DCFTA with the Republic of Moldova and Georgia, regrets, however, that the outcome of the Vilnius summit did not match all expectations, and urges that association agreements be swiftly signed and fully, rapidly and efficiently implemented, where applicable, with the partner countries, in order to support the modernisation and reform process in those countries, particularly in the fields related to the consolidation of good governance, the rule of law, the protection of human rights and the fight against corruption, and to support the building-up and modernisation of the partner societies' economies, as well as business-friendly legislation; calls on the EEAS and the Commission to identify areas and fields of cooperation under the association agendas in which implementation could already begin in the short and medium term;

29. Deplores the continuous pressure exerted on the EaP countries, through economic, political and military tools, by Russia, which perceives the strengthening of relations between the EU and the EaP countries as actions against its own interests; highlights the need to address this in talks with Russia, as well as the need for a serious discussion among EU Member States on new ways of constructively engaging Russia in initiatives that reflect common interests in the context of a secure, stable and prosperous European neighbourhood, thus overcoming obsolete and dangerous thinking in terms of spheres of influence; calls on the EU to take concrete measures, including economic assistance, easing of trade regimes, projects to enhance energy security and economic modernisation, in order to support the EaP countries in their European aspirations, and to adopt a common strategy vis-à-vis Russia; calls, furthermore, for a frank and open dialogue with third countries in order to maximise efforts to develop synergies aimed at benefiting EaP countries;

30. Recalls that the objectives of cooperation with the EaP countries should be to establish a closer strategic partnership, strengthen people-to-people contacts between the EU and EaP countries, establish networks of social ties with a view to further integration, and support modernisation and pro-European orientation beyond mere stabilisation;

31. Stresses the need to increase awareness of the European Union in the EaP countries; emphasises that the EU Delegations in EaP countries should play a key role in supporting EU visibility campaigns;

32. Encourages the development of closer relations between partner countries and the promotion of stability and multilateral confidence-building; stresses, in this regard, the importance of developing a genuine multilateral dimension in the Eastern Partnership with a view to improving good neighbourly relations, enhancing regional cooperation and overcoming bilateral controversies;

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33. Reiterates its view that frozen conflicts hamper the full development of the EaP and exacerbate hate, animosity and tensions among the peoples of several EaP countries; notes the importance of achieving equitable solutions and a long-lasting peace based on principles of international law; to this end, calls on all parties to create favourable conditions by refraining from hate rhetoric and warmongering and by implementing confidence-building measures to address humanitarian, economic and other issues on all sides of the current dividing lines; stresses the importance of regional cooperation and confidence-building initiatives among parties; underlines the importance of strengthening the principle of good neighbourly relations as a crucial element of conflict resolution; expresses concern that the efforts and resources devoted by the EU have not been sufficient for achieving any tangible results so far; urges the Commission to step up confidence-building programmes in conflict areas with a view to restoring dialogue and facilitating people-to-people exchanges; calls on the VP/HR and the EEAS to develop innovative measures and approaches, including public communication strategies, consideration of pragmatic initiatives and informal contacts and consultations, in order to support civic culture and community dialogue;

34. Is of the view the that participation and involvement of civil society in both the EU and the partner countries is of significant importance for the advancement of the EaP policy; stresses that the participation and active contribution of the Eastern Partnership Civil Society Forum at all levels of the multilateral platform is most welcome and should be further strengthened;

35. Takes the view that cooperation between CSOs is a good basis for genuine people-to- people contact that should not be limited by state borders; recommends closer cooperation and coordination between the Civil Society Forum of the Eastern Partnership and its EU-Russia equivalent;

36. Considers that the cooperation instruments should be defined precisely, taking account of available instruments and programmes and focusing particularly on education and academic exchange; calls for additional financial resources to be provided for implementation of the EaP and support for reforms, flagship initiatives and projects; calls for the full participation of all six EaP partner countries in Union programmes;

37. Stresses that respect for the rule of law, including the establishment of an independent and efficient judiciary, and deterrence of corruption in both private and public sectors are essential for the protection of democratic values;

38. Underlines that corruption is still widespread in the EaP countries and is an important issue that needs to be addressed;

39. Recognises the effects of the economic crisis on the economic development of the Eastern Partnership countries; highlights the importance of fostering economic cooperation in order to move the EaP project forward, inter alia by raising awareness of the complexity of the economic problems, promoting good governance in the financial sector and cooperation with international financial institutions, adopting a sectoral approach, and encouraging legislation conducive to the development of the SME sector; highlights the need for the conclusion and provisional application of DCFTAs as the main tools for modernising the economies of the EaP countries and enabling recovery from the financial crisis;

40. Calls for greater efforts to strengthen the business dimension of the Eastern Partnership, including through improving the business environment in partner countries to the benefit of local, regional and European SMEs and businesses and promoting business partnerships between the EU and the EaP;

41. Considers, furthermore, that promoting joint activities with other strategic partners and cooperation in international and European organisations would be beneficial to all concerned;

42. Emphasises the need to promote social and cultural ties, thus putting the EU motto ‘united in diversity’ into practice;

43. Highlights the importance of information and cultural exchange between the EaP countries and the EU for the purposes of building contemporary, well-informed societies and promoting European values;

44. Highlights the fact that the European Endowment for Democracy (EED) has an important role to play in EaP countries by strengthening, in a rapid, effective and flexible way, civil society and promoting the rule of law and respect for human rights, and by supporting or developing pro-democracy movements in countries which have not yet made the transition to democracy or which are in the process of doing so; invites the Commission, the EEAS and the Member States to support the work of the EED, and make full use of the potential for cooperation and synergies; urges the EU and its Member States, in this context, to ensure that appropriate and stable funding is made available for the activities of the EED;

45. Considers that, in order to improve cooperation among the Eastern Partners, the EU should refrain from imposing a restriction to one language in joint projects, and should promote multilingualism, notably in local government, civic and educational initiatives;

46. Highlights the importance of promoting and supporting joint efforts in research and innovation, including exchange programmes for students, in virtual multilingual projects, in dialogue between cultures through joint film productions and joint resources for literary translations, in joint research on the legacy of Nazism and Communism and of totalitarian regimes and on common history in Europe, inter alia through the 'Europe for citizens' programme and by promoting cooperation with the Platform of European Memory and Conscience;

47. Calls for the gradual development of a Common Knowledge and Innovation Space, in order to pull together several existing strands of cooperation in research and innovation;

48. Encourages further regulatory approximation in all areas of transport and in implementing transport infrastructure projects, across the Eastern Partnership transport network through existing EU programmes and instruments, while also seeking closer involvement of European and international financial institutions and prioritising projects that improve connections with the TEN-T core network;

49. Calls for understanding that the EaP is an ambitious programme whose results may become more obvious in the long-term perspective; stresses that, while the EaP is being widely criticised, the success of the initiative is dependent on the engagement and political will of both the EU and its Eastern neighbours; further notes that it is essential that any criticism of the EaP should be constructive in character and should be targeted on improving it rather than discrediting it;

50. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the European External Action Service, the Committee of the Regions, the governments and parliaments of the EaP countries, the OSCE and the Council of Europe.

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P7_TA(2014)0230

US NSA surveillance programme, surveillance bodies in various Member States and impact on EU citizens' fundamental rights

European Parliament resolution of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs (2013/2188(INI))

(2017/C 378/14)

The European Parliament,

— having regard to the Treaty on European Union (TEU), in particular Articles 2, 3, 4, 5, 6, 7, 10, 11 and 21 thereof,

— having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 15, 16 and 218 and Title V thereof,

— having regard to Protocol 36 on transitional provisions and Article 10 thereof and to Declaration 50 concerning this protocol,

— having regard to the Charter on Fundamental Rights of the European Union, in particular Articles 1, 3, 6, 7, 8, 10, 11, 20, 21, 42, 47, 48 and 52 thereof,

— having regard to the European Convention on Human Rights, notably Articles 6, 8, 9, 10 and 13 thereof, and the protocols thereto,

— having regard to the Universal Declaration of Human Rights, notably Articles 7, 8, 10,11,12 and 14 thereof ([1]),

— having regard to the International Covenant on Civil and Political Rights, notably Articles 14, 17, 18 and 19 thereof,

— having regard to the Council of Europe Convention on Data Protection (ETS No 108) and the Additional Protocol of 8 November 2001 to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows (ETS No 181),

— having regard to the Vienna Convention on Diplomatic Relations, notably Articles 24, 27 and 40 thereof,

— having regard to the Council of Europe Convention on Cybercrime (ETS No 185),

— having regard to the report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, submitted on 17 May 2010 ([2]),

— having regard to the Commission communication on 'Internet Policy and Governance — Europe's role in shaping the future of Internet Governance' (COM(2014)0072);

— having regard to the report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, submitted on 17 April 2013 ([3]),

— having regard to the Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers of the Council of Europe on 11 July 2002,

([1]) http://www.un.org/en/documents/udhr/
([2]) http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/134/10/PDF/G1013410.pdf?OpenElement
([3]) http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf

— having regard to the Declaration of Brussels of 1 October 2010, adopted at the 6th Conference of the Parliamentary Committees for the Oversight of Intelligence and Security Services of the European Union Member States,

— having regard to Council of Europe Parliamentary Assembly Resolution No 1954 (2013) on national security and access to information,

— having regard to the report on the democratic oversight of the security services adopted by the Venice Commission on 11 June 2007 ([1]), and expecting with great interest the update thereof, due in spring 2014,

— having regard to the testimonies of the representatives of the oversight committees on intelligence of Belgium, the Netherlands, Denmark and Norway,

— having regard to the cases lodged before the French ([2]), Polish and British ([3]) courts, as well as before the European Court of Human Rights ([4]), in relation to systems of mass surveillance,

— having regard to the Convention established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union ([5]), and in particular to Title III thereof,

— having regard to Commission Decision 2000/520/EC of 26 July 2000 on the adequacy of the protection provided by the Safe Harbour privacy principles and the related frequently asked questions (FAQs) issued by the US Department of Commerce,

— having regard to the Commission's assessment reports on the implementation of the Safe Harbour privacy principles of 13 February 2002 (SEC(2002)0196) and of 20 October 2004 (SEC(2004)1323),

— having regard to the Commission communication of 27 November 2013 on the functioning of the Safe Harbour from the perspective of EU citizens and companies established in the EU (COM(2013)0847), and to the Commission communication of 27 November 2013 on rebuilding trust in EU-US data flows (COM(2013)0846),

— having regard to its resolution of 5 July 2000 on the Draft Commission Decision on the adequacy of the protection provided by the Safe Harbour privacy principles and related frequently asked questions issued by the US Department of Commerce ([6]), which took the view that the adequacy of the system could not be confirmed, and to the Opinions of the Article 29 Working Party, more particularly Opinion 4/2000 of 16 May 2000 ([7]),

— having regard to the agreements between the United States of America and the European Union on the use and transfer of passenger name records (PNR agreement) of 2004, 2007 ([8]) and 2012 ([9]),

— having regard to the Joint Review of the implementation of the Agreement between the EU and the USA on the processing and transfer of passenger name records to the US Department of Homeland Security ([10]), accompanying the report from the Commission to the European Parliament and to the Council on the joint review (COM(2013)0844),

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([1]) http://www.venice.coe.int/webforms/documents/CDL-AD(2007)016.aspx
([2]) La Fédération Internationale des Ligues des Droits de l'Homme and La Ligue française pour la défense des droits de l'Homme et du Citoyen v. X; Tribunal de Grande Instance of Paris.
([3]) Cases by Privacy International and Liberty in the Investigatory Powers Tribunal.
([4]) Joint Application Under Article 34 of Big Brother Watch, Open Rights Group, English PEN and Dr Constanze Kurz (applicants) v. United Kingdom (respondent).
([5]) OJ C 197, 12.7.2000, p. 1.
([6]) OJ C 121, 24.4.2001, p. 152.
([7]) http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2000/wp32en.pdf
([8]) OJ L 204, 4.8.2007, p. 18.
([9]) OJ L 215, 11.8.2012, p. 5.
([10]) SEC(2013)0630, 27.11.2013.

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— having regard to the opinion of Advocate General Cruz Villalón concluding that Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks is as a whole incompatible with Article 52(1) of the Charter of Fundamental Rights of the European Union and that Article 6 thereof is incompatible with Articles 7 and 52(1) of the Charter ([1]),

— having regard to Council Decision 2010/412/EU of 13 July 2010 on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program (TFTP) ([2]) and the accompanying declarations by the Commission and the Council,

— having regard to the Agreement on mutual legal assistance between the European Union and the United States of America ([3]),

— having regard to the ongoing negotiations on an EU-US framework agreement on the protection of personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police and judicial cooperation in criminal matters (the 'Umbrella agreement'),

— having regard to Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom ([4]),

— having regard to the statement by the President of the Federative Republic of Brazil at the opening of the 68th session of the UN General Assembly on 24 September 2013 and to the work carried out by the Parliamentary Committee of Inquiry on Espionage established by the Federal Senate of Brazil,

— having regard to the USA PATRIOT Act signed by President George W. Bush on 26 October 2001,

— having regard to the Foreign Intelligence Surveillance Act (FISA) of 1978 and the FISA Amendments Act of 2008,

— having regard to Executive Order No 12333, issued by the US President in 1981 and amended in 2008,

— having regard to the Presidential Policy Directive (PPD-28) on Signals Intelligence Activities, issued by US President Barack Obama on 17 January 2014,

— having regard to legislative proposals currently under examination in the US Congress including the draft US Freedom Act, the draft Intelligence Oversight and Surveillance Reform Act, and others,

— having regard to the reviews conducted by the Privacy and Civil Liberties Oversight Board, the US National Security Council and the President's Review Group on Intelligence and Communications Technology, particularly the report by the latter of 12 December 2013 entitled 'Liberty and Security in a Changing World',

— having regard to the ruling of the United States District Court for the District of Columbia, Klayman et al. v Obama et al., Civil Action No 13-0851 of 16 December 2013, and to the ruling of the United States District Court for the Southern District of New York, ACLU et al. v James R. Clapper et al., Civil Action No 13-3994 of 11 June 2013,

— having regard to the report on the findings by the EU Co-Chairs of the ad hoc EU-US Working Group on data protection of 27 November 2013 ([5]),

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([1]) Opinion of Advocate General Cruz Villalón, 12 December 2013, Case C-293/12.
([2]) OJ L 195, 27.7.2010, p. 3.
([3]) OJ L 181, 19.7.2003, p. 34.
([4]) OJ L 309, 29.11.1996, p. 1.
([5]) Council document 16987/2013.

— having regard to its resolutions of 5 September 2001 ([1]) and 7 November 2002 ([2]) on the existence of a global system for the interception of private and commercial communications (ECHELON interception system),

— having regard to its resolution of 21 May 2013 on the EU Charter: standard settings for media freedom across the EU ([3]),

— having regard to its resolution of 4 July 2013 on the US National Security Agency surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' privacy ([4]), whereby it instructed its Committee on Civil Liberties, Justice and Home Affairs to conduct an in-depth inquiry into the matter

— having regard to working document 1 on the US and EU Surveillance programmes and their impact on EU citizens fundamental rights,

— having regard to working document 3 on the relation between the surveillance practices in the EU and the US and the EU data protection provisions,

— having regard to working document 4 on US Surveillance activities with respect to EU data and its possible legal implications on transatlantic agreements and cooperation,

— having regard to working document 5 on democratic oversight of Member State intelligence services and of EU intelligence bodies,

— having regard to the AFET working document on Foreign Policy Aspects of the Inquiry on Electronic Mass Surveillance of EU Citizens;

— having regard to its resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken ([5]),

— having regard to its resolution of 23 October 2013 on the suspension of the TFTP agreement as a result of US National Security Agency surveillance ([6]),

— having regard to its resolution of 10 December 2013 on unleashing the potential of cloud computing in Europe ([7]),

— having regard to the interinstitutional agreement between the European Parliament and the Council concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the common foreign and security policy ([8]),

— having regard to Annex VIII of its Rules of Procedure,

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0139/2014),

The impact of mass surveillance

A. whereas data protection and privacy are fundamental rights; whereas security measures, including counterterrorism measures, must therefore be pursued through the rule of law and must be subject to fundamental rights obligations, including those relating to privacy and data protection;

([1]) OJ C 72 E, 21.3.2002, p. 221.
([2]) OJ C 16 E, 22.1.2004, p. 88.
([3]) Texts adopted, P7_TA(2013)0203.
([4]) Texts adopted, P7_TA(2013)0322.
([5]) Texts adopted, P7_TA(2013)0444.
([6]) Texts adopted, P7_TA(2013)0449.
([7]) Texts adopted, P7_TA(2013)0535.
([8]) OJ C 353 E, 3.12.2013, p. 156.

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B. whereas information flows and data, which today dominate everyday life and are part of any person's integrity, need to be as secure from intrusion as private homes;

C. whereas the ties between Europe and the United States of America are based on the spirit and principles of democracy, the rule of law, liberty, justice and solidarity;

D. whereas cooperation between the US and the European Union and its Member States in counter-terrorism remains vital for the security and safety of both partners;

E. whereas mutual trust and understanding are key factors in the transatlantic dialogue and partnership;

F. whereas following 11 September 2001, the fight against terrorism became one of the top priorities of most governments; whereas the revelations based on documents leaked by the former NSA contractor Edward Snowden put political leaders under the obligation to address the challenges of overseeing and controlling intelligence agencies in surveillance activities and assessing the impact of their activities on fundamental rights and the rule of law in a democratic society;

G. whereas the revelations since June 2013 have caused numerous concerns within the EU as to:

— the extent of the surveillance systems revealed both in the US and in EU Member States;

— the violation of EU legal standards, fundamental rights and data protection standards;

— the degree of trust between the EU and the US as transatlantic partners;

— the degree of cooperation and involvement of certain EU Member States with US surveillance programmes or equivalent programmes at national level as unveiled by the media;

— the lack of control and effective oversight by the US political authorities and certain EU Member States over their intelligence communities;

— the possibility of these mass surveillance operations being used for reasons other than national security and the fight against terrorism in the strict sense, for example economic and industrial espionage or profiling on political grounds;

— the undermining of press freedom and of communications of members of professions with a confidentiality privilege, including lawyers and doctors;

— the respective roles and degree of involvement of intelligence agencies and private IT and telecom companies;

— the increasingly blurred boundaries between law enforcement and intelligence activities, leading to every citizen being treated as a suspect and being subject to surveillance;

— the threats to privacy in a digital era and the impact of mass surveillance on citizens and societies;

H. whereas the unprecedented magnitude of the espionage revealed requires full investigation by the US authorities, the European institutions and Member States' governments, national parliaments and judicial authorities;

I. whereas the US authorities have denied some of the information revealed but have not contested the vast majority of it; whereas the public debate has developed on a large scale in the US and in certain EU Member States; whereas EU governments and parliaments too often remain silent and fail to launch adequate investigations;

J. whereas President Obama has recently announced a reform of the NSA and its surveillance programmes;

K. whereas in comparison to actions taken both by EU institutions and by certain EU Member States, the European Parliament has taken very seriously its obligation to shed light on the revelations on the indiscriminate practices of mass surveillance of EU citizens and, by means of its resolution of 4 July 2013 on the US National Security Agency surveillance programme, surveillance bodies in various Member States and their impact on EU citizens, instructed its Committee on Civil Liberties, Justice and Home Affairs to conduct an in-depth inquiry into the matter;

L. whereas it is the duty of the European institutions to ensure that EU law is fully implemented for the benefit of European citizens and that the legal force of the EU Treaties is not undermined by a dismissive acceptance of extraterritorial effects of third countries' standards or actions;

Developments in the US on reform of intelligence

M. whereas the District Court for the District of Columbia, in its Decision of 16 December 2013, has ruled that the bulk collection of metadata by the NSA is in breach of the Fourth Amendment to the US Constitution ([1]); whereas, however the District Court for the Southern District of New York ruled in its Decision of 27 December 2013 that this collection was lawful;

N. whereas a Decision of the District Court for the Eastern District of Michigan has ruled that the Fourth Amendment requires reasonableness in all searches, prior warrants for any reasonable search, warrants based upon prior-existing probable cause, as well as particularity as to persons, place and things and the interposition of a neutral magistrate between executive branch enforcement officers and citizens ([2]);

O. whereas in its report of 12 December 2013, the President's Review Group on Intelligence and Communication Technology proposes 46 recommendations to the President of the United States; whereas the recommendations stress the need simultaneously to protect national security and personal privacy and civil liberties; whereas in this regard it invites the US Government: to end bulk collection of phone records of US persons under Section 215 of the USA PATRIOT Act as soon as practicable; to undertake a thorough review of the NSA and the US intelligence legal framework in order to ensure respect for the right to privacy; to end efforts to subvert or make vulnerable commercial software (backdoors and malware); to increase the use of encryption, particularly in the case of data in transit, and not to undermine efforts to create encryption standards; to create a Public Interest Advocate to represent privacy and civil liberties before the Foreign Intelligence Surveillance Court; to confer on the Privacy and Civil Liberties Oversight Board the power to oversee Intelligence Community activities for foreign intelligence purposes, and not only for counterterrorism purposes; and to receive whistleblowers' complaints, to use Mutual Legal Assistance Treaties to obtain electronic communications, and not to use surveillance to steal industry or trade secrets;

P. whereas, according to an open memorandum submitted to President Obama by Former NSA Senior Executives/ Veteran Intelligence Professionals for Sanity (VIPS) on 7 January 2014 ([3]), the massive collection of data does not enhance the ability to prevent future terrorist attacks; whereas the authors stress that mass surveillance conducted by the NSA has resulted in the prevention of zero attacks and that billions of dollars have been spent on programmes which are less effective and vastly more intrusive on citizens' privacy than an in-house technology called THINTHREAD that was created in 2001;

Q. whereas in respect of intelligence activities concerning non-US persons under Section 702 of FISA, the Recommendations to the President of the USA recognise the fundamental principle of respect for privacy and human dignity as enshrined in Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights; whereas they do not recommend granting non-US persons the same rights and protections as US persons;

([1]) Klayman et al. v Obama et al., Civil Action No 13-0851, 16 December 2013.
([2]) ACLU v. NSA No 06-CV-10204, 17 August 2006.
([3]) http://consortiumnews.com/2014/01/07/nsa-insiders-reveal-what-went-wrong.

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R. whereas in his Presidential Policy Directive on Signals Intelligence Activities of 17 January 2014 and the related speech, US President Barack Obama stated that mass electronic surveillance is necessary for the United States to protect its national security, its citizens and the citizens of US allies and partners, as well as to advance its foreign policy interests; whereas this policy directive contains certain principles regarding the collection, use and sharing of signals intelligence and extends certain safeguards to non-US persons, partly providing for treatment equivalent to that enjoyed by US citizens, including safeguards for the personal information of all individuals regardless of their nationality or residence; whereas, however, President Obama did not call for any concrete proposals, particularly regarding the prohibition of mass surveillance activities and the introduction of administrative and judicial redress for non-US persons;

Legal framework

Fundamental rights

S. whereas the report on the findings by the EU Co-Chairs of the ad hoc EU-US Working Group on data protection provides for an overview of the legal situation in the US, but has failed to establish the facts about US surveillance programmes; whereas no information has been made available about the so-called 'second track' Working Group, under which Member States discuss bilaterally with the US authorities matters related to national security;

T. whereas fundamental rights, notably freedom of expression, of the press, of thought, of conscience, of religion and of association, private life, data protection, as well as the right to an effective remedy, the presumption of innocence and the right to a fair trial and non-discrimination, as enshrined in the Charter of Fundamental Rights of the European Union and in the European Convention on Human Rights, are cornerstones of democracy; whereas mass surveillance of human beings is incompatible with these cornerstones;

U. whereas in all Member States the law protects from disclosure information communicated in confidence between lawyer and client, a principle which has been recognised by the European Court of Justice ([1]);

V. whereas in its resolution of 23 October 2013 on organised crime, corruption and money laundering Parliament called on the Commission to submit a legislative proposal establishing an effective and comprehensive European whistleblower protection programme in order to protect EU financial interests and furthermore conduct an examination on whether such future legislation should also cover other fields of Union competence;

Union competences in the field of security

W. whereas according to Article 67(3) TFEU the EU 'shall endeavour to ensure a high level of security'; whereas the provisions of the Treaty (in particular Article 4(2) TEU, Article 72 TFEU and Article 73 TFEU) imply that the EU possesses certain competences on matters relating to the collective security of the Union; whereas the EU has competence in matters of internal security (Article 4(j) TFEU) and has exercised this competence by deciding on a number of legislative instruments and concluding international agreements (PNR, TFTP) aimed at fighting serious crime and terrorism, and by setting up an internal security strategy and agencies working in this field;

X. whereas the Treaty on the Functioning of the European Union states that 'it shall be open to Member States to organise between themselves and under their responsibility such forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security' (Article 73 TFEU);

Y. whereas Article 276 TFEU states that 'in exercising its powers regarding the provisions of Chapters 4 and 5 of Title V of Part Three relating to the area of freedom, security and justice, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security';

([1]) Judgement of 18 May 1982 in Case C-155/79, AM & S Europe Limited v Commission of the European Communities.

Z. whereas the concepts of 'national security', 'internal security', 'internal security of the EU' and 'international security' overlap; whereas the Vienna Convention on the Law of Treaties, the principle of sincere cooperation among EU Member States and the human rights law principle of interpreting any exemptions narrowly point towards a restrictive interpretation of the notion of 'national security' and require that Member States refrain from encroaching upon EU competences;

AA. whereas the European Treaties confer on the European Commission the role of the 'Guardian of the Treaties', and it is therefore the legal responsibility of the Commission to investigate any potential breaches of EU law;

AB. whereas, in accordance with Article 6 TEU, referring to the EU Charter of Fundamental Rights and the ECHR, Member States' agencies and even private parties acting in the field of national security also have to respect the rights enshrined therein, be they of their own citizens or of citizens of other states;

Extraterritoriality

AC. whereas the extraterritorial application by a third country of its laws, regulations and other legislative or executive instruments in situations falling under the jurisdiction of the EU or its Member States may impact on the established legal order and the rule of law, or even violate international or EU law, including the rights of natural and legal persons, taking into account the extent and the declared or actual aim of such an application; whereas, in these circumstances, it is necessary to take action at Union level to ensure that the EU values enshrined in Article 2 TEU, the Charter of Fundamental Rights, the ECHR referring to fundamental rights, democracy and the rule of law, and the rights of natural and legal persons as enshrined in secondary legislation applying these fundamental principles, are respected within the EU, for example by removing, neutralising, blocking or otherwise countering the effects of the foreign legislation concerned;

International transfers of data

AD. whereas the transfer of personal data by EU institutions, bodies, offices or agencies or by the Member States to the US for law enforcement purposes in the absence of adequate safeguards and protections for the respect of the fundamental rights of EU citizens, in particular the rights to privacy and the protection of personal data, would make that EU institution, body, office or agency or that Member State liable, under Article 340 TFEU or the established case law of the CJEU ([1]), for breach of EU law — which includes any violation of the fundamental rights enshrined in the EU Charter;

AE. whereas the transfer of data is not geographically limited, and, especially in a context of increasing globalisation and worldwide communication, the EU legislator is confronted with new challenges in terms of protecting personal data and communications; whereas it is therefore of the utmost importance to foster legal frameworks on common standards;

AF. whereas the mass collection of personal data for commercial purposes and in the fight against terror and serious transnational crime puts at risk the personal data and privacy rights of EU citizens;

Transfers to the US based on the US Safe Harbour

AG. whereas the US data protection legal framework does not ensure an adequate level of protection for EU citizens;

AH. whereas, in order to enable EU data controllers to transfer personal data to an entity in the US, the Commission, in its Decision 2000/520/EC, has declared the adequacy of the protection provided by the Safe Harbour privacy principles and the related FAQs issued by the US Department of Commerce for personal data transferred from the Union to organisations established in the US that have joined the Safe Harbour;

([1]) See notably Joined Cases C-6/90 and C-9/90, Francovich and others v. Italy, judgment of 19 November 1991.

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AI. whereas in its resolution of 5 July 2000 Parliament expressed doubts and concerns as to the adequacy of the Safe Harbour, and called on the Commission to review the decision in good time, in the light of experience and of any legislative developments;

AJ. whereas in Parliament's working document 4 on US Surveillance activities with respect to EU data and its possible legal implications on transatlantic agreements and cooperation of 12 December 2013, the rapporteurs expressed doubts and concerns as to the adequacy of Safe Harbour and called on the Commission to repeal the decision on the adequacy of Safe Harbour and to find new legal solutions;

AK. whereas Commission Decision 2000/520/EC stipulates that the competent authorities in Member States may exercise their existing powers to suspend data flows to an organisation that has self-certified its adherence to the Safe Harbour principles, in order to protect individuals with regard to the processing of their personal data in cases where there is a substantial likelihood that the Safe Harbour principles are being violated or that the continuing transfer would create an imminent risk of grave harm to data subjects;

AL. whereas Commission Decision 2000/520/EC also states that where evidence has been provided that anybody responsible for ensuring compliance with the principles is not effectively fulfilling their role, the Commission must inform the US Department of Commerce and, if necessary, present measures with a view to reversing or suspending the Decision or limiting its scope;

AM. whereas in its first two reports on the implementation of the Safe Harbour, published in 2002 and 2004, the Commission identified several deficiencies as regards the proper implementation of the Safe Harbour and made a number of recommendations to the US authorities with a view to rectifying those deficiencies;

AN. whereas in its third implementation report, of 27 November 2013, nine years after the second report and without any of the deficiencies recognised in that report having been rectified, the Commission identified further wide-ranging weaknesses and shortcomings in the Safe Harbour and concluded that the current implementation could not be maintained; whereas the Commission has stressed that wide-ranging access by US intelligence agencies to data transferred to the US by Safe Harbour-certified entities raises additional serious questions as to the continuity of protection of the data of EU data subjects; whereas the Commission addressed 13 recommendations to the US authorities and undertook to identify by summer 2014, together with the US authorities, remedies to be implemented as soon as possible, forming the basis for a full review of the functioning of the Safe Harbour principles;

AO. whereas on 28-31 October 2013 a delegation of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) met in Washington D.C. with the US Department of Commerce and the US Federal Trade Commission; whereas the Department of Commerce acknowledged the existence of organisations having self-certified adherence to Safe Harbour Principles but clearly showing a 'not-current status', meaning that the company does not fulfil Safe Harbour requirements although continuing to receive personal data from the EU; whereas the Federal Trade Commission admitted that the Safe Harbour should be reviewed in order to improve it, particularly with regard to complaints and alternative dispute resolution systems;

AP. whereas Safe Harbour Principles may be limited 'to the extent necessary to meet national security, public interest, or law enforcement requirements'; whereas, as an exception to a fundamental right, such an exception must always be interpreted restrictively and be limited to what is necessary and proportionate in a democratic society, and the law must clearly establish the conditions and safeguards to make this limitation legitimate; whereas the scope of application of such exception should have been clarified by the US and the EU, notably by the Commission, to avoid any interpretation or implementation that nullifies in substance the fundamental right to privacy and data protection, among others; whereas, consequently, such an exception should not be used in a way that undermines or nullifies the protection afforded by Charter of Fundamental Rights, the ECHR, the EU data protection law and the Safe Harbour principles; insists that if the national security exception is invoked, it must be specified under which national law;

AQ. whereas large-scale access by US intelligence agencies has seriously eroded transatlantic trust and negatively impacted on trust as regards US organisations acting in the EU; whereas this is further exacerbated by the lack of judicial and administrative redress for EU citizens under US law, particularly in cases of surveillance activities for intelligence purposes;

Transfers to third countries with the adequacy decision

AR. whereas according to the information revealed and to the findings of the inquiry conducted by the LIBE Committee, the national security agencies of New Zealand, Canada and Australia have been involved on a large scale in mass surveillance of electronic communications and have actively cooperated with the US under the so- called 'Five Eyes' programme, and may have exchanged with each other personal data of EU citizens transferred from the EU;

AS. whereas Commission Decisions 2013/65/EU ([1]) and 2002/2/EC ([2]) have declared the levels of protection ensured by, respectively, the New Zealand Privacy Act and the Canadian Personal Information Protection and Electronic Documents Act to be adequate; whereas the aforementioned revelations also seriously affect trust in the legal systems of these countries as regards the continuity of protection afforded to EU citizens; whereas the Commission has not examined this aspect;

Transfers based on contractual clauses and other instruments

AT. whereas Directive 95/46/EC provides that international transfers to a third country may also take place by means of specific instruments whereby the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights;

AU. whereas such safeguards may in particular result from appropriate contractual clauses;

AV. whereas Directive 95/46/EC empowers the Commission to decide that specific standard contractual clauses offer sufficient safeguards required by the Directive, and whereas on this basis the Commission has adopted three models of standard contractual clauses for transfers to controllers and processors (and sub-processors) in third countries;

AW. whereas the Commission Decisions establishing the standard contractual clauses stipulate that the competent authorities in Member States may exercise their existing powers to suspend data flows where it is established that the law to which the data importer or a sub-processor is subject imposes upon them requirements to derogate from the applicable data protection law which go beyond the restrictions necessary in a democratic society as provided for in Article 13 of Directive 95/46/EC, where those requirements are likely to have a substantial adverse effect on the guarantees provided by the applicable data protection law and the standard contractual clauses, or where there is a substantial likelihood that the standard contractual clauses in the annex are not being or will not be complied with and the continuing transfer would create an imminent risk of grave harm to the data subjects;

AX. whereas national data protection authorities have developed binding corporate rules (BCRs) in order to facilitate international transfers within a multinational corporation with adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights; whereas before being used, BCRs need to be authorised by the Member States' competent authorities after the latter have assessed compliance with Union data protection law; whereas BCRs for data processors have been rejected in the LIBE Committee report on the General Data Protection Regulation, as they would leave the data controller and the data subject without any control over the jurisdiction in which their data is processed;

([1]) OJ L 28, 30.1.2013, p. 12.
([2]) OJ L 2, 4.1.2002, p. 13.

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AY. whereas the European Parliament, given its competence stipulated by Article 218 TFEU, has the responsibility to continuously monitor the value of international agreements it has given its consent to;

Transfers based on TFTP and PNR agreements

AZ. whereas in its resolution of 23 October 2013 Parliament expressed serious concerns over the revelations concerning the NSA's activities as regards direct access to financial payments messages and related data, which would constitute a clear breach of the TFTP Agreement, and in particular Article 1 thereof;

BA. whereas terrorist finance tracking is an essential tool in the fight against terrorism financing and serious crime, allowing counterterrorism investigators to discover links between targets of investigation and other potential suspects connected with wider terrorist networks suspected of financing terrorism;

BB. whereas Parliament asked the Commission to suspend the Agreement and requested that all relevant information and documents be made available immediately for Parliament's deliberations; whereas the Commission has done neither;

BC. whereas following the allegations published by the media, the Commission decided to open consultations with the US pursuant to Article 19 of the TFTP Agreement; whereas on 27 November 2013 Commissioner Malmström informed the LIBE Committee that, after meeting US authorities and in view of the replies given by the US authorities in their letters and during their meetings, the Commission had decided not to pursue the consultations on the grounds that there were no elements showing that the US Government has acted in a manner contrary to the provisions of the Agreement, and that the US has provided written assurance that no direct data collection has taken place contrary to the provisions of the TFTP agreement; whereas it is not clear whether the US authorities have circumvented the Agreement by accessing such data through other means, as indicated in the letter of 18 September 2013 from the US authorities ([1]);

BD. whereas during its visit to Washington of 28-31 October 2013 the LIBE delegation met with the US Department of the Treasury; whereas the US Treasury stated that since the entry into force of the TFTP Agreement it had not had access to data from SWIFT in the EU except within the framework of the TFTP; whereas the US Treasury refused to comment on whether SWIFT data would have been accessed outside TFTP by any other US government body or department or whether the US administration was aware of NSA mass surveillance activities; whereas on 18 December 2013 Mr Glenn Greenwald stated before the inquiry held by the LIBE Committee that the NSA and GCHQ had targeted SWIFT networks;

BE. whereas the Belgian and Netherlands data protection authorities decided on 13 November 2013 to conduct a joint investigation into the security of SWIFT's payment networks in order to ascertain whether third parties could gain unauthorised or unlawful access to European citizens' bank data ([2]);

BF. whereas according to the Joint Review of the EU-US PNR agreement, the US Department of Homeland Security (DHS) made 23 disclosures of PNR data to the NSA on a case-by-case basis in support of counterterrorism cases, in a manner consistent with the specific terms of the Agreement;

BG. whereas the Joint Review fails to mention the fact that in the case of processing of personal data for intelligence purposes, under US law, non-US citizens do not enjoy any judicial or administrative avenue to protect their rights, and constitutional protections are only granted to US persons; whereas this lack of judicial or administrative rights nullifies the protections for EU citizens laid down in the existing PNR agreement;

([1]) The letter states that 'the US government seeks and obtains financial information … [which] is collected through regulatory, law enforcement, diplomatic and intelligence channels, as well as through exchanges with foreign partners' and that 'the US Government is using the TFTP to obtain SWIFT data that we do not obtain from other sources'.

([2]) http://www.privacycommission.be/fr/news/les-instances-europ%C3%A9ennes-charg%C3%A9es-de-contr%C3%B4ler-le-respect-de-la-vie-priv%C3%A9e-examinent-la

Transfers based on the EU-US Mutual Legal Assistance Agreement in criminal matters

BH. whereas the EU-US Agreement on mutual legal assistance in criminal matters of 6 June 2003 ([1]) entered into force on 1 February 2010 and is intended to facilitate cooperation between the EU and the US to combat crime in a more effective way, having due regard for the rights of individuals and the rule of law;

Framework agreement on data protection in the field of police and judicial cooperation ('umbrella agreement')

BI. whereas the purpose of this general agreement is to establish the legal framework for all transfers of personal data between the EU and US for the sole purposes of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police and judicial cooperation in criminal matters; whereas negotiations were authorised by the Council on 2 December 2010; whereas this agreement is of the utmost importance and would act as the basis to facilitate data transfer in the context of police and judicial cooperation and in criminal matters;

BJ. whereas this agreement should provide for clear and precise and legally binding data-processing principles, and should in particular recognise EU citizens' right to judicial access to and rectification and erasure of their personal data in the US, as well as the right to an efficient administrative and judicial redress mechanism for EU citizens in the US and independent oversight of the data-processing activities;

BK. whereas in its communication of 27 November 2013 the Commission indicated that the 'umbrella agreement' should result in a high level of protection for citizens on both sides of the Atlantic and should strengthen the trust of Europeans in EU-US data exchanges, providing a basis on which to develop EU-US security cooperation and partnership further;

BL. whereas negotiations on the agreement have not progressed because of the US Government's persistent position of refusing recognition of effective rights of administrative and judicial redress to EU citizens and because of the intention of providing broad derogations to the data protection principles contained in the agreement, such as purpose limitation, data retention or onward transfers either domestically or abroad;

Data protection reform

BM. whereas the EU data protection legal framework is currently being reviewed in order to establish a comprehensive, consistent, modern and robust system for all data-processing activities in the Union; whereas in January 2012 the Commission presented a package of legislative proposals: a General Data Protection Regulation ([2]), which will replace Directive 95/46/EC and establish a uniform law throughout the EU, and a Directive ([3]) which will lay down a harmonised framework for all data processing activities by law enforcement authorities for law enforcement purposes and will reduce the current divergences among national laws;

BN. whereas on 21 October 2013 the LIBE Committee adopted its legislative reports on the two proposals and a decision on the opening of negotiations with the Council with a view to having the legal instruments adopted during this legislative term;

BO. whereas, although the European Council of 24/25 October 2013 called for the timely adoption of a strong EU General Data Protection framework in order to foster the trust of citizens and businesses in the digital economy, after two years of deliberations the Council has still been unable to arrive at a general approach on the General Data Protection Regulation and the Directive ([4]);

([1]) OJ L 181, 19.7.2003, p. 25.
([2]) COM(2012)0011, 25.1.2012.
([3]) COM(2012)0010, 25.1.2012.
([4]) http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/139197.pdf

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IT security and cloud computing

BP. whereas Parliament's abovementioned resolution of 10 December 2013 emphasises the economic potential of 'cloud computing' business for growth and employment; whereas the overall economic value of the cloud market is forecast to be worth USD 207 billion a year by 2016, or twice its value in 2012;

BQ. whereas the level of data protection in a cloud computing environment must not be inferior to that required in any other data-processing context; whereas Union data protection law, since it is technologically neutral, already applies fully to cloud computing services operating in the EU;

BR. whereas mass surveillance activities give intelligence agencies access to personal data stored or otherwise processed by EU individuals under cloud services agreements with major US cloud providers; whereas the US intelligence authorities have accessed personal data stored or otherwise processed in servers located on EU soil by tapping into the internal networks of Yahoo and Google; whereas such activities constitute a violation of international obligations and of European fundamental rights standards including the right to private and family life, the confidentiality of communications, the presumption of innocence, freedom of expression, freedom of information, freedom of assembly and association and the freedom to conduct business; whereas it is not excluded that information stored in cloud services by Member States' public authorities or undertakings and institutions has also been accessed by intelligence authorities;

BS. whereas US intelligence agencies have a policy of systematically undermining cryptographic protocols and products in order to be able to intercept even encrypted communication; whereas the US National Security Agency has collected vast numbers of so called 'zero-day exploits' — IT security vulnerabilities that are not yet known to the public or the product vendor; whereas such activities massively undermine global efforts to improve IT security;

BT. whereas the fact that intelligence agencies have accessed personal data of users of online services has severely distorted the trust of citizens in such services, and therefore has an adverse effect on businesses investing in the development of new services using 'Big Data' and new applications such as the 'Internet of Things';

BU. whereas IT vendors often deliver products that have not been properly tested for IT security or that even sometimes have backdoors implanted purposefully by the vendor; whereas the lack of liability rules for software vendors has led to such a situation, which is in turn exploited by intelligence agencies but also leaves open the risk of attacks by other entities;

BV. whereas it is essential for companies providing such new services and applications to respect the data protection rules and privacy of the data subjects whose data are collected, processed and analysed, in order to maintain a high level of trust among citizens;

Democratic oversight of intelligence services

BW. whereas intelligence services in democratic societies are given special powers and capabilities to protect fundamental rights, democracy and the rule of law, citizens' rights and the State against internal and external threats, and are subject to democratic accountability and judicial oversight; whereas they are given special powers and capabilities only to this end; whereas these powers should be used within the legal limits imposed by fundamental rights, democracy and the rule of law and their application should be strictly scrutinised, as otherwise they lose legitimacy and risk undermining democracy;

BX. whereas the fact that a certain level of secrecy is conceded to intelligence services in order to avoid endangering ongoing operations, revealing modi operandi or putting at risk the lives of agents, such secrecy cannot override or exclude rules on democratic and judicial scrutiny and examination of their activities, as well as on transparency, notably in relation to the respect of fundamental rights and the rule of law, all of which are cornerstones in a democratic society;

BY. whereas most of the existing national oversight mechanisms and bodies were set up or revamped in the 1990s and have not necessarily been adapted to the rapid political and technological developments over the last decade that have led to increased international intelligence cooperation, also through the large scale exchange of personal data, and often blurring the line between intelligence and law enforcement activities;

BZ. whereas democratic oversight of intelligence activities is still only conducted at national level, despite the increase in exchange of information between EU Member States and between Member States and third countries; whereas there is an increasing gap between the level of international cooperation on the one hand and oversight capacities limited to the national level on the other, which results in insufficient and ineffective democratic scrutiny;

CA. whereas national oversight bodies often do not have full access to intelligence received from a foreign intelligence agency, which can lead to gaps in which international information exchanges can take place without adequate review; whereas this problem is further aggravated by the so-called 'third party rule' or the principle of 'originator control', which has been designed to enable originators to maintain control over the further dissemination of their sensitive information, but is unfortunately often interpreted as applying also to the recipient services' oversight;

CB. whereas private and public transparency reform initiatives are key to ensuring public trust in the activities of intelligence agencies; whereas legal systems should not prevent companies from disclosing to the public information about how they handle all types of government requests and court orders for access to user data, including the possibility of disclosing aggregate information on the number of requests and orders approved and rejected;

Main findings

1. Considers that recent revelations in the press by whistleblowers and journalists, together with the expert evidence given during this inquiry, admissions by authorities, and the insufficient response to these allegations, have resulted in compelling evidence of the existence of far-reaching, complex and highly technologically advanced systems designed by US and some Member States' intelligence services to collect, store and analyse communication data, including content data, location data and metadata of all citizens around the world, on an unprecedented scale and in an indiscriminate and non-suspicion-based manner;

2. Points specifically to US NSA intelligence programmes allowing for the mass surveillance of EU citizens through direct access to the central servers of leading US internet companies (PRISM programme), the analysis of content and metadata (Xkeyscore programme), the circumvention of online encryption (BULLRUN), access to computer and telephone networks, and access to location data, as well as to systems of the UK intelligence agency GCHQ such as the upstream surveillance activity (Tempora programme), the decryption programme (Edgehill), the targeted 'man-in-the-middle attacks' on information systems (Quantumtheory and Foxacid programmes) and the collection and retention of 200 million text messages per day (Dishfire programme);

3. Notes the allegations of 'hacking' or tapping into the Belgacom systems by the UK intelligence agency GCHQ; notes the statements by Belgacom that it could neither confirm nor deny that EU institutions were targeted or affected, and that the malware used was extremely complex and its development and use would require extensive financial and staffing resources that would not be available to private entities or hackers;

4. Emphasises that trust has been profoundly shaken: trust between the two transatlantic partners, trust between citizens and their governments, trust in the functioning of democratic institutions on both sides of the Atlantic, trust in the respect of the rule of law, and trust in the security of IT services and communication; believes that in order to rebuild trust in all these dimensions, an immediate and comprehensive response plan comprising a series of actions which are subject to public scrutiny is needed;

5. Notes that several governments claim that these mass surveillance programmes are necessary to combat terrorism; strongly denounces terrorism, but strongly believes that the fight against terrorism can never be a justification for untargeted, secret, or even illegal mass surveillance programmes; takes the view that such programmes are incompatible with the principles of necessity and proportionality in a democratic society;

6. Recalls the EU's firm belief in the need to strike the right balance between security measures and the protection of civil liberties and fundamental rights, while ensuring the utmost respect for privacy and data protection;

7. Considers that data collection of such magnitude leaves considerable doubts as to whether these actions are guided only by the fight against terrorism, since it involves the collection of all possible data of all citizens; points, therefore, to the possible existence of other purposes including political and economic espionage, which need to be comprehensively dispelled;

8. Questions the compatibility of some Member States' massive economic espionage activities with the EU internal market and competition law as enshrined in Titles I and VII of the Treaty on the Functioning of the European Union; reaffirms the principle of sincere cooperation as enshrined in Article 4(3) of the Treaty on European Union, as well as the principle that Member States shall 'refrain from any measures which could jeopardise the attainment of the Union's objectives';

9. Notes that international treaties and EU and US legislation, as well as national oversight mechanisms, have failed to provide for the necessary checks and balances or for democratic accountability;

10. Condemns the vast and systemic blanket collection of the personal data of innocent people, often including intimate personal information; emphasises that the systems of indiscriminate mass surveillance by intelligence services constitute a serious interference with the fundamental rights of citizens; stresses that privacy is not a luxury right, but is the foundation stone of a free and democratic society; points out, furthermore, that mass surveillance has potentially severe effects on freedom of the press, thought and speech and on freedom of assembly and of association, as well as entailing a significant potential for abusive use of the information gathered against political adversaries; emphasises that these mass surveillance activities also entail illegal actions by intelligence services and raise questions regarding the extraterritoriality of national laws;

11. Considers it crucial that the professional confidentiality privilege of lawyers, journalists, doctors and other regulated professions is safeguarded against mass surveillance activities; stresses, in particular, that any uncertainty about the confidentiality of communications between lawyers and their clients could negatively impact on EU citizens' right of access to legal advice and access to justice and the right to a fair trial;

12. Sees the surveillance programmes as yet another step towards the establishment of a fully-fledged preventive state, changing the established paradigm of criminal law in democratic societies whereby any interference with suspects' fundamental rights has to be authorised by a judge or prosecutor on the basis of a reasonable suspicion and must be regulated by law, promoting instead a mix of law enforcement and intelligence activities with blurred and weakened legal safeguards, often not in line with democratic checks and balances and fundamental rights, especially the presumption of innocence; recalls in this regard the decision of the German Federal Constitutional Court ([1]) on the prohibition of the use of preventive dragnets ('präventive Rasterfahndung') unless there is proof of a concrete danger to other high-ranking legally protected rights, whereby a general threat situation or international tensions do not suffice to justify such measures;

13. Is convinced that secret laws and courts violate the rule of law; points out that any judgment of a court or tribunal and any decision of an administrative authority of a non-EU state authorising, directly or indirectly, the transfer of personal data, may not be recognised or enforced in any manner unless there is a mutual legal assistance treaty or an international agreement in force between the requesting third country and the Union or a Member State and a prior authorisation by the competent supervisory authority; recalls that any judgment of a secret court or tribunal and any decision of an administrative authority of a non-EU state secretly authorising, directly or indirectly, surveillance activities shall not be recognised or enforced;

([1]) No 1 BvR 518/02 of 4 April 2006.

14. Points out that the abovementioned concerns are exacerbated by rapid technological and societal developments, since internet and mobile devices are everywhere in modern daily life ('ubiquitous computing') and the business model of most internet companies is based on the processing of personal data; considers that the scale of this problem is unprecedented; notes that this may create a situation where infrastructure for the mass collection and processing of data could be misused in cases of change of political regime;

15. Notes that there is no guarantee, either for EU public institutions or for citizens, that their IT security or privacy can be protected from attacks by well-equipped intruders ('no 100 % IT security'); notes that in order to achieve maximum IT security, Europeans need to be willing to dedicate sufficient resources, both human and financial, to preserving Europe's independence and self-reliance in the field of IT;

16. Strongly rejects the notion that all issues related to mass surveillance programmes are purely a matter of national security and therefore the sole competence of Member States; reiterates that Member States must fully respect EU law and the ECHR while acting to ensure their national security; recalls a recent ruling of the Court of Justice according to which 'although it is for Member States to take the appropriate measures to ensure their internal and external security, the mere fact that a decision concerns State security cannot result in European Union law being inapplicable' ([1]); recalls further that the protection of the privacy of all EU citizens is at stake, as are the security and reliability of all EU communication networks; believes, therefore, that discussion and action at EU level are not only legitimate, but also a matter of EU autonomy;

17. Commends the institutions and experts who have contributed to this Inquiry; deplores the fact that several Member States' authorities have declined to cooperate with the inquiry the European Parliament has been conducting on behalf of citizens; welcomes the openness of several Members of Congress and of national parliaments;

18. Is aware that in such a limited timeframe it has been possible to conduct only a preliminary investigation of all the issues at stake since July 2013; recognises both the scale of the revelations involved and their ongoing nature; adopts, therefore, a forward-planning approach consisting in a set of specific proposals and a mechanism for follow-up action in the next parliamentary term, ensuring the findings remain high on the EU political agenda;

19. Intends to request strong political undertakings from the new Commission which will be designated after the May 2014 European elections to the effect that it will implement the proposals and recommendations of this Inquiry;

Recommendations

20. Calls on the US authorities and the EU Member States, where this is not yet the case, to prohibit blanket mass surveillance activities;

21. Calls on the EU Member States, and in particular those participating in the so-called '9-eyes' and '14-eyes' programmes ([2]), to comprehensively evaluate, and revise where necessary, their national legislation and practices governing the activities of the intelligence services so as to ensure that they are subject to parliamentary and judicial oversight and public scrutiny, that they respect the principles of legality, necessity, proportionality, due process, user notification and transparency, including by reference to the UN compilation of good practices and the recommendations of the Venice Commission, and that they are in line with the standards of the European Convention on Human Rights and comply with Member States' fundamental rights obligations, in particular as regards data protection, privacy, and the presumption of innocence;

([1]) Judgement in Case C-300/11, ZZ v Secretary of State for the Home Department, 4 June 2013.

([2]) The '9-eyes programme' comprises the US, the UK, Canada, Australia, New Zealand, Denmark, France, Norway and the Netherlands; the '14-eyes programme' includes those countries and also Germany, Belgium, Italy, Spain and Sweden.

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22. Calls on all EU Member States and in particular, with regard to its Resolution of 4 July 2013 and Inquiry Hearings, the United Kingdom, France, Germany, Sweden, the Netherlands and Poland to ensure that their current or future legislative frameworks and oversight mechanisms governing the activities of intelligence agencies are in line with the standards of the European Convention on Human Rights and European Union data protection legislation; calls on these Member States to clarify the allegations of mass surveillance activities, including mass surveillance of cross border telecommunications, untargeted surveillance on cable-bound communications, potential agreements between intelligence services and telecommunication companies as regards access and exchange of personal data and access to transatlantic cables, US intelligence personnel and equipment on EU territory without oversight on surveillance operations, and their compatibility with EU legislation; invites the national parliaments of those countries to intensify cooperation of their intelligence oversight bodies at European level;

23. Calls on the United Kingdom, in particular, given the extensive media reports referring to mass surveillance by the intelligence service GCHQ, to revise its current legal framework, which is made up of a 'complex interaction' between three separate pieces of legislation — the Human Rights Act 1998, the Intelligence Services Act 1994 and the Regulation of Investigatory Powers Act 2000;

24. Takes note of the review of the Dutch Intelligence and Security Act 2002 (report by the Dessens Commission of 2 December 2013); supports those recommendations of the review commission which aim to strengthen the transparency, control and oversight of the Dutch intelligence services; calls on the Netherlands to refrain from extending the powers of the intelligence services in such a way as to enable untargeted and large-scale surveillance also to be performed on cable-bound communications of innocent citizens, especially given the fact that one of the biggest Internet Exchange Points in the world is located in Amsterdam (AMS-IX); calls for caution in defining the mandate and capabilities of the new Joint Sigint Cyber Unit, as well as for caution regarding the presence and operation of US intelligence personnel on Dutch territory;

25. Calls on the Member States, including when represented by their intelligence agencies, to refrain from accepting data from third states which have been collected unlawfully and from allowing surveillance activities on their territory by third states' governments or agencies which are unlawful under national law or do not meet the legal safeguards enshrined in international or EU instruments, including the protection of human rights under the TEU, the ECHR and the EU Charter of Fundamental Rights;

26. Calls for the termination of mass interception and processing of webcam imagery by any secret service; calls upon the Member States to fully investigate whether, how and to what extent their respective secret services have been involved in the collection and processing of webcam images, and to delete all stored images collected through such mass surveillance programmes;

27. Calls on the Member States immediately to fulfil their positive obligation under the European Convention on Human Rights to protect their citizens from surveillance contrary to its requirements, including when the aim thereof is to safeguard national security, undertaken by third states or by their own intelligence services, and to ensure that the rule of law is not weakened as a result of extraterritorial application of a third country's law;

28. Invites the Secretary-General of the Council of Europe to launch the Article 52 procedure according to which 'on receipt of a request from the Secretary-General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention';

29. Calls on Member States to take appropriate action immediately, including court action, against the breach of their sovereignty, and thereby the violation of general public international law, perpetrated through the mass surveillance programmes; calls further on Member States to make use of all available international measures to defend EU citizens' fundamental rights, notably by triggering the inter-state complaint procedure under Article 41 of the International Covenant on Civil and Political Rights (ICCPR);

30. Calls upon the Member States to establish effective mechanisms whereby those responsible for (mass) surveillance programmes that are in violation of the rule of law and the fundamental rights of citizens are held accountable for this abuse of power;

31. Calls on the US to revise its legislation without delay in order to bring it into line with international law, to recognise the privacy and other rights of EU citizens, to provide for judicial redress for EU citizens, to put rights of EU citizens on an equal footing with rights of US citizens, and to sign the Optional Protocol allowing for complaints by individuals under the ICCPR;

32. Welcomes, in this regard, the remarks made and the Presidential Policy Directive issued by US President Obama on 17 January 2014, as a step towards limiting authorisation of the use of surveillance and data processing to national security purposes and towards equal treatment of all individuals' personal information, regardless of their nationality or residence, by the US intelligence community; awaits, however, in the context of the EU-US relationship, further specific steps which will, most importantly, strengthen trust in transatlantic data transfers and provide for binding guarantees for enforceable privacy rights of EU citizens, as outlined in detail in this report;

33. Stresses its serious concerns in relation to the work within the Council of Europe's Cybercrime Convention Committee on the interpretation of Article 32 of the Convention on Cybercrime of 23 November 2001 (Budapest Convention) on transborder access to stored computer data with consent or where publicly available, and opposes any conclusion of an additional protocol or guidance intended to broaden the scope of this provision beyond the current regime established by this Convention, which is already a major exception to the principle of territoriality because it could result in unfettered remote access by law enforcement authorities to servers and computers located in other jurisdictions without recourse to MLA agreements and other instruments of judicial cooperation put in place to guarantee the fundamental rights of the individual, including data protection and due process, and in particular Council of Europe Convention 108;

34. Calls on the Commission to carry out, before July 2014, an assessment of the applicability of Regulation (EC) No 2271/96 to cases of conflict of laws on transfers of personal data;

35. Calls on the Fundamental Rights Agency to undertake in-depth research on the protection of fundamental rights in the context of surveillance, and in particular on the current legal situation of EU citizens with regard to the judicial remedies available to them in relation to those practices;

International transfers of data

US data protection legal framework and US Safe Harbour

36. Notes that the companies identified by media revelations as being involved in the large-scale mass surveillance of EU data subjects by the US NSA are companies that have self-certified their adherence to the Safe Harbour, and that the Safe Harbour is the legal instrument used for the transfer of EU personal data to the US (examples being Google, Microsoft, Yahoo!, Facebook, Apple and LinkedIn); expresses its concerns that these organisations have not encrypted information and communications flowing between their data centres, thereby enabling intelligence services to intercept information; welcomes the subsequent statements by some US companies that they will accelerate plans to implement encryption of data flows between their global data centres;

37. Considers that large-scale access by US intelligence agencies to EU personal data processed by Safe Harbour does not meet the criteria for derogation under 'national security';

38. Takes the view that, as under the current circumstances the Safe Harbour principles do not provide adequate protection for EU citizens, these transfers should be carried out under other instruments, such as contractual clauses or BCRs, provided these instruments set out specific safeguards and protections and are not circumvented by other legal frameworks;

39. Takes the view that the Commission has failed to act to remedy the well-known deficiencies of the current implementation of Safe Harbour;

40. Calls on the Commission to present measures providing for the immediate suspension of Commission Decision 2000/520/EC, which declared the adequacy of the Safe Harbour privacy principles, and of the related FAQs issued by the US Department of Commerce; calls on the US authorities, therefore, to put forward a proposal for a new framework for transfers of personal data from the EU to the US which meets Union law data protection requirements and provides for the required adequate level of protection;

41. Calls on Member States' competent authorities, in particular the data protection authorities, to make use of their existing powers and immediately suspend data flows to any organisation that has self-certified its adherence to the US Safe Harbour Principles, and to require that such data flows are only carried out under other instruments and provided they contain the necessary safeguards and guarantees with respect to the protection of the privacy and fundamental rights and freedoms of individuals;

42. Calls on the Commission to present, by December 2014, a comprehensive assessment of the US privacy framework covering commercial, law enforcement and intelligence activities, and concrete recommendations based on the absence of a general data protection law in the US; encourages the Commission to engage with the US administration in order to establish a legal framework providing for a high level of protection of individuals with regard to the protection of their personal data when transferred to the US and ensure the equivalence of EU and US privacy frameworks;

Transfers to other third countries with adequacy decision

43. Recalls that Directive 95/46/EC stipulates that transfers of personal data to a third country may take place only if, without prejudice to compliance with the national provisions adopted pursuant to the other provisions of the Directive, the third country in question ensures an adequate level of protection, the purpose of this provision being to ensure the continuity of the protection afforded by EU data protection law where personal data are transferred outside the EU;

44. Recalls that Directive 95/46/EC also provides that the adequacy of the level of protection afforded by a third country is to be assessed in the light of all the circumstances surrounding a data transfer operation or set of such operations; recalls likewise that the said Directive also equips the Commission with implementing powers to declare that a third country ensures an adequate level of protection in the light of the criteria laid down by Directive 95/46/EC; recalls that Directive 95/46/EC also empowers the Commission to declare that a third country does not ensure an adequate level of protection;

45. Recalls that in the latter case Member States must take the measures necessary to prevent any transfer of data of the same type to the third country in question, and that the Commission should enter into negotiations with a view to remedying the situation;

46. Calls on the Commission and the Member States to assess without delay whether the adequate level of protection of the New Zealand Privacy Act and of the Canadian Personal Information Protection and Electronic Documents Act, as declared by Commission Decisions 2013/65/EU and 2002/2/EC, has been affected by the involvement of those countries' national intelligence agencies in the mass surveillance of EU citizens, and, if necessary, to take appropriate measures to suspend or reverse the adequacy decisions; also calls on the Commission to assess the situation for other countries that have received an adequacy rating; expects the Commission to report to Parliament on its findings on the above-mentioned countries by December 2014 at the latest;

Transfers based on contractual clauses and other instruments

47. Recalls that national data protection authorities have indicated that neither standard contractual clauses nor BCRs were formulated with situations of access to personal data for mass surveillance purposes in mind, and that such access would not be in line with the derogation clauses of the contractual clauses or BCRs which refer to exceptional derogations for a legitimate interest in a democratic society and where necessary and proportionate;

48. Calls on the Member States to prohibit or suspend data flows to third countries based on the standard contractual clauses, contractual clauses or BCRs authorised by the national competent authorities where it is likely that the law to which data recipients are subject imposes requirements on them which go beyond the restrictions that are strictly necessary, adequate and proportionate in a democratic society and are likely to have an adverse effect on the guarantees provided by the applicable data protection law and the standard contractual clauses, or because continuing transfer would create a risk of grave harm to the data subjects;

49. Calls on the Article 29 Working Party to issue guidelines and recommendations on the safeguards and protections that contractual instruments for international transfers of EU personal data should contain in order to ensure the protection of the privacy, fundamental rights and freedoms of individuals, taking particular account of the third-country laws on intelligence and national security and the involvement of the companies receiving the data in a third country in mass surveillance activities by a third country's intelligence agencies;

50. Calls on the Commission to examine without delay the standard contractual clauses it has established in order to assess whether they provide the necessary protection as regards access to personal data transferred under the clauses for intelligence purposes and, if appropriate, to review them;

Transfers based on the Mutual Legal Assistance Agreement

51. Calls on the Commission to conduct, before the end of 2014, an in-depth assessment of the existing Mutual Legal Assistance Agreement, pursuant to its Article 17, in order to verify its practical implementation and, in particular, whether the US has made effective use of it for obtaining information or evidence in the EU and whether the Agreement has been circumvented to acquire the information directly in the EU, and to assess the impact on the fundamental rights of individuals; such an assessment should not only refer to US official statements as a sufficient basis for the analysis but also be based on specific EU evaluations; this in-depth review should also address the consequences of the application of the Union's constitutional architecture to this instrument in order to bring it into line with Union law, taking account in particular of Protocol 36 and Article 10 thereof and Declaration 50 concerning this protocol; calls on the Council and Commission also to assess bilateral agreements between Member States and the US so as to ensure that they are consistent with the agreements that the EU follows or decides to follow with the US;

EU mutual assistance in criminal matters

52. Asks the Council and Commission to inform Parliament about the actual use by Member States of the Convention on Mutual Assistance in Criminal Matters between the Member States, in particular its Title III on interception of telecommunications; calls on the Commission to put forward a proposal, in accordance with Declaration 50, concerning Protocol 36, as requested, before the end of 2014 in order to adapt it to the Lisbon Treaty framework;

Transfers based on the TFTP and PNR agreements

53. Takes the view that the information provided by the European Commission and the US Treasury does not clarify whether US intelligence agencies have access to SWIFT financial messages in the EU by intercepting SWIFT networks or banks' operating systems or communication networks, alone or in cooperation with EU national intelligence agencies and without having recourse to existing bilateral channels for mutual legal assistance and judicial cooperation;

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54. Reiterates its resolution of 23 October 2013 and asks the Commission for the suspension of the TFTP Agreement;

55. Calls on the Commission to react to concerns that three of the major computerised reservation systems used by airlines worldwide are based in the US and that PNR data are saved in cloud systems operating on US soil under US law, which lacks data protection adequacy;

Framework agreement on data protection in the field of police and judicial cooperation ('Umbrella Agreement')

56. Considers that a satisfactory solution under the 'Umbrella agreement' is a precondition for the full restoration of trust between the transatlantic partners;

57. Asks for an immediate resumption of the negotiations with the US on the 'Umbrella Agreement', which should put rights for EU citizens on an equal footing with rights for US citizens; stresses that, moreover, this agreement should provide effective and enforceable administrative and judicial remedies for all EU citizens in the US without any discrimination;

58. Asks the Commission and Council not to initiate any new sectorial agreements or arrangements for the transfer of personal data for law enforcement purposes with the US as long as the 'Umbrella Agreement' has not entered into force;

59. Urges the Commission to report in detail on the various points of the negotiating mandate and the latest state of play by April 2014;

Data protection reform

60. Calls on the Council Presidency and the Member States to accelerate their work on the whole Data Protection Package to allow for its adoption in 2014, so that EU citizens will be able to enjoy a high level of data protection in the very near future; stresses that strong engagement and full support on the part of the Council are a necessary condition to demonstrate credibility and assertiveness towards third countries;

61. Stresses that both the Data Protection Regulation and the Data Protection Directive are necessary to protect the fundamental rights of individuals, and that the two must therefore be treated as a package to be adopted simultaneously, in order to ensure that all data-processing activities in the EU provide a high level of protection in all circumstances; stresses that it will only adopt further law enforcement cooperation measures once the Council has entered into negotiations with Parliament and the Commission on the Data Protection Package;

62. Recalls that the concepts of 'privacy by design' and 'privacy by default' are a strengthening of data protection and should have the status of guidelines for all products, services and systems offered on the internet;

63. Considers higher transparency and safety standards for online and telecommunication as a necessary principle with a view to a better data protection regime; calls, therefore, on the Commission to put forward a legislative proposal on standardised general terms and conditions for online and telecommunications services, and to mandate a supervisory body to monitor compliance with the general terms and conditions;

Cloud computing

64. Notes that trust in US cloud computing and cloud providers has been negatively affected by the above-mentioned practices; emphasises, therefore, the development of European clouds and IT solutions as an essential element for growth and employment and for trust in cloud computing services and providers, as well as for ensuring a high level of personal data protection;

65. Calls on all public bodies in the Union not to use cloud services where non-EU laws might apply;

66. Reiterates its serious concern regarding the compulsory direct disclosure of EU personal data and information processed under cloud agreements to third-country authorities by cloud providers subject to third-country laws or using storage servers located in third countries, as also regarding direct remote access to personal data and information processed by third-country law enforcement authorities and intelligence services;

67. Deplores the fact that such access is usually attained by means of direct enforcement by third-country authorities of their own legal rules, without recourse to international instruments established for legal cooperation such as mutual legal assistance (MLA) agreements or other forms of judicial cooperation;

68. Calls on the Commission and the Member States to speed up the work of establishing a European Cloud Partnership while fully including civil society and the technical community, such as the Internet Engineering Task Force (IETF), and incorporating data protection aspects;

69. Urges the Commission, when negotiating international agreements that involve the processing of personal data, to take particular note of the risks and challenges that cloud computing poses to fundamental rights, in particular — but not exclusively — the right to private life and to the protection of personal data, as enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union; urges the Commission, furthermore, to take note of the negotiating partner's domestic rules governing the access of law enforcement and intelligence agencies to personal data processed through cloud computing services, in particular by demanding that such access be granted only if there is full respect for due process of law and on an unambiguous legal basis, as well as the requirement that the exact conditions of access, the purpose of gaining such access, the security measures put in place when handing over data and the rights of the individual, as well as the rules for supervision and for an effective redress mechanism, be specified;

70. Recalls that all companies providing services in the EU must, without exception, comply with EU law and are liable for any breaches, and underlines the importance of having effective, proportionate and dissuasive administrative sanctions in place that can be imposed on 'cloud computing' service providers who do not comply with EU data protection standards;

71. Calls on the Commission and the competent authorities of the Member States to evaluate the extent to which EU rules on privacy and data protection have been violated through the cooperation of EU legal entities with secret services or through the acceptance of court warrants of third-country authorities requesting personal data of EU citizens contrary to EU data protection legislation;

72. Calls on businesses providing new services using 'Big Data' and new applications such as the 'Internet of Things' to build in data protection measures already at the development stage, in order to maintain a high level of trust among citizens;

Transatlantic Trade and Investment Partnership Agreement (TTIP)

73. Recognises that the EU and the US are pursuing negotiations for a Transatlantic Trade and Investment Partnership, which is of major strategic importance for creating further economic growth;

74. Strongly emphasises, given the importance of the digital economy in the relationship and in the cause of rebuilding EU-US trust, that the consent of the European Parliament to the final TTIP agreement could be endangered as long as the blanket mass surveillance activities and the interception of communications in EU institutions and diplomatic representations are not completely abandoned and an adequate solution is found for the data privacy rights of EU citizens, including administrative and judicial redress; stresses that Parliament may only consent to the final TTIP agreement

provided the agreement fully respects, inter alia, the fundamental rights recognised by the EU Charter, and provided the protection of the privacy of individuals in relation to the processing and dissemination of personal data remain governed by Article XIV of the GATS; stresses that EU data protection legislation cannot be deemed an 'arbitrary or unjustifiable discrimination' in the application of Article XIV of the GATS;

Democratic oversight of intelligence services

75. Stresses that, despite the fact that oversight of intelligence services' activities should be based on both democratic legitimacy (strong legal framework, ex ante authorisation and ex post verification) and adequate technical capability and expertise, the majority of current EU and US oversight bodies dramatically lack both, in particular the technical capabilities;

76. Calls, as it did in the case of Echelon, on all national parliaments which have not yet done so to install meaningful oversight of intelligence activities by parliamentarians or expert bodies with legal powers to investigate; calls on the national parliaments to ensure that such oversight committees/bodies have sufficient resources, technical expertise and legal means, including the right to conduct on-site visits, to be able to effectively control intelligence services;

77. Calls for the setting up of a Group of Members and experts to examine, in a transparent manner and in collaboration with national parliaments, recommendations for enhanced democratic oversight, including parliamentary oversight, of intelligence services and increased oversight collaboration in the EU, in particular as regards its cross-border dimension; considers that the group should examine, in particular, the possibility of minimum European standards or guidelines for the (ex ante and ex post) oversight of intelligence services on the basis of existing best practices and recommendations by international bodies (UN, Council of Europe), including the issue of oversight bodies being considered as a third party under the 'third party rule', or the principle of 'originator control', on the oversight and accountability of intelligence from foreign countries, criteria on enhanced transparency, built on the general principle of access to information and the so-called 'Tshwane Principles' ([1]), as well as principles regarding the limits on the duration and scope of any surveillance ensuring that they are proportionate and limited to its purpose;

78. Calls on this Group to prepare a report for and to assist in the preparation of a conference to be held by Parliament with national oversight bodies, whether parliamentary or independent, by the beginning of 2015;

79. Calls on the Member States to draw on best practices so as to improve access by their oversight bodies to information on intelligence activities (including classified information and information from other services) and establish the power to conduct on-site visits, a robust set of powers of interrogation, adequate resources and technical expertise, strict independence vis-à-vis their respective governments, and a reporting obligation to their respective parliaments;

80. Calls on the Member States to develop cooperation among oversight bodies, in particular within the European Network of National Intelligence Reviewers (ENNIR);

81. Urges the HR/VP to regularly account for the activities of the EU Intelligence Analysis Centre (IntCen), which is part of the European External Action Service, to the responsible bodies of Parliament, including its full compliance with fundamental rights and applicable EU data privacy rules, allowing for improved oversight by Parliament of the external dimension of EU policies; urges the Commission and the HR/VP to present a proposal for a legal basis for the activities of IntCen, should any operations or future competences in the area of intelligence or data collection facilities of its own be envisaged which may have an impact on the EU's internal security strategy;

([1]) The Global Principles on National Security and the Right to Information, June 2013.

82. Calls on the Commission to present, by December 2014, a proposal for an EU security clearance procedure for all EU office holders, as the current system, which relies on the security clearance undertaken by the Member State of citizenship, provides for different requirements and lengths of procedures within national systems, thus leading to differing treatment of Members of Parliament and their staff depending on their nationality;

83. Recalls the provisions of the interinstitutional agreement between the European Parliament and the Council concerning the forwarding to and handling by Parliament of classified information held by the Council on matters other than those in the area of the common foreign and security policy, which should be used to improve oversight at EU level;

EU agencies

84. Calls on the Europol Joint Supervisory Body, together with national data protection authorities, to conduct a joint inspection before the end of 2014 in order to ascertain whether information and personal data shared with Europol have been lawfully acquired by national authorities, particularly if the information or data were initially acquired by intelligence services in the EU or a third country, and whether appropriate measures are in place to prevent the use and further dissemination of such information or data; considers that Europol should not process any information or data which were obtained in violation of fundamental rights which would be protected under the Charter of Fundamental Rights;

85. Calls on Europol to make full use of its mandate to request the competent authorities of the Member States to initiate criminal investigations with regards to major cyberattacks and IT breaches with potential cross-border impact; believes that Europol's mandate should be enhanced in order to allow it to initiate its own investigation following suspicion of a malicious attack on the network and information systems of two or more Member States or Union bodies ([1]); calls on the Commission to review the activities of Europol's European Cybercrime Centre (EC3) and, if necessary, put forward a proposal for a comprehensive framework for strengthening its competences;

Freedom of expression

86. Expresses its deep concern at the mounting threats to the freedom of the press and the chilling effect on journalists of intimidation by state authorities, in particular as regards the protection of confidentiality of journalistic sources; reiterates the calls expressed in its resolution of 21 May 2013 on 'the EU Charter: standard settings for media freedom across the EU';

87. Takes note of the detention of David Miranda and the seizure of the material in his possession by the UK authorities under Schedule 7 of the Terrorism Act 2000 (and also the request made to the *Guardian* newspaper to destroy or hand over the material) and expresses its concern that this constitutes a possible serious interference with the right of freedom of expression and media freedom as recognised by Article 10 of the ECHR and Article 11 of the EU Charter and that legislation intended to fight terrorism could be misused in such instances;

88. Draws attention to the plight of whistleblowers and their supporters, including journalists following their revelations; calls on the Commission to conduct an examination as to whether a future legislative proposal establishing an effective and comprehensive European whistleblower protection programme, as already requested in Parliament's resolution of 23 October 2013, should also include other fields of Union competence, with particular attention to the complexity of whistleblowing in the field of intelligence; calls on the Member States to thoroughly examine the possibility of granting whistleblowers international protection from prosecution;

([1]) European Parliament position of 25 February 2014 on the proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) (Texts adopted, P7_TA(2014)0121).

89. Calls on the Member States to ensure that their legislation, notably in the field of national security, provides a safe alternative to silence for disclosing or reporting of wrongdoing, including corruption, criminal offences, breaches of legal obligation, miscarriages of justice and abuse of authority, which is also in line with the provisions of different international (UN and Council of Europe) instruments against corruption, the principles laid out in the PACE Resolution 1729 (2010), the Tshwane principles, etc.;

EU IT security

90. Points out that recent incidents clearly demonstrate the acute vulnerability of the EU, and in particular the EU institutions, national governments and parliaments, major European companies, European IT infrastructures and networks, to sophisticated attacks using complex software and malware; notes that these attacks require financial and human resources on a scale such that they are likely to originate from state entities acting on behalf of foreign governments; in this context, regards the case of the hacking or tapping of the telecommunications company Belgacom as a worrying example of an attack on the EU's IT capacity; underlines that boosting EU IT capacity and security also reduces the vulnerability of the EU towards serious cyberattacks originating from large criminal organisations or terrorist groups;

91. Takes the view that the mass surveillance revelations that have initiated this crisis can be used as an opportunity for Europe to take the initiative and build up, as a strategic priority measure, a strong and autonomous IT key-resource capability; stresses that in order to regain trust, such a European IT capability should be based, as much as possible, on open standards and open-source software and if possible hardware, making the whole supply chain from processor design to application layer transparent and reviewable; points out that in order to regain competitiveness in the strategic sector of IT services, a 'digital new deal' is needed, with joint and large-scale efforts by EU institutions, Member States, research institutions, industry and civil society; calls on the Commission and the Member States to use public procurement as leverage to support such resource capability in the EU by making EU security and privacy standards a key requirement in the public procurement of IT goods and services; urges the Commission, therefore, to review the current public procurement practices with regard to data processing in order to consider restricting tender procedures to certified companies, and possibly to EU companies, where security or other vital interests are involved;

92. Strongly condemns the fact that intelligence services sought to lower IT security standards and to install backdoors in a wide range of IT systems; asks the Commission to present draft legislation to ban the use of backdoors by law enforcement agencies; recommends, consequently, the use of open-source software in all environments where IT security is a concern;

93. Calls on all the Member States, the Commission, the Council and the European Council to give their fullest support, including through funding in the field of research and development, to the development of European innovative and technological capability in IT tools, companies and providers (hardware, software, services and network), including for purposes of cybersecurity and encryption and cryptographic capabilities; calls on all responsible EU institutions and Member States to invest in EU local and independent technologies, and to develop massively and increase detection capabilities;

94. Calls on the Commission, standardisation bodies and ENISA to develop, by December 2014, minimum security and privacy standards and guidelines for IT systems, networks and services, including cloud computing services, in order to better protect EU citizens' personal data and the integrity of all IT systems; believes that such standards could become the benchmark for new global standards and should be set in an open and democratic process, rather than being driven by a single country, entity or multinational company; takes the view that, while legitimate law enforcement and intelligence concerns need to be taken into account in order to support the fight against terrorism, they should not lead to a general undermining of the dependability of all IT systems; expresses support for the recent decisions by the Internet Engineering Task Force (IETF) to include governments in the threat model for internet security;

95. Points out that EU and national telecom regulators, and in certain cases also telecom companies, have clearly neglected the IT security of their users and clients; calls on the Commission to make full use of its existing powers under the ePrivacy and Telecommunication Framework Directive to strengthen the protection of confidentiality of communication by adopting measures to ensure that terminal equipment is compatible with the right of users to control and protect their personal data, and to ensure a high level of security of telecommunication networks and services, including by way of requiring state-of-the-art end-to-end encryption of communications;

96. Supports the EU cyber strategy, but considers that it does not cover all possible threats and should be extended to cover malicious state behaviour; underlines the need for more robust IT security and resilience of IT systems;

97. Calls on the Commission, by January 2015 at the latest, to present an Action Plan to develop greater EU independence in the IT sector, including a more coherent approach to boosting European IT technological capabilities (including IT systems, equipment, services, cloud computing, encryption and anonymisation) and to the protection of critical IT infrastructure (including in terms of ownership and vulnerability);

98. Calls on the Commission, in the framework of the next Work Programme of the Horizon 2020 Programme, to direct more resources towards boosting European research, development, innovation and training in the field of IT, in particular privacy-enhancing technologies and infrastructures, cryptology, secure computing, the best possible security solutions including open-source security, and other information society services, and also to promote the internal market in European software, hardware, and encrypted means of communication and communication infrastructures, including by developing a comprehensive EU industrial strategy for the IT industry; considers that small and medium enterprises play a particular role in research; stresses that no EU funding should be granted to projects having the sole purpose of developing tools for gaining illegal access into IT systems;

99. Asks the Commission to map out current responsibilities and to review, by December 2014 at the latest, the need for a broader mandate, better coordination and/or additional resources and technical capabilities for ENISA, Europol's Cyber Crime Centre and other Union centres of specialised expertise, CERT-EU and the EDPS, in order to enable them to play a key role in securing European communication systems, be more effective in preventing and investigating major IT breaches in the EU and performing (or assisting Member States and EU bodies to perform) on-site technical investigations regarding major IT breaches; in particular, calls on the Commission to consider strengthening ENISA's role in defending the internal systems within the EU institutions and to establish within ENISA's structure a Computer Emergency Response Team (CERT) for the EU and its Member States;

100. Requests the Commission to assess the need for an EU IT Academy that brings together the best independent European and international experts in all related fields, tasked with providing all relevant EU institutions and bodies with scientific advice on IT technologies, including security-related strategies;

101. Calls on the competent services of the Secretariat of the European Parliament, under the responsibility of the President of Parliament, to carry out, by June 2015 at the latest with an intermediate report by December 2014 at the latest, a thorough review and assessment of Parliament's IT security dependability, focused on: budgetary means, staff resources, technical capabilities, internal organisation and all relevant elements, in order to achieve a high level of security for Parliament's IT systems; believes that such an assessment should at the least provide information, analysis and recommendations on:

— the need for regular, rigorous and independent security audits and penetration tests, with the selection of outside security experts ensuring transparency and guarantees of their credentials vis-à-vis third countries or any types of vested interest;

— the inclusion in tender procedures for new IT systems of best-practice specific IT security/privacy requirements, including the possibility of a requirement for open-source software as a condition of purchase or a requirement that trusted European companies should take part in the tender when sensitive, security-related areas are concerned;

— the list of companies under contract with Parliament in the IT and telecom fields, taking into account any information that has come to light about their cooperation with intelligence agencies (such as revelations about NSA contracts with a company such as RSA, whose products Parliament is using to supposedly protect remote access to their data by its Members and staff), including the feasibility of providing the same services by other, preferably European, companies;

— the reliability and resilience of the software, and especially off-the-shelf commercial software, used by the EU institutions in their IT systems with regard to penetrations and intrusions by EU or third-country law enforcement and intelligence authorities, taking also into account relevant international standards, best-practice security risk management principles, and adherence to EU Network Information Security standards on security breaches;

— the use of more open-source systems;

— steps and measures to take in order to address the increased use of mobile tools (e.g. smartphones, tablets, whether professional or personal) and its effects on the IT security of the system;

— the security of the communications between the different workplaces of the Parliament and of the IT systems used in Parliament;

— the use and location of servers and IT centres for Parliament's IT systems and the implications for the security and integrity of the systems;

— the implementation in reality of the existing rules on security breaches and prompt notification of the competent authorities by the providers of publicly available telecommunication networks;

— the use of cloud computing and storage services by Parliament, including the nature of the data stored in the cloud, how the content and access to it is protected and where the cloud-servers are located, clarifying the applicable data protection and intelligence legal framework, as well as assessing the possibilities of solely using cloud servers that are based on EU territory;

— a plan allowing for the use of more cryptographic technologies, in particular end-to-end authenticated encryption for all IT and communications services such as cloud computing, email, instant messaging and telephony;

— the use of electronic signatures in email;

— a plan for using a default encryption standard, such as the GNU Privacy Guard, for emails that would at the same time allow for the use of digital signatures;

— the possibility of setting up a secure instant messaging service within Parliament allowing secure communication, with the server only seeing encrypted content;

102. Calls for all the EU institutions and agencies to perform a similar exercise in cooperation with ENISA, Europol and the CERTs, by June 2015 at the latest with an intermediate report by December 2014, in particular the European Council, the Council, the European External Action Service (including EU delegations), the Commission, the Court of Justice and the European Central Bank; invites the Member States to conduct similar assessments;

103. Stresses that as far as the external action of the EU is concerned, assessments of related budgetary needs should be carried out and first measures taken without delay in the case of the European External Action Service (EEAS) and that appropriate funds need to be allocated in the 2015 draft budget;

104. Takes the view that the large-scale IT systems used in the area of freedom, security and justice, such as the Schengen Information System II, the Visa Information System, Eurodac and possible future systems such as EU-ESTA, should be developed and operated in such a way as to ensure that data are not compromised as a result of requests by authorities from third countries; asks eu-LISA to report back to Parliament on the reliability of the systems in place by the end of 2014;

105. Calls on the Commission and the EEAS to take action at the international level, with the UN in particular, and in cooperation with interested partners to implement an EU strategy for democratic governance of the internet in order to prevent undue influence over ICANN's and IANA's activities by any individual entity, company or country by ensuring appropriate representation of all interested parties in these bodies, while avoiding the facilitation of state control or censorship or the balkanisation and fragmentation of the internet;

106. Calls for the EU to take the lead in reshaping the architecture and governance of the internet in order to address the risks related to data flows and storage, striving for more data minimisation and transparency and less centralised mass storage of raw data, as well as for rerouting of Internet traffic or full end-to-end encryption of all Internet traffic so as to avoid the current risks associated with unnecessary routing of traffic through the territory of countries that do not meet basic standards on fundamental rights, data protection and privacy;

107. Calls for the promotion of:

— EU search engines and EU social networks as a valuable step in the direction of IT independence for the EU;

— European IT service providers;

— encrypting communication in general, including email and SMS communication;

— European IT key elements, for instance solutions for client-server operating systems, using open-source standards, developing European elements for grid coupling, e.g. routers;

108. Calls on the Commission to present a legal proposal for an EU routing system including the processing of call detail records (CDRs) at EU level that will be a substructure of the existing internet and will not extend beyond EU borders; notes that all routing data and CDRs should be processed in accordance with EU legal frameworks;

109. Calls on the Member States, in cooperation with ENISA, Europol's CyberCrime Centre, CERTs and national data protection authorities and cybercrime units, to develop a culture of security and to launch an education and awareness-raising campaign in order to enable citizens to make a more informed choice regarding what personal data to put on-line and how better to protect them, including through encryption and safe cloud computing, making full use of the public interest information platform provided for in the Universal Service Directive;

110. Calls on the Commission, by December 2014, to put forward legislative proposals to encourage software and hardware manufacturers to introduce more security and privacy by design and by default features in their products, including by introducing disincentives for the undue and disproportionate collection of mass personal data and legal liability on the part of manufacturers for unpatched known vulnerabilities, faulty or insecure products or the installation of secret backdoors enabling unauthorised access to and processing of data; in this respect, calls on the Commission to evaluate the possibility of setting up a certification or validation scheme for IT hardware including testing procedures at EU level to ensure the integrity and security of the products;

Rebuilding trust

111. Believes that, beyond the need for legislative change, the inquiry has shown the need for the US to restore trust with its EU partners, as it is the US intelligence agencies' activities that are primarily at stake;

112. Points out that the crisis of confidence generated extends to:

— the spirit of cooperation within the EU, as some national intelligence activities may jeopardise the attainment of the Union's objectives;

— citizens, who realise that not only third countries or multinational companies but also their own government may be spying on them;

— respect for fundamental rights, democracy and the rule of law, as well as the credibility of democratic, judicial and parliamentary safeguards and oversight in a digital society;

Between the EU and the US

113. Recalls the important historical and strategic partnership between the EU Member States and the US, based on a common belief in democracy, the rule of law and fundamental rights;

114. Believes that the mass surveillance of citizens and the spying on political leaders by the US have caused serious damage to relations between the EU and the US and negatively impacted on trust in US organisations acting in the EU; this is further exacerbated by the lack of judicial and administrative remedies for redress under US law for EU citizens, particularly in cases of surveillance activities for intelligence purposes;

115. Recognises, in light of the global challenges facing the EU and the US, that the transatlantic partnership needs to be further strengthened, and that it is vital that transatlantic cooperation in counter-terrorism continues on a new basis of trust based on true common respect for the rule of law and the rejection of all indiscriminate practices of mass surveillance; insists, therefore, that clear measures need to be taken by the US to re-establish trust and re-emphasise the shared basic values underlying the partnership;

116. Is ready to engage in a dialogue with US counterparts so that, in the ongoing American public and congressional debate on reforming surveillance and reviewing intelligence oversight, the right to privacy and other rights of EU citizens, residents or other persons protected by EU law and equivalent information rights and privacy protection in US courts, including legal redress, are guaranteed through, for example, a revision of the Privacy Act and the Electronic Communications Privacy Act and by ratifying the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), so that the current discrimination is not perpetuated;

117. Insists that necessary reforms be undertaken and effective guarantees be given to Europeans to ensure that the use of surveillance and data processing for foreign intelligence purposes is proportional, limited by clearly specified conditions, and related to reasonable suspicion and probable cause of terrorist activity; stresses that this purpose must be subject to transparent judicial oversight;

118. Considers that clear political signals are needed from our American partners to demonstrate that the US distinguishes between allies and adversaries;

119. Urges the Commission and the US Administration to address, in the context of the ongoing negotiations on an EU-US Umbrella Agreement on data transfer for law enforcement purposes, the information and judicial redress rights of EU citizens, and to conclude these negotiations, in line with the commitment made at the EU-US Justice and Home Affairs Ministerial Meeting of 18 November 2013, before summer 2014;

120. Encourages the US to accede to the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108), as it acceded to the 2001 Convention on Cybercrime, thus strengthening the shared legal basis between the transatlantic allies;

121. Calls on the EU institutions to explore the possibilities for establishing with the US a code of conduct which would guarantee that no US espionage is pursued against EU institutions and facilities;

Within the European Union

122. Also believes that the involvement and activities of EU Member States have led to a loss of trust, including among Member States and between EU citizens and their national authorities; is of the opinion that only full clarity as to purposes and means of surveillance, public debate and, ultimately, revision of legislation, including an end to mass surveillance activities and strengthening the system of judicial and parliamentary oversight, will it be possible to re-establish the trust lost; reiterates the difficulties involved in developing comprehensive EU security policies with such mass surveillance activities in operation, and stresses that the EU principle of sincere cooperation requires that Member States refrain from conducting intelligence activities in other Member States' territory;

123. Notes that some Member States are pursuing bilateral communication with the US authorities on spying allegations, and that some of them have concluded (the UK) or envisage concluding (Germany, France) so-called 'anti-spying' arrangements; stresses that these Member States need to observe fully the interests and the legislative framework of the EU as a whole; deems such bilateral arrangements to be counterproductive and irrelevant, given the need for a European approach to this problem; asks the Council to inform Parliament on developments by Member States on an EU-wide mutual no-spy arrangement;

124. Considers that such arrangements should not breach the Union Treaties, especially the principle of sincere cooperation (under Article 4(3) TEU), or undermine EU policies in general and, more specifically, the internal market, fair competition, and economic, industrial and social development; decides to review any such arrangements for their compatibility with European law, and reserves the right to activate Treaty procedures in the event of such arrangements being proven to contradict the Union's cohesion or the fundamental principles on which it is based;

125. Calls on the Member States to make every effort to ensure better cooperation with a view to providing safeguards against espionage, in cooperation with the relevant EU bodies and agencies, for the protection of EU citizens and institutions, European companies, EU industry, and IT infrastructure and networks, as well as European research; considers the active involvement of EU stakeholders to be a precondition for an effective exchange of information; points out that security threats have become more international, diffuse and complex, thereby requiring an enhanced European cooperation; believes that this development should be better reflected in the Treaties, and therefore calls for a revision of the Treaties in order to reinforce the notion of sincere cooperation between the Member States and the Union as regards the objective of achieving an area of security and to prevent mutual espionage between Member States within the Union;

126. Considers tap-proof communication structures (email and telecommunications, including landlines and cell phones) and tap-proof meeting rooms within all relevant EU institutions and EU delegations to be absolutely necessary; therefore calls for the establishment of an encrypted internal EU email system;

127. Calls on the Council and Commission to consent without further delay to the proposal adopted by the European Parliament on 23 May 2012 for a regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry and repealing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission presented on the basis of Article 226 TFEU; calls for a revision of the Treaty in order to extend such inquiry powers to cover, without restrictions or exceptions, all fields of Union competence or activity and to include the possibility of questioning under oath;

Internationally

128. Calls on the Commission to present, by January 2015 at the latest, an EU strategy for democratic governance of the internet;

129. Calls on the Member States to follow the call of the 35th International Conference of Data Protection and Privacy Commissioners 'to advocate the adoption of an additional protocol to Article17 of the International Covenant on Civil and Political Rights (ICCPR), which should be based on the standards that have been developed and endorsed by the International Conference and the provisions in the Human Rights Committee General Comment No 16 to the Covenant in order to create globally applicable standards for data protection and the protection of privacy in accordance with the rule of law'; calls on the Member States to include in this exercise a call for an international UN agency to be in charge of, in particular, monitoring the emergence of surveillance tools and regulating and investigating their uses; asks the High Representative/Vice-President of the Commission and the European External Action Service to take a proactive stance;

130. Calls on the Member States to develop a coherent and strong strategy within the UN, supporting in particular the resolution on 'the right to privacy in the digital age' initiated by Brazil and Germany, as adopted by the Third Committee of the UN General Assembly Committee (Human Rights Committee) on 27 November 2013, as well as taking further action for the defence of the fundamental right to privacy and data protection at an international level while avoiding any facilitation of state control or censorship or the fragmentation of the internet, including an initiative for an international treaty prohibiting mass surveillance activities and an agency for its oversight;

Priority Plan: A European Digital Habeas Corpus — protecting fundamental rights in a digital age

131. Decides to submit to EU citizens, institutions and Member States the above-mentioned recommendations as a Priority Plan for the next legislature; calls on the Commission and the other EU institutions, bodies, offices and agencies referred to in this resolution, in accordance with Article 265 TFEU, to act upon the recommendations and calls as contained in this resolution;

132. Decides to launch 'A European Digital Habeas Corpus — protecting fundamental rights in a digital age' with the following 8 actions, the implementation of which it will oversee:

— Action 1: Adopt the Data Protection Package in 2014;

— Action 2: Conclude the EU-US Umbrella Agreement guaranteeing the fundamental right of citizens to privacy and data protection and ensuring proper redress mechanisms for EU citizens, including in the event of data transfers from the EU to the US for law enforcement purposes;

— Action 3: Suspend Safe Harbour until a full review has been conducted and current loopholes are remedied, making sure that transfers of personal data for commercial purposes from the Union to the US can only take place in compliance with the highest EU standards;

— Action 4: Suspend the TFTP agreement until: (i) the Umbrella Agreement negotiations have been concluded; (ii) a thorough investigation has been concluded on the basis of an EU analysis and all concerns raised by Parliament in its resolution of 23 October 2013 have been properly addressed;

— Action 5: Evaluate any agreement, mechanism or exchange with third countries involving personal data in order to ensure that the right to privacy and to the protection of personal data is not violated due to surveillance activities, and take necessary follow-up actions;

— Action 6: Protect the rule of law and the fundamental rights of EU citizens, (including from threats to the freedom of the press), the right of the public to receive impartial information and professional confidentiality (including lawyer-client relations), as well as ensuring enhanced protection for whistleblowers;

— Action 7: Develop a European strategy for greater IT independence (a 'digital new deal' including the allocation of adequate resources at national and EU level) in order to boost IT industry and allow European companies to exploit the EU privacy competitive advantage;

— Action 8: Develop the EU as a reference player for a democratic and neutral governance of the internet;

133. Calls on the EU institutions and the Member States to promote the 'European Digital Habeas Corpus' protecting fundamental rights in a digital age; undertakes to act as the EU citizens' rights advocate, with the following timetable to monitor implementation:

— April 2014-March 2015: a monitoring group based on the LIBE inquiry team responsible for monitoring any new revelations concerning the inquiry's mandate and scrutinising the implementation of this resolution;

— July 2014 onwards: a standing oversight mechanism for data transfers and judicial remedies within the competent committee;

— Spring 2014: a formal call on the European Council to include the 'European Digital Habeas Corpus — protecting fundamental rights in a digital age' in the guidelines to be adopted under Article 68 TFEU;

— Autumn 2014: a commitment that the 'European Digital Habeas Corpus — protecting fundamental rights in a digital age' and related recommendations will serve as key criteria for the approval of the next Commission;

— 2014: a conference bringing together high-level European experts in the various fields conducive to IT security (including mathematics, cryptography and privacy-enhancing technologies) to help foster an EU IT strategy for the next legislative term;

— 2014-2015: a Trust/Data/Citizens' Rights group to be convened on a regular basis between the European Parliament and the US Congress, as well as with other committed third-country parliaments, including that of Brazil;

— 2014-2015: a conference with the intelligence oversight bodies of European national parliaments;

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134. Instructs its President to forward this resolution to the European Council, the Council, the Commission, the parliaments and governments of the Member States, the national data protection authorities, the EDPS, eu-LISA, ENISA, the Fundamental Rights Agency, the Article 29 Working Party, the Council of Europe, the Congress of the United States of America, the US Administration, the President, Government and Parliament of the Federative Republic of Brazil, and the UN Secretary-General;

135. Instructs its Committee on Civil Liberties, Justice and Home Affairs to address Parliament in plenary on the matter a year after the adoption of this resolution; considers it essential to assess the extent to which the recommendations adopted by Parliament have been followed and to analyse any instances where such recommendations have not been followed.

Wednesday 12 March 2014

P7_TA(2014)0231

Evaluation of justice in relation to criminal justice and the rule of law

European Parliament resolution of 12 March 2014 on evaluation of justice in relation to criminal justice and the rule of law (2014/2006(INI))

(2017/C 378/15)

The European Parliament,

— having regard to the Treaty on European Union, in particular Articles 2, 6 and 7 thereof,

— having regard to the Treaty on the Functioning of the European Union, in particular Articles 70, 85, 258, 259 and 260 thereof,

— having regard to the Charter of Fundamental Rights of the European Union,

— having regard to Article 6 of the European Convention on Human Rights,

— having regard to the Commission communication of 27 March 2013 entitled 'The EU Justice Scoreboard — A tool to promote effective justice and growth' (COM(2013)0160),

— having regard to the letter of 6 March 2013 sent by the foreign affairs ministers of Germany, Denmark, Finland and the Netherlands to Commission President José Barroso calling for the establishment of a mechanism to foster compliance with fundamental values in the Member States,

— having regard to Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States,

— having regard to the Commission proposal on the establishment of the European Public Prosecutor's Office (COM(2013)0534), addressing the need to create an EU criminal justice area,

— having regard to the activities, annual reports and studies of the European Union Agency for Fundamental Rights,

— having regard to the activities and reports of the European Commission for Democracy through Law (the Venice Commission), notably its Report on the Rule of Law (CDL-AD(2011)003rev), its Report on the Independence of the Judicial System — Part I: The Independence of Judges (CDL-AD(2010)004), and its Report on European Standards as regards the Independence of the Judicial System — Part II: The Prosecution Service (CDL-AD(2010)040),

— having regard to the Memorandum of Understanding between the Council of Europe and the European Union,

— having regard to the Revised Statute of the European Commission for Democracy through Law,

— having regard to the Commission communication of 13 November 2013 entitled 'Annual Growth Survey 2014' (COM(2013)0800),

— having regard to the activities and reports of the European Commission for the Efficiency of Justice (CEPEJ), notably its latest evaluation report on European judicial systems (2012),

— having regard to its resolutions on the situation, standards and practices of fundamental rights in the European Union, as well as to all relevant resolutions in the area of the rule of law and justice, including those on corruption and on the European Arrest Warrant ([1]),

— having regard to Rule 48 of its Rules of Procedure,

([1]) Texts adopted, P7_TA(2012)0500, P7_TA(2013)0315, P7_TA(2011)0388, and P7_TA(2013)0444, P7_TA(2014)0173 and P7_TA(2014)0174.

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A7-0122/2014),

A. whereas in the area of criminal justice evaluation enhances mutual trust, and whereas mutual trust is key to the efficient implementation of mutual recognition tools; whereas under the Stockholm programme evaluation is listed as one of the main tools for integration in the area of freedom, security and justice;

B. whereas the Treaties provide the necessary basis for evaluating policies in the area of freedom, security and justice, as well as respect for fundamental Union values, including the rule of law; whereas the quality, independence and efficiency of judicial systems are also priorities mentioned in the framework of the European Semester, the new EU annual cycle of economic policy coordination;

C. whereas the Justice Scoreboard is currently dealt with in the context of the European economic semester, thus overemphasising the economic value of justice; whereas justice is a value in itself and should be accessible to all irrespective of economic interests;

D. whereas there is a need for cooperation among national authorities and a common understanding of the EU legislation in the field of criminal law;

E. whereas the 2013 Justice Scoreboard bears exclusively on civil, commercial and administrative justice, but should also include criminal justice, as the functioning and integrity of criminal justice also have important repercussions on fundamental rights, and furthermore are strongly linked to the rule of law;

F. whereas the annual report of the European Union Agency for Fundamental Rights for 2012, in its chapter on 'access to efficient and independent justice', expressed concerns over the situation regarding the rule of law, and in particular judicial independence, in certain Member States and, in this connection, over the fundamental right of access to justice, which has been seriously affected by the financial crisis;

G. whereas excessive duration of judicial proceedings remains the first reason for the European Court of Human Rights to condemn EU Member States;

H. whereas since its creation in 2002, the European Commission for the Effectiveness of Justice (CEPEJ) has developed first-hand expertise in the analysis of different national judicial systems and has provided an unprecedented knowledge base with real added value, helping the Member States to improve the evaluation and functioning of their judicial systems; whereas its evaluation scheme, which has now reached its fifth round, covers all areas of justice and includes different categories for analysis, such as demographic and economic data, fair trial, access to justice, the careers of judges, prosecutors and lawyers, etc.;

I. whereas the Venice Commission, in its most recent report on the rule of law, listed six elements on which there was consensus and which constitute the basic pillars of the rule of law: legality, including a transparent, accountable and democratic process for enacting law; legal certainty; the prohibition of arbitrariness; access to justice before independent and impartial courts, including the judicial review of administrative acts; respect for human rights; and non-discrimination and equality before the law;

J. whereas the work of the EU institutions should be based on close cooperation and interaction, and should draw on best practices and the expertise of other international bodies, including the specialised bodies of the Council of Europe, so as to avoid overlapping and duplication of activities and ensure an efficient use of resources;

K. whereas the Council of Europe and the European Union have reaffirmed their commitment to strengthening their cooperation in areas of common interest, in particular the promotion and protection of pluralistic democracy and respect for human rights and fundamental freedoms and the rule of law, to making full use of the specialised bodies such as the Venice Commission, and to developing appropriate forms of cooperation in response to new challenges;

L. whereas Parliament has repeatedly called for a strengthening of existing mechanisms to ensure that the values of the Union set out in Article 2 TEU are respected, protected and promoted, and for crisis situations in the Union and the Member States to be addressed in a rapid and efficient way; whereas a debate is under way within Parliament, the Council and the Commission on the creation of a 'new mechanism';

M. whereas the independence of the judiciary as well as that of judges and public prosecutors in Member States must be protected from any political interference;

N. whereas any decision on the matter should guarantee, as soon as possible, the proper application of Article 2 TEU and ensure that all decisions are taken on the basis of objective criteria and an objective evaluation, in order to address criticisms of double standards, differential treatment and political bias;

O. whereas the application of Union instruments in the field of criminal justice, including, in this connection, respect for fundamental rights, as well as the development of an area of criminal justice, are dependent on the effective functioning of national criminal justice systems;

P. whereas there is a need for a coherent and comprehensive administration of justice, as differences between Member States' criminal systems must not be exploited by criminals crossing borders;

Development of the Justice Scoreboard in criminal law matters

1. Welcomes the EU Justice Scoreboard drawn up by the Commission; regrets, however, that it only focuses on civil, commercial and administrative justice;

2. Emphasises that the establishment of a Justice Scoreboard in criminal matters will make a fundamental contribution to creating a common understanding of EU legislation in the field of criminal law among judges and prosecutors, thus strengthening mutual trust;

3. Calls on the Commission, therefore, to gradually expand the scoreboard's scope so that it becomes a separate and encompassing justice scoreboard which assesses, through the use of objective indicators, all areas of justice, including criminal justice and all justice-related horizontal issues, such as the independence, efficiency and integrity of the judiciary, the career of judges and the respect of procedural rights; calls on the Commission to involve all relevant actors and draw on their experience and lessons learnt, as well as the work already carried out by the bodies of the Council of Europe regarding the assessment of the rule of law and justice systems, and by the European Union Agency for Fundamental Rights;

Role of the national Parliaments and the European Parliament

4. Calls on the Commission and Council to ensure that the European Parliament and the national Parliaments are involved in the process as provided for by the Treaties and that they are regularly presented with the results of evaluations;

Member States' participation

5. Regrets the lack of available data on national justice systems, and therefore calls the Member States to cooperate fully with the EU and Council of Europe institutions and to collect and provide, on a regular basis, impartial, reliable, objective, and comparable data on their justice systems;

Rule of law and fundamental rights

6. Calls on the Commission to address Parliament's repeated request and propose:

— an effective mechanism for a regular assessment of Member States' compliance with the fundamental values of the EU, as set out in Article 2 TEU, providing a basis for an early warning tool; and

— a mechanism for crisis situations with appropriate forms of intervention, more effective infringement proceedings and the possibility of sanctions should systematic breaches of the principles of democracy and the rule of law occur and should the appropriate checks and balances fail to function in a Member State;

7. Reiterates that any such mechanism must be applied to all Member States on a transparent, uniform and equal footing, and must seek complementarity with the work of other international institutions, such as the Council of Europe and, in particular, its Venice Commission; calls for a role for the European Union Agency for Fundamental Rights in the assessment;

8. Calls for increased cooperation between the European Parliament and the Venice Commission; invites Parliament and the Council of Europe to develop an appropriate mechanism for submitting requests for opinion on subjects of particular concern to the Venice Commission and to ensure Parliament's participation as an observer in the work of the Venice Commission;

9. Deems it necessary to further strengthen cooperation between the competent committees of Parliament and the Parliamentary Assembly of the Council of Europe in compliance with Rule 199, in particular in the forms of regular and ad hoc meetings, as well as to appoint focal points on both sides; extends a standing invitation to Council of Europe representatives (relevant PACE Committees, Venice Commission, CEPEJ, Commissioner for Human Rights) to attend the relevant meetings of EP committees;

10. Calls for an update of the 2007 Agreement on the strengthening of cooperation between the Parliamentary Assembly of the Council of Europe and the European Parliament in order to best take into account the developments since the entry into force of the Lisbon Treaty; calls on the Conference of Presidents, on the basis of Rule 199 of Parliament's Rules of Procedure, to invite the PACE to open discussions with a view to the inclusion in this general framework of practical cooperation measures between the respective bodies;

11. Notes that the Memorandum of Understanding between the Council of Europe and the European Union must be also subject to regular evaluations;

12. Calls on the Council and the Member States to fully assume their responsibilities in relation to fundamental rights, as enshrined in the Charter and the relevant articles of the Treaties, in particular Articles 2, 6 and 7 TEU; believes that this is a precondition if the EU is to deal effectively with situations where the principles of democracy, the rule of law and fundamental rights are curbed by Member States;

13. Emphasises that the Commission is empowered to bring a Member State failing to fulfil an obligation under the Treaties before the Court of Justice of the European Union;

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14. Instructs its President to forward this resolution to the Council and the Commission.

Wednesday 12 March 2014

P7_TA(2014)0232

Preparing for a fully converged audiovisual world

European Parliament resolution of 12 March 2014 on Preparing for a Fully Converged Audiovisual World (2013/2180(INI))

(2017/C 378/16)

The European Parliament,

— having regard to Article 167 of the Treaty on the Functioning of the European Union,

— having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) ([1]),

— having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) ([2]),

— having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) ([3]) as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 ([4]),

— having regard to Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) ([5]),

— having regard to Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) ([6]), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 ([7]),

— having regard to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications devices and the mutual recognition of their conformity ([8]),

— having regard to the proposal from the Commission of 11 July 2012 for a directive on collective rights management and multi-territorial licensing of rights in musical works for online uses,

— having regard to Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (Copyright Directive) ([9]),

— having regard to its resolution of 4 July 2013 on 'Connected TV' ([10]),

— having regard to Rule 48 of its Rules of Procedure,

([1]) OJ L 95, 15.4.2010, p. 1.
([2]) OJ L 178, 17.7.2000, p. 1.
([3]) OJ L 108, 24.4.2002, p. 33.
([4]) OJ L 337, 18.12.2009, p. 37.
([5]) OJ L 108, 24.4.2002, p. 7.
([6]) OJ L 108, 24.4.2002, p. 21.
([7]) OJ L 337, 18.12.2009, p. 37.
([8]) OJ L 91, 7.4.1999, p. 10.
([9]) OJ L 167, 22.6.2001, p. 10.
([10]) Texts adopted, P7_TA(2013)0329.

— having regard to the report of the Committee on Culture and Education and the opinion of the Committee on Legal Affairs (A7-0057/2014),

A. whereas audiovisual convergence means the merging of audiovisual media services previously delivered largely separately, and interlocking along the value chain or the grouping of various audiovisual services;

B. whereas convergence means innovation, and whereas this requires new types of cooperation between companies and sectors so that users can access audiovisual content and electronic services everywhere, at all times, and with any device;

C. whereas horizontal (sector convergence), vertical (value chain convergence) and functional convergence (convergence of applications/services) all impact on the audiovisual industry;

D. whereas technical convergence means that media law and network policy issues are increasingly overlapping;

E. whereas access to and findability of audiovisual content are becoming key factors in a converging world; whereas policy should not stand in the way of a self-regulating content labelling system that meets minimum quality standards, and whereas net neutrality is becoming more and more urgent as regards cable and mobile connections;

F. whereas technical media convergence has now become a reality — particularly for broadcasting, the press and the internet — and whereas European policies concerning media, culture and networks need to adapt the regulatory framework to the new conditions and ensure that a uniform level of regulation can be established and enforced, including as regards new entrants to the market from the EU and third countries;

G. whereas, despite growing technical convergence, experience in relation to the use of linked devices and the expectations and profile of users is still limited;

H. whereas digitisation and technical convergence alone are of limited value to citizens, and whereas support for high levels of sustained investment in original European content remains a key priority in a converging media environment;

I. whereas growing convergence makes it necessary to develop a new understanding of the way in which audiovisual media, electronic services and applications interact;

J. whereas the term 'content gateway' describes any entity which acts as an intermediary between audiovisual content providers and end-users and which typically brings together, selects and organises a range of content providers and provides an interface through which users can discover and access that content; whereas such gateways can include TV platforms (like satellite, cable and IPTV), devices (like connected TVs and games consoles) or over-the-top services;

Convergent markets

1. Notes that the increasing trend towards horizontal concentration in the industry and vertical integration along the value chain can provide new business opportunities but may also create dominant market positions;

2. Stresses that regulation is required where content gateways control access to media and impact directly or indirectly on the shaping of opinion; calls on the Commission and the Member States, therefore, to monitor developments in this regard and to make full use of the possibilities offered by European competition and anti-trust law and, if necessary, introduce measures to safeguard diversity, and also to draw up a regulatory framework for convergence that is adapted to these developments;

3. Notes that market developments indicate that in the future companies will increasingly link network services to the provision of audiovisual content, and that the internet in its current form based on optimum access might as a result increasingly give way to a range of content geared to unilateral company interests;

4. Takes the view that all data packages in the field of electronic communication must as a matter of principle be treated equally, regardless of content, application, origin and destination (the best effort principle), and therefore calls for a free and open internet to be preserved and safeguarded, particularly as regards the development of special services;

5. Stresses the need to align the rights and obligations of broadcasters with those of other market players by means of a horizontal, cross-media legal framework;

Access and findability

6. Stresses that net neutrality, in line with a best-effort Internet and the non-discriminatory access to and transmission of all audiovisual content, guarantees a pluralist supply of information and a diversity of opinion and culture, and therefore represents a key element analogous to the 'must-carry' principle of the converged media landscape; calls on the Commission, therefore, to ensure, in a legally binding manner, compliance with the principles of internet neutrality, since this is vital where media convergence is concerned;

7. Calls for non-discriminatory, transparent and open access to the internet for all users and providers of audiovisual services, and opposes any restriction on the best effort principle through provider-specific platforms or services;

8. Reiterates that net neutrality rules do not remove the need to apply 'must-carry' rules for managed networks or specialised services such as cable TV and IPTV;

9. Calls for uniform standards for ensuring the interoperability of connected TVs to be developed by the industry in order not to stifle innovation;

10. Calls for the diversity of cultural and audiovisual work in a converged world to be accessible to and findable by all Europeans, in particular where the content on offer to users is prescribed by device manufacturers, network operators, content providers or other aggregators;

11. Believes that, in order to safeguard the diversity of products and opinions, searching for and finding audiovisual content should not be determined by economic interests, and that regulatory measures should only be taken if a platform provider exploits a dominant position in the market or gatekeeper function in order to favour or discriminate against particular content;

12. Calls on the Commission to check the extent to which operators of content gateways tend to abuse their position in order to prioritise their own content, and to develop measures to rule out any future abuse;

13. Calls on the Commission to define what a platform is and to establish, if necessary, regulation that also covers technical networks' transfer of audiovisual content;

14. Considers that open network platforms which do not occupy a dominant market position and do not hamper competition should be excluded from the regulation of platforms;

15. Believes that the creation of applications ('apps') should be encouraged given that it is a growing market; stresses, however, that 'appisation' can lead to market access problems for producers of audiovisual content; calls on the Commission to investigate where measures to secure the accessibility and findability of audiovisual media are needed and how they can be enforced, while recalling that regulatory measures should only be taken if a platform provider, by means of apps, exploits a dominant market position or gatekeeper function in order to favour or discriminate against particular content;

16. Believes that Member States should be able to take specific measures to provide a reasonable level of findability and visibility for audiovisual content of general interest, in order to guarantee diversity of opinion, while users should be able to sort the offers themselves in an uncomplicated manner;

Safeguarding diversity and funding models

17. Calls on the Commission, against the backdrop of media convergence, to determine how the refinancing, funding and production of quality European audiovisual content can be secured in a future-proof and balanced manner;

18. Calls on the Commission to examine the extent to which market distortions as regards quantitative and qualitative bans on advertising have arisen as a result of the unequal treatment of linear and non-linear services under Directive 2010/13/EU;

19. Emphasises that new advertising strategies that use new technologies to increase their effectiveness (screenshots, consumer profiling, multi-screen strategies) raise the issue of protecting consumers, their private lives and their personal data; with this in mind, emphasises that there is a need to come up with a set of consistent rules to apply to these strategies;

20. Calls on the Commission, by removing regulation in quantitative advertising provisions for linear audiovisual content, to ensure that the aims of Directive 2010/13/EU are accomplished more successfully by increasing flexibility and strengthening co- and self-regulation;

21. Considers that new business models under which unauthorised audiovisual content is marketed represent a threat to high-quality journalism, public service media and broadcasting funded by means of advertising;

22. Takes the view that linear and non-linear offers from broadcasters or other content providers must not be altered in terms of their content or technology, and that individual content or parts thereof must not be included in programme packages or otherwise used for payment or free of charge without the consent of the broadcaster or provider;

23. Considers that, in view of convergence, the accreditation procedure for electronic information and communication services funded by means of a licence fee — insofar as these are public service audiovisual offers — must be adapted to the digital reality of media competition;

24. Emphasises that, in order to retain its independence, the public sector must continue to be shielded from the constraints of advertising-based financing, and calls on Member States to support the sector's efforts in relation to financing;

Infrastructure and frequencies

25. Notes that widespread coverage of the most powerful broadband internet connections is a basic requirement for convergence and innovation in the media industry; stresses that such broadband networks need to be developed still further, particularly in rural areas, and calls on the Member States to rectify this problem by means of short-term investment campaigns;

26. Regrets there are still vast areas across Europe with limited internet infrastructure, and reminds the Commission that in order to unlock the potential of a converged audiovisual world, it is vital for consumers to have access to high-speed internet;

27. Urges industry actors, in anticipation of a more converged future, to work together on a voluntary basis in order to ensure that there is a common framework for media standards, so that a more consistent approach applies across different media, and also to ensure that consumers continue to understand what content has been regulated and to what extent;

28. Stresses that open and interoperable standards offer the guarantee of free and unimpeded access to audiovisual content;

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29. Notes that emerging self-regulation initiatives have a crucial role to play in establishing uniform standards for user technologies and for developers and producers;

30. Stresses that DVB-T/T2 offers excellent long-term opportunities for the joint use of the 700 MHz frequency band by broadcasting and mobile communications, in particular when using promising hybrid mobile devices and by integrating TV receiver chips in mobile devices;

31. Advocates the development of a technology mix that makes efficient use of both broadcast and broadband technologies and intelligently combines broadcasting and mobile communications ('smart broadcasting');

32. Considers it important to have a roadmap for digital terrestrial radio in order to provide investors from both the broadcasting and mobile telephony sectors with the certainty needed for long-term planning;

Values

33. Regrets the Green Paper's lack of a specific reference to the dual nature of audiovisual media as cultural and economic assets;

34. Reminds the Commission that the EU is committed to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;

35. Stresses that protecting media freedom, promoting media pluralism and cultural diversity and the protection of minors remain relevant values in an era of convergence;

36. Calls on the Commission, in the context of a possible revision of Directive 2010/13/EU, to continue its efforts to safeguard press freedom;

37. Calls on the Commission and the Member States to step up application of Article 13 of the AVMS Directive on promoting production of European works and access to those works through on-demand audiovisual media services;

38. Draws the Commission's attention to the fact that including audiovisual culture and media in international free trade agreements represents a contradiction of the EU's commitment to promote cultural diversity and identity and to respect Member States' sovereignty over their own cultural heritage;

39. Encourages Europe's audiovisual industry to continue to develop consistent, attractive services, especially on-line, so as to enrich the range of European audiovisual content on offer; stresses that content must remain the prime consideration; emphasises that having a large number of platforms is no guarantee of diversity of content;

40. Highlights that youth protection, consumer protection and data protection are absolute objectives of regulation and must apply uniformly to media and communications providers throughout the EU;

41. Calls on the Commission to step up its efforts to enforce youth and consumer protection provisions; calls for the same data protection requirements to apply to all media and communications service providers in the territory of the EU; stresses that consumers must be able to alter their privacy settings easily and at any time;

42. Stresses that global competition in converged markets makes it essential to draw up appropriate co- and self-regulation standards for youth and consumer protection at international level;

43. Calls on the Commission and the Member States to enhance and expand the existing range of activities aimed at imparting digital media skills, and to develop a methodology for the evaluation of media skills teaching;

Regulatory framework

44. Considers that European media and internet policy should aim to remove barriers to media innovation and, at the same time, not lose sight of the normative aspects of a democratic and culturally diverse media policy;

45. Stresses that similar content on the same device requires a uniform, flexible, user-friendly and accessible legal framework which is technology-neutral, transparent and enforceable;

46. Calls on the Commission to ensure that platforms are operated in a way which accords with market conditions, entailing fair competition;

47. Calls on the Commission to conduct an impact assessment so as to look into whether, in the light of developments in all audiovisual media services accessible to European citizens, the scope of the AVMS Directive is still relevant;

48. Calls on the Commission to examine to what extent the linearity criterion is preventing the regulatory objectives of Directive 2010/13/EU from being attained in many areas of the converged world;

49. Recommends deregulation for the areas of Directive 2010/13/EU in which the aims of the legislation are not being achieved; believes that, instead, European-level minimum requirements for all audiovisual media services should be put in place;

50. Stresses the importance of technology-neutral rights clearance systems in order to facilitate services of media service providers being made available on third-party platforms;

51. Stresses that the country of origin (or country of broadcasting) principle enshrined in the Audiovisual Media Services Directive is still a significant prerequisite for the provision of audiovisual content across borders and a milestone on the way to a common market in services; emphasises, however, the need to adapt EU law to the realities of the internet and the digital environment, and to pay special attention to companies offering audiovisual content on-line which try to evade taxation in certain Member States by basing themselves in countries with a very low tax rate;

52. Calls on the Commission to examine whether copyright law needs to be adapted to enable linear and non-linear content on the various platforms and their cross-border accessibility to be appropriately evaluated;

53. Calls on the Commission to enforce the principle of technology neutrality consistently and, where appropriate, to review European copyright law accordingly;

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54. Instructs its President to forward this resolution to the Council and the Commission.

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P7_TA(2014)0233

EU citizenship report 2013

European Parliament resolution of 12 March 2014 on the EU Citizenship Report 2013. EU citizens: your rights, your future (2013/2186(INI))

(2017/C 378/17)

The European Parliament,

— having regard to the Commission Report of 27 October 2010 entitled 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights' (COM(2010)0603),

— having regard to the results of the Commission's public consultation on EU citizenship, held from 9 May to 27 September 2012,

— having regard to its resolution of 29 March 2012 on the EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights ([1]),

— having regard to the hearing jointly organised by the Committee on Petitions, the Committee on Civil Liberties, Justice and Home Affairs and the European Commission on 19 February 2013, 'Making the most of EU citizenship', and the hearing of 24 September 2013, 'The impact of the crisis on Europe's citizens and the reinforcement of democratic involvement in the governance of the Union',

— having regard to the Commission Report of 8 May 2013 entitled 'EU Citizenship Report 2013 — EU citizens: your rights, your future' (COM(2013)0269),

— having regard to its previous resolutions on the deliberations of the Committee on Petitions,

— having regard to the right of petition enshrined in Article 227 of the Treaty on the Functioning of the European Union,

— having regard to Part Two of the Treaty on the Functioning of the European Union entitled 'Non-discrimination and citizenship of the Union' and Title V of the Charter of Fundamental Rights,

— having regard to Articles 9, 10 and 11 of the Treaty on European Union,

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Petitions and the opinion of the Committee on Culture and Education (A7-0107/2014),

A. whereas the Lisbon Treaty enhanced the concept of EU citizenship and its derived rights;

B. whereas the right to petition the European Parliament is one of the pillars of European citizenship, creating an interface between citizens and the European institutions, with the aim of bringing the EU closer to its citizens, and turning the EU into an increasingly meaningful and credible concept for them;

C. whereas the rights inherent to citizenship of the Union are incorporated in the treaties and in the Charter of Fundamental Rights of the European Union;

D. whereas all Member States have committed to respect the commonly agreed EU rules on the right of every citizen of the Union to move and reside freely within its territory, non-discrimination and the common values of the European Union, notably the respect for fundamental rights, with special attention to the rights of people belonging to minorities; whereas special attention should be paid to national citizenship and the rights of minorities deriving from it; whereas infringements by any Member State of fundamental rights concerning citizenship issues must be stamped out in order to avoid double standards and/or discrimination; whereas the Roma minority still faces widespread discrimination, and progress in the implementation of the National Strategies for Roma Inclusion is still limited;

([1]) OJ C 257 E, 6.9.2013, p. 74.

E. whereas free movement of people is one of the key elements of EU citizenship and can contribute to reducing the mismatch between jobs and skills in the internal market; whereas according to a Flash Eurobarometer from February 2013 more than two-thirds of respondents rightly agree that free movement of people within the EU brings overall benefits to the economy of their own country; whereas the Schengen criteria should be of a technical nature and should not be used to limit the access to the free movement of citizens;

F. whereas discrimination on grounds of nationality is still present in some EU countries;

G. whereas the issue of obtaining and forfeiting national citizenship has been raised in petitions, especially from the standpoint of its effects on European citizenship; whereas many petitioners, including many belonging to minorities in a Member State, have expressed their wish to see more coordinated citizenship laws in Europe;

H. whereas various complaints have been received with regard to the exercise of the right to vote in European and municipal elections, and also with regard to disenfranchisement in relation to national elections after a period of time spent abroad;

I. whereas public confidence in the European Union has fallen and European citizens are living through a difficult period caused by a severe economic and social crisis;

J. whereas the 2014 elections will be the first to be held after the entry into force of the Lisbon Treaty, which significantly widens the powers of the European Parliament; whereas the European elections represent an opportunity to strengthen public trust in the political system, create a European public sphere and strengthen the voice and the role of citizens, which is one of the most important preconditions for strengthening democracy in the Member States and the EU; whereas the democratic and transparent functioning of the European Parliament is one of the main assets in promoting European values and integration;

K. whereas the European Union, through its Treaties and the Charter of Fundamental Rights, champions a Europe of rights and democratic values, of freedom, solidarity and security, and guarantees EU citizens better protection;

L. whereas citizens are directly represented at Union level in the European Parliament and have a democratic right to stand and vote in the European elections, even when residing in a Member State other than their own; whereas the right of EU citizens resident in a Member State other than their own to vote in European and local elections is not sufficiently facilitated and promoted in all Member States;

M. whereas the European Union created a new right for European citizens to organise and support a European Citizens' Initiative by submitting their policy proposals to the European Institutions, and this has been used by millions of European citizens since 1 April 2012;

1. Welcomes the Commission's EU Citizenship Report 2013 (COM(2013)0269) announcing twelve new actions in six areas aimed at strengthening EU citizens' rights;

2. Welcomes the fact that a large majority of the 25 measures announced in the Commission's EU Citizenship Report 2010 have in the meantime been completed by the Commission and other EU institutions;

3. Stresses that citizens need to be able to make informed decisions about exercising their Treaty rights and should therefore have access to all the necessary information, focusing not only on abstract rights, but also on practical, readily accessible information about economic, social, administrative, legal and cultural issues; calls on national, regional and local authorities to promote a better understanding of EU citizenship and to explain its practical benefits for individuals;

4. Welcomes the Commission's initiatives aimed at improving citizens' awareness of their rights through Europe Direct and Your Europe and urges Member States to step up their efforts to spread knowledge of the SOLVIT network to citizens and companies; proposes, in this respect, that more information on European citizenship be provided on the occasion of the celebration of Europe Day on 9 May;

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5. Urges the Commission to ensure that its public consultations are available in all official EU languages so that no discrimination occurs on the basis of language; points to the Parliament's, and in particular to the Committee on Petitions', activities on social media platforms as an excellent way of creating interaction and dialogue with citizens;

6. Encourages Member States to give more space to political education on EU affairs in their school curricula, to adapt teachers' training accordingly and, in this respect, to provide the necessary know-how and resources; emphasises that accessible education plays a vital role in the formation of future citizens by enabling them to acquire a solid basis of general knowledge, promoting individual empowerment, solidarity and mutual understanding and strengthening social cohesion; notes in this respect that education is essential as a means of enabling individuals to participate fully in democratic, social and cultural life and therefore considers that substantial cuts should not be made in the funds allocated to education;

7. Believes that it is particularly important to encourage recognition of volunteers' commitment, to validate the skills and expertise acquired in this way and to remove obstacles relating to free movement;

8. Underlines the importance of the organised civil society in strengthening an active European citizenship; considers it crucial therefore to further facilitate the cross-border work of these organisations in reducing bureaucratic burdens and providing adequate funding; reiterates its call ([1]) for the establishment of the European Association Statute, as this may facilitate the construction of projects between citizens of different EU Member States within a transnational organisation; highlights the need to create a structured framework for European civil dialogue which would give practical substance to participatory citizenship;

9. Regrets the existing opt-outs from parts of the EU treaties by some Member States which undermine, and generate de facto differences in, the rights of citizens that are intended to be equal under the EU Treaties;

10. Stresses the vital role played by the Member States in correctly implementing European legislation; believes that progress still remains to be made and that enhanced cooperation between the EU institutions and local and national authorities is needed; considers that increased cooperation would be an effective means of informally resolving problems, in particular impediments of an administrative nature; in this respect, applauds the Commission's intention of supporting, from 2013 and via its town twinning scheme in the Europe for Citizens programme, exchanges of best practice between municipalities and projects aimed at enhancing knowledge about, and correct implementation of, citizens' rights; believes that a practical toolkit on EU citizens' rights tailored to local and regional authorities would further improve correct implementation;

11. Regrets that the options for redress open to parents and children in the event of separation or divorce are not the same in each Member State, with the result that hundreds of parents in Europe have contacted the Committee on Petitions to urge it to be more active in this area despite its only having very limited competence;

12. Expects that the new petitions web portal, which will be available at the beginning of 2014, will turn the petitioning process into an appealing, transparent and user-friendly instrument, also for people with disabilities; calls on the Commission and the other institutions to properly acknowledge the petitioning process on their websites;

13. Welcomes the fact that, by November 2013, three very different European citizens' initiatives (ECIs) had met the required threshold; welcomes the planned hearings with the organisers of successful ECIs before the European elections; calls on Member States to promote the right to organise and support ECIs and to implement Regulation (EU) No 211/2011 on the European Citizens' Initiative in an inclusive way, by ensuring that they are ready to validate signatures both of their own citizens residing abroad and of citizens from other Member States residing on their territory;

([1]) Declaration of the European Parliament of 10 March 2011 on establishing European statutes for mutual societies, associations and foundations (OJ C 199 E, 7.7.2012, p. 187).

14. Calls on all those Member States which do not as yet have a national ombudsman, at present Italy and Germany, to meet the expectations of all EU citizens by appointing one;

15. Calls on the Commission to regularly monitor the way in which the administrative formalities related to entry and residence of EU citizens and their relatives are processed in the Member States; calls on the Commission to play an active role in ensuring that procedures implemented by Member States fully comply with the values and human rights recognised in the EU Treaties; emphasises that one of the main pillars of the Single Market is labour mobility; highlights the very positive benefits of the EU migrant workforce to the economy of the Member States; calls in this respect on the Commission to closely monitor the situation and take appropriate measures to remove potential obstacles, such as excessive bureaucracy, imposed at the national level in the way of this fundamental freedom;

16. Acknowledges that, according to the settled case law of the European Court of Justice ([1]), the conditions for obtaining and forfeiting citizenship of the Member States are regulated exclusively under the national law of the individual Member States; calls, however, for closer coordination and a more structured exchange of best practices between Member States with respect to their citizenship laws in order to ensure fundamental rights and particularly legal certainty for citizens; calls for comprehensive common guidelines clarifying the relation between national and European citizenship;

17. Calls on those Member States that disenfranchise their own nationals who choose to live in another Member State for an extended period of time to put an end to this practice and revise their legislation accordingly to provide full citizenship rights during the whole process; recommends that the Member States take all steps to effectively help and assist citizens who wish to vote or stand as candidates in states other than their own; stresses the need for EU citizens to exercise their right to vote in the national elections of their country of origin from the Member State in which they reside;

18. Calls on the Member States to protect and enhance the meaning of EU citizenship by discouraging any forms of discrimination on grounds of nationality; deplores any populist rhetoric that aims to create discriminatory practices based only on grounds of nationality;

19. Calls on European political parties and their national affiliates to organise transparent electoral campaigns ahead of the 2014 European elections and to effectively tackle the problems of falling voter participation rates and the widening gap between citizens and the EU institutions; considers the nomination of Europe-wide candidates for the post of Commission President by European political parties as an important step towards building a genuine European public space, and is convinced that the prospect of a Europeanisation of the electoral campaign can be better achieved through pan-European activities and networks of local and national media, especially public media in the fields of radio, TV and the internet;

20. Stresses the importance of informing citizens that they are entitled to vote in municipal and European elections if they live outside their home country and of promoting this right by different means; urges the Commission not to wait until May 2014 to launch its handbook presenting those EU rights 'in clear and simple language';

21. Calls on all Union institutions, bodies, offices and agencies to further improve transparency and make access to documents easy and user-friendly, as this enables citizens to participate more closely in the decision-making process; calls on the Union's institutions, and particularly the European Commission, to improve the efficiency of their procedures so that legitimate requests by EU citizens are met as quickly as possible; calls on all Union institutions, and particularly Parliament, to ensure transparency and accountability in equal measure;

22. Welcomes the recent adoption of the two main EU programmes to fund activities in the field of EU citizenship from 2014 to 2020: the 'Rights and Citizenship' and the 'Europe for Citizens' programmes; considers it highly regrettable that the financial envelope for the latter especially, which supports projects on active European citizenship, has been drastically cut by Member States' governments as compared to the 2007-2013 period;

([1]) Most recently in its judgment of 2 March 2010, C-135/08, Rottmann.

23. Expresses its serious concern about petitions revealing the delicate situation of certain residents who, due to their status, cannot entirely benefit from their rights to free movement or from full voting rights in local elections; calls on the European Commission and Member States concerned to facilitate the regularisation of their status in such cases;

24. Is deeply concerned about the obstacles citizens still face when exercising their individual rights in the internal market and believes that the current economic insecurity in Europe also needs to be tackled by removing these obstacles; welcomes therefore the new initiatives announced by the Commission to strengthen citizens in their role as consumers and workers across Europe;

25. Highlights the importance of improving the exchange of information about traineeship and apprenticeship opportunities in other EU countries through the EURES network; is alarmed at the unemployment rate, notably as this affects young people; welcomes the Commission's proposal for a Council Recommendation on a Quality Framework for Traineeships ([1]) and calls on Member States to respect the principles set out in the guidelines;

26. Calls on the Member States to better inform EU citizens as to their rights and duties and to facilitate entitlement to these rights being respected equally both in their country of origin and in any other Member State;

27. Draws attention to the grievances of some petitioners, mostly expatriate EU citizens, who reported having encountered problems in relation to the acquisition, transfer and ownership of immovable property in various countries;

28. Acknowledges the problems faced by people with disabilities who exercise their right to free movement and calls for the introduction of an EU disability card, valid throughout Europe, for disabled persons;

29. Calls on the Member States to put in place coordination and cooperation measures in order to efficiently tackle the issues of double car registration taxes, tax discrimination and double taxation in a cross-border context and to take better account of the realities of cross-border worker mobility; considers that double taxation issues are insufficiently addressed through existing bilateral tax conventions or unilateral action by a Member State and would need concerted, timely action at the Union level;

30. Regrets the existence of cross-border hurdles in civil or social matters, such as family law or pensions, that prevent many citizens from enjoying full EU citizenship;

31. Recalls that EU citizens in the territory of a third country in which the Member State of which they are nationals is not represented are entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State, and emphasises the importance of such a provision as a point of principle;

32. Calls on Member States to set up as quickly as possible in each Member State a one-stop-shop to coordinate projects with a cross-border impact, for instance those with a social impact such as emergency services, with particular reference to projects that have an environmental impact, such as wind farms, where on occasion no consultation is held with residents on both sides of the border and no impact study is conducted;

33. Calls on the Commission to conduct a thorough assessment of the benefits and challenges of the European Year of Citizens 2013 (EYC); regrets that, due to underfunding and lack of political ambition, the EYC had a poor media profile and failed to generate a broad, publicly visible debate on European citizenship which could have contributed to improved or newly defined instruments;

34. Calls on the Commission to bring forward proposals for recognising the contribution voluntary work makes to citizenship;

35. Calls on the Commission to publish and distribute an explanation of citizens' rights before and after the Lisbon Treaty so as to restore citizens' trust;

36. Instructs its President to forward this resolution to the Council, the Commission, the European Ombudsman and to the governments and parliaments of the Member States.

([1]) COM(2013)0857.

P7_TA(2014)0234

European Public Prosecutor's Office

European Parliament resolution of 12 March 2014 on the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office (COM(2013)0534 — 2013/0255(APP))

(2017/C 378/18)

The European Parliament,

— having regard to the proposal for a Council regulation (COM(2013)0534),

— having regard to the proposal for a regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) (COM(2013)0535),

— having regard to the proposal for a directive on the fight against fraud to the Union's financial interests by means of criminal law (COM(2012)0363),

— having regard to the Council resolution of 30 November 2009 on a roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings,

— having regard to its resolution of 23 October 2013 on organised crime, corruption, and money laundering: recommendations on action and initiatives to be taken ([1]),

— having regard to other instruments in the area of criminal justice which have been adopted in codecision by the European Parliament together with the Council, such as Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, the Directive regarding the European Investigation Order in criminal matters, etc,

— having regard to the European Convention on Human Rights,

— having regard to Articles 2, 6 and 7 of the Treaty on European Union and the Charter of Fundamental Rights of the European Union,

— having regard to the Treaty on the Functioning of the European Union, in particular its Articles 86, 218, 263, 265, 267, 268 and 340,

— having regard to the opinion of the European Union Agency for Fundamental Rights,

— having regard to the opinion of the European Social and Economic Committee of 11 December 2013,

— having regard to the opinion of the Committee of the Regions of 30 January 2014,

— having regard to Rule 81(3) of its Rules of Procedure,

— having regard to the interim report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Budgetary Control, the Committee on Budgets and the Committee on Legal Affairs (A7-0141/2014),

A. whereas the main objectives of establishing the European Public Prosecutor's Office are to contribute to the strengthening of the protection of the Union's financial interests, to enhance the trust of EU businesses and citizens in the Union's institutions, and to ensure a more efficient and effective investigation and prosecution of offences affecting the EU's financial interests, while fully respecting the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union;

([1]) Texts adopted, P7_TA(2013)0444.

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B. whereas the EU has set itself the task of developing an Area of Freedom, Security and Justice, and whereas, pursuant to Article 6 of the Treaty on European Union, it respects human rights and fundamental freedoms; whereas crime is increasingly taking on a cross-border dimension, and in the case of crimes against the Union's financial interest, which generate significant financial damage every year, the EU must provide an effective response, giving added value to the joint efforts of all the Member States, as the protection of the EU budget against fraud can be better achieved at EU level;

C. whereas the principle of zero tolerance where the EU budget is concerned should be applied in order to address fraud against the financial interests of the European Union in a coherent and efficient manner;

D. whereas the Member States have primary responsibility for implementing some 80 % of the Union budget, and for the collection of own resources as established in Council Decision 2007/436/EC, Euratom ([1]), which is shortly to be replaced by a Council decision on the amended Commission proposal for a Council decision on the system of own resources of the European Union (COM(2011)0739);

E. whereas it is equally important to ensure that the Union's financial interests are protected both at the level of collection of the EU's resources and at the level of expenditure;

F. whereas 10 % of enquiries conducted by OLAF concern cases of cross-border organised crime, but those cases account for 40 % of the overall financial impact on the financial interests of the European Union;

G. whereas the establishment of a European Public Prosecutor's Office (EPPO) is the only act under the criminal justice system for which the ordinary legislative procedure would not be applicable;

H. whereas the proposal for a regulation on the establishment of the European Public Prosecutor's Office is intrinsically linked to the proposal for a directive on the fight against fraud to the Union's financial interests by means of criminal law and to the proposal for a regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust), which are subject to the ordinary legislative procedure;

I. whereas respect for the rule of law must be a guiding principle for all European legislation, especially in matters relating to justice and the protection of fundamental human rights;

J. whereas 14 national parliamentary chambers from 11 Member States have triggered the 'yellow card' in relation to the Commission proposal and whereas on 27 November 2013 the Commission decided to maintain the proposal, while nevertheless stating that it would take due account of the reasoned opinions of the national parliamentary chambers during the legislative process;

K. whereas Article 86(1) TFEU requires unanimity within the Council in order to establish an European Public Prosecutor's Office; whereas it seems very unlikely that this unanimity will be reached and it therefore seems more likely that some Member States will establish a European Public Prosecutor's Office by means of enhanced cooperation, which would require the Commission to present a new proposal;

1. Considers the objective of the Commission proposal to represent a further step towards the establishment of a European area of criminal justice and the strengthening of the tools for fighting fraud against the Union's financial interests, thus increasing the taxpayers' confidence in the EU;

2. Considers that the establishment of a European Public Prosecutor's Office could give a particular added value to the Area of Freedom, Security and Justice, assuming that all Member States participate, since the financial interests of the Union and thus the interests of the European taxpayers must be protected in all Member States;

3. Calls on the Council to extensively involve Parliament in its legislative work through a constant flow of information and ongoing consultation of Parliament, so as to achieve an outcome which is in line with the changes to the Treaty on the Functioning of the European Union following the Lisbon process and which is essentially welcomed by both parties;

([1]) OJ L 163, 23.6.2007, p. 17.

4. Calls on the European legislator, considering that the consistency of overall EU action in the field of justice is vital for its effectiveness, to deal with this proposal in the light of others that are closely linked to it, such as the proposal for a directive on the fight against fraud to the Union's financial interests by means of criminal law, the proposal for a regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) and other relevant instruments in the field of criminal justice and procedural rights, in order to be able to ensure that it is fully compatible with all the above and is consistently implemented;

5. Emphasises that the powers and practice of the European Public Prosecutor's Office must respect the body of fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights, and the constitutional traditions of the Member States; therefore calls on the Council to take due account of the following recommendations:

(i) the European Public Prosecutor's Office should operate in strict observance of the right to a fair trial and thus comply with the principle of the natural court, which requires that the criteria determining which competent court is to exert jurisdiction are clearly established in advance; as the current formulation of Article 27(4) grants the European Public Prosecutor's Office excessive discretion in applying the various jurisdiction criteria, those criteria should be rendered binding and a hierarchy should be created between them in order to ensure foreseeability; in this regard, the rights of the suspect should be taken into account; furthermore, the determination of competence in accordance with those criteria should be subject to judicial review;

(ii) the European Public Prosecutor's Office should be given full independence both from national governments and from EU institutions and should be protected from any political pressure;

(iii) the scope of the competence of the EPPO should be precisely determined, to enable the criminal acts that fall within that scope to be identified beforehand; Parliament calls for the definitions set out in Article 13 of the Commission proposal, concerning ancillary competence, to be carefully reviewed as in its current drafting they exceed the limits of the scope of Article 86(1) to (3) TFEU; this should be done in such a way as to ensure that the powers of the European Public Prosecutor's Office extend to offences other than those affecting the Union's financial interests only where cumulatively:

(a) the particular conduct simultaneously constitutes an offence affecting the Union's financial interests and other offences; and

(b) the offences affecting the Union's financial interests are predominant and the other are merely ancillary; and

(c) the other offences would be barred from further trying and punishment if they were not prosecuted and brought to judgment together with the offences affecting the Union's financial interests;

In addition, the determination of competence in accordance with those criteria should be subject to judicial review;

(iv) taking into account the fact that the Directive provided for in Article 12 of the proposal setting out the offences for which the European Public Prosecutor will be competent has not yet been adopted, the text of the proposal should specify that the European Public Prosecutor cannot prosecute offences which are not yet set out in the relevant Member States' law at the time of the offence; in addition, the EPPO should not exercise its competence with regard to offences committed before it becomes fully operative; in this regard, Article 71 of the proposal should be amended accordingly;

(v) the investigative tools and investigation measures available to the EPPO should be uniform, precisely identified and compatible with the legal systems of the Member States where they are implemented; in addition, the criteria for the use of investigative measures should be spelled out in more detail in order to ensure that 'forum shopping' is excluded;

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(vi) the admissibility of evidence and its assessment in accordance with Article 30 are key elements in the criminal investigation; the relevant rules must therefore be clear and uniform throughout the area covered by the European Public Prosecutor's Office, and should fully comply with procedural safeguards; to ensure such compliance, the conditions for admissibility of evidence should be such as to respect all rights guaranteed by the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights, and the European Court of Human Rights case law;

(vii) the right to an effective judicial remedy should be upheld at all times in respect of the European Public Prosecutor's activity throughout the Union; therefore, decisions taken by the European Public Prosecutor should be subject to judicial review before the competent court; in this regard, decisions taken by the European Public Prosecutor before or independently from the trial, such as those described in Articles 27, 28 and 29 concerning competence, dismissal of cases or transactions, should be subject to the remedies available before the Union Courts.

Article 36 of the proposal should be redrafted to avoid the circumvention of the Treaty provisions on the jurisdiction of the Union's courts and a disproportionate limitation to the right to an effective judicial remedy under Article 47(1) of the Charter of Fundamental Rights;

(viii) the provisions of Article 28 of the proposal should clearly state that after the dismissal by the European Public Prosecutor of a case relating to minor offences, the national prosecution authorities are not prevented from further investigating and prosecuting the case should they be allowed to under their national laws; and that where a lack of relevant evidence cannot be foreseeably be remedied by further proportionate investigative steps dismissal is mandatory; in addition, the existence of mandatory dismissal grounds should be checked for as soon as possible in the course of the investigation, and dismissal should follow without undue delay upon the finding that one of the mandatory grounds applies;

(ix) arbitrary administration of justice has to be avoided under all circumstances; thus, the condition of 'proper administration of justice' as a ground for transaction as set out in Article 29(1) of the proposal should be replaced by more specific criteria; transaction should in particular be excluded as of the time of the indictment, and in any event in cases which can be dismissed under Article 28 of the proposal as well as in serious cases;

(x) as the European Public Prosecutor's powers require not just judicial review by the Court of Justice, but also oversight by the European Parliament and national parliaments, relevant provisions need to be included in particular to ensure effective and coherent practices among Member States and compatibility with the rule of law;

6. Calls on the Council, furthermore, stressing the need for the utmost respect for fundamental principles such as that of a fair trial, to which defence safeguards in criminal trials are directly connected, to take account of the following recommendations and act accordingly:

(i) all the activities of the European Public Prosecutor's Office should ensure a high protection of the rights of defence, particularly considering that the Union could become an area in which the European Public Prosecutor's Office could act, at operating speed, without having to resort to instruments of mutual legal assistance; in this regard, the respect of EU minimum standards in the field of the rights of individuals in criminal procedure in all Member States is a key element for the adequate functioning of the EPPO.

It should be noted in this respect that the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, adopted by the Council on 30 November 2009, has not yet been completed and that the proposal merely refers to the national legal systems for all issues relating to the right to remain silent, the presumption of innocence, the right to legal aid and to investigations for the defence; therefore, to respect the principle of equality of arms, the law applicable to the suspects or accused persons involved in the proceedings of the European Public Prosecutor's Office should also apply to the procedural safeguards against the latter's investigative or prosecutorial acts, without prejudice to any additional or higher standards of procedural safeguards granted by Union law;

(ii) after expiry of the relevant transposition period, non-transposition or wrong transposition into national law of one of the procedural rights acts of Union law should never be interpreted against an individual subject to investigation or prosecution, and their application will always be in accordance with the case law of the Court of Justice and the European Court of Human Rights;

(iii) compliance with the *ne bis in idem* principle should be ensured;

(iv) The prosecution should comply with Article 6 of the Treaty on the European Union, Article 16 of the Treaty on the Functioning of the European Union, the Charter of Fundamental Rights of the European Union and the applicable EU legislation on the protection of personal data; particular attention should be paid to the rights of the data subject where personal data are transferred to third countries or international organisations;

7. Calls on the Council to take into account the following recommendations, to ensure that the structure of the European Public Prosecutor's Office is versatile, streamlined and efficient and is able to achieve maximum results:

(i) in order to ensure a successful and fair outcome for investigations and their coordination, those who are required to conduct them should have in-depth knowledge of the legal systems of the countries concerned; to that end, the organisational model of the EPPO should ensure at central level the appropriate skills, experience and knowledge of the legal systems of the Member States;

(ii) to ensure that decisions are taken promptly and efficiently, the decision-making process should be able to be expanded by the EPPO, with the assistance of national Delegated Prosecutors responsible for specific cases;

(iii) to ensure that the EPPO is able to guarantee high standards of independence, efficiency, experience and professionalism, its staff should be as highly qualified as possible and should ensure that the objectives set out in this resolution are achieved; in particular, the staff members in question may come from the judiciary, from the legal profession or from other sectors in which they have acquired the aforementioned experience and professionalism, as well as appropriate knowledge of the legal systems of the Member States; in this regard, the Commission's statements in paragraph 4 of the proposal's Explanatory Memorandum in relation to overall costs should match actual requirements relating to the efficiency and functionality of the EPPO;

(iv) a control mechanism should be established and should report annually on the EPPO's activities;

8. Takes note of the idea of basing the European Public Prosecutor's Office on existing structures, a solution expected by the Commission to entail no substantial new costs for the Union or its Member States, as the Office's administrative services are to be handled by Eurojust and its human resources will come from existing entities such as OLAF;

9. Expresses doubts about the cost-efficiency argument put forward in the proposal, as the European Public Prosecutor's Office needs to set up specialist departments, one for each Member State, which will have to have profound knowledge of the national legal framework in order to carry out effective investigations and prosecutions; calls for an analysis to be carried out in order to assess the costs to the EU budget of setting up the EPPO and any spillover into the Member States' budgets; calls for such an analysis to be carried out in order to assess the benefits as well;

10. Is worried that the proposal is based on an assumption that the administrative services provided by Eurojust will have no financial or staff impact on this decentralised agency; considers, therefore, that the financial statement is misleading; draws attention, in this connection, to its request that the Commission present an updated financial statement taking account of potential amendments by the legislator before the conclusion of the legislative process;

11. Recommends that, in accordance with the provisions laid down in Article 86(1) TFEU, whereby the Council may establish an EPPO 'from Eurojust', the Commission should envisage a mere transfer of financial resources from OLAF to the EPPO and that the EPPO should take advantage of the expertise and added value provided by Eurojust's staff members;

12. Stresses that no clear indication has been given as to whether the European Public Prosecutor's Office, as a newly set-up body, is subject to the staff reductions planned for all Union institutions and bodies; makes it clear that it would not support such an approach;

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13. Calls on the Council to clarify the competence of each existing body in charge of protecting the Union's financial interests; points out that it is of the utmost importance that the relationship between the EPPO and other existing bodies, such as Eurojust and OLAF, be further defined and clearly demarcated; stresses that the EPPO should take advantage of OLAF's long-term expertise in conducting investigations, at both national and Union level, in areas pertaining to the protection of the Union's financial interests, including corruption; stresses, in particular, that the Council should clarify the complementarity of OLAF and EPPO action when it comes to 'internal' and 'external' investigations; emphasises that the Commission's current proposal clarifies neither its relationship with the EPPO nor how internal investigations within the EU institutions are to be performed;

14. Considers that further analysis of the concurrent functioning of OLAF, Eurojust and the EPPO should be carried out in order to limit the risk of conflicting competences; invites the Council to clarify the respective competences of these bodies, to identify both potential shared competences and inefficiencies, and to suggest remedies where appropriate;

15. Requires, given that several Member States will probably opt out of the EPPO proposal, an analysis to clarify which OLAF units and which members of its staff, are to be transferred to the EPPO, and which are to remain with OLAF; requires that OLAF retain the necessary resources to carry out any anti-fraud activity that does not fall within the EPPO's mandate;

16. Points out that OLAF will remain competent for those Member States which do not participate in the EPPO, and that they should be afforded an equivalent level of procedural safeguards;

17. Calls on the Commission, therefore, to include, among the changes to the OLAF Regulation resulting from the establishment of the EPPO, sufficient procedural safeguards, including the possibility of a judicial review of investigative measures taken by OLAF;

18. Considers that the obligations imposed on national authorities to inform the EPPO of any conduct which might constitute an offence within its competence should be aligned with, and not exceed, those in place at Member State level, and should respect the independence of those authorities;

19. Calls for the creation of a special set of rules at Union level to ensure harmonised protection for whistleblowers;

20. Calls on the Council to improve further the efficiency and effectiveness of the respective courts of justice in the Member States, which are indispensable for the success of the EPPO project;

21. Welcomes the idea of embedding the EPPO in existing decentralised structures through the participation of national delegated prosecutors as 'special advisers'; is aware of the need to elaborate further on the delegated prosecutors' independence vis-à-vis the national judiciary, and on transparent procedures for selecting them in order to avoid any suggestion of favouritism on the part of the EPPO;

22. Considers that appropriate training in EU criminal law for European Delegated Prosecutors and their staff should be provided in a uniform and effective way;

23. Reminds the Council and Commission that it is of the utmost importance that the European Parliament, co-legislator in substantive and procedural criminal matters, remains closely involved in the process of establishment of the European Public Prosecutor's Office and that its position is duly taken into account at all stages of the procedure; to that end, intends to maintain frequent contacts with the Commission and Council with a view to successful collaboration; is fully aware of the complexity of the task and of the need for a reasonable timeframe within which to fulfil it, and undertakes to express its views, where necessary in further interim reports, on future developments regarding the EPPO;

24. Calls on the Council to take the time necessary for a thorough evaluation of the Commission proposal, and not to finalise its negotiations in a rush; stresses that a premature transition to the enhanced cooperation procedure should be avoided;

25. Instructs its President to call for continued scrutiny of the proposal with the Council;

26. Points out to the Council that the political guidelines stated above are supplemented by the technical annex to this Resolution;

27. Instructs its President to forward this resolution to the Council and the Commission.

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ANNEX TO THE RESOLUTION

Recital 22

Modification 1

Proposal for a Regulation	*Amendment*
(22) Offences against the Union's financial interests are often closely connected to other offences. ***In the interest of procedural efficiency and*** to avoid a possible breach of the principle *ne bis in idem*, the competence of European Public Prosecutor's Office should also cover offences which are not technically defined under national law as offences affecting the Union's financial interests where their constituent facts are identical and ***inextricably*** linked with those of the offences affecting the financial interests of the Union. In such mixed cases, where the offence affecting the Union's financial interests is ***preponderant***, the competence of the European Public Prosecutor's Office should be exercised after consultation with the competent authorities of the Member State concerned. ***Preponderance*** should be established on the basis of criteria such as the offences' financial impact for the Union, for national budgets, the number of victims or other circumstances related to the offences' gravity, or the applicable penalties.	(22) Offences against the Union's financial interests are often closely connected to other offences. To avoid a possible breach of the principle *ne bis in idem*, the competence of European Public Prosecutor's Office should also cover offences which are not technically defined under national law as offences affecting the Union's financial interests where their constituent facts are identical and linked with those of the offences affecting the financial interests of the Union. In such mixed cases, where the offence affecting the Union's financial interests is ***predominant***, the competence of the European Public Prosecutor's Office should be exercised after consultation with the competent authorities of the Member State concerned. ***Predominance*** should be established on the basis of criteria such as the offences' financial impact for the Union, for national budgets, the number of victims or other circumstances related to the offences' gravity, or the applicable penalties.

Recital 46

Modification 3

Proposal for a Regulation	*Amendment*
(46) The general rules of transparency applicable to Union agencies should also apply to the European Public Prosecutor's Office ***but only with regard to its administrative tasks so as not to jeopardise in any manner the requirement of confidentiality in its operational work. In the same manne***r, administrative inquiries conducted by the European Ombudsman should respect the requirement of confidentiality of the European Public Prosecutor's Office.	(46) The general rules of transparency applicable to Union agencies should also apply to the European Public Prosecutor's Office; administrative inquiries conducted by the European Ombudsman should respect the requirement of confidentiality of the European Public Prosecutor's Office.

Article 13

Modification 2

Proposal for a Regulation	*Amendment*
1. Where the offences referred to in Article 12 are ***inextricably*** linked with criminal offences other than those referred to in Article 12 ***and their joint investigation and prosecution are in the interest of a good administration of justice*** the European Public Prosecutor's Office shall also be competent for those other criminal offences, ***under the conditions*** that the offences referred to in Article 12 are ***preponderant*** and the other criminal offences are ***based on identical facts.***	1. Where the offences referred to in Article 12 are linked with criminal offences other than those referred to in Article 12 the European Public Prosecutor's Office shall also be competent for those other criminal offences ***provided*** that ***he following cumulative conditions are met:***
	— one particular set of facts simultaneously constitutes both offences affecting the Union's financial interests and other offence(s); and
	— the offence(s) affecting the Union's financial interest is/are predominant and the other(s) is/are merely ancillary; and
	— the further prosecution and punishment of the other offence(s) would no longer be possible if they were not prosecuted and brought to judgment together with the offence(s) affecting the Union's financial interests.
If those conditions are not met, the Member State that is competent for the other offences shall also be competent for the offences referred to in Article 12.	If those conditions are not met, the Member State that is competent for the other offences shall also be competent for the offences referred to in Article 12.
2. The European Public Prosecutor's Office and the national prosecution authorities shall consult each other in order to determine which authority has competence pursuant to paragraph 1. Where appropriate to facilitate the determination of such competence Eurojust may be associated in accordance with Article 57.	2. The European Public Prosecutor's Office and the national prosecution authorities shall consult each other in order to determine which authority has competence pursuant to paragraph 1. Where appropriate to facilitate the determination of such competence Eurojust may be associated in accordance with Article 57.
3. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over competence pursuant to in paragraph 1, the national judicial authority competent to decide on the attribution of competences concerning prosecution at national level shall decide on ancillary competence.	3. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over competence pursuant to in paragraph 1, the national judicial authority competent to decide on the attribution of competences concerning prosecution at national level shall decide on ancillary competence.
4. The determination of competence pursuant to this Article shall not be subject to review.	4. The determination of competence pursuant to this Article ***may*** be subject to review ***by the trial court as determined pursuant to Article 27(4) of the proposal, of its own motion.***

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Article 27

Modification 4

Proposal for a Regulation	*Amendment*
1. The European Public Prosecutor and the European Delegated Prosecutors shall have the same powers as national public prosecutors in respect of prosecution and bringing a case to judgement, in particular the power to present trial pleas, participate in evidence taking and exercise the available remedies.	1. The European Public Prosecutor and the European Delegated Prosecutors shall have the same powers as national public prosecutors in respect of prosecution and bringing a case to judgement, in particular the power to present trial pleas, participate in evidence taking and exercise the available remedies.
2. When the competent European Delegated Prosecutor considers the investigation to be completed, he/she shall submit a summary of the case with a draft indictment and the list of evidence to the European Public Prosecutor for review. Where he/she does not instruct to dismiss the case pursuant to Article 28, the European Public Prosecutor shall instruct the European Delegated Prosecutor to bring the case before the competent national court with an indictment, or refer it back for further investigations. The European Public Prosecutor may also bring the case to the competent national court himself/herself.	2. When the competent European Delegated Prosecutor considers the investigation to be completed, he/she shall submit a summary of the case with a draft indictment and the list of evidence to the European Public Prosecutor for review. Where he/she does not instruct to dismiss the case pursuant to Article 28 ***or where, upon his/her instruction to offer a transaction under Article 29, such offer was not accepted,*** the European Public Prosecutor shall instruct the European Delegated Prosecutor to bring the case before the competent national court with an indictment, or refer it back for further investigations. The European Public Prosecutor may also bring the case to the competent national court himself/herself.
3. The indictment submitted to the competent national court shall list the evidence to be adduced in trial.	3. The indictment submitted to the competent national court shall list the evidence to be adduced in trial.
4. ***The European Public Prosecutor shall choose, in close consultation with the European Delegated Prosecutor submitting the case and bearing in mind the proper administration of justice, the jurisdiction of trial and determine*** the competent national court ***taking into account*** the following criteria:	4. The competent national court ***shall be determined on the basis of*** the following criteria, ***in order of priority***:
a) the place where the offence, or in case of several offences, the majority of the offences was committed;	a) the place where the offence, or in case of several offences, the majority of the offences was committed;
b) the place where the accused person has his/her habitual residence;	b) the place where the accused person has his/her habitual residence;
c) the place where the evidence is located;	c) the place where the evidence is located;
d) the place where the direct victims have their habitual residence.	d) the place where the direct victims have their habitual residence.
5. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the European Public Prosecutor shall notify the competent national authorities, the interested persons and the relevant Union institutions, bodies, agencies of the indictment.	5. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the European Public Prosecutor shall notify the competent national authorities, the interested persons and the relevant Union institutions, bodies, agencies of the indictment.

Article 28

Modification 5

Proposal for a Regulation	*Amendment*
1. The European Public Prosecutor shall dismiss the case where prosecution has become impossible on account of any of the following grounds:	1. The European Public Prosecutor shall dismiss the case where prosecution has become impossible on account of any of the following grounds:
a) death of the suspected person;	a) death of the suspected person;
b) the conduct subject to investigation does not amount to a criminal offence;	b) the conduct subject to investigation does not amount to a criminal offence;
c) amnesty or immunity granted to the suspect;	c) amnesty or immunity granted to the suspect;
d) expiry of the national statutory limitation to prosecute;	d) expiry of the national statutory limitation to prosecute;
e) the suspected person has already been finally acquitted or convicted of the same facts within the Union or the case has been dealt with in accordance with Article 29.	e) the suspected person has already been finally acquitted or convicted of the same facts within the Union or the case has been dealt with in accordance with Article 29;
	f) following a full, comprehensive and proportionate investigation by the European Public Prosecutor's Office, there is a lack of relevant evidence.
2. The European Public Prosecutor may dismiss the case ***on any of the following grounds:***	2. The European Public Prosecutor may dismiss the case ***if*** the offence is a minor offence according to national law implementing Directive 2013/XX/EU on the fight against fraud to the Union's financial interests by means of criminal law;
a) the offence is a minor offence according to national law implementing Directive 2013/XX/EU on the fight against fraud to the Union's financial interests by means of criminal law;	
b) lack of relevant evidence.	
3. The European Public Prosecutor's Office may refer cases dismissed by it to OLAF or to the competent national administrative or judicial authorities for recovery, other administrative follow-up or monitoring.	3. The European Public Prosecutor's Office may refer cases dismissed by it to OLAF or to the competent national administrative or judicial authorities for recovery, other administrative follow-up or monitoring.
4. Where the investigation was initiated on the basis of information provided by the injured party, the European Public Prosecutor's Office shall inform that party thereof.	4. Where the investigation was initiated on the basis of information provided by the injured party, the European Public Prosecutor's Office shall inform that party thereof.

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Article 29

Modification 6

Proposal for a Regulation	*Amendment*
1. Where the case ***is not*** dismissed ***and it would serve the purpose of proper administration of justice,*** the European Public Prosecutor's Office may, after the damage has been compensated, propose to the suspected person to pay a lump-sum fine which, once paid, entails the final dismissal of the case (transaction). If the suspected person agrees, he/she shall pay the lump sum fine to the Union.	1. Where the case ***cannot be*** dismissed ***under Article 28 and where an imprisonment penalty would be disproportionate even if the conduct were fully proven at trial,*** the European Public Prosecutor's Office may, after the damage has been compensated, propose to the suspected person to pay a lump-sum fine which, once paid, entails the final dismissal of the case (transaction). If the suspected person agrees, he/she shall pay the lump sum fine to the Union.
2. The European Public Prosecutor's Office shall supervise the collection of the financial payment involved in the transaction.	2. The European Public Prosecutor's Office shall supervise the collection of the financial payment involved in the transaction.
3. Where the transaction is accepted and paid by the suspected person, the European Public Prosecutor shall finally dismiss the case and officially notify the competent national law enforcement and judicial authorities and shall inform the relevant Union institutions, bodies, agencies thereof.	3. Where the transaction is accepted and paid by the suspected person, the European Public Prosecutor shall finally dismiss the case and officially notify the competent national law enforcement and judicial authorities and shall inform the relevant Union institutions, bodies, agencies thereof.
4. The dismissal referred to in paragraph 3 shall not be subject to judicial review.	

Article 30

Modification 7

Proposal for a Regulation	*Amendment*
1. Evidence presented by the European Public Prosecutor's Office to the trial court, where the court considers that its admission would not adversely affect the fairness of the procedure or the rights of defence as enshrined in ***Articles 47 and 48 of*** the Charter of Fundamental Rights of the European Union***, shall be admitted in the trial without any validation or similar legal process even if the national law of the Member State where the court is located provides for different rules on the collection or presentation of such evidence***.	1. Evidence presented by the European Public Prosecutor's Office to the trial court ***shall be admitted*** where the court considers that its admission would not adversely affect the fairness of the procedure or the rights of defence as enshrined in the Charter of Fundamental Rights of the European Union ***and Member States' obligations under Article 6 TEU***.
2. Once the evidence is admitted, the competence of national courts to assess freely the evidence presented by the European Public Prosecutor's Office at trial shall not be affected.	2. Once the evidence is admitted, the competence of national courts to assess freely the evidence presented by the European Public Prosecutor's Office at trial shall not be affected.

Article 33

Modification 8

Proposal for a Regulation	*Amendment*
1. The suspect and accused person involved in the proceedings of the European Public Prosecutor's Office shall have***, in accordance with national law,*** the right to remain silent when questioned, in relation to the facts that he/she is suspected of having committed, and shall be informed that he/she is not obliged to incriminate himself/herself.	1. The suspect and accused person involved in the proceedings of the European Public Prosecutor's Office shall have the right to remain silent when questioned, in relation to the facts that he/she is suspected of having committed, and shall be informed that he/she is not obliged to incriminate himself/herself.
2. The suspect and accused person shall be presumed innocent until proven guilty ***according to national law***.	2. The suspect and accused person shall be presumed innocent until proven guilty.

Article 34

Modification 9

Proposal for a Regulation	*Amendment*
Any person suspected or accused of an offence within the scope of the competence of the European Public Prosecutor's Office shall have***, in accordance with national law,*** the right to be given legal assistance free or partially free of charge by national authorities if he/she has insufficient means to pay for it.	Any person suspected or accused of an offence within the scope of the competence of the European Public Prosecutor's Office shall have the right to be given legal assistance free or partially free of charge by national authorities if he/she has insufficient means to pay for it.

Article 36

Modification 10

Proposal for a Regulation	*Amendment*
1. ***When adopting procedural measures in the performance of its functions,*** the European Public Prosecutor's Office shall be considered as a national authority for the purpose of judicial review.	***For the purposes of judicial review***, the European Public Prosecutor's Office shall be considered to be a national authority ***in respect of all procedural measures which it adopts in the course of its prosecution function before the competent trial court. For all other acts or omissions of the European Public Prosecutor's Office, it shall be regarded as a Union body.***
2. Where provisions of national law are rendered applicable by this Regulation, such provisions shall not be considered as provisions of Union law for the purpose of Article 267 of the Treaty.	

Wednesday 12 March 2014

Article 68

Modification 11

Proposal for a Regulation	*Amendment*
The administrative activities of the European Public Prosecutor's Office shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the Treaty.	The European Public Prosecutor's Office shall be subject to the inquiries of the European Ombudsman ***in relation to instances of maladministration*** in accordance with Article 228 of the Treaty.

P7_TA(2014)0235

2013 progress report on Turkey

European Parliament resolution of 12 March 2014 on the 2013 progress report on Turkey (2013/2945(RSP))

(2017/C 378/19)

The European Parliament,

— having regard to the Commission staff working document entitled 'Turkey: 2013 progress report' (SWD(2013)0417),

— having regard to the Commission communication of 16 October 2013 entitled 'Enlargement strategy and main challenges 2013-2014' (COM(2013)0700),

— having regard to its previous resolutions, in particular those of 10 February 2010 on Turkey's progress report 2009 ([1]), of 9 March 2011 on Turkey's 2010 progress report ([2]), of 29 March 2012 on the 2011 progress report on Turkey ([3]), of 18 April 2013 on the 2012 progress report on Turkey ([4]) and of 13 June 2013 on the situation in Turkey ([5]),

— having regard to the Negotiating Framework for Turkey of 3 October 2005,

— having regard to Council Decision 2008/157/EC of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey ([6]) ('the Accession Partnership'), and to the previous Council decisions of 2001, 2003 and 2006 on the Accession Partnership,

— having regard to the Council conclusions of 14 December 2010, 5 December 2011, 11 December 2012 and 25 June 2013,

— having regard to the Charter of Fundamental Rights of the European Union,

— having regard to the conclusions of the report of 26 November 2013 by the Council of Europe Commissioner for Human Rights, which highlighted the inappropriate conduct of law enforcement officials during the Gezi protests,

— having regard to Rule 110(2) of its Rules of Procedure,

A. whereas accession negotiations with Turkey were opened on 3 October 2005 and the opening of such negotiations is the starting point for a long-lasting and open-ended process based on fair and rigorous conditionality and the commitment to reform;

B. whereas Turkey has committed itself to the fulfilment of the Copenhagen criteria, adequate and effective reforms, good neighbourly relations and progressive alignment with the EU; whereas these efforts should be viewed as an opportunity for Turkey to continue its process of modernisation;

C. whereas the EU should remain the benchmark for reforms in Turkey;

([1]) OJ C 341 E, 16.12.2010, p. 59.
([2]) OJ C 199 E, 7.7.2012, p. 98.
([3]) OJ C 257 E, 6.9.2013, p. 38.
([4]) Texts adopted, P7_TA(2013)0184.
([5]) Texts adopted, P7_TA(2013)0277.
([6]) OJ L 51, 26.2.2008, p. 4.

D. whereas full compliance with the Copenhagen criteria and the EU's integration capacity, in accordance with the conclusions of the December 2006 European Council meeting, remains the basis for accession to the EU;

E. whereas, in its conclusions of 11 December 2012, the Council endorsed the Commission's new approach to the negotiating frameworks for new candidate states whereby the rule of law is placed at the heart of enlargement policy, and confirmed the centrality in the negotiating process of Chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom and security), which should be tackled early in the negotiations so as to allow clear benchmarks and sufficient time to carry out the necessary legislative changes and institutional reforms, and thus to establish a solid track record as regards implementation;

F. whereas in its communication entitled 'Enlargement strategy and main challenges 2013-2014' the Commission concluded that Turkey, on account of its economy, strategic location and important regional role, is a strategic partner for the EU and a valuable component of EU economic competitiveness and that important progress on reforms had been made in the preceding 12 months; whereas the Commission called for further reforms and the promotion of dialogue across the political spectrum in Turkey and in Turkish society at large;

G. whereas Turkey, for the eighth consecutive year, has still not implemented the provisions stemming from the EC-Turkey Association Agreement and the Additional Protocol thereto;

H. whereas, for its own benefit and with a view to enhancing stability and promoting good neighbourly relations, Turkey needs to step up its efforts to resolve outstanding bilateral issues, including unsettled legal obligations and disputes with its immediate neighbours over land and maritime borders and airspace, in accordance with the provisions of the UN Charter and with international law;

I. whereas Turkey has the potential to play a pivotal role in diversifying energy resources and routes for oil, gas and electricity transit from neighbouring countries to the EU, and whereas there is potential for both Turkey and the EU to benefit from Turkey's rich renewable energy resources in order to create a sustainable low-carbon economy;

J. whereas tackling corruption at all levels is an important element of a functioning rule of law system;

K. whereas Turkey continues to be actively involved in its wider neighbourhood and is an important regional player;

Credible commitment and strong democratic foundations

1. Welcomes the 2013 progress report on Turkey and shares the Commission's conclusion that Turkey is a strategic partner for the EU and that important progress on reforms was made in the preceding 12 months; underlines the importance of, and urgent need for, further reforms with a view to ensuring greater accountability and transparency in the Turkish administration and the promotion of dialogue across the political spectrum and in society more broadly, in particular through the proper involvement, and a process of empowerment, of civil society, together with full respect for fundamental rights and the rule of law in practice; recalls the centrality for any democracy of the principle of separation of powers, the rule of law and fundamental rights, and stresses the importance of an impartial and independent judiciary for a truly democratic state;

2. Notes the transformative power of negotiations between the Union and Turkey, and stresses the importance of close dialogue and cooperation between Turkey and the EU on the reform process, so that negotiations can continue to provide Turkey with a clear reference and credible benchmarks; stresses, therefore, the importance of credible negotiations, conducted in good faith and based on a mutual commitment by Turkey and the Union to effective reforms furthering the democratic foundations of Turkish society, promoting fundamental values and producing positive change in Turkey's institutions, its legislation and the mentality of its society; welcomes, therefore, the opening of Chapter 22;

3. Welcomes the signing of the readmission agreement between the EU and Turkey and the initiation of the visa liberalisation dialogue on 16 December 2013; stresses the importance of achieving a common understanding between Turkey and the EU on the relevance for both parties of the readmission agreement and the roadmap leading to visa liberalisation; calls, in this connection, for the EU to provide full technical and financial support to Turkey for the implementation of the readmission agreement, and on Turkey to put in place adequate policies aimed at providing effective international protection to asylum-seekers and securing respect for the human rights of migrants; takes the view that the establishment of the General Directorate of Migration Management and the implementation of the Law on Foreigners and International Protection are a first positive step in that direction; recalls that Turkey is one of the key transit countries for irregular migration to the EU and stresses the importance of swift ratification of the readmission agreement and its effective implementation vis-à-vis all the Member States; calls on Turkey to implement the existing bilateral readmission agreements fully and effectively; stresses the clear benefits of facilitating access to the EU for business people, academics, students and representatives of civil society and calls on Turkey and the Commission to move forward in dialogue with a view to making substantial progress on visa liberalisation;

Fulfilling the Copenhagen criteria

4. Expresses deep concern at the recent developments in Turkey with regard to allegations of high-level corruption; regrets the removal of the prosecutors and police officers in charge of the original investigations, as this goes against the fundamental principle of an independent judiciary and deeply affects the prospects for credible investigations; considers regrettable the serious breakdown of trust between the government, the judiciary, the police and the media; urges the Government of Turkey, therefore, to show full commitment to democratic principles and to refrain from any further interference in the investigation and prosecution of corruption;

5. Reminds the Government of Turkey of the commitment made to eradicate corruption, in particular by implementing the majority of the recommendations issued in the 2005 evaluation reports by the Council of Europe Group of States against Corruption (GRECO); calls on the Government of Turkey to ensure the good functioning of the Court of Auditors in compliance with applicable international standards and to secure full access to its reports, including those on the security forces, for the public and the institutions concerned, with particular reference to the Turkish Grand National Assembly; calls on Turkey to secure the cooperation of all ministries with the Court of Auditors; stresses, once again, the need to put in place a judicial police force, working under the authority of the judiciary;

6. Points to the crucial role of a system of checks and balances for any modern democratic state and to the fundamental role that the Turkish Grand National Assembly must play at the centre of Turkey's political system in providing a framework for dialogue and consensus-building across the political spectrum; expresses concern about political polarisation and the lack of readiness on the part of government and opposition to work towards consensus on key reforms and the drafting of a new constitution for Turkey; urges all political actors, the government and the opposition to work together to enhance a pluralistic vision within state institutions and to promote the modernisation and democratisation of the state and of society; emphasises the crucial role of civil society organisations and the need for adequate communication with the public on the reform process; calls on the political majority to actively involve other political forces and civil society organisations in the deliberation process on relevant reforms and to take into consideration their interests and views in an inclusive manner; emphasises that constitutional reform must remain the top priority for the process of further modernisation and democratisation of Turkey;

7. Is worried about the allegations of systematic profiling of civil servants, the police and security forces by the authorities on the basis of religious, ethnic and political affiliations;

8. Stresses the urgent need for further progress in implementing the 2010 constitutional amendments, in particular the adoption of laws on protection of personal data and military justice, and of laws introducing affirmative-action measures to promote gender equality; underlines the importance of strictly implementing these legislative changes once they are adopted;

9. Commends the Conciliation Committee for reaching consensus on 60 constitutional amendments, but expresses concern at the suspension of its work and the current lack of progress; strongly believes that work on a new constitution for Turkey should be continued, as this is essential for the reform process in Turkey; stresses the importance of achieving consensus, within the framework of the constitutional reform process, on an effective system of separation of powers and an inclusive definition of citizenship in order to arrive at a fully democratic constitution which guarantees equal rights for all the people of Turkey; underlines the fact that Turkey, as a member state of the Council of Europe, would benefit from active dialogue with the Venice Commission on the constitutional reform process; underlines the fact that the constitutional reform process should be carried out in a transparent and inclusive manner, with full involvement of civil society at all stages;

10. Expresses deep concern at the new law on the High Council of Judges and Prosecutors and points to the strong, central role conferred on the minister of justice, which is not in line with the principle of an independent judiciary as a necessary precondition for a fully functioning democratic system of checks and balances; stresses that the rules governing the election, composition and functioning of the High Council of Judges and Prosecutors should be fully in line with European standards, and calls on the Government of Turkey to consult closely with the European Commission and the Venice Commission and to revise the new law on the High Council of Judges and Prosecutors in accordance with their recommendations;

11. Welcomes the democratisation package presented by the government on 30 September 2013 and calls on the government to implement it rapidly and fully, to duly consult the opposition and relevant civil society organisations in the preparation of implementing legislation and to continue with its reform efforts towards the revision of the electoral system (including the lowering of the 10 % electoral threshold) and the adequate inclusion of all components of Turkish society, in order to strengthen democracy and better reflect the existing pluralism in the country; stresses the urgent need for comprehensive anti-discrimination legislation and the establishment of an anti-discrimination and equality board; calls on the government, therefore, to ensure that the legislation on hate crimes offers protection for all citizens and communities, including LGBTI people; encourages the government to take steps to improve the rights of the Alevi community without delay; calls for further efforts to address the discrimination faced by the Roma minority, and to increase employability and reduce school drop-out rates;

12. Welcomes the establishment of new institutions, namely the Ombudsman Institution and the Turkish National Human Rights Institution, which became operational in 2013, thus creating additional mechanisms enabling individuals to apply for protection of their fundamental rights and freedoms;

13. Deeply regrets the loss of life among protesters and police, the excessive use of force by police and the violent acts by some marginal groups; takes the view that the protests in Gezi Park testify both to the existence in Turkey of a vibrant civil society and to the need for further vital dialogue and reforms, as a matter of urgency, on the promotion of fundamental values; considers regrettable the apparent failure of the courts to penalise all those state officials and police officers responsible for excessive violence, loss of life, and serious injuries to Gezi Park protesters, and therefore welcomes the ongoing administrative investigations (launched by the Ministry of the Interior), the judicial investigations and the inquiries by the Ombudsman into complaints relating to the events in Gezi Park, as a new opportunity to show full commitment to the rule of law and bring those responsible to justice; expects these investigations and inquiries to address the concerns fully and without delay; calls on Turkey to adopt adequate internal review procedures and to establish an independent supervisory body for police offences; takes the view that the Gezi Park events underline the need for far-reaching reforms in order to ensure respect for freedom of assembly; encourages the Ministry of the Interior and the police to establish methods for dealing with public protests in a more restrained way and calls on them, in particular, not to arrest or hinder the work of medical staff, lawyers and other professionals ensuring the basic rights of protesters; is concerned about the action taken against health professionals, lawyers, academics, students and professional associations in connection with their non-violent actions during the Gezi events;

14. Observes that the unprecedented wave of protests also reflects the legitimate aspirations of many Turkish citizens for deeper democracy; reiterates that, in a democratic polity, governments must promote tolerance and guarantee freedom of religion and belief for all citizens; calls on the government to respect the plurality and richness of Turkish society;

15. Expresses great concern at the very limited coverage of the Gezi Park events by Turkish media and the dismissal of journalists who criticised the government's reactions to those events; recalls that freedom of expression and media pluralism, including digital and social media, are at the heart of European values and that an independent press is crucial to a democratic society, as it enables citizens to take an active part in the collective decision-making processes on an informed basis and therefore strengthens democracy; expresses deep concern at the new internet law which introduces excessive controls on, and monitoring of, internet access and has the potential to significantly impact on free expression, investigative journalism, democratic scrutiny and access to politically diverse information over the internet; points to the serious concerns expressed by the EU and the Organisation for Security and Cooperation in Europe and asks the Government of Turkey to revise the law in line with European standards on media freedom and freedom of expression; reiterates once again its concern at the fact that most media are owned by, and concentrated in, large conglomerates with a wide range of business interests, and points to the worrying and widespread phenomenon of self-censorship by media owners and journalists; is concerned about the dismissal of journalists from positions in the media as a result of their criticising the government; is deeply concerned about the procedures used to punish the owners of critical media; raises concerns about the implications of accreditation by state institutions, mainly targeting the opposition media; expresses deep concern at the particularly high number of journalists currently in pre-trial detention, which undermines freedom of expression and of the media, and calls on Turkey's judicial authorities to review and address these cases as soon as possible; highlights the special role of public service media in strengthening democracy and calls on the Government of Turkey to ensure the independence and sustainability of public service media in compliance with European standards;

16. Expresses deep concern and dissatisfaction at the lack of genuine dialogue and consultation on the draft internet law and the draft law on the High Council of Judges and Prosecutors, and notes that this starkly departs from previous instances of good cooperation; is deeply concerned that the law on the internet and the law on the High Council of Judges and Prosecutors are taking Turkey away from its path towards the fulfilment of the Copenhagen criteria, and calls on the Government of Turkey to engage in true, constructive dialogue on the two laws and on future legislation, in particular, on the media and the judiciary, and to do its utmost to rekindle the negotiation process and show true commitment to its European perspective, including through a reform of the laws on the internet and the High Council of Judges and Prosecutors;

17. Expresses its concern over the Turkish Prime Minister's recent statements that he might go beyond the existing internet law and ban Facebook and YouTube;

18. Notes that Parliament's Ad Hoc Delegation for the Observation of Trials of Journalists in Turkey, established in 2011 and referred to in Parliament's resolutions on the 2011 and 2012 progress reports on Turkey, presented its interim activity report in 2013, based on factual observations, and will deliver its final activity report on 1 April 2014;

19. Notes the concerns in Turkish society about the excessively wide scope of the Ergenekon case, the shortcomings as regards due process, and allegations of the use of inconsistent evidence against the defendants, which, as in the Sledgehammer case, have undermined acceptance of the ruling; stresses once again, in light of the above, that the KCK case must demonstrate the strength and the proper, independent, impartial and transparent functioning of Turkey's democratic institutions and judiciary, as well as a firm, unconditional commitment to respect for fundamental rights; calls on the EU Delegation in Ankara to closely monitor further developments in these cases, including a possible appeal process and detention conditions, and to report back to the Commission and Parliament;

20. Draws particular attention to the trials of Füsun Erdoğan and Pinar Selek; takes the view that these trials are an example of the shortcomings of Turkey's justice system and expresses concern at the fact that the proceedings against Pinar Selek have lasted 16 years; insists that any trials should be carried out in a transparent manner, respecting the rule of law and ensuring appropriate conditions;

21. Expresses concern over the deepening cultural division in Turkey on so-called 'lifestyle issues', which runs the risk that the authorities will start to intrude into citizens' private lives, as exemplified by recent statements on the number of children women should have, on mixed-sex student residences and on the selling of alcohol;

22. Notes that the implementation of the third judicial reform package has led to the release of a significant number of detainees, and welcomes the fourth judicial reform package as another important step towards a Turkish judiciary that is in line with EU standards and values; notes, in particular, (i) the new, important distinction between freedom of expression, of the press and of assembly and incitement to violence or to acts of terrorism, (ii) the limitation of the offence of praising a crime or a criminal to instances where there is a clear and imminent danger to public order, and (iii) the narrowing of the scope of the offence of committing a crime in the name of an organisation, without being a member of it, to armed organisations only;

23. Welcomes the initiatives taken by the High Council of Judges and Prosecutors to promote the training of a large number of judges and prosecutors in the field of human rights and to promote a thorough, operational understanding of the case law of the European Court of Human Rights (ECtHR); notes the adoption of the Action Plan on the Prevention of Violations of the European Convention on Human Rights and calls on the government to ensure the rapid and effective implementation thereof so that all issues raised in ECtHR judgments in which Turkey was found to have violated provisions of the European Convention on Human Rights can be addressed once and for all; encourages the government to continue with ambitious judicial reforms built on the need to advance the defence and promotion of fundamental rights; stresses, in this connection, the need to reform the anti-terror law as a matter of priority;

24. Calls on Turkey to commit itself to combating impunity and bringing to a successful conclusion efforts to accede to the Rome Statute of the International Criminal Court (ICC);

25. Reaffirms the importance of opening Chapters 23 (judiciary and fundamental rights) and 24 (justice and home affairs) early in the negotiation process and closing them at the end; stresses that this would be consistent with the Commission's new approach for new candidate countries; recalls that the opening of these chapters is based on the fulfilment of the conditions defined in the official benchmarks and stresses, therefore, that delivering to Turkey the official benchmarks for the opening of Chapters 23 and 24 would provide a clear roadmap for, and give a boost to, the reform process and, in particular, would provide a clear anchor for the reform process in Turkey, on the basis of European standards, with particular reference to the judiciary; calls on the Council, therefore, to make renewed efforts for the delivery of the official benchmarks and ultimately, upon fulfilment of the criteria set, for the opening of Chapters 23 and 24; calls on Turkey to cooperate as much as possible to this end; calls on the Commission to promote without delay further dialogue and cooperation with Turkey in the fields of the judiciary and fundamental rights and of justice and home affairs in the framework of the Positive Agenda;

26. Commends the decision by the Assembly of Foundations to return the lands of the historic Mor Gabriel Monastery to the Syriac community in Turkey, in compliance with the pledge made by the government in the democratisation package; stresses the importance of continuing to provide an appropriate legal framework for the restoration of the property rights of all religious communities; stresses the importance of continuing the process of reform in the area of freedom of thought, conscience and religion by enabling religious communities to obtain legal personality, by eliminating all restrictions on the training, appointment and succession of clergy, by complying with the relevant judgments of the ECtHR and the recommendations of the Venice Commission and by eliminating all forms of discrimination or barriers based on religion; calls on the Government of Turkey to consider the request by the Alevi community to recognise the Cemevis as places of worship in their own right; underlines the importance of lifting all obstacles to a speedy reopening of the Halki Seminary and to public use of the ecclesiastical title of the Ecumenical Patriarch; calls on the Yargitay court to reverse its decision converting the historic Hagia Sophia Church in Trabzon as a mosque and push for its immediate re-opening as a museum.

27. Expresses support for the database on violence against women currently being compiled by the Ministry for Family and Social Policies; asks that existing legislation on the creation of shelters for women who are victims of domestic violence be complemented with adequate follow-up mechanisms where municipalities fail to establish such shelters; supports the efforts of the Ministry for Family and Social Policies to raise penalties for forced early marriages, which must be eradicated, and encourages it to continue on this path; calls for further efforts to eradicate so-called 'honour killings'; expresses renewed concern at the low level of social and economic inclusion of women and of participation by women in the labour force, in politics and at senior level in the administration, and encourages the government to adopt appropriate measures to promote a more central role for women in Turkey's economic and political fabric; calls on all political parties to take specific action to further encourage women's empowerment as regards active participation in politics; stresses the key role of education and professional training in promoting the social and economic inclusion of women, and the importance of mainstreaming gender equality in the legislative process and in the implementation of laws;

28. Strongly supports the government's initiative of striving for a settlement of the Kurdish issue on the basis of negotiations with the PKK, with the aim of putting a definitive end to the PKK's terrorist activities; welcomes the fact that education in Kurdish is now allowed in private schools and encourages the government to put in place the necessary reforms aimed at promoting the social, cultural and economic rights of the Kurdish community, including through education in Kurdish in public schools, on the basis of adequate consultation of relevant stakeholders and of the opposition, and with the overall aim of facilitating a real opening to the claims for basic rights for all citizens in Turkey; asks Turkey to sign the Council of Europe's European Charter for Regional or Minority Languages; expresses concern at the large number of cases launched against writers and journalists writing on the Kurdish issue and at the arrest of several Kurdish politicians, mayors and members of municipal councils, trade unionists, lawyers, protesters and human rights defenders in connection with the KCK trial; calls on the opposition to actively support negotiations and reforms as an important step for the benefit of Turkish society at large; calls on the Turkish authorities and the Commission to cooperate closely on assessing which Instrument for Pre-Accession Assistance (IPA) programmes could be used to promote sustainable development in the south-east in the framework of negotiations on Chapter 22;

29. Welcomes the expected speedy implementation of the statement of intent by the Turkish Government regarding the reopening of the Greek-minority school on the island of Gökçeada (Imbros), which constitutes a positive step towards the preservation of the bicultural character of the islands of Gökçeada (Imbros) and Bozcaada (Tenedos), in line with Resolution 1625(2008) of the Parliamentary Assembly of the Council of Europe; notes, however, that further action is needed to address the problems faced by members of the Greek minority, in particular with regard to property rights; calls on the Turkish authorities, in this regard, given the dwindling number of members of the minority, to encourage and assist expatriate minority families who wish to return to the island;

30. Is of the opinion that social dialogue and the involvement of social partners are vital to the development of a prosperous and pluralistic society, and as a way to promote social and economic inclusion in society at large; underlines the importance of further progress in the areas of social policy and employment, in particular with a view to removing all obstacles to the effective functioning and unhindered work of trade unions, especially in small and medium-sized enterprises, establishing a national employment strategy, addressing undeclared work, widening the coverage of social protection mechanisms, and increasing employment rates among women and people with disabilities; notes the implementation of new legislation on trade union rights in both the public and the private sectors, and calls on Turkey to make every effort to bring legislation fully into line with ILO standards, especially the right to strike and the right to collective bargaining; stresses the importance of opening Chapter 19 on social policy and employment;

Building good neighbourly relations

31. Notes the continuing efforts by Turkey and Greece to improve their bilateral relations, including through bilateral meetings; considers it regrettable, however, that the casus belli threat declared by the Grand National Assembly of Turkey against Greece has not been withdrawn; urges the Turkish Government to end the repeated violations of Greek airspace and territorial waters, as well as Turkish military aircraft flights over Greek islands;

32. Calls on the Turkish Government to sign and ratify the United Nations Convention on the Law of the Sea (UNCLOS), which is part of the acquis communautaire, without further delay, and recalls the full legitimacy of the Republic of Cyprus' exclusive economic zone; calls on Turkey to respect the sovereign rights of all Member States, including those relating to the exploration and exploitation of natural resources in territories or waters under their sovereignty;

33. Reiterates its strong support for the reunification of Cyprus, on the basis of a fair and viable settlement for both communities, and welcomes, in this regard, the joint declaration by the leaders of the two communities on relaunching the talks on the reunification of Cyprus and the commitment by both sides to a settlement based on a bi-communal, bi-zonal federation with political equality, and that the united Cyprus, as a member of the UN and the EU, will have a single international legal personality, single sovereignty and single united-Cyprus citizenship; commends the commitment by both sides to creating a positive atmosphere in order to ensure that the talks succeed, and to confidence-building measures to support the negotiation process; asks Turkey to actively support these negotiations aimed at a fair, comprehensive and

viable settlement under the auspices of the UN Secretary-General and in accordance with the relevant UN Security Council resolutions; calls on Turkey to begin withdrawing its forces from Cyprus and to transfer the sealed-off area of Famagusta to the UN in accordance with UNSC Resolution 550 (1984); calls on the Republic of Cyprus to open the port of Famagusta, under EU customs supervision, in order to promote a positive climate conducive to the successful resolution of the ongoing reunification negotiations, and to allow Turkish Cypriots to trade directly in a legal manner that is acceptable to all; takes note of the proposals by the Cypriot Government to address the abovementioned issues;

34. Welcomes the joint statement of 10 December 2013 by Mayor Alexis Galanos and Mayor Oktay Kayalp in which they express strong support for a reunited Famagusta;

35. Welcomes Turkey's decision to grant the Committee on Missing Persons access to a fenced military area in the northern part of Cyprus and encourages Turkey to allow the committee to access relevant archives and military zones for exhumation; calls for special consideration for the work done by the Committee on Missing Persons;

36. Stresses the importance of a coherent and comprehensive security approach in the Eastern Mediterranean, and calls on Turkey to allow political dialogue between the EU and NATO by lifting its veto on EU-NATO cooperation including Cyprus, and calls, in parallel, on the Republic of Cyprus to lift its veto on Turkey's participation in the European Defence Agency;

37. Urges Turkey and Armenia to proceed to a normalisation of their relations by ratifying, without preconditions, the protocols on the establishment of diplomatic relations, by opening the border and by actively improving their relations, with particular reference to cross-border cooperation and economic integration;

Advancing EU-Turkey cooperation

38. Deplores Turkey's refusal to fulfil its obligation of full, non-discriminatory implementation of the Additional Protocol to the EC-Turkey Association Agreement towards all Member States; recalls that this refusal continues to have a profound effect on the negotiation process;

39. Notes that Turkey is still the EU's sixth biggest trading partner and that the EU is Turkey's biggest, with 38 % of Turkey's total trade going to the EU and almost 71 % of foreign direct investment coming from the EU; welcomes the ongoing Commission evaluation of the EU-Turkey Customs Union aimed at assessing its impact on both parties and ways to update it, and urges Turkey to remove the remaining restrictions on the free movement of goods;

40. Believes that, in view of Turkey's strategic role as an energy hub and source of plentiful renewable energy resources, consideration should be given to close cooperation between the EU and Turkey on energy and to the value of opening negotiations on Chapter 15 on energy in order to provide an adequate regulatory framework; stresses, further, the importance of involving Turkey in the process of shaping Europe's energy policy; underlines the fact that climate change, renewable energy and energy efficiency priorities need to be addressed, and stresses, in this regard, the potential for cooperation between the EU and Turkey on green energy issues; asks the Commission to prioritise financing in favour of renewable energy projects, the energy grid and interconnectivity in Turkey; asks Turkey to fully implement legislation on environmental impact assessment, without any exception for large projects;

41. Notes Turkey's increased engagement in south-east Europe, particularly in Bosnia and Herzegovina, and encourages the Turkish authorities to align their positions with the EU's Common Foreign and Security Policy, to coordinate diplomatic activities with the VP/HR and to further strengthen cooperation with Member States;

42. Welcomes Turkey's commitment to the provision of humanitarian assistance to almost one million Syrian refugees; asks Turkey to closely monitor its borders to prevent the entry of fighters and arms to the benefit of groups credibly found to be implicated in systematic human rights violations or not committed to the democratic transition of Syria; believes that the EU, Turkey and other international stakeholders should actively seek to develop a joint strategic vision to promote a political and democratic solution in Syria without delay and support political and economic stability in the region, with particular reference to Jordan, Lebanon, Iran and Iraq; points, in particular, to the difficult conditions of the Syrian Alawite refugee community, which has sought refuge at the margins of large cities, and asks Turkey to ensure that assistance can effectively reach them; stresses the importance of securing access to education and employment for the refugee population and expresses, at the same time, concern at the socio-economic impact of refugee communities on cities and villages near the refugee camps; asks the Commission, the Member States and the international community to cooperate closely with Turkey on providing assistance to the refugee population;

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43. Instructs its President to forward this resolution to the Council, the Commission, the VP/HR, the Secretary General of the Council of Europe, the President of the ECtHR, the governments and parliaments of the Member States and the Government and Parliament of the Republic of Turkey.

Wednesday 12 March 2014

P7_TA(2014)0236

EU strategy for the Arctic

European Parliament resolution of 12 March 2014 on the EU strategy for the Arctic (2013/2595(RSP))

(2017/C 378/20)

The European Parliament,

— having regard to its previous reports and resolutions on the Arctic, the most recent of which was adopted in January 2011,

— having regard to the joint communication of the Commission and of the High Representative of the Union for Foreign Affairs and Security Policy of 26 June 2012 entitled 'Developing a European Union policy towards the Arctic region: progress since 2008 and next steps' (JOIN(2012)0019), and to the Commission communication of 20 November 2008 entitled 'The European Union and the Arctic region' (COM(2008)0763),

— having regard to the Preparatory Action 'Strategic environmental impact assessment of the development of the Arctic',

— having regard to the opinion of the European Economic and Social Committee of 2013 on EU Arctic policy,

— having regard to the UN Convention on the Law of the Sea,

— having regard to the Arctic Council programme for 2013 to 2015 under the Canadian chairmanship,

— having regard to the Arctic Council's Kiruna Declaration of 15 May 2013,

— having regard to the EU-Greenland Partnership 2007-2013 and to the Fisheries Partnership Agreement between the EU and Greenland,

— having regard to its position of 5 February 2014 on the draft Council decision on relations between the European Union on the one hand, and Greenland and the Kingdom of Denmark on the other ([1]),

— having regard to the EU's Horizon 2020 research and innovation programme for the years 2014 to 2020,

— having regard to the Declaration on the 20th Anniversary of the Barents Euro-Arctic Cooperation, issued in Kirkenes on 3-4 June 2013,

— having regard to the national strategies and policy papers concerning Arctic issues from Finland, Sweden, Denmark and Greenland, Norway, Russia, the USA, Canada and the UK respectively,

— having regard to the statements adopted at the Northern Dimension Parliamentary Forum in September 2009 in Brussels and in February 2011 in Tromsø and in Archangelsk in November 2013,

— having regard to the joint statement of the third ministerial meeting of the renewed Northern Dimension, held in Brussels on 18 February 2013,

— having regard to the Barents Euro-Arctic Council priorities for 2013 to 2015 under the Finnish chairmanship,

— having regard to the respective conference statements of the 9th Conference of Parliamentarians of the Arctic Region, held in Brussels from 13 to 15 September 2010, and of the 10th Conference of Parliamentarians of the Arctic Region, held in Akureyri from 5 to 7 September 2012, and to the statement made by the Standing Committee of Parliamentarians of the Arctic Region (SCPAR) on 19 September 2013 in Murmansk on EU observer status in the Arctic Council,

([1]) Texts adopted, P7_TA(2014)0075.

— having regard to the Nordic Council's recommendations of 2012,

— having regard to Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations ([1]),

— having regard to its resolution of 20 April 2012 on 'Our life insurance, our natural capital: an EU biodiversity strategy to 2020' ([2]),

— having regard to its resolution of 5 February 2014 on a 2030 framework for climate and energy policies ([3]),

— having regard to the EEA Joint Parliamentary Committee Report of 28 October 2013 on Arctic policy,

— having regard to the judgments of the Court of Justice of the European Union of 3 October 2013 in Case C-583/11P, and of 25 April 2013 in Case T-526/10 concerning the application for annulment of Commission Regulation (EU) No 737/2010 of 10 August 2010 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products ([4]),

— having regard to the World Trade Organisation (WTO) panel report of 25 November 2013 entitled 'European Communities — measures prohibiting the importation and marketing of seal products', chapter 1.3.5 (setting out the preliminary ruling issued on 29 January 2013), and to the EU's notification of appeal to the WTO Appellate Body of 29 January 2014,

— having regard to the Nordregio Report 2009:2 ('Strong, Specific and Promising — Towards a Vision for the Northern Sparsely Populated Areas in 2020'),

— having regard to Rule 110(2) and (4) of its Rules of Procedure,

A. whereas the EU has an interest in the Arctic by virtue of its rights and obligations under international law, its commitment to environmental and climate and other policies and its funding, and research activities, as well as economic interests;

B. whereas the Commission and of the High Representative of the Union for Foreign Affairs and Security Policy published their joint communication entitled 'Developing a European Union policy towards the Arctic region: progress since 2008 and next steps' in June 2012;

C. whereas the Council has not yet published its conclusions on the Commission/EEAS joint communication of summer 2012;

D. whereas Parliament has been an active participant in the work of the SCPAR through its Delegation for relations with Switzerland, Iceland and Norway and in the Conference of Arctic Parliamentarians;

E. whereas Denmark, Finland and Sweden are Arctic countries; whereas the EU's only indigenous people, the Sami people, live in the Arctic regions of Finland and Sweden, as well as Norway and Russia;

F. whereas France, Germany, the United Kingdom, the Netherlands, Poland, Spain and Italy — observers to the Arctic Council — show a substantial involvement in the Arctic and strong interest in future dialogue and cooperation with the Arctic Council;

G. whereas Iceland and Norway, as engaged and reliable partners, are associated with the EU through the EEA and the Schengen Agreement;

([1]) OJ L 178, 28.6.2013, p. 66.
([2]) OJ C 258 E, 7.9.2013, p. 99.
([3]) Texts adopted, P7_TA(2014)0094.
([4]) OJ L 216, 17.8.2010, p. 1.

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H. whereas the Arctic is an inhabited region with sovereign states; whereas the European Arctic region encompasses industrialised modern societies, rural areas and indigenous communities; whereas the active involvement of these regions in the development of the EU-Arctic policy is essential for ensuring legitimacy, mutual understanding and local support for the EU's Arctic engagement;

I. whereas there has been a longstanding engagement of the EU in the Arctic through its involvement in the Northern Dimension Policy with Russia, Norway and Iceland, in the Barents cooperation and particularly in the Barents Euro-Arctic Council and the Barents Regional Council, in the strategic partnerships with Canada, the US and Russia, and in its participation as an active ad hoc observer in the Arctic Council in recent years;

J. whereas the Arctic Council made a decision in Kiruna on 15 May 2013 to 'affirmatively receive' the EU's application for permanent observer status; whereas this affirmative decision includes the condition of resolving the seal products ban issue between the EU and Canada; whereas the EU and Canada are in the process of resolving this issue; whereas the EU is already working under the above status of permanent observer to the Arctic Council;

K. whereas the EU and its Member States make a major contribution to research in the Arctic; whereas EU programmes, including the new Horizon 2020 Framework Programme, and the European structural and investment funds support major research projects in the region, benefiting not least the Arctic countries' peoples and economies;

L. whereas only 20 % of global fossil fuel reserves can be exploited by 2050 in order to keep the average temperature increase below two degrees Celsius;

M. whereas it is estimated that about one fifth of the world's undiscovered hydrocarbon resources are located in the Arctic region, but more extensive research is needed;

N. whereas the growing interest in the Arctic region shown by non-Arctic actors, such as China, Japan, India and other countries, their allocation of funding to polar research and the confirmation of South Korea, China, Japan, India and Singapore as observers to the Arctic Council indicate an increasing global geopolitical interest in the Arctic;

O. whereas research and development, impact assessments and ecosystem protection have to accompany economic investment and development in order to ensure the sustainable development of the Arctic region;

P. whereas reconciling prospective economic opportunities and interests with socio-cultural, ecological and environmental challenges through sustainable development remains a top priority, reflected also in the national Arctic strategies of the Arctic states;

1. Welcomes the joint communication of the Commission and of the High Representative of the Union for Foreign Affairs and Security Policy of 26 June 2012 as an important building block in ensuring the continuous development of the EU's Arctic policy;

2. Reiterates its call for a united EU policy on the Arctic, as well as a coherent strategy and a concretised action plan on the EU's engagement on the Arctic, with a focus on socio-economic and environmental issues; believes that this strategic choice is integral in ensuring legitimacy and local support for the EU's Arctic engagement;

3. Stresses that the increasing use of the Arctic region's natural resources must be conducted in a way which respects and benefits the local population, both indigenous and non-indigenous, and takes full environmental responsibility for the fragile Arctic environment;

4. Highlights the economic opportunities and the variety of industries in the Arctic and sub-Arctic regions, such as tourism, maritime industry and shipping, renewable energy, environmental technology and cleantech, gas and oil, offshore industry, forestry and wood-based industries, mining, transport services and communications, information technology and e-solutions, fishing and aquaculture, and agriculture and traditional livelihoods such as reindeer herding; recognises their impact and importance both in the region and in Europe as a whole, highlighting the engagement of European actors from business, research and development;

5. Takes note of the Kiruna Declaration of the Arctic Council in May 2013, and its decision on the permanent observer status for the EU as well as other state entities; urges the Commission to follow up on the outstanding seal products ban issue with Canada and to duly inform the European Parliament regarding that process; regrets the effects which the EU regulation relating to the ban on seal products has produced for sections of the population, and in particular for indigenous culture and livelihood;

6. Recalls the status of the EU and its Member States as active members in other frameworks of relevance to the Arctic, such as the International Maritime Organisation (IMO) and the Convention on Biological Diversity (CBD); highlights the need to refocus the EU institutions' activities on those fields of relevance to the political, environmental or economic interests of the EU and its Member States; emphasises, in particular, the need to bear in mind the interests of the EU and the European Arctic states and regions when utilising, amending or developing EU programmes or policies that do or can affect the Arctic, so that they serve the Arctic region as a whole;

7. Regards the Barents Euro-Arctic Council (BEAC) as an important hub for cooperation between Denmark, Finland, Norway, Russia, Sweden and the Commission; notes the work of the BEAC in the fields of health and social issues, education and research, energy, culture and tourism; notes the advisory role of the Working Group of Indigenous Peoples (WGIP) within the BEAC;

8. Strongly advocates freedom of research in the Arctic and encourages broad cooperation between the states that are active in the field of multidisciplinary Arctic research and in establishing research infrastructures;

9. Recalls the contributions the EU is making to research and development and the engagement of European economic actors in the Arctic region;

10. Stresses that reliable, high-capacity information networks and digital services are instrumental in boosting the economic activity and welfare of people in the Arctic;

11. Calls on the Commission to put forward proposals as to how the Galileo Project or projects such as Global Monitoring for Environment and Security that could have an impact on the Arctic could be developed to enable safer and faster navigation in Arctic waters, thus investing in the safety and accessibility of the North-East Passage in particular, to contribute to better predictability of ice movements, better mapping of the Arctic seabed and an understanding of the main geodynamic processes in the area;

12. Stresses the need for reliable monitoring and observational systems that follow the changing conditions of the Arctic;

13. Emphasises the need for centres of competence for ensuring safety, emergency preparedness and rescue facilities; recommends that the EU actively contribute to the development of such competence centres;

14. Welcomes the identification of Ecologically and Biologically Significant Areas in the Arctic region under the CBD as an important process in ensuring the effective conservation of Arctic biodiversity and stresses the importance of implementing an Ecosystem Based Management (EBM) approach in the coastal, marine and terrestrial environments of the Arctic, as highlighted by the Arctic Council EBM expert group;

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15. Reiterates that the serious environmental concerns relating to the Arctic waters require special attention to ensure the environmental protection of the Arctic in relation to any offshore oil and gas operations, taking into account the risk of major accidents and the need for an effective response, as provided for in Directive 2013/30/EU; calls on EU and EEA member states, when assessing the financial capacity of offshore oil and gas operators pursuant to Article 4 of Directive 2013/30/EU, to assess the financial capacity of applicants to cover all liabilities potentially deriving from offshore oil and gas activities in the Arctic, including liability for environmental damage to the extent covered by the Environmental Liability Directive (2004/35/EC);

16. Calls on the Commission, the EEAS and the Member States to encourage and actively promote the highest standards with regard to environmental safety in the Arctic waters;

17. Welcomes the implementation of the Search and Rescue Agreement and the Oil Spill Response Agreement by Arctic Council members; considers it regrettable, however, that the agreement does not include specific binding common standards;

18. Stresses the need for a binding instrument on pollution prevention;

19. Highlights the need for an active engagement of the EU in all relevant working groups of the Arctic Council;

20. Notes the Government of Iceland's initiative to end the EU membership negotiations; requests the Commission and the EEAS to maintain good relations and develop closer cooperation with Iceland in fields of common interest, such as the development of maritime transport, fishing, geothermal energy and the environment, making full use of existing instruments and encouraging Arctic cooperation between EU-based and Icelandic actors and ensuring that European interests do not suffer in this strategically important region;

21. Welcomes the preparations for an Arctic Economic Council, to be attached to the Arctic Council in an advisory function and highlights the proportion of European businesses and institutes contributing to and investing in the Arctic, which suggests an efficient participation of business actors not only from the three Arctic EU Member States but also from other (observer) states, bearing in mind the global nature of many businesses;

22. Stresses the need to undertake investments in an environmentally and socially responsible manner;

23. Welcomes the work on bottom-up initiatives that can ensure a balanced and long-term engagement of European and non-European businesses, and asks the Commission to come forward with suggestions as to how to engage European businesses in sustainable and long-term balanced socio-economic development in the Arctic;

24. Emphasises that the EU must take into account the need for raw material activities to provide local benefits and enjoy local acceptance; acknowledges the current gap between relevant competence on mineral extraction, processing and projected future needs as the region develops further; suggests that by participating in joint projects at the European level, such as the Innovation Partnership on Raw Materials, Arctic actors can exchange information and competence across topics;

25. Asks the Commission, in view of the huge number of scientific, economic and civic activities, in particular in the European Arctic, the Barents region and beyond, to develop practices aimed at better utilising existing EU funding and ensuring a proper balance in protecting and developing the Arctic region when channelling EU funds towards the Arctic;

26. Stresses the vital importance of the EU regional and cohesion policy with regard to interregional and cross-border cooperation;

27. Further calls for the development of more effective synergies between existing programmes, for instance under the Interreg IV programme, the Northern Periphery Programme (NPP), Kolarctic, Baltic and the Blue Growth strategy, as well as contributions to fund Northern Dimension Partnerships such as the Northern Dimension Environmental Partnership (NDEP) and the Northern Dimension Partnership on Transportation and Logistics (NDPTL), or other European Neighbourhood Instrument (ENI) envelopes to enable the efficient channelling of funding, and to clearly define investment priorities for engagement with the Arctic region; urges the Commission and the EEAS to cooperate for a coherent channelling of funds on the Arctic and thereby to maximise effective interaction between the EU's internal and external programmes and projects related to Arctic and sub-Arctic regions;

28. Emphasises that an EU-Arctic Strategy requires the appropriate budget support to be made operational;

29. Is of the opinion that the Northern Dimension policy based on regional cooperation and pragmatic partnerships serves as a successful model of stability, joint ownership and engagement involving the EU, Iceland, Norway and Russia;

30. Underlines, in this respect, the significance of Arctic priorities such as well-functioning infrastructure and logistics, development in the Arctic region, encouraging investment in cold-climate expertise and relevant environment-friendly technologies, and support for regional and rural entrepreneurship and particularly for SMEs; calls for the EU to invest greater effort in integrating such Arctic priorities into its Europe 2020 strategy for growth and into programmes such as Horizon 2020 and Innovation Union, as well as into other Union research programmes;

31. Reaffirms its support for, and urges the Commission to proceed with, the establishment of the EU Arctic Information Centre as a networked undertaking with a permanent office in Rovaniemi, with reference to the Preparatory Action 'Strategic environmental impact assessment of the development of the Arctic', as supported by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy in their 2012 joint communication and implemented by the Arctic Centre of the University of Lapland together with a network of European centres of excellence on the Arctic, with the goal of ensuring efficient access to Arctic information, dialogues at all levels and communication for the purpose of harnessing information and knowledge with a view to sustainability in the Arctic;

32. Awaits, in this regard, the results of the 18-months Preparatory Action (PA) project on the strategic environmental impact assessment of the development of the Arctic, to be published this spring; calls for the EU to proceed swiftly thereafter with the establishment of the EU Arctic Information Centre;

33. Highlights the need to maintain a special interface on the Arctic with the goal of providing an open, cross-party and cross-issues platform in Brussels, fostering understanding among the wide range of relevant actors in both the Arctic and the EU connecting the spheres of policymaking, science, civil society and business;

34. Recommends strengthening regular exchange and consultations on Arctic-related topics with regional, local and indigenous stakeholders of the European Arctic in order to facilitate mutual understanding, in particular during the EU-Arctic policymaking process; stresses the need for such consultations to draw on the experience and expertise of the region and its inhabitants and to guarantee the essential legitimacy of the EU's further engagement as an Arctic actor;

35. Suggests that there should be enhanced coordination within the EU institutions between the Commission and the EEAS, particularly considering the cross-sectoral nature of Arctic issues;

36. Recognises that the waters around the North Pole are mostly international waters;

37. Draws attention to the fact that energy security is closely related to climate change; considers that energy security must be improved by reducing the EU's dependence on fossil fuels; highlights the fact that the transformation of the Arctic represents one major effect of climate change on EU security; stresses the need to address this risk multiplier through a reinforced EU strategy for the Arctic, and through an enhanced policy of EU-generated renewable energies and energy efficiency that significantly reduces the Union's reliance on external sources and thereby improves its security position;

38. Supports the initiative by five Arctic coastal states to agree on interim precautionary measures to prevent any future fisheries in the Arctic high seas without the prior establishment of appropriate regulatory mechanisms, and supports the development of a network of Arctic conservation areas and, in particular, the protection of the international sea area around the North Pole outside the economic zones of the coastal states;

39. Calls on the Member States and the EEA states to support the international commitment under the CBD to protect 10 % of each coastal and marine region;

40. Calls for the EU to make all possible efforts to ensure a sustainable reconciliation between economic activities and viable socio-ecological and environmental protection and development, in order to safeguard wellbeing within the Arctic;

41. Stresses that maintaining developed and sustainable communities in the Arctic with a high quality of life is of the utmost importance, and that the EU can play a vital role in the matter; calls for the EU, in this respect, to intensify its work in the areas of eco-system-based management, multilateral cooperation, knowledge-based decision-making and close cooperation with local inhabitants and indigenous peoples;

42. Acknowledges the wish of the inhabitants and governments of the Arctic region with sovereign rights and responsibilities to continue to pursue sustainable economic development while at the same time protecting the traditional sources of the indigenous peoples' livelihood and the very sensitive nature of the Arctic ecosystems;

43. Acknowledges the fundamental importance of the Regional Aid Guidelines (RAG), which enable regions in the High North with special characteristics and challenges to continue to use appropriate mechanisms to foster innovation and sustainable growth;

44. Confirms its formulations on the rights of indigenous people in general and the Sami in particular, as the EU's only indigenous people;

45. Supports the meetings held by the Commission with the six associations of circumpolar indigenous peoples that are recognised as permanent participants in the Arctic Council; asks the Commission to explore the possibility of ensuring that their voices are taken into account in EU debates, providing funds for these associations;

46. Acknowledges that EU policies that strengthen higher education and research facilities in the area are fundamental for strengthening innovative environments and technology transfer mechanisms; underlines the importance of supporting the development of cooperation networks between higher education institution within and beyond the region and providing opportunities for research funding, particularly in fields where the region has a proven track record, in order to bring about sustainable economic development in the regions of the Arctic;

47. Underlines the major importance of the safety and security of new world trade routes by sea in the Arctic, in particular for the EU and its Member States' economies, these countries, which control 40 % of world commercial shipping;

48. Welcomes the work in the International Maritime Organisation (IMO) on finalising the mandatory Polar Code for shipping; encourages cooperation in both research and investment with a view to developing a robust and safe infrastructure for the Arctic sea routes, and stresses that the EU and its Member States should actively uphold the principles of freedom of navigation and innocent passage;

49. Emphasises that the European Maritime Safety Agency (EMSA) must have the necessary means to monitor and prevent pollution from maritime shipping as well as from oil and gas installations in the Arctic area;

50. Calls on the states in the region to ensure that any current transport routes — and those that may emerge in the future — are open to international shipping and to refrain from introducing any arbitrary unilateral obstacles, be they financial or administrative, that could hinder shipping in the Arctic, other than internationally agreed measures aimed at increasing security or protection of the environment;

51. Notes the importance of developing infrastructure links connecting the Arctic region with the rest of Europe;

52. Calls on the Commission and the Member States to focus on transport corridors such as roads, railways and maritime shipping with a view to maintaining and promoting cross-border links in the European Arctic and bringing goods from the Arctic to European markets; is of the opinion that as the EU develops its transport infrastructure (Connecting Europe Facility, TEN-T) further, the links to and within the European Arctic needs to be improved;

53. Reiterates the right of the people of the Arctic to determine their own livelihoods and recognises their wish for sustainable development of the region; asks the Commission to report on which EU programmes could be used to support such long-term balanced sustainable development, and prepare measures with a view to making a more concrete contribution to fulfilling this desire;

54. Takes note of recent exploration activities in the European Arctic and the Barents Sea, and highlights the bilateral cooperation between Norway and Russia, aiming for application of the highest available technical standards in the field of environmental protection, while prospecting for oil and gas in the Barents Sea; points out in particular the importance of the continuous development of new technologies, specially developed for the Arctic environment, such as sub-seabed installation technology;

55. Recalls the position of the EU as a main consumer of Arctic natural gas, and highlights the role of natural gas from a safe and secure supply and produced according to the highest possible standards, and as an important bridge element for the shift to a low-carbon economy in the future; supports the step-by-step precautionary approach in the development of energy resources in the Arctic, recognising that the regions of the Arctic differ substantially;

56. Stresses the EU's strong relations with Greenland and the geostrategic importance of that territory; takes note of the priorities of the Government of Greenland, with a renewed emphasis on economic development and the exploitation of raw materials; asks the Commission and the EEAS to explore how the EU and EU-based actors from science, technology and business can contribute to and assist in the sustainable development of Greenland so that both environmental concerns and the need for economic development are taken into account; expresses, in this connection, its concern regarding the limited results of the Letter of Intent signed by a Commission Vice-President with Greenland;

57. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President/High Representative of the Union for Foreign Affairs and Security Policy, the governments and parliaments of the Member States and the governments and parliaments of the Arctic region states.

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Role and operations of the Troika with regard to the euro area programme countries

European Parliament resolution of 13 March 2014 on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries (2013/2277(INI))

(2017/C 378/21)

The European Parliament,

— having regard to the Treaty on the Functioning of the European Union, and in particular Article 7, Article 136 in combination with Article 121 , and Article 174 thereof,

— having regard to the Charter of Fundamental Rights of the European Union,

— having regard to the Treaty on European Union and in particular Article 3 thereof,

— having regard to Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability ([1]),

— having regard to the Treaty establishing the European Stability Mechanism (ESM),

— having regard to its resolution of 16 June 2010 on EU 2020 ([2]),

— having regard to its resolution of 23 October 2013 on the European Semester for economic policy coordination: implementation of 2013 priorities ([3]),

— having regard to its resolution of 4 July 2013 on the European Parliament's priorities for the Commission Work Programme 2014 ([4]),

— having regard to its resolution of 12 June 2013 on strengthening European democracy in the future EMU ([5]),

— having regard to its resolution of 20 November 2012 with recommendations to the Commission on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup, 'Towards a genuine Economic and Monetary Union' ([6]),

— having regard to its resolution of 6 July 2011 on the financial, economic and social crisis: recommendations concerning the measures and initiatives to be taken ([7]),

— having regard to its resolution of 20 October 2010 on the financial, economic and social crisis: recommendations concerning measures and initiatives to be taken (mid-term report) ([8]),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Budgetary Control and the Committee on Constitutional Affairs (A7-0149/2014),

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([1]) OJ L 140, 27.5.2013, p. 1.
([2]) OJ C 236 E, 12.8.2011, p. 57.
([3]) Texts adopted, P7_TA(2013)0447.
([4]) Texts adopted, P7_TA(2013)0332.
([5]) Texts adopted, P7_TA(2013)0269.
([6]) Texts adopted, P7_TA(2012)0430.
([7]) OJ C 33 E, 5.2.2013, p. 140.
([8]) OJ C 70 E, 8.3.2012, p. 19.

A. whereas the Troika, consisting of the European Commission, the European Central Bank (ECB) and the International Monetary Fund (IMF), originated in the decision of 25 March 2010 by euro area Heads of State and Government to establish a joint programme and to provide conditional bilateral loans to Greece, thereby also building on recommendations from the Ecofin Council, and has since also been operational in Portugal, Ireland and Cyprus; whereas there exists significant involvement of euro area finance ministers in the decisions concerning the detail of the bilateral loans;

B. whereas the Troika and its role have been defined in Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 and mentioned in the Treaty on the ESM;

C. whereas the European Court of Justice (ECJ) confirmed in its ruling in the Pringle v Ireland case (Case C-370/12) that the Commission and the ECB can be entrusted with the tasks conferred on them in the ESM Treaty;

D. whereas, within the Troika, the Commission, acting as an agent of the Eurogroup, is entrusted with negotiating the conditions for financial assistance for euro area Member States 'in liaison with the ECB', and, 'wherever possible together with the IMF', the financial assistance hereinafter referred to as 'EU-IMF assistance', but the Council is politically responsible for approving the macroeconomic adjustment programmes; whereas each member of the Troika followed its own procedural process;

E. whereas the Troika has been to date the basic structure for negotiation between the official lenders and the governments of the recipient countries, as well as for reviewing the implementation of economic adjustment programmes; whereas for the European side, in case of European Financial Stability Facility (EFSF) and European Stability Mechanism (ESM) support the final decisions as regards financial assistance and conditionality are taken by the Eurogroup, which therefore bears the political responsibility for the programmes;

F. whereas there was a broad political agreement to avoid a disorderly default by Member States in the EU, and especially in the euro area, in order to avoid economic and social chaos resulting in the impossibility to pay pensions and civil servants' salaries, as well as dire knock-down effects on the economy, the banking system and social welfare, in addition to the sovereign being completely cut off from the capital markets for a prolonged period;

G. whereas the Troika, together with the Member State concerned, is also responsible for the preparation of formal decisions of the Eurogroup;

H. whereas several Member States outside the euro area have already received or are receiving EU assistance under Article 143 TFEU, provided by the EU in conjunction with the IMF;

I. whereas the EU and its Member States created several ad hoc mechanisms to provide financial assistance for euro area countries, first through bilateral loans, including from several non-euro area countries, then through the temporary emergency funds, namely the EFSF and the European Financial Stabilisation Mechanism (EFSM), created for EU Member States in distress, and finally through the ESM, which was meant to replace all the other mechanisms;

J. whereas the ECJ, referring to Article 13(3) of the ESM Treaty, has recently confirmed (in the Pringle case) that it is the Commission's duty, by reason of its involvement in the ESM Treaty, to 'promote the general interest of the Union' and to 'ensure that the memoranda of understanding concluded by the ESM are consistent with European Union law';

K. whereas the ECJ has also ruled in the Pringle case that the ESM is consistent with the TFEU and has opened the door for a possible integration of that mechanism into the acquis communautaire within the current limits of the Treaties;

L. whereas a Memorandum of Understanding (MoU) is, by definition, an agreement between the Member State concerned and the Troika, which results from negotiations and by which a Member State undertakes to carry out a number of precise actions in exchange for financial assistance; whereas the Commission signs the MoU on behalf of euro area finance ministers; whereas, however, it is not public knowledge how negotiations have been conducted in practice between the Troika and the relevant Member State and, furthermore, there is a lack of transparency as to the extent to which a Member State seeking assistance has been able to influence the outcome of negotiations; whereas it is stipulated in the ESM Treaty that a Member State requesting assistance from the ESM is expected to address, wherever possible, a request for assistance to the IMF;

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M. whereas the total amount of financial assistance packages in the four programmes is unprecedented, as are the duration, shape and context of the programmes, leading to an undesirable situation where the assistance has almost exclusively replaced the usual financing provided by the markets; thereby shielding the banking sector from losses by transferring large amounts of programme country sovereign debt from the balance-sheet of the private sector to that of the public sector;

N. whereas the ECJ has stated in its Pringle ruling that the prohibition laid down in Article 125 TFEU ensures that the Member States remain subject to the logic of the market when they enter into debt, since that should prompt them to maintain budgetary discipline, and that compliance with such discipline contributes at Union level to the attainment of a higher objective, namely maintaining the financial stability of the monetary union; whereas, however, the ECJ stresses that Article 125 TFEU does not prohibit the granting of financial assistance by one or more Member States to a Member State which remains responsible for its commitments to its creditors provided that the conditions attached to such assistance are such as to prompt that Member State to implement a sound budgetary policy;

O. whereas the financial crisis has led to an economic and social crisis; whereas this economic situation and recent developments have had serious and previously unforeseen negative impacts on the quantity and quality of employment, access to credit, income levels, social protection and health and safety standards, and as a result economic and social hardship is unmistakeable; whereas these negative impacts could have been considerably worse without the EU-IMF financial assistance and whereas the action at European level has helped prevent the situation from deteriorating even further;

P. whereas Article 151 TFEU provides that action taken by the EU and its Member States must be consistent with the fundamental social rights laid down in the 1961 European Social Charter and the 1989 Community Charter of the Fundamental Rights of Workers, in order to improve, inter alia, the social dialogue;

Q. whereas Article 152 TFEU states that 'the Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems' and that it 'shall facilitate dialogue between the social partners, respecting their autonomy';

R. whereas the costs of services to service users are rising in some Member States, which means that many people are no longer able to afford an adequate level of service to meet their basic needs, including access to vital treatment;

S. whereas the Task Force for Greece was set up to strengthen the capacity of the Greek administration to design, implement and enforce structural reforms in order to improve the competitiveness and functioning of the economy, society and administration and create the conditions for sustained recovery and job creation, as well as to speed up the absorption of EU Structural and Cohesion Funds in Greece and to utilise critical resources to finance investment;

T. whereas, in its resolution of 20 November 2012 Parliament called for high standards of democratic accountability at national and Union level to be applied to the EU institutions which are members of the Troika; whereas such accountability is imperative for the credibility of the assistance programmes, and, notably, requires a closer involvement of the national parliaments, as well as necessitating that the EU members of the Troika be heard in the European Parliament on the basis of a clear mandate before taking up their duties and to be subject to regular reporting to and democratic scrutiny by Parliament;

U. whereas the programmes were in the short run primarily meant to avoid a disorderly default and stop speculation on sovereign debt; whereas the medium-term aim was to ensure that the money that was lent would be reimbursed, thus avoiding a large financial loss that would rest on the shoulders of the taxpayers of the countries which are providing the assistance and guaranteeing the funds; whereas this also requires the programme to deliver sustainable growth and effective debt reduction in the medium and long term; whereas the programmes were not suited to comprehensively correcting macroeconomic imbalances which had accumulated, in some cases over decades;

Economic situation in programme countries at the beginning of the crisis

1. Considers that the precise triggers for the crises differed in all four Member States, even though common patterns can be observed such as the rapid increase in capital inflows and a build-up of macroeconomic imbalances across the EU during the years preceding the crisis; points out that excessive private and/or public debt, which had risen to a level which became unsustainable, and over-reaction by financial markets combined with speculation and a loss of competitiveness, played a crucial role, and that none of these could have been prevented by the existing EU economic governance framework; further notes that the sovereign debt crises in all cases have been strongly correlated to the global financial crisis caused by lax regulation and misbehaviour of the financial industry;

2. Notes that Europe's public finances were already in a poor state before the crisis, and that since the 1970s the level of Member States' public debt has gradually crept upwards under the impact of the various economic downturns the EU has experienced; notes that the costs of recovery plans, falling tax revenues and high welfare expenditure have caused both public debt and the ratio of public debt to GDP to rise in all Member States, although not to a uniform degree across the Union;

3. Recalls the triangle of interlinked vulnerabilities, whereby the unbalanced fiscal policy of some Member States has amplified the pre-crisis public deficits and the financial crisis has contributed significantly to a further ballooning of those deficits, followed by tensions in sovereign debt markets in some Member States;

4. Points out that the recent financial, economic and banking crisis is the most severe since World War II; acknowledges that without action being taken at European level, the crisis could have had even more severe consequences; notes in this respect that the former ECB President Jean-Claude Trichet has pointed out in a public hearing his concern that without swift and forceful action the sovereign debt crisis might have triggered a crisis of the scale of the Great Depression of 1929;

5. Notes that, prior to the beginning of the EU-IMF assistance programme initiated in the spring of 2010, there was a dual fear associated with the 'insolvency' and 'non-sustainability' of the public finances of Greece as a result of the constantly declining competitiveness of the Greek economy and long-run fiscal derailment, resulting from low effective corporate tax collection, with the government deficit reaching 15,7 % of GDP in 2009, up from - 6,5 % in 2007, and the debt-to-GDP ratio continuing on an upward trend since 2003 when it stood at 97,4 %, reaching 107,4 % in 2007, 129,7 % in 2009 and 156,9 % in 2012; is of the opinion that the problematic situation of Greece was also due to statistical fraud in the years preceding the setting-up of the programme; welcomes the decisive action by the Greek government to urgently and effectively address these problems, including by establishing the independent Hellenic Statistical Authority in March 2010; notes that the gradual uncovering of statistical fraud in Greece had an impact on the need to readjust multipliers, forecasts and proposed measures; recalls that because of the European Parliament's insistence Eurostat (the statistical office of the European Union) is now endowed with powers and means to deliver a solid basis of reliable and objective statistics;

6. Notes that Greece entered recession in Q4 2008; notes that the country experienced six quarters of negative GDP growth rate in the seven leading up to the assistance programme being activated; notes the close correlation between the effects of the financial crisis and the rise in government debt on the one hand, and the increase in the national debt and the economic downturn on the other, with public debt increasing from EUR 254,7 billion at the end of Q3 2008 to EUR 314,1 billion at the end of Q2 2010;

7. Notes that following the Greek government's request for financial assistance in April 2010, the markets started to reassess the economic fundamentals and the solvency of other euro area Member States, and subsequently tensions on Portuguese sovereign bonds quickly drove up Portugal's refinancing costs to unsustainable levels;

8. Notes that the economic data first used by the government during the negotiations had to be revised;

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9. Notes that, prior to the beginning of the EU-IMF assistance programme, the Portuguese economy had suffered from low GDP and productivity growth for a number of years, as well as large capital inflows, and that these patterns, combined with an acceleration of expenditure, particularly discretionary spending, consistently above GDP growth, and the impact of the global financial crisis, had resulted in a large fiscal deficit and high public and private debt levels together with contagion from the Greek crisis, driving up Portugal's refinancing costs in the capital markets to unsustainable levels and effectively cutting the public sector from access to those markets; stresses that in 2010, before financial assistance was sought in 7 April 2011, Portugal's growth rate had declined to 1,9 % and its fiscal deficit had reached 9,8 % (2010), its debt level 94 % (2010) and its current account deficit 10,6 % of GDP, with the unemployment rate standing at 12 %; notes in this context that the overall macroeconomic fundamentals deteriorated very rapidly, from reasonably good levels in 2007 before the crisis — when Portugal's growth rate was 2,4 %, its fiscal deficit 3,1 %, its debt level 62,7 % and its current account deficit 10,2 % of GDP, with the unemployment rate standing at 8,1 % — to a deep and unprecedented recession;

10. Notes that, before the EU-IMF assistance programme, the Irish economy had just suffered a banking and economic crisis of unprecedented dimensions that resulted largely from the exposure of the Irish financial sector to the US 'subprime crisis', irresponsible risk-taking by Irish banks and the widespread use of asset-backed securities, which, following the blanket guarantee and the subsequent bailout, had the effect of cutting the public sector off from access to the capital markets, causing Irish GDP to fall by 6,4 % in 2009 (1,1 % in 2010) from a positive growth level of 5 % of GDP in 2007, unemployment to increase from 4,7 % in 2007 to 13,9 % in 2010, and the General Government Fiscal Balance to experience a deficit, peaking at 30,6 % in 2010, as a result of Irish government support for the banking sector, down from a surplus of 0,2 % in 2007; notes that the banking crisis partly resulted from inadequate regulation, very low tax rates and an oversized banking sector; recognises that private losses of Irish banks were taken on to the balance of the Irish sovereign, in order to avoid a breakdown of the Irish banking system and also to minimise the risks of contagion across the euro area as a whole, and that the Irish government acted in the wider interests of the Union in responding to its banking crisis; further notes that in the decade prior to the assistance programme the Irish economy experienced a prolonged period of negative real interest rates;

11. Points out the non-existence of fiscal imbalances prior to the crisis in Ireland and to the extremely low level of public debt; also stresses the extended level of flexibility of the labour market prior to the crisis; notes that the troika initially requested the lowering of wages; draws attention to a non-sustainable banking model and a tax system which was overly dependent on the income from taxing a housing and asset bubble, depriving the state of income when those bubbles burst;

12. Notes that around 40 % of Irish GDP was injected into the banking sector by the taxpayer at a time when bail-in was not available as it had given rise to considerable debate within the troika;

13. Calls for the full implementation of the June 2012 commitment by EU leaders to break the vicious circle between banks and sovereigns and to further examine the situation of the Irish financial sector in a manner that substantially alleviates Ireland's heavy burden of bank debt;

14. Notes that when it came to PSI in Greece, the knock-on effects on the Cyprus banking system, which was already on the verge of collapse because of a failing banking model, were not sufficiently considered and it is also suggested that assets relating to some larger Member States were again protected;

15. Notes that in May 2011, Cyprus lost access to international markets due to the significant deterioration in public finances as well as the heavy exposure of the Cypriot banking sector to the Greek economy and the restructuring of public debt in Greece, which led to sizeable losses in Cyprus; recalls that years before the beginning of the EU-IMF assistance programme in 2013, serious concerns regarding systemic instability in the Cypriot economy had been raised, owing inter alia to its overleveraged and risk-seeking banking sector and its exposure to highly indebted local property companies, the Greek debt crisis, the downgrading of Cypriot government bonds by international rating agencies, the inability to refund public expenditure from the international markets, and the reluctance of the Cypriot public authorities to restructure the

troubled financial sector, opting instead to rely on a massive injection of capital by Russia; recalls also that the situation has been made more complex by the over-reliance on savings coming from Russian citizens and by the recourse to a loan from the Russian authorities; further notes that in 2007, the Cypriot public debt-to-GDP ratio stood at 58,8 %, rising to 86,6 % in 2012, while in 2007 there was a general government surplus of 3,5 % of GDP which nonetheless became a deficit of - 6,4 % by 2012;

EU-IMF financial assistance, content of the MoUs and policies implemented

16. Notes that the initial request for financial assistance was made by Greece on 23 April 2010 and that the agreement between the Greek authorities on the one side and the EU and IMF on the other was adopted on 2 May 2010, in the relevant MoUs containing the policy conditionality for EU-IMF financial assistance; further notes that, following five reviews and the insufficient success of the first programme, a second programme had to be adopted in March 2012, which has been reviewed three times since; notes that the IMF did not take effectively into account the objections of one third of its board members in regard to the distribution of benefits and burdens resulting from the first Greek programme;

17. Notes that the first agreement of May 2010 could not contain provisions for a restructuring of the Greek debt, despite it being first proposed by the IMF, which, in line with its usual practice, would have preferred an early debt restructuring; recalls the ECB's reluctance to consider any form of debt restructuring in 2010 and 2011 on the grounds that it would have led to the crisis having a contagion effect on other Member States, as well as its refusal to participate in the restructuring agreed in February 2012; notes that the Central Bank of Greece contributed in November 2010 to intensifying market turmoil by publicly warning investors that ECB liquidity operations could no longer be taken for granted in the case of Greek sovereign debt; further notes that there was a commitment by Member States that their banks would retain their exposure to the Greek bond markets, which they were unable to maintain;

18. Notes that Portugal's initial request for financial assistance was made on 7 April 2011 and that the agreement between the Portuguese authorities on the one side and the EU and IMF on the other was adopted on 17 May 2011 in the relevant MoUs containing the policy conditionality for EU-IMF financial assistance; further notes that the Portuguese programme has since been reviewed regularly to adjust the targets and objectives, given the unattainable initial goals, leading to the successful tenth review of Portugal's economic adjustment programme, with good prospects for completion of the programme soon;

19. Recalls the bilateral pressure reportedly exerted by the ECB on the Irish authorities prior to the initial agreement between the latter and the EU and IMF being adopted on 7 December 2010 and 16 December 2010, respectively in the relevant MoUs containing the policy conditionality for EU-IMF assistance; notes that the programme was largely based on the Irish Government's own National Recovery Plan 2011-2014 published on 24 November 2010; further notes that the Irish programme has since been reviewed regularly, leading to a twelfth and final review on 9 December 2013, and that this programme was completed on 15 December 2013;

20. Notes that the European Council decided on 29 June 2012 to allow the ESM the option of recapitalising banks directly, following a regular decision and provided an effective single supervisory mechanism is established; further notes that the operational framework for a direct recapitalisation instrument, subject to conditionality, was defined by the Eurogroup on 20 June 2013;

21. Notes that thinking on bail-in has evolved over time; in the case of Ireland in 2010, the bail-in of senior bondholders was not an option available to the Irish authorities, while in Cyprus in 2013, the bail-in of insured depositors was put forward as a policy measure, which increased the disparity between the instruments used to alleviate the banking and sovereign debt crises;

22. Notes that Cyprus made its initial request for financial assistance on 25 June 2012, but that differences of positions as regards the conditionality, as well as the rejection by the Cypriot Parliament on 19 March 2013 of an initial draft programme which included bail-in of insured depositors on the grounds that it was contrary to the spirit of European law since it envisaged haircut of small deposits of less than EUR 100 000, delayed the final agreement on the EU-IMF assistance programme until 24 April (EU) and 15 May 2013 (IMF) respectively, with the Cypriot House of Representatives finally endorsing the agreement on 30 April 2013; notes that there were initial competing programme proposals in the case of Cyprus between different members of the Troika, and highlights the lack of sufficient explanation as to how the inclusion of

insured depositors was signed off by the European Commission and EU finance ministers; furthermore, regrets the fact that the Cypriot authorities referred to difficulties in convincing the Troika representatives of their concerns during the negotiation process, as also the fact that the Cypriot Government was reportedly obliged to accept the bail-in instrument on bank deposits in view of the exceptionally high level of private debt in relation to GDP; points out that while the Central Bank of Cyprus (CBC) and a ministerial committee were heavily involved in the negotiation and design of the financial assistance programme and finally the Governor of the CBC co-signed the MoU with the Minister of Finance, it must be noted that there was extremely limited time for any further negotiation in detail of aspects of the MoU;

23. Notes the serious side-effects of the application of the bail-in, which include the imposition of capital controls; stresses that the Cypriot real economy continues to face major challenges as the severing of credit lines is bearing down on the productive sectors of the economy;

24. Notes that the IMF is the global institution tasked with providing states experiencing balance of payments problems with conditional financial assistance; points out that all the Member States are members of the IMF and therefore have the right to request its assistance, in cooperation with the EU institutions, in the light of assessment of the interests of the EU and the Member State in question; notes that in view of the magnitude of the crisis, sole reliance on the financial means of the IMF would not have been sufficient to tackle the problems of the countries in need of financial assistance;

25. Notes that the IMF has clearly pointed out the risks of the Greek programme, in particular with respect to debt sustainability; observes that in addition to accepting that the programme be devised and negotiated by the troika, the IMF decided to modify its Exceptional Access Policy (EAP) criterion on debt sustainability in order to make it possible to lend to Greece, Ireland and Portugal;

26. Draws attention to the concerns expressed with regard to oversight by the ECB of emergency liquidity assistance (ELA); considers the solvency concept employed by the ECB to be lacking in transparency and predictability;

27. Notes the unpreparedness of the EU and the international institutions for a sovereign debt crisis of large magnitude, as well as its differentiated origins and consequences within the euro area, stemming from, among other factors, what is the most serious financial crisis since 1929; regrets the absence of a viable legal basis to deal with a crisis of this nature; acknowledges the efforts made to respond quickly and resolutely, but regrets the fact that the Council has consistently refused to develop a long-term, comprehensive and systemic approach; deplores the fact that the EU Structural Funds and EU policies aiming at long- term economic convergence within the Union have not effectively delivered;

28. Points out that the cofinancing rates for the EU Structural Funds were topped up to 95 % for some of the Member States which have been most affected by the crisis and which have received financial assistance under an adjustment programme; stresses that local and national administrations need to be strengthened in order to cope with the implementation of EU legislation and programmes, thus speeding up the absorption of Structural Fund monies;

29. Acknowledges, despite the above, that the immense challenge which the Troika faced in the lead-up to the crisis was unique as a result of, inter alia, the poor state of public finances, the need for structural reforms in some Member States, insufficient regulation of financial services at European and national level, and large macroeconomic imbalances built up over many years, as well as policy and institutional failures and the fact that most traditional macroeconomic instruments such as budgetary policy or external devaluation were not available due to the constraints of monetary union and the incomplete nature of the euro area; notes, moreover, the considerable time pressure arising due partly to the fact that requests for financial assistance were generally made at a time when countries were already close to default and had already lost access to the markets, while legal obstacles had to be cleared, fear of a meltdown of the euro area was palpable, there was a patent need to reach political agreements and take decisions on reforms, the world economy was in a severe downturn, and a number of countries that were to contribute financial support had seen their own public and private debt increase in alarming ways;

30. Denounces the lack of transparency in the MoU negotiations; notes the need to evaluate whether formal documents were clearly communicated to and considered in due time by the national parliaments and the European Parliament and adequately discussed with the social partners; further notes the possible negative impact of such practices, which involve keeping information behind closed doors on citizens' rights, on the stability of political situation in the countries concerned and the trust of citizens in democracy and the European project;

31. Notes that the recommendations contained in the MoUs are at odds with the modernisation policy drawn up in the form of the Lisbon strategy and the Europe 2020 strategy; further notes the fact that Member States with MoUs are exempt from all European Semester reporting processes, including reporting under the anti-poverty and social inclusion targets, and do not receive Country Specific Recommendations aside from implementation of their MoUs; recalls that the MoUs need to be adapted in order to take into account the practice and institutions for wage formation and the national reform programme of the Member State concerned in the context of the Union's strategy for growth and jobs as set out in Regulation (EU) No 472/2013 (Article7(1)); urges that this be done where it is not yet the case; points out, however, that this can be partly explained, even if not fully justified, by the fact that programmes had to be implemented under considerable time pressure in a difficult political, economic and financial environment;

32. Regrets the inclusion in the programmes for Greece, Ireland and Portugal of a number of detailed prescriptions for health systems reform and expenditure cuts; regrets the fact that the programmes are not bound by the Charter of Fundamental Rights of the European Union or by the provisions of the Treaties, notably Article 168(7) TFEU;

33. Points out that the EU finance ministers approved the macroeconomic adjustment programmes;

The current economic and social situation

34. Regrets that the measures implemented have led in the short term to a rise in income distribution inequality; notes that there has been an above-average rise in such inequalities in the four countries; notes that cuts in social benefits and services and rising unemployment resulting from measures contained in the programmes intended to address the macroeconomic situation, as well as wage reductions, are raising poverty levels;

35. Points to the unacceptable level of unemployment, long-term unemployment and youth unemployment in particular in the four Member States under assistance programmes; stresses that the high youth unemployment rate imperils the opportunities for future economic development, as demonstrated by the flow of young migrants from southern Europe as well as from Ireland, which risks causing a brain drain; recalls that education, training and a strong scientific and technological background have been systematically identified as the critical path for the structural catching up of these economies; therefore welcomes the recent initiatives at EU level regarding youth education and employment, the Erasmus+ programme, the Youth Employment Initiative, and the 6 billion EUR for the EU Youth Guarantee Scheme, but calls for an even stronger political and economic focus on addressing these issues; stresses that competences related to employment remain primarily with the Member States; therefore encourages the Member States to further modernise their national education systems and to engage in addressing youth unemployment;

36. Welcomes the end of the programme in Ireland, in so far as the Troika missions have stopped and the country was able to successfully access bond markets on 7 January 2014, as well as the expected end for Portugal; recognises the unprecedented fiscal adjustment in Greece, yet regrets the uneven results in Greece despite unprecedented reforms having been undertaken; acknowledges the very demanding efforts that have been requested from individuals, families, enterprises and other institutions of the civil societies of the countries under adjustment programmes; notes the first signs of partial economic improvements in certain programme countries; points out, however, that the persistently high unemployment rates weigh on economic recovery, and that continued and ambitious efforts are still needed both at national and at EU level;

The Troika: the economic dimension and the theoretical basis and impact of decisions

37. Stresses that adequate country-specific as well as eurozone-wide economic models, built on prudent assumptions, independent data, involvement of stakeholders and transparency, are necessary in order to produce credible and efficient adjustment programmes, while acknowledging that economic forecasts usually contain a degree of uncertainty and unpredictability; deplores the fact that adequate statistics and information have not always been available;

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38. Welcomes the fact that financial assistance achieved in the short run the objective of avoiding a disorderly default on sovereign debt that would have had extremely severe economic and social consequences which would have arguably been worse than the current ones, as well as spillover effects for other countries of an incalculable magnitude, and possibly the forced exit of countries from the euro area; notes, however, that there is no guarantee this will be avoided in the long run; also notes that the financial assistance and adjustment programme in Greece has not prevented either an orderly default or a contagion effect of the crisis on other Member States, and that market confidence was restored and spreads on sovereign debt started to come down only when the ECB supplemented actions already taken with the Outright Monetary Transactions (OMT) programme in August 2012; deplores the economic and social downturn which became evident when the fiscal and macroeconomic corrections were put in place; notes that the economic and social consequences would have been worse without the EU-IMF financial and technical assistance;

39. Notes that from the onset the Troika published comprehensive documents on the diagnosis, the strategy for overcoming the unprecedented problems, a set of policy measures drawn up together with the national government concerned, and economic forecasts, all of which are updated on a regular basis; notes that these documents did not permit the public to form an overall view of the negotiations and thus that this does not constitute sufficient means of accountability;

40. Deplores the sometimes overoptimistic assumptions made by the Troika, especially as far as growth and unemployment are concerned, deriving inter alia from the insufficient recognition of cross border spillovers (as recognised by the Commission in its report 'Fiscal consolidations and spillovers in the Euro area periphery and core'), political resistance to change in some Member States, and the economic and social impact of adjustment; deplores the fact that this also affected the Troika's analysis of the interplay between fiscal consolidation and growth; notes that as a result fiscal targets could not be fulfilled within the timeframe foreseen;

41. Understands from the hearings that a strict relationship exists between the length of the adjustment programme and the help made available through the dedicated funds such as the ESM, meaning that a longer adjustment period would inevitably have meant substantially larger amounts to be made available and guaranteed by the other euro area countries and the IMF, something which was not considered politically feasible in view of the already very high amounts involved; points out that the length of the adjustment programmes and the reimbursement periods are distinctly longer than in usual IMF financial assistance programmes;

42. Welcomes the reduction of structural deficits in all programme countries since the start of their respective assistance programmes; regrets that these have not yet led to a reduction in the ratios of public debt to GDP; notes that the ratio of public debt to GDP has instead sharply increased in all programme countries, as the receipt of conditional loans naturally leads to an increase of public debt and as policy implemented has a recessive impact in the short term; further believes that the accurate estimation of fiscal multipliers is of crucial importance for fiscal adjustment to be successful in reducing the debt-to-GDP ratio; notes that progression towards more sustainable levels of private debt is also necessary for long-term stability; acknowledges that it typically takes several years before structural reforms can make a significant contribution to raising output and employment;

43. Considers that fiscal multipliers are difficult to assess with certainty; recalls in this respect that the IMF admitted to underestimating the fiscal multiplier in its growth forecasts prior to October 2012; notes that this period encompasses the conclusions of all but one of the initial memoranda of understanding under enquiry in this report; recalls that the European Commission stated in November 2012 that forecast errors were not due to the underestimation of fiscal multipliers; points out however that the Commission stated in its reply to the questionnaire that 'fiscal multipliers tend to be larger at the current juncture than in normal times'; understands that fiscal multipliers are partly endogenous and evolve in changing macroeconomic conditions; points out that this expression of public disagreement between the European Commission and the IMF on the size of the fiscal multiplier was not followed up with a joint stance being taken by the troika;

44. Points out that while the IMF's stated objective in its assistance operations within the frame of the Troika is internal devaluation, including through wage and pension cuts, the Commission has never explicitly endorsed this objective; notes that the objective emphasised by the Commission in all four programme countries under enquiry has rather been fiscal consolidation; recognises these priority differences between the IMF and the Commission and takes note of this preliminary inconsistency of goals between the two institutions; notes that it was commonly decided to rely on a mix of both instruments as well as structural reforms, with other measures complementing this approach; notes that the combination of

fiscal consolidation and restrictive wage policy has depressed both public and private demand; notes that the objective of reforming both the industrial base and the institutional structures in programme countries, rendering them more sustainable and effective, has received less attention than the above-mentioned objectives;

45. Considers that too little attention has been paid to alleviating the negative economic and social impact of adjustment strategies in the programme countries; recalls the origins of the crises; deplores the fact that too often the one-size-fits-all approach to crisis management has not fully considered the balance in the economic and social impact of the prescribed policy measures;

46. Stresses that national-level ownership is crucial, and that failure to implement agreed measures has consequences in terms of the expected results, inducing additional hardship over an even longer period for the country concerned; takes note of the IMF's experience that country ownership could be seen as the single most important factor in the success of any financial assistance programme; stresses however that national-level ownership cannot be achieved without proper democratic legitimacy and accountability at both national and EU level; highlights in this regard the fact that deliberation by national parliaments of the budgets and laws for implementing economic adjustment programmes is crucial for providing accountability and transparency at national level;

47. Stresses that enhanced gender equality is an important key to building stronger economies and that this factor should never be overlooked in economic analyses or recommendations;

The Troika: the institutional dimension and democratic legitimacy

48. Notes that because of the evolving nature of the EU's response to the crisis, the unclear role of the ECB in the Troika and the nature of the Troika decision-making process, the Troika's mandate has been perceived as being unclear and lacking in transparency and democratic oversight;

49. Points out, however, that the adoption of Regulation (EU) No 472/2013 on 21 May 2013, constitutes a first — even though insufficient — step in codifying the surveillance procedures to be employed in the euro area for countries experiencing financial difficulties, and that it confers a mandate on the Troika; welcomes inter alia: the provisions regarding the evaluation of the sustainability of the government debt; the more transparent procedures regarding the adoption of macroeconomic adjustment programmes, including the need to integrate adverse spillover effects as well as macroeconomic and financial shocks and the scrutiny rights devolved to the European Parliament; the provisions regarding the involvement of social partners; the requirements to take explicit account of national practices and institutions for wage formation; the need to ensure sufficient means for fundamental policies, such as education and healthcare; and the exemptions granted to Member States under assistance from the relevant requirements of the Stability and Growth Pact;

50. Takes note of the Eurogroup President's statement that the Eurogroup gives a mandate to the Commission to negotiate on its behalf the details of the conditions attached to the assistance, while taking into account Member States' views on key elements of the conditionality and, in view of their own financial constraints, on the extent of financial assistance; notes that the above-mentioned procedure whereby the Eurogroup confers a mandate on the Commission is not specified in EU law, as the Eurogroup is not an official institution of the European Union; stresses that despite the Commission acting on behalf of the Member States, the ultimate political responsibility for the design and approval of the macroeconomic adjustment programmes lies with EU finance ministers and their governments; deplores the absence of EU-level democratic legitimacy and accountability of the Eurogroup when it assumes EU-level executive powers;

51. Points out that the rescue mechanisms and the Troika were of an ad hoc nature, and regrets that there was no appropriate legal basis available for setting up the Troika on the basis of Union primary law, which led to the establishment of intergovernmental mechanisms in the form of the EFSF, and eventually the ESM; calls for any future solution shall be based on Union primary law; acknowledges that this might lead to the need for a Treaty change;

52. Is alarmed by the admission by the former President of the Eurogroup before the European Parliament that the Eurogroup endorsed the recommendations of the Troika without extensive consideration of their specific policy implications; stresses that, if accurate, this does not discharge euro area finance ministers from their political responsibility for the macroeconomic adjustment programmes and the MoUs; points out that this admission sheds a worrying light on

the blurred scope of the 'technical advising' and 'Eurogroup agency' roles devolved to both the Commission and the ECB in the framework of the design, implementation and assessment of assistance programmes; deplores, from that perspective, the lack of any clear and accountable case-by-case mandates from the Council and the Eurogroup to the Commission;

53. Questions the dual role of the Commission in the Troika as both an agent of Member States and an EU institution; asserts that there is a potential conflict of interest within the Commission between its role in the Troika and its responsibility as guardian of the Treaties and the acquis communautaire, especially in policy areas such as competition and state aid policy and social cohesion, and with regard to Member States' wage and social policy, an area in which the Commission has no competence, as well as respect for the Charter of Fundamental Rights of the European Union; points out that such a situation contrasts with the Commission's normal role, which is to act as an independent principal protecting the EU interest and ensuring the implementation of EU rules within the limits established by the Treaties;

54. Points equally to the potential conflict of interest between the current role of the ECB in the Troika as 'technical advisor' and its position as creditor of the four Member States, as well as its mandate under the Treaty as it has made its own actions conditional on decisions it is itself part of; nonetheless, welcomes its contribution in addressing the crisis but requests that potential ECB conflicts of interest, especially as regards crucial liquidity policy, are carefully scrutinised; notes that throughout the crisis the ECB has had crucial information on the health of the banking sector and financial stability in general, and that with this in mind it has subsequently exerted policy leverage on decision-makers, at least in the cases of the Greek debt restructuring, where the ECB insisted that CACs were to be removed from government bonds it held, the Cypriot ELA operations, and the Irish non-inclusion of senior-bondholders in the bail-in; calls on the ECB to publish the letter of 19 November 2010 from Jean-Claude Trichet to the then Irish Finance Minister, as requested by the European Ombudsman;

55. Notes that the ECB's role is not sufficiently defined, as it is stated in the ESM Treaty and Regulation (EU) No 472/2013 that the Commission should work 'in liaison with the ECB', thus reducing the ECB to an advisory role; notes that the Eurogroup asked for the involvement of the ECB as a provider of expertise to complement the views of the other Troika partners, and that the ECJ has ruled in the Pringle case that the tasks allocated to the ECB by the ESM Treaty are in line with the various tasks which the TFEU and the Statute of the ESCB [and the ECB] confer on the ECB provided that a certain number of conditions are permanently fulfilled; points to the responsibility of the Eurogroup in allowing the ECB to act within the Troika, but recalls that the ECB's mandate is circumscribed by the TFEU to the areas of monetary policy and financial stability and that involvement of the ECB in the decision-making process related to budgetary, fiscal and structural policies is not foreseen by the Treaties; recalls that Article 127 TFEU provides that, without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 TEU;

56. Points to the generally weak democratic accountability of the Troika in programme countries at national level; notes, however, that this democratic accountability varies between countries, depending on the will of national executives and the effective scrutiny capacity of national parliaments, as demonstrated in the case of the refusal of the original MoU by the Cypriot parliament; notes, however, that when consulted, national parliaments were faced with the choice between eventually defaulting on their debt or accepting Memoranda of Understanding negotiated between the Troika and national authorities; points out that the MoU was not ratified by the national parliament in Portugal; notes with concern that the fact that the Troika is made up of three independent institutions with an uneven distribution of responsibility between them, coupled with differing mandates, as well as negotiation and decision-making structures with different levels of accountability, has resulted in a lack of appropriate scrutiny and democratic accountability of the Troika as a whole;

57. Regrets the fact that by reason of its statutes the IMF cannot appear formally before or report in writing to national or European parliaments; notes that the IMF's governance structure foresees accountability towards the 188 member countries via the IMF Board; stresses that the IMF's involvement as lender of last resort providing up to one third of the funding places the institution in a minority role;

58. Notes that, following preparatory work by the Troika, formal decisions are made, separately and in accordance with their respective legal statutes and roles, by the Eurogroup and the IMF, who thus respectively acquire political responsibility for Troika actions; further notes that a crucial role is now accorded to the ESM as the organisation responsible for deciding on financial assistance granted by eurozone member states, thus putting national executives of member states of the euro area, including the governments of those directly concerned, at the centre of any decisions taken;

59. Notes that the democratic legitimacy of the troika at national level derives from the political responsibility of Eurogroup and ECOFIN members before their respective national parliaments; regrets that the troika lacks means of democratic legitimacy at EU level because of its structure;

60. Deplores the way EU institutions are being portrayed as the scapegoat for adverse effects in Member States' macroeconomic adjustment, when it is the Member States' finance ministers who bear the political responsibility for the Troika and its operations; stresses that this may lead to increased Euroscepticism although responsibility lies with the national and not the European level;

61. Calls on the Eurogroup, the Council and the European Council to assume full responsibility for the operations of the Troika;

62. Points out that the ESM is an intergovernmental body which is not part of the European Union legal structure and is bound by the unanimity rule in the regular procedure; believes that for this reason a spirit of mutual commitment and solidarity is required; notes that the ESM Treaty has introduced the principle of loan conditionality, in the form of a macroeconomic adjustment programme; points out that the ESM treaty does not define further the content of conditionality or adjustment programmes, thus allowing great leeway in recommending such conditionality;

63. Expects the national courts of auditors to fully assume their legal responsibilities with regard to certifying the legality and regularity of financial transactions and the effectiveness of supervisory and control systems; calls on the supreme audit institutions, in this connection, to reinforce their cooperation, in particular by exchanging best practices;

Proposals and recommendations

64. Welcomes the willingness of the Commission, the ECB, the President of the Eurogroup, the IMF, the national governments and central banks of Cyprus, Ireland, Greece and Portugal, as well as the social partners and representatives of civil society, to cooperate and participate in the evaluation by Parliament of the role and operations of the Troika, including by answering the detailed questionnaire and/or participating in formal and informal hearings;

65. Deplores the fact that the European Council did not sufficiently take into account the proposals contained in its resolution of 6 July 2011 on the financial, economic and social crisis; emphasises that implementing them would have fostered economic and social convergence in the Economic and Monetary Union and would have afforded measures to coordinate economic and budgetary policy full democratic legitimacy;

The short to medium term

66. Calls, as a first step, for the establishment of clear, transparent and binding rules of procedure for the interaction between the institutions within the Troika and the allocation of tasks and responsibility therein; strongly believes that a clear definition and division of tasks is needed in order to enhance transparency and to enable a stronger democratic control over and underpin the credibility of the work of the Troika;

67. Calls for the development of an improved communication strategy for ongoing and future financial assistance programmes; urges that this concern be given the utmost priority, as inaction on this front will ultimately damage the image of the Union;

68. Calls for a transparent evaluation of the awarding of contracts to external consultants, the lack of public tenders, the very high fees paid and the potential conflicts of interests;

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Economic and social impact

69. Recalls that the Parliament's position on Regulation (EU) No 472/2013 entailed introducing provisions requiring the macroeconomic adjustment programmes to include contingency plans in case baseline forecast scenarios should not materialize and in case of slippage due to circumstances outside the control of the Member State under assistance, such as unexpected international economic shocks; stresses that such plans are a prerequisite for prudent policymaking, given the fragility and poor reliability of economic models underpinning programme forecasts as illustrated in all Member States under assistance programmes;

70. Urges the EU to closely monitor the financial, fiscal and economic evolution in the Member States and to create an institutionalised system of positive incentives to duly reward those who meet best practices in this regard and those who fully comply with their adjustment programmes;

71. Demands that the Troika take stock of the current debate on fiscal multipliers and consider revision of the MoUs on the basis of the latest empirical results;

72. Asks the Troika to proceed to new debt sustainability assessments and, as a matter of urgency, to address the need to reduce the Greek public debt burden as well as the severe capital outflows from Greece, which are contributing significantly to the vicious circle characterising the current economic depression in the country; recalls that a number of possibilities exist for a debt restructuring, besides a haircut on bond principals, including bond swapping, extending bond maturities and reducing coupons; believes the different possibilities for debt restructuring should be carefully weighed;

73. Insists that the MoUs must be made to respect, where this is not the case, the objectives of the European Union, i.e. the promotion of employment and improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, as well as proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion, as stated in Article 151 TFEU; supports the cautious prolongation of fiscal adjustment timeframes that have already been fulfilled in the memoranda as fears of general meltdown receded; supports considering further adjustments in light of further macroeconomic developments;

74. Regrets that the burden has not been shared among all who acted irresponsibly and that the protection of bondholders was seen as an EU necessity in the interests of financial stability; asks the Council to activate the framework it decided on the treatment of legacy assets so as to breakdown the vicious circle between sovereigns and the banks and alleviate the public debt burden in Ireland, Greece, Portugal and Cyprus; urges the Eurogroup to deliver on its commitment to examine the situation of the Irish financial sector with a view to further improving the sustainability of the adjustment in Ireland, and, having regard to all of the above, urges the Eurogroup to make good on the commitment to Ireland to deal with this bank debt burden; believes special consideration should be given to the application of the Stability and Growth Pact to relevant legacy debt, since the latter is perceived in Ireland as unfair and as burdening the country under the flexibility provisions of the reformed pact; considers that in the longer term the distribution of the costs should reflect distribution of the protected bondholders; takes note of the Irish authorities' demand for a transfer of a share of public debt corresponding to the cost of the bailout of the financial sector to the ESM;

75. Recommends that the Commission, the Eurogroup and the IMF should explore further the concept of 'contingent convertible bonds', where the returns of newly issued sovereign debt in Member States under assistance are linked to economic growth;

76. Recalls the need for measures to safeguard tax revenues, in particular for programme countries, as enshrined in Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability (the Gauzès report), by taking 'measures in close cooperation with the Commission and in liaison with the ECB and, where appropriate, with the IMF, aiming to reinforce the efficiency and effectiveness of revenue collection capacity and the fight against tax fraud and evasion, with a view to increasing its fiscal revenue'; recalls that effective steps to fight and prevent fiscal fraud both within and outside the EU should be taken rapidly; recommends implementing measures that would make all parties contribute fairly to tax revenues;

77. Calls for the publication of the use made of bail-out funds; stresses that the quantity of funds channelled to finance the deficits, fund the government and repay private creditors should be clarified;

78. Calls for an effective involvement of social partners in the design and implementation of adjustment programmes, current and future; believes that agreements reached by social partners in the framework of the programmes should be respected insofar as they are compatible with the programmes; emphasises that Regulation (EU) No 472/2013 provides that assistance programmes shall respect national practices and institutions for wage formation;

79. Calls for the involvement of the EIB in the design and implementation of investment- related measures in order to contribute to economic and social recovery;

80. Regrets that the programmes are not bound by the Charter of Fundamental Rights of the European Union, the European Convention of Human Rights and the European Social Charter, due to the fact that they are not based on Union primary law;

81. Stresses that the European institutions need to respect Union law, including the Charter of Fundamental Rights of the European Union, under all circumstances;

82. Stresses that pursuing economic and financial stability in the Member States and the Union as a whole must not undermine social stability, the European social model or the social rights of EU citizens; stresses that involvement of the social partners in the economic dialogue at European level, as provided for in the Treaties, must be on the political agenda; calls for the necessary involvement of the social partners in the design and implementation of current and future adjustment programmes;

The Commission

83. Calls for full implementation and full ownership of Regulation (EU) No 472/2013; calls on the Commission to start interinstitutional negotiations with Parliament in order to define a common procedure for informing the competent committee of Parliament on the conclusions drawn from the monitoring of the macroeconomic adjustment programme, as well as the progress made in the preparation of the draft macroeconomic adjustment programme provided for in Article 7 of Regulation (EU) No 472/2013; reminds the Commission to conduct and publish ex-post evaluations of its recommendations and its participation in the Troika; asks the Commission to include such assessments in the review report foreseen in Article 19 of Regulation (EU) No 472/2013; reminds the Council and the Commission that Article 16 of Regulation (EU) No 472/2013 provides that Member States in receipt of financial assistance on 30 May 2013 shall be subject to that Regulation as from that date; calls on the Council and the Commission, in conformity with Article 265 TFEU, to act in order to streamline and align the ad hoc financial assistance programmes with the procedures and acts referred to in Regulation (EU) No 472/2013; calls on the Commission and the co-legislators to draw the relevant lessons from the troika experience when designing and implementing the next steps of the EMU. including when revising Regulation (EU) No 472/2013;

84. Reminds the Commission and the Council of its position adopted in plenary regarding Regulation (EU) No 472/2013; emphasises in particular that it has laid down provisions in this position which increase further the transparency and accountability of the decision-making process leading to the adoption of macroeconomic adjustment programmes, providing for a clearer and well-delimitated mandate and overall role for the Commission; asks the Commission to reassess such provisions and integrate them into the framework in case of a future proposal to amend Regulation (EU) No 472/2013; recalls, from that perspective, that the preparation of future assistance programmes shall be placed under the responsibility of the Commission, which should seek advice, where appropriate, from third parties such as the ECB, the IMF or other bodies;

85. Requests full accountability of the Commission in line with and beyond Regulation (EU) No 472/2013 when it acts in its capacity as a member of the EU assistance mechanism; requests that the Commission representatives in that mechanism be heard by Parliament before taking up their duties; demands that they be subjected to regular reporting to Parliament;

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86. Proposes that for each programme country the Commission should sets up a 'growth task force' consisting inter alia of experts from (inter alia) the Member States and the EIB, in association with representatives of the private sector and civil society in order to allow ownership, to suggest options to promote growth which would complement fiscal consolidation and structural reforms; this task force would have the objective of restoring confidence and therefore enabling investments; the Commission should build on the experience of the 'twinning' instrument for cooperation between public administrations of Member States and of beneficiary countries;

87. Is of the opinion that the situation of the euro area as a whole (including spillover effects on other Member States resulting from national policies) should be better taken into account when looking at the Macroeconomic Imbalances Procedure (MIP) or when the Commission is drafting the AGS;

88. Believes that the MIP should also clearly assess any Member State's overreliance on a particular sector of activity;

89. Asks the Commission to proceed to a thorough examination in the light of state aid rules of the liquidity provisions of the ESCB;

90. Instructs the Commission, in its capacity of 'guardian of the Treaties', to present by the end of 2015, a detailed study of the economic and social consequences of the adjustment programmes in the four countries, in order to provide a precise understanding of both the short-term and long-term impact of the programmes, thus enabling the resulting information to be used for future assistance measures; asks the Commission to use all relevant consultative bodies, including the Economic and Financial Committee, the Employment Committee and the Social Protection Committee, when drafting this study, and to fully cooperate with Parliament; believes the report of the Commission should also reflect the assessment of the European Agency of Fundamental Rights;

91. Calls on the Commission and Council to ensure the involvement of all relevant Directorate -Generals (DGs) of the Commission and national ministries in the MoU discussions and decisions; highlights in particular the role DG Employment has to play alongside DG ECFIN and DG MARKT in ensuring that the social dimension is a key consideration in the negotiations and that the social impact is also taken into account;

The ECB

92. Requests that in any reform of the Troika framework the ECB's role is carefully analysed, in order to align it with the ECB mandate; requests especially that the ECB be given the status of a silent observer with a transparent and clearly defined advisory role while, not allowing it to be a full negotiation partner and discontinuing the practice of the ECB co-signing mission statements;

93. Asks the ECB to conduct and publish ex-post evaluations of the impact of its recommendations and its participation in the Troika;

94. Recommends that the ECB update its guidelines on Emergency Liquidity Assistance (ELA) and its collateral framework regulations, in order to enhance the transparency of liquidity provisions in Member States under assistance and increase the legal certainty surrounding the solvency concept used by the ESCB;

95. Calls on the ECB and the national central banks (NCBs) to publish comprehensive information on ELAs in a timely fashion, including on the conditions for support such as solvability, the way the ELAs are financed by the NCBs, the legal framework and their practical functioning;

The IMF

96. Believes that after years of experience in designing and implementing financial programmes, the European institutions have acquired the necessary know-how to design and implement them by themselves, with the IMF's involvement being redefined along the lines proposed in this report;

97. Calls for any future involvement of the IMF in the euro area to remain optional;

98. Calls on the IMF to redefine the scope of any future involvement on its part in EU-related assistance programmes, such that it becomes a catalytic lender providing minimum financing and expertise to the borrowing country and the EU institutions while retaining the option of exit in case of disagreement;

99. Asks the Commission, in accordance with Article 138 TFEU, to propose appropriate measures to ensure unified representation of the euro area within the international financial institutions and conferences and particularly in the IMF, in order to replace the current system of individual Member State representation at the international level; notes that this requires a change in the statutes of the IMF;

100. Calls for the consultation of Parliament on the involvement of the IMF in the euro area on an ad hoc basis;

The Council and the Eurogroup

101. Calls for a reassessment of the decision-making process of the Eurogroup so as to include appropriate democratic accountability at both national and European levels; calls for European guidelines to be established in order to ensure appropriate democratic control over the implementation of measures at national level which take into account the quality of employment, social protection, health and education and ensure access for all to social systems; proposes that being the permanent chair of the Eurogroup should be a full-time responsibility; suggests that the chair be one of the Vice-Presidents of the Commission, to be accountable to Parliament; calls, in the short run, for the establishment of a regular dialogue between the Troika and Parliament;

102. Calls on the Eurogroup, the Council and the European Council to assume full responsibility for the operations of the Troika; is concerned, in particular, to improve the accountability of decisions of the Eurogroup with regard to financial assistance, as finance ministers bear the ultimate political responsibility for macroeconomic adjustment programmes and their implementation while often neither being directly accountable to their national parliament nor the European Parliament for specific decisions; believes that before financial assistance is granted the President of the Eurogroup should be heard before the European Parliament and the EU finance ministers in their respective parliament; stresses that the President of the Eurogroup and the finance ministers should both be required to regularly report to the European Parliament and national parliaments;

103. Urges all Member States to increase their national ownership in the European Semester's workings and decisions and to carry out all measures and reforms they have agreed to in the context of the country-specific recommendations (CSRs); recalls that the Commission has identified a significant degree of progress in comparison with previous years in only 15 % of the approximately 400 CSRs;

The ESM

104. Stresses that with the phasing-out of the Troika, an institution will need to take over the scrutiny of ongoing reforms;

105. Emphasises that the creation of the EFSF and the ESM outside the institutions of the Union represents a setback in the development of the Union, essentially at the expense of Parliament, the Court of Auditors and the Court of Justice;

106. Demands that the ESM be integrated in the Union's legal framework and evolve towards a Community-based mechanism, as provided for in the ESM Treaty; demands that it be made accountable to the European Parliament and the European Council, including with respect to decisions to grant financial assistance as well as decisions to grant new loan tranches; acknowledges that as long as Member States make direct contributions from their national budget to the ESM, they should approve financial assistance; calls for the ESM to be further developed, with adequate lending and borrowing capacities, and for the establishment of a dialogue between the ESM board and the European social partners and the integration of the ESM into the EU budget; calls on the members of the ESM, until the above becomes reality, to abstain from the unanimity requirement in the short run in order to allow standard decisions to be taken by a qualified majority rather than by unanimity, and to allow for precautionary assistance to be given;

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107. Asks the Council and the Eurogroup to respect the commitment made by the President of the European Council to negotiate an interinstitutional arrangement with the European Parliament in order to establish an appropriate interim mechanism for increasing the accountability of the ESM; calls also in that context for greater transparency in the proceedings of the ESM Governing Council;

108. Underlines that the ECJ 'Pringle' case-law and jurisprudence opens up the possibility of bringing the ESM within the Community framework, with a constant Treaty on the basis of Article 352 TFEU; calls, therefore, on the Commission to put forward, by the end of 2014, a legislative proposal with that objective;

The medium to long term

109. Calls for the memoranda to be placed within the framework of Community legislation so as to promote a credible and sustainable consolidation strategy, thus also serving the objectives of the Union's growth strategy and the declared social cohesion and employment objectives; recommends that for assistance programmes to be vested with appropriate democratic legitimacy, the negotiation mandates should be submitted to a vote in the European Parliament, and that Parliament should be consulted on the resulting MoUs;

110. Reiterates its call for decisions related to the strengthening of the EMU to be taken on the basis of the Treaty on European Union; takes the view that departure from the Community method with increased use of intergovernmental agreements (such as contractual agreements) divides, weakens and challenges the credibility of the Union, including the euro area; is aware that full respect of the Community method in further reforms of the Union assistance mechanism might require treaty change, and stresses that any such changes must fully involve the EP and be subject to a convention;

111. Is of the opinion that the option of a Treaty change allowing for the extension of the scope of the present Article 143 TFEU to all Member States, instead of being restricted to non-euro Member States, should be explored;

112. Calls for the creation of a European Monetary Fund (EMF) on the basis of Union law, which would be subject to the Community method; believes that such an EMF should combine the financial means of the ESM geared to supporting countries experiencing balance of payments problems or facing state insolvency with the resources and experience that the Commission has acquired over the last few years in this field; points out that such a framework would avoid the possible conflicts of interest inherent to the Commission's current role as an Eurogroup agent and its much more encompassing role of 'guardian of the treaty'; believes that the EMF should be subjected to the highest democratic standards of accountability and legitimacy; believes that such a framework would ensure transparency in the decision-making process and that all institutions involved are made fully responsible and accountable for their actions;

113. Is of the opinion that a treaty revision will be required in order to fully anchor the EU crisis prevention and resolution framework on the basis of legally sound and economically sustainable grounds;

114. Is of the opinion that the option of developing a mechanism with clear procedural steps for countries which are in danger of insolvency should be explored, following the rules of the 6-pack and the 2-pack; in this context, encourages the IMF, and asks the Commission and the Council to bring the IMF to a common position in order to reignite the debate around an international sovereign debt restructuring mechanism (SDRM) with a view to adopting a fair and sustainable multilateral approach in this domain;

115. Summarises its recommendation that the respective roles and tasks of each participant in the Troika should be clarified in the following ways:

(a) a European Monetary Fund, which would combine the financial means of the ESM and the human resources that the Commission has acquired over the last few years, would take over the Commission's role, allowing the latter to act in conformity with Article 17 of the TEU and in particular to act as guardian of the Treaties;

(b) the ECB would participate as a silent observer during the negotiation process, in order to enable it to raise strong concerns in its advising role to the Commission, and later to the European Monetary Fund if appropriate;

(c) the IMF, should its involvement be strictly necessary, would be a marginal lender and therefore could leave the programme if in disagreement;

116. Considers that the work started with this report should be followed up; calls on the next Parliament to pursue the work of this report and to develop further its key findings and to investigate further;

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117. Instructs its President to forward this resolution to the European Council, the Council, the Eurogroup, the Commission, the European Central Bank and the IMF.

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P7_TA(2014)0240

Employment and social aspects of the role and operations of the Troika

European Parliament resolution of 13 March 2014 on Employment and social aspects of the role and operations of the Troika (ECB, Commission and IMF) with regard to euro area programme countries (2014/2007(INI))

(2017/C 378/22)

The European Parliament,

— having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 9, 151, 152 and 153 thereof,

— having regard to the Charter of Fundamental Rights of the EU, in particular to its Title IV (Solidarity),

— having regard to the revised European Social Charter, in particular its Article 30 on the right to protection against poverty and social exclusion,

— having regard to the public hearing held by the Employment and Social Affairs Committee on 9 January 2014 on 'the employment and social aspects of the role and operations of the Troika with regard to euro area programme countries',

— having regard to the four draft policy notes with evaluations of the social and employment aspects and challenges in Greece, Portugal, Ireland and Cyprus, respectively, prepared in January 2014 by DG IPOL's Economic and Scientific Policies Economic Governance Support Unit,

— having regard to the economic dialogue and exchange of views with the Greek Minister of Finance and the Greek Minister of Labour, Social Security and Welfare organised jointly by the EMPL and ECON committees on 13 November 2012,

— having regard to the five decisions of the Council of Europe's European Committee on Social Rights of 22 April 2013 concerning pension schemes in Greece ([1]),

— having regard to the 365th Report of the Committee on Freedom of Association of the International Labour Organisation (ILO),

— having regard to its resolution of 8 October 2013 on the effects of budgetary constraints for regional and local authorities regarding the EU's Structural Funds expenditure in the Member States ([2]),

— having regard to its resolution of 4 July 2013 on the impact of the crisis on access to care for vulnerable groups ([3]),

— having regard to its resolution of 11 June 2013 on social housing in the European Union ([4]),

— having regard to its resolution of 15 February 2012 on employment and social aspects in the Annual Growth Survey 2012 ([5]),

— having regard to the Commission Communication of 13 November 2013 entitled 'Annual Growth Survey 2014' (COM(2013)0800) and to the draft Joint Employment Report annexed thereto,

— having regard to its resolution of 23 October 2013 on the European Semester for economic policy coordination: implementation of 2013 priorities ([6]),

([1]) http://www.coe.int/T/DGHL/Monitoring/SocialCharter/NewsCOEPortal/CC76-80Merits_en.asp
([2]) Texts adopted, P7_TA(2013)0401.
([3]) Texts adopted, P7_TA(2013)0328.
([4]) Texts adopted, P7_TA(2013)0246.
([5]) OJ C 249 E, 30.8.2013, p. 4.
([6]) Texts adopted, P7_TA(2013)0447.

— having regard to the Commission Communication of 2 October 2013 entitled 'Strengthening the social dimension of the Economic and Monetary Union' (COM(2013)0690),

— having regard to question O-000122/2013 — B7-0524/2013 to the Commission, and to Parliament's related resolution of 21 November 2013 on the Commission Communication entitled 'Strengthening the social dimension of the Economic and Monetary Union (EMU)' ([1]),

— having regard to the EMPL opinion with a view to its resolution of 20 November 2012 on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup 'Towards a genuine Economic and Monetary Union' ([2]),

— having regard to the Commission Communication of 16 December 2010 entitled 'The European Platform against Poverty and Social Exclusion: A European framework for social and territorial cohesion' (COM(2010)0758), and to its resolution of 15 November 2011 thereon ([3]),

— having regard to its resolution of 20 November 2012 on Social Investment Pact — as a response to the crisis ([4]),

— having regard to the Eurofound report of 12 December 2013 entitled 'Industrial relations and working conditions in Europe 2012',

— having regard to the Commission Communication of 20 February 2013 entitled 'Towards Social Investment for Growth and Cohesion — including implementing the European Social Fund 2014-2020' (COM(2013)0083),

— having regard to question O-000057/2013 — B7-0207/2013 to the Commission, and to Parliament's related resolution of 12 June 2013 on the Commission Communication 'Towards Social Investment for Growth and Cohesion — including implementing the European Social Fund 2014-2020' ([5]),

— having regard to the Committee of Regions' fourth Monitoring Report on Europe 2020 of October 2013,

— having regard to the ILO's Working Paper Nr 49 of 30 April 2013 entitled 'The impact of the eurozone crisis on Irish social partnership: A political economy analysis',

— having regard to the ILO's Working Paper Nr 38 of 8 March 2012 entitled 'Social dialogue and collective bargaining in times of crisis: The case of Greece',

— having regard to the ILO's report of 30 October 2013 entitled 'Tackling the job crisis in Portugal',

— having regard to the Bruegel report of 17 June 2013 entitled 'EU-IMF assistance to euro-area countries: an early assessment' (Bruegel Blueprint 19),

— having regard to the Eurostat news releases on euro indicators of 12 February 2010 (22/2010) and of 29 November 2013 (179/2013),

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([1]) Texts adopted, P7_TA(2013)0515.
([2]) Texts adopted, P7_TA(2012)0430.
([3]) OJ C 153 E, 31.5.2013, p. 57.
([4]) Texts adopted, P7_TA(2012)0419.
([5]) Texts adopted, P7_TA(2013)0266.

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— having regard to OECD Economics Policy Paper No. 1 of 12 April 2012 entitled 'Fiscal consolidation: How much, how fast and by what means? — An Economic Outlook Report',

— having regard to the Commission Communication of 3 March 2010 entitled 'Europe 2020 A strategy for smart, sustainable and inclusive growth' (COM(2010)2020),

— having regard to the European Trade Union Institute (ETUI) Working Paper of May 2013 entitled 'The Euro crisis and its impact on national and European social policies',

— having regard to the Commission report of June 2013 entitled 'Labour Market Developments in Europe 2013' (European Economy series 6/2013),

— having regard to the Caritas Europe document of February 2013 entitled 'the impact of the European Crisis: a study of the impact of the crisis and austerity on the people, with a special focus on Greece, Ireland, Italy, Portugal and Spain',

— having regard to the Oxfam Policy Brief of September 2013 entitled 'A cautionary tale: the true cost of austerity and inequality in Europe',

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Employment and Social Affairs (A7-0135/2014),

A. whereas the unprecedented economic and financial crisis that has highlighted the fragility of public finances in some Member States, and the economic adjustment programme measures adopted in response to the situation experienced by Greece (May 2010 and March 2012), Ireland (December 2010), Portugal (May 2011) and Cyprus (June 2013), have had a direct and indirect impact on employment levels and on the living conditions of many people; whereas all the programmes, although formally signed by the Commission, were designed, and their conditionality determined, jointly by the IMF, the Eurogroup, the European Central Bank (ECB), the Commission and the Member States to be bailed-out;

B. whereas once the economic and budgetary sustainability of these four countries can be guaranteed, efforts should be focused on social aspects, with special attention paid to job creation;

C. whereas Article 9 TFEU prescribes: 'In implementing and defining its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health';

D. whereas Article 151 TFEU provides that action taken by the EU and its Member States must be consistent with the fundamental social rights laid down in the 1961 European Social Charter, and in the 1989 Community Charter of the Fundamental Social Rights of Workers, in order to improve, inter alia, the social dialogue; whereas Article 152 TFEU states: 'The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy';

E. whereas Article 36 of the Charter of Fundamental Rights of the European Union commits the Union to recognising and respecting 'access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union'; whereas Article 14 TFEU establishes that 'given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and with the scope of application of the Treaties, shall take care that such services operate on the basis of principles and condition, particularly economic and financial conditions, which enable them to fulfil their missions'; whereas Article 345 TFEU provides that the Treaties 'shall in no way prejudice the rules in Member States governing the system of property ownership'; and whereas Protocol No. 26 on services of general interest elaborates on the shared values of the Union with respect to services of general economic interest;

F. whereas Article 6(1) of the Treaty on European Union (TEU) states: 'The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000 (…), which shall have the same legal value as the Treaties', and whereas paragraphs 2 and 3 of that article provide for accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and stipulate that these rights shall constitute general principles of the Union's law;

G. whereas the Charter of Fundamental Rights of the European Union provides for, inter alia, the right of collective bargaining and action (Article 28), protection in the event of unjustified dismissal (Article 30), fair and just working conditions (Article 31), recognition of and respect for the entitlement to social security benefits and social services and, in order to 'combat social exclusion and poverty', the right to 'a decent existence for all those who lack sufficient resources' (Article 34), the right of access to preventive health care and the right to benefit from medical treatment (Article 35), and recognition and respect for the right to access services of general economic interest (Article 36);

H. whereas the Europe 2020 strategy proposed by the Commission on 3 March 2010 and agreed by the European Council of 17 June 2010 includes, among its five headline targets to be achieved by 2020: 75 % of men and women aged 20-64 years to be employed; early school-leaving to be reduced to below 10 % and at least 40 % of 30-34 year-olds to have completed tertiary or equivalent education; and poverty to be reduced by means of lifting at least 20 million people out of the risk of poverty or social exclusion;

I. whereas, according to the Commission's Quarterly Review of October 2013 entitled 'EU Employment and Social Situation', the severe fall in the GDP of Greece, Portugal and Ireland was mostly translated in employment decline;

J. whereas in its resolution of 21 November 2013, Parliament welcomed the Commission Communication of 2 October 2013 entitled 'Strengthening the social dimension of the Economic and Monetary Union' and its proposal to establish a scoreboard of key employment and social indicators, complementary to the Macroeconomic Imbalances Procedure (MIP) and the Joint Employment Report (JER), as a step towards a social dimension of EMU; stresses that those indicators should be sufficient to ensure comprehensive and transparent coverage of the Member States' employment and social situations; whereas the resolution stressed the need to ensure that this monitoring aims to reduce social divergences between Member States and to promote upward social convergence and social progress;

K. whereas the available data shows that in the four countries there is a regression towards achieving the social targets of the Europe 2020 (see Annex 1), with the exception of the targets related to early leavers from education and to training and tertiary education attainment;

L. whereas long-term economic prospects in these countries are improving; whereas this should begin to aid the creation of new jobs in these economies and reverse the trend of declining employment;

1. Notes that the EU institutions (the ECB, the Commission and the Eurogroup) are also responsible for the conditions of the economic adjustment programmes; notes also that there is a need to guarantee the sustainability of public finances and to ensure that citizens have proper social protection;

2. Deplores the fact that Parliament has been completely marginalised in all phases of the programmes: the preparatory phase, the development of mandates and the monitoring of the impact of the results achieved by the programmes and related measures; notes that, even though this association with the European Parliament was not compulsory due to the lack of legal basis, the absence of the European institutions as well as that of European financial mechanisms meant that the programmes had to be improvised, leading to financial and institutional agreements outside the community method; notes, in the same vein, that the ECB has taken decisions that fall outside its mandate; recalls the Commission's role as guardian of the Treaties and that this role should always have been respected; considers that only genuinely democratically accountable institutions should steer the political process of designing and implementing the adjustment programmes for countries in severe financial difficulties;

3. Regrets the fact that the programmes in question were designed without sufficient means to assess their consequences using impact studies or through coordination with the Employment Committee, the Social Protection Committee, the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) or the Commissioner for Employment and Social Affairs; regrets, too, the fact that the ILO was not consulted and that, despite the important social implications, the consultative bodies established by Treaty, in particular the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR), were not consulted;

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4. Regrets that the conditionality imposed in return for the financial assistance has threatened the EU's social objectives for several reasons:

— the EU was ill-prepared and ill-equipped to deal with the problems that arose, not least the immense sovereign debt crisis, a situation that demanded an immediate response in order to avoid bankruptcy;

— while the programmes are of specific duration, a number of the measures stipulated under these programmes shouldn't have been long-term in nature;

— the measures are particularly burdensome, mainly because the worsening of the economic and social situation was not noticed in time, because little time was allowed to implement them, and because proper impact assessments were not made of their distributional impact on different groups of society;

— despite appeals by the Commission, EU funds left over from 2007-2013 framework have not been used in a prompt manner;

— the measures could have been accompanied by better efforts to protect vulnerable groups, such as measures to prevent high levels of poverty, deprivation and health inequalities resulting from the fact that low income groups are especially dependant on public health systems;

Employment

5. Notes that the extremely difficult economic and financial crisis and the adjustment policies in the four countries have led to increased unemployment and job loss rates, and in the numbers of long-term unemployed, and have in some cases led to worsened working conditions; points out that employment rates play an outstanding role in the sustainability of social protection and pension systems, as well as in the achievement of the Europa 2020 social and employment targets;

6. Notes that expectations of a return to growth and job creation through internal devaluation, in order to regain competitiveness, have not been fulfilled; highlights the fact that these failed expectations reflect a tendency to underestimate the structural character of the crisis as well as the importance of maintaining domestic demand, investment and credit support to the real economy; stresses the procyclical character of the austerity measures and the fact that they haven't been accompanied by structural changes and reforms on a case-by-case basis, in which special attention is given to vulnerable sections of society with a view to achieving growth, accompanied by social cohesion and employment;

7. Notes that the high rates of unemployment and underemployment, combined with public and private sector pay cuts and, in some cases, a lack of effective action to combat tax evasion while lowering the contribution rates, are undermining the sustainability and adequacy of public social security systems as a result of social security funding shortfall;

8. Notes that the worsening conditions and the loss of SMEs is one of the main causes of job losses and the biggest threat to future recovery; notes that the adjustment policies did not take into account strategic sectors which should have been considered in order to preserve future growth and social cohesion; notes that this has led to significant job losses in strategic sectors such as industry and R&D&I; points out that the four countries must make an effort to create the favourable conditions needed for companies, and SMEs in particular, to be able to develop their business sustainability in the long term; points out that many public sector jobs have been shed in basic public sectors such as health, education and social public services;

9. Deplores the fact that it is young people who are suffering the highest levels of unemployment, with the situation in countries such as Greece (where the rate is over 50 %), Portugal and Ireland (where it was in excess of 30 % in 2012) and Cyprus (where it is about 26,4 %) being particularly serious; notes that these figures persist five years into the crisis; regrets the fact that even when young people do find a job, many of them — on average 43 %, as compared to 13 % of adult workers — often find themselves working under precarious conditions or on part-time contracts, making it difficult for them to live independently from their families, and resulting in a loss of innovation and expert resources affecting production and growth;

10. Notes that the most vulnerable groups on the labour market — the long-term unemployed, women, migrant workers and persons with disabilities — have suffered most and are experiencing higher unemployment rates than the national averages; notes the severe rise in the long-term unemployment rate of women and senior workers, and the additional difficulties these workers will face when seeking to re-enter the labour market once the economy eventually recovers; stresses that these workers need targeted measures;

11. Warns that, if not remedied, these huge divergences, especially in the case of the younger generation, may in the long run result in structural damage to the labour market of the four countries, limit their capacity for recovery, provoke involuntary migration that further exacerbates the effects of an ongoing brain-drain, and increase the persistent divergences between Member States supplying employment and those supplying a low-cost workforce; regrets that negative social and economic developments are amongst the main motivations for young people to migrate and to exercise their right to freedom of movement;

12. Is concerned about the fact that, in some cases and sectors, there is, along with job losses, a decline in job quality, an increase in precarious forms of employment and a deterioration of basic labour standards; stresses that Member States need to make dedicated efforts to address the increase in involuntary part-time employment and temporary contracts, payless internships and apprenticeships, and bogus self-employment, as well as the activities of the black economy; notes, furthermore, that even though the setting of wages does not fall within the competences of the EU the programmes have had an impact on minimum wages: in Ireland it became necessary to reduce the minimum wage by nearly 12 % (a decision which, however, was later changed), and in Greece a radical cut of 22 % was decreed;

13. Recalls that the Europe 2020 strategy accurately states that the figure to watch is the employment rate, which indicates the availability of human and financial resources to ensure the sustainability of our economic and social model; asks that the slowdown in the unemployment rate not be confused with a recovery of jobs lost as no account is taken of the increase in emigration; observes that the decline in industrial employment was a problem already before the programmes were launched; stresses that there is a need for more and better jobs; recalls that in the last four years job losses have reached 2 million in the four countries, or 15 % of the jobs that existed in 2009; welcomes the fact that recent data shows a small increase in employment figures for Ireland, Cyprus and Portugal;

Poverty and social exclusion

14. Is concerned that, among the conditions for financial assistance, the programmes include recommendations for specific cuts in real social spending in fundamental areas, such as pensions, basic services, health care and, in some cases, pharmaceutical products for the basic protection of the most vulnerable, as well as in environmental protection, rather than recommendations allowing national governments more flexibility to decide where savings could be made; fears that the main impact of these measures is on the fight against poverty, especially child poverty; restates that fighting poverty, especially child poverty, should continue to be an objective to be achieved by the Member States and that fiscal and budgetary consolidation policies should not undermine this;

15. Expresses its concern that, in the preparation and implementation of the economic adjustment plans, insufficient attention was given to the impact of economic policy on employment or to its social implications and that, in the case of Greece, the working hypothesis turned out to be based on a mistaken assumption regarding the economic multiplier effect, resulting in failure to act in time to protect the most vulnerable against poverty, in-work poverty and social exclusion; calls on the Commission to take account of social indicators also for the purpose of renegotiating the economic adjustment programmes and replacing the measures recommended for each Member State, with a view to ensuring the necessary conditions for growth and full compliance with the EU's basic social principles and values;

16. Notes that despite the fact that the Commission, in its Quarterly Review of October 2013 ('EU Employment and Social Situation'), emphasises the importance of social protection expenditure as a safeguard against social risks, since 2010 Greece, Ireland and Portugal have had the largest decreases in social spending in EU;

17. Highlights that new forms of poverty touching the middle and working class are arising in some cases where difficulties in paying mortgages and high energy prices are creating energy poverty and increasing evictions and foreclosures; is concerned by evidence that levels of homelessness and housing exclusion are increasing; recalls that this represents a violation of fundamental rights; recommends that the Member States and their local authorities introduce neutral housing policies that favour social and affordable housing, tackle the issue of housing vacancy and implement effective prevention policies to reduce the number of evictions;

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18. Expresses concern that the (micro and macro) social and economic situation in these countries is aggravating regional and territorial disparities, thereby undermining the stated EU objective of strengthening internal regional cohesion;

19. Notes that international and social organisations have warned that the new pay-scale, grading and dismissals system in the public sector will have a gender gap impact; notes that the ILO has expressed concern over the disproportionate impact of new flexible forms of employment on women's pay; notes, furthermore, that the ILO has asked governments to monitor the impact of austerity on remuneration of men and women in the private sector; notes with concern that the gender pay gap has ceased to narrow in countries undergoing adjustment, where the disparities are wider than the EU average; maintains that wage inequalities and the falling female employment rate need to receive greater attention in the Member States undergoing adjustment;

20. Notes that Eurostat and Commission figures, along with various other studies, show that, in some cases, income distribution inequality grew between 2008 and 2012, and that cuts in social and unemployment benefits, as well as wage reductions owing to structural reforms, are raising poverty levels; notes, furthermore, that the Commission report found relatively high levels of in-work poverty due to low minimum wages being cut or frozen;

21. Regrets the fact that in most cases the level of people at risk of poverty or social exclusion has increased; notes, moreover, that these statistics hide a much harsher reality, which is that when GDP per capita falls, the poverty threshold also falls, meaning that people who until recently were considered to be in poverty are now considered to be out of poverty; points out that, in the countries undergoing adjustment and budgetary crisis, the fall in GDP, the slump in public and private investment and the drop in R&D investment are leading to a reduction of the potential GDP and creating long-term poverty;

22. Welcomes the fact that in the aforementioned studies the Commission recognises that only a strong reversal of current trends will make it possible for the entire EU to meet the Europe 2020 targets;

23. Regrets the fact that, for Greece, Ireland and Portugal at least, the programmes included a number of detailed prescriptions on health system reform and expenditure cuts that have had an impact on the quality and universal accessibility of social services, especially in health and social care, despite the fact that Article 168(7) TFEU establishes that the EU will respect the competences of the Member States; is concerned about the fact that this has in some cases led to a number of people being denied health insurance coverage or access to social protection, thereby increasing the risk of extreme poverty and social exclusion, as reflected in the growing number of destitute and homeless people and their lack of access to basic goods and services;

24. Regrets that no targeted effort has been made to identify inefficiencies in health systems and in decisions to make across-the-board cuts in health budgets; warns that implementing co-payments could cause patients to delay seeking care, thereby placing the financial burden on households; cautions that salary reductions for healthcare professionals could have a negative effect on patient safety and cause migration of healthcare professionals;

25. Reiterates that Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for the right of everyone to the highest attainable standard of physical and mental health; notes that all four countries are signatories to the Covenant and thus have recognised the right to health for everyone;

26. Recalls that the Council of Europe has already condemned the cuts in the Greek public pension system, considering them to be a violation of Article 12 of the 1961 European Social Charter and of Article 4 of the Protocol thereto, stating that 'the fact that the contested provisions of domestic law seek to fulfil the requirements of other legal obligations does not remove them from the ambit of the Charter' ([1]); notes that this doctrine of maintaining the pension system at a satisfactory level to allow pensioners a decent life is generally applicable in all four countries and should have been taken into consideration;

27. Deplores cuts to resources for independent living for persons with disabilities;

28. Points out that when the ILO's Expert Committee evaluated the application of Convention No 102 in the case of the Greek reforms, it strongly criticised the radical reforms of the pension system, and that this same critical observation was included in its 29th annual report 2011; recalls that Convention No 102 is generally applicable in all four countries and should have been taken into consideration;

29. Stresses that the increasing social poverty in the four countries is also producing an increase in solidarity among the most vulnerable groups, thanks to private efforts, family networks and aid organisations; stresses that this type of intervention should not become the structural solution to the problem, even if it alleviates the situation for the most deprived and shows the qualities of the European citizenship;

30. Notes with concern the steady rise in the Gini coefficient against the general downward trend in the Eurozone, which means that there has been a significant increase in wealth distribution inequalities in the adjustment countries;

Early school-leaving

31. Welcomes the fact that the levels of early school-leavers are falling in the four countries; notes, that this may be partially explained by the difficulties young people are facing in finding employment; recalls the urgent need to recover quality vocational training systems, since this is one of the best ways to improve young people's employability;

32. Welcomes the fact that tertiary education attainment levels have been rising in all four countries; notes that this may partially be explained by the need for young people to improve their future labour market chances;

33. Regrets that, mainly due to the cuts in public funding, the quality of the education systems is not following this positive path, exacerbating the problems faced by young persons not in education, employment or training ('NEETs') and by children with special needs; notes that these measures could have practical implications for the quality of education as well as on the material and human resources available, class sizes, curricula and school concentration;

Social dialogue

34. Stresses that the social partners at national level should have been consulted or involved in the initial design of programmes; regrets the fact that the programmes designed for the four countries in some cases allow firms to opt out of collective bargaining agreements and to review sectorial wage agreements, which has direct consequences for the structure and values of collective bargaining arrangements set out in the respective national constitutions; notes that the ILO Expert Committee has requested that the social dialogue be re-established; condemns the undermining of the principle of collective representation, which puts into question the automatic renewal of bargaining agreements that, in some countries, is important, as a consequence of which the number of collective agreements in force has fallen substantially; condemns the cut in minimum wages and the freezing of nominal minimum wages; stresses that this situation is the consequence of having limited structural reforms involving only the deregulation of labour relations and wage cuts, which runs counter to the EU's general objectives and the policies of the Europe 2020 strategy;

35. Points out that there is no single solution that can be applied across all the Member States;

([1]) European Committee of Social Rights, Decision of Merits, 7 December 2012, Complaint No 78/2012, p. 10.

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Recommendations

36. Calls on the Commission to carry out a detailed study of the social and economic consequences of the economic and financial crisis, and the adjustment programmes carried out in response to it in the four countries, in order to provide a precise understanding of both the short-term and long-term effects on employment and social protection systems, and on the European social acquis, with particular regard to the fight against poverty, the maintenance of good social dialogue and the balance between flexibility and security in labour relations; calls on the Commission to use its consultative bodies when drafting this study, as well as the Employment Committee and the Social Protection Committee; suggests that the EESC be asked to draft a specific report;

37. Invites the Commission to ask the ILO and the Council of Europe to draft reports on possible corrective measures and incentives needed to improve the social situation in these countries, their funding and the sustainability of public finances, and to ensure full compliance with the European Social Charter, with the Protocol thereto and with the ILO's Core Conventions and its Convention 94, since the obligations deriving from these instruments have been affected by the economic and financial crisis and by the budgetary adjustment measures and the structural reforms requested by the Troika;

38. Calls on the EU, taking into account the sacrifices that these countries have made, to provide support, after the assessment and with sufficient financial resources where appropriate, for the recovery of social protection standards, the fight against poverty reduction, the support of education services, in particular those targeting children with special needs and persons with disabilities, and the renewal of social dialogue through a social recovery plan; calls on the Commission, the ECB and the Eurogroup to review and revise, where appropriate and as soon as possible, the exceptional measures that have been put in place;

39. Calls for compliance with aforementioned legal obligations laid down in the Treaties, and in the Charter of Fundamental Rights, as failure to comply constitutes an infringement of EU primary law; calls on the European Union Agency for Fundamental Rights to assess thoroughly the impact of the measures on human rights and to issue recommendations in case of breaches of the Charter;

40. Calls on the Troika and the Member States concerned to end the programmes as soon as possible and to put in place crisis management mechanisms enabling all EU institutions, including Parliament, to achieve the social goals and policies — also those relating to the individual and collective rights of those at greatest risk of social exclusion — set out in the Treaties, in European social partner agreements and in other international obligations (ILO Conventions, the European Social Charter and the European Convention of Human Rights); calls for increased transparency and political ownership in the design and implementation of the adjustment programmes;

41. Calls on the Commission and the Council to give the same attention to social imbalances, and to correcting them, as it does to macroeconomic imbalances, and to see to it that adjustment measures seek to ensure social justice and enable a balance between economic growth and employment, the implementation of structural reforms and budget consolidation; calls, furthermore, on both institutions to prioritise employment creation and entrepreneurship support, and, to that end, to pay as much attention to EPSCO and its priorities as to ECOFIN and the Eurogroup and, whenever necessary, to hold a Eurogroup employment and social affairs ministers' meeting prior to euro summits;

42. Recommends that the Commission and the Member States consider public health and education spending not as a spending exposed to cuts but as a public investment in the future of the country, to be respected and increased so as to improve its economic and social recovery;

43. Recommends that once the hardest moment of the financial crisis has passed, the programme countries should, together with the EU institutions, put in place job recovery plans to restore their economies sufficiently to recover the social situation of the pre-programme period, since this is necessary if their macroeconomic adjustment is to be consolidated and the imbalances of their public sectors, such as the debt and the deficit, to be equilibrated; stresses that job recovery plans must be put in place that take into account:

— the need quickly to repair the credit system, notably for SMEs,

— the need to create favourable conditions for companies, so as to allow them to develop their activities in the long-term and in a sustainable manner, and to promote SMEs in particular as they play a central role in job creation,

— optimum use of the opportunities offered by the EU structural funds, especially the ESF,

— a real employment policy with active labour market policies,

— quality and European public employment services, an upward wage policy,

— a European youth employment guarantee,

— the need to ensure a fair distributional impact, and

— a programme for jobless households and finally a more careful fiscal management;

44. Calls on the Commission to present a report on the progress made towards the Europa 2020 targets, with specific attention to the lack of progress in programme countries, and to come forward with proposals to put these countries on a credible path towards all Europa 2020 targets;

45. Recommends that future Member States' labour reforms take into account the flexicurity criteria for boosting companies' competitiveness spelled out in the Europa 2020 Strategy, taking into account other elements such as energy costs, unfair competition, social dumping, a fair and efficient financial system, fiscal policies in favour of growth and employment, and, in general, everything which helps the real economy and entrepreneurship to develop; calls on the Commission to carry out social impact assessments prior to imposing major reforms in the programme countries and to consider the spill-over effects of these measures, such as the effect on poverty, social exclusion, crime rates and xenophobia;

46. Calls for urgent measures to prevent the increase of homelessness in programme countries, and calls on the Commission to support this through policy analysis and the promotion of good practices;

47. Notes that according to Article 19 of Regulation (EU) No 472/2013 the Commission shall issue a report to Parliament before 1 January 2014 on the application of this regulation; calls on the Commission to present this report without delay and to include the implications of this regulation for the economic adjustment programmes in place;

48. Invites the Commission and the Member States to consult with civil society, patient organisations and professional bodies for future measures related to health in adjustment programmes, and to make use of the Social Protection Committee, so as to ensure that the reforms increase the efficiency of the systems and the resources without endangering the most vulnerable groups and the most important social protection, including the acquisition and the use of medicines, the most basic needs and the consideration of the health staff;

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49. Instructs its President to forward this resolution to the Council and the Commission.

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P7_TA(2014)0247

General guidelines for the 2015 budget — Section III

European Parliament resolution of 13 March 2014 on general guidelines for the preparation of the 2015 budget, Section III — Commission (2014/2004(BUD))

(2017/C 378/23)

The European Parliament,

— having regard to Articles 312 and 314 of the Treaty on the Functioning of the European Union and Article 106a of the Treaty establishing the European Atomic Energy Community,

— having regard to Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 ([1]),

— having regard to the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management ([2]),

— having regard to the European Union's general budget for the financial year 2014 ([3]) and to the four related joint statements agreed between Parliament, the Council and the Commission, as well as the joint statement by Parliament and the Commission on payment appropriations,

— having regard to Title II, Chapter 7 of its Rules of Procedure,

— having regard to the report of the Committee on Budgets (A7-0159/2014),

The EU budget — endowing citizens with the tools to find a way out of the crisis

1. Believes that despite some remaining headwinds the European economy is showing some signs of recovery, and considers that, while acknowledging the persistent economic and budgetary constraints at national level and the fiscal consolidation efforts being made by the Member States, the European budget must encourage this tendency by reinforcing strategic investment in actions with European added value in order to help put the European economy back on track, generating sustainable growth and employment while aiming to foster competitiveness and increase economic and social cohesion throughout the EU;

2. Highlights in particular the importance of the European Structural and Investment Funds, which form one of the biggest blocks of expenditure in the EU budget; underlines the fact that EU cohesion policy has been instrumental in sustaining public investment in vital economic areas and has achieved tangible results on the ground that can empower Member States and regions to overcome the current crisis and achieve the Europe 2020 targets; stresses the need to endow citizens with the tools to find a way out of the crisis; stresses in this regard the special need to invest in areas such as education and mobility, research and innovation, SMEs and entrepreneurship, in order to boost EU competitiveness and contribute to the creation of employment — in particular youth and 50 + employment;

3. Considers it also important to invest in other areas such as renewable energy, the digital agenda, infrastructures, information and communication technologies and cross-border connectivity, and stronger and enhanced use of 'innovative financial instruments', particularly in respect of long-term investments; emphasises the need to strengthen EU industry as a central driver of job creation and growth; urges that, with a view to making EU industry strong, competitive and independent, the main focus should be on investment in innovation;

([1]) OJ L 347, 20.12.2013, p. 884.
([2]) OJ C 373, 20.12.2013, p. 1.
([3]) OJ L 51, 20.2.2014.

4. Underlines the importance of ensuring that sufficient resources are made available for EU external actions; recalls the international commitment made by the EU and its Member States to increase their official development assistance (ODA) spending to 0,7 % of GNI and to achieve the Millennium Development Goals by 2015;

5. Stresses the importance of ensuring the best possible coordination between the various EU funds, on the one hand, and between EU funds and national expenditure, on the other, so as to make optimum use of public money;

6. Recalls the recent agreement on the 2014-2020 multiannual financial framework (MFF), which defines the main parameters for the annual budgets until 2020; underlines the fact that each annual budget must be in line with the MFF Regulation and the Interinstitutional Agreement and should not be considered an excuse to re-negotiate the MFF; expects that the Council will not attempt to impose restricted interpretations of specific provisions, especially as regards the nature and scope of special instruments; reiterates its intention to make full use of all means available to the budgetary authority within the framework of the annual budget procedure in order to provide the EU budget with the necessary flexibility;

7. Emphasises that, as the second year of the new MFF, 2015 will be important for the successful implementation of the new 2014-2020 multiannual programmes; underlines the fact that, in order not to hamper the implementation of key EU policies, all programmes need to be up and running and in full swing as soon as possible; notes that the 2015 budget will be lower in real terms than the 2013 budget; urges, in this context, the Commission and the Member States to do their utmost to ensure the swift adoption of all partnership agreements and operational programmes in 2014, so as not to lose any additional time in implementing the new investment programmes; stresses the importance of the Commission's full support for national administrations at all stages of the process;

8. Recalls the agreement within the MFF, which is being implemented for the first time in the 2014 budget, to frontload commitments for specified policy objectives relating to youth employment, research, Erasmus+ (in particular for apprenticeships) and SMEs; emphasises that, as part of the MFF agreement, a similar approach needs to be taken for the 2015 budget through the frontloading of the Youth Employment Initiative (EUR 871,4 million in 2011 prices) as well as of Erasmus+ and COSME (EUR 20 million each in 2011 prices); is particularly concerned about the funding of the Youth Employment Initiative after 2015 and requests that all funding possibilities, including the global MFF margin for commitments, be considered for this purpose;

9. Expresses, however, its concern about the possible adverse effects of additional backloading of the Connecting Europe Facility energy programme in 2015 and calls on the Commission to provide adequate information on how such a decision would affect the successful launch of this new programme;

10. Emphasises the added value of bringing forward investments in these programmes, in order to help EU citizens to exit the crisis; invites the Commission, furthermore, to identify other possible programmes which could benefit from frontloading, are able to contribute to this aim and would be able to fully absorb such frontloading;

11. Stresses that, once again, the latest European Council conclusions (19 and 20 December 2013) on the Common Security and Defence Policy and migration flows will have an impact on the EU budget; reiterates its position that any additional projects agreed by the European Council need to be financed with additional resources and not through cuts in existing programmes and instruments, nor by conferring additional tasks on institutions or other EU bodies which are already at the limit of their capacities;

12. Underlines the importance of decentralised agencies, which are vital for the implementation of EU policies and programmes; notes that they enable economies of scale to be made through the pooling of expenditure that would otherwise be outlaid by each Member State to achieve exactly the same result; underlines the need to assess all agencies on a case-by-case basis in terms of budget and human resources and to provide them, in the 2015 budget and in the following years, with the appropriate financial means and staff to enable them to fulfil properly the tasks assigned to them by the legislative authority; emphasises, therefore, that the Commission communication entitled 'Programming of human and financial resources for decentralised agencies 2014-2020' (COM(2013)0519) must not form the basis for the draft budget with regard to agencies; stresses, furthermore, the important role of the new Interinstitutional Working Group on decentralised agencies, which should undertake closer and more permanent scrutiny of the development of agencies with a view to ensuring a coherent approach; expects this working group to deliver its first outcome in due time for Parliament's reading of the budget;

13. Recalls the joint statement on EU Special Representatives, in which Parliament and the Council agreed to examine the transfer of appropriations for the EU Special Representatives from the Commission's budget (Section III) to the budget of the European External Action Service (Section X) in the context of the 2015 budgetary procedure;

Payment appropriations — the EU must fulfil its legal and political commitments

14. Recalls that the overall level of payment appropriations agreed for the 2014 budget remains below the level considered necessary and proposed by the Commission in its original draft budget; notes that, as provided for in the new MFF Regulation and the new global margin for payments, the Commission should adjust the payment ceiling for the year 2015 upwards by the amount equivalent to the difference between the executed 2014 payments and the MFF payment ceiling for 2014; is deeply concerned that the unprecedented level of outstanding bills at the end of 2013, amounting to EUR 23,4 billion under Heading 1b alone, cannot be covered within the 2014 ceilings; calls for the mobilisation of the appropriate flexibility mechanisms for payments in 2014 and stresses that even this is not expected to be sufficient to avoid a large implementation deficit at the end of 2014; underlines the fact that the recurrent shortages in payment appropriations have been the main cause of the unprecedentedly high level of outstanding commitments (RALs), especially in the last few years;

15. Recalls that according to the Treaty ([1]) 'the European Parliament, the Council and the Commission shall ensure that the financial means are made available to allow the Union to fulfil its legal obligations in respect of third parties'; expects the Commission in its draft budget to propose an adequate level of payment appropriations, based on real forecasts and not driven by political considerations;

16. Insists on the use of all means available under the MFF Regulation, including recourse to the contingency margin and, if still proven to be necessary and only as a last resort, revision of the payment ceiling, in order to meet the Union's legal obligations and avoid jeopardising or delaying payments to all stakeholders, such as researchers, universities, humanitarian aid organisations, local authorities and SMEs, and at the same time to decrease the amount of the outstanding year-end payments;

17. Insists that the use of all special instruments for payments (the Flexibility Instrument, the contingency margin, the EU Solidarity Fund, the European Globalisation Adjustment Fund and the Emergency Aid Reserve) must be entered in the budget over and above the MFF payment ceiling;

18. Calls for the Commission, in view of the alarming situation with regard to payment appropriations in the area of humanitarian aid at the very beginning of 2014, in particular the EUR 160 million backlog in payment appropriations for humanitarian aid carried over from 2013 to 2014, to take all necessary measures and to react as quickly as possible in order to ensure the proper delivery of EU humanitarian aid in 2014; stresses that the level of payment appropriations for humanitarian aid should keep up with the probable growth of commitment appropriations, which should be taken into consideration in the draft budget for 2015;

19. Recalls the joint statement on payment appropriations and the bilateral statement by Parliament and the Commission in the framework of the agreement on the 2014 budget; calls on the Commission to keep the budgetary authority fully informed of the development of payments and the evolution of RALs throughout the current year and insists that regular interinstitutional meetings should be held to monitor the payments situation;

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20. Instructs its President to forward this resolution to the Council, the Commission and the Court of Auditors.

([1]) Article 323 TFEU.

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P7_TA(2014)0248

Invasion of Ukraine by Russia

European Parliament resolution of 13 March 2014 on the invasion of Ukraine by Russia (2014/2627(RSP))

(2017/C 378/24)

The European Parliament,

— having regard to its previous resolutions on the European Neighbourhood Policy, on the Eastern Partnership (EaP) and on Ukraine, and with particular reference to that of 27 February 2014 on the situation in Ukraine ([1]),

— having regard to its resolution of 12 December 2013 on the outcome of the Vilnius Summit and the future of the Eastern Partnership, in particular as regards Ukraine ([2]),

— having regard to its resolution of 6 February 2014 on the EU-Russia Summit ([3]),

— having regard to the conclusions of the Foreign Affairs Council extraordinary meeting of 3 March 2014 on Ukraine,

— having regard to the North Atlantic Council's statement of 4 March 2014,

— having regard to the statement of the Heads of State or Government on Ukraine following the European Council's extraordinary meeting on Ukraine of 6 March 2014,

— having regard to Article 2(4) of the Charter of the United Nations,

— having regard to Rule 110(2) and (4) of its Rules of Procedure,

A. whereas Russia's act of aggression in invading Crimea is a violation of the sovereignty and territorial integrity of Ukraine and is against international law and in breach of Russia's obligations as a signatory to the Budapest Memorandum on Security Assurances for Ukraine, whereby it guaranteed to respect the territorial integrity and sovereignty of Ukraine;

B. whereas pro-Russian gunmen and Russian soldiers have seized key buildings in the Crimean capital of Simferopol, as well as important Ukrainian installations and strategic objectives in Crimea, including at least three airports; whereas most of the Ukrainian military units on the peninsula have been surrounded but have refused to give up their arms; whereas since the beginning of the crisis substantial numbers of additional Russian troops have been deployed in Ukraine;

C. whereas the arguments presented by the Russian leadership to support this aggression are utterly unfounded and out of touch with the realities on the ground, as there have been no instances whatsoever of attacks on or intimidation of Russian or ethnic Russian citizens in Crimea;

D. whereas the self-proclaimed and illegitimate authorities of Crimea decided on 6 March 2014 to ask Russia to incorporate Crimea into the Russian Federation and called a referendum for 16 March 2014 on Crimea's secession from Ukraine, thus violating the constitutions of both Ukraine and Crimea;

E. whereas the Russian Prime Minister has announced plans to apply swiftly procedures for Russian-speakers in foreign countries to gain Russian citizenship;

([1]) Texts adopted, P7_TA(2014)0170.
([2]) Texts adopted, P7_TA(2013)0595.
([3]) Texts adopted, P7_TA(2014)0101.

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F. whereas on 1 March 2014 the Federal Council of the Russian Federation authorised the deployment of Russian Federation armed forces in Ukraine in order to protect the interests of Russia and of Russian-speakers in Crimea and in the entire country;

G. whereas strong international diplomatic action at all levels and a negotiated process are needed in order to de-escalate the situation, ease tensions, prevent the crisis from spiralling out of control and secure a peaceful outcome; whereas the EU must respond effectively so as to allow Ukraine to fully exercise its sovereignty and territorial integrity free from external pressure;

H. whereas the 28 EU prime ministers and heads of state have issued a strong warning of the implications of Russia's actions and taken the decision to suspend bilateral talks with Russia on visa matters and the negotiations for a new Partnership and Cooperation Agreement, and to suspend the participation of EU institutions in the preparations for the G8 Summit due to take place in Sochi in June 2014;

1. Firmly condemns Russia's act of aggression in invading Crimea, which is an inseparable part of Ukraine and recognised as such by the Russian Federation and by the international community; calls for the immediate de-escalation of the crisis, with the immediate withdrawal of all military forces present illegally on Ukrainian territory, and urges full respect for international law and existing conventional obligations;

2. Recalls that these actions are in clear breach of the UN Charter, the OSCE Helsinki Final Act, the Statute of the Council of Europe, the 1994 Budapest Memorandum on Security Assurances, the 1997 Bilateral Treaty on Friendship, Cooperation and Partnership, the 1997 Agreement on the Status and Conditions of the Presence of the Russian Black Sea Fleet on the Territory of Ukraine, and Russia's international obligations; considers the acts undertaken by Russia as posing a threat to the security of the EU; regrets the decision of the Russian Federation not to attend the meeting on Ukraine's security called by the signatories to the memorandum and scheduled for 5 March 2014 in Paris;

3. Highlights the fact that the territorial integrity of Ukraine was guaranteed by Russia, the United States and the United Kingdom in the Budapest Memorandum signed with Ukraine, and points out that, according to the Ukrainian constitution, the Autonomous Republic of Crimea can only organise referendums on local matters and not on modifying the internationally recognised borders of Ukraine; stresses that a referendum on the issue of accession to the Russian Federation will therefore be considered illegitimate and illegal, as would any other referendum that contravened the Ukrainian constitution and international law; takes the same view of the decision of the illegitimate and self-proclaimed authorities of Crimea to declare independence on 11 March 2014;

4. Emphasises the need for the EU and its Member States to speak to Russia with one united voice and to support the right of a united Ukraine to determine its future freely; welcomes, therefore, and strongly supports, the joint statement of the extraordinary European Council of 6 March 2014 that condemned the Russian acts of aggression and supported the territorial integrity, unity, sovereignty and independence of Ukraine; calls for close transatlantic cooperation on steps towards a resolution of the crisis;

5. Condemns as contrary to international law and codes of conduct the official Russian doctrine under which the Kremlin claims the right to intervene by force in the neighbouring sovereign states to 'protect' the safety of Russian compatriots living there; points out that such a doctrine is tantamount to usurping unilaterally the position of the highest arbiter of international law and has been used as justification for manifold acts of political, economic and military intervention;

6. Recalls that in the nationwide independence referendum held in Ukraine in 1991, the majority of the Crimean population voted in support of independence;

7. Stresses its conviction that the establishment of a constructive dialogue is the best way forward for resolving any conflict and for long-term stability in Ukraine; praises the Ukraine Government's responsible, measured and restrained handling of this severe crisis, in which the territorial integrity and sovereignty of the country is at stake; calls on the international community to stand firmly by and support Ukraine;

8. Rejects Russia's stated objective of protecting the Russian-speaking population in Crimea as completely unfounded, as it has not faced — and does not face — any discrimination whatsoever; strongly rejects the defamation of protesters against Yanukovych's policy as fascists by Russian propaganda;

9. Calls for a peaceful solution to the current crisis and full respect for the principles of, and obligations laid down under, international law; takes the view that the situation must be contained and further de-escalated with a view to avoiding a military confrontation in Crimea;

10. Underlines the utmost importance of international observation and mediation; calls on the EU institutions and Member States to be ready to exhaust every possible diplomatic and political avenue and work tirelessly with all relevant international organisations, such as the UN, the OSCE and the Council of Europe, to secure a peaceful solution, which must be based on the sovereignty and territorial integrity of Ukraine; calls, therefore, for the deployment of a fully fledged OSCE monitoring mission in Crimea;

11. Welcomes the initiative taken to establish a Contact Group under the auspices of the OSCE, but regrets the fact that armed groups hindered the entry into Crimea of the OSCE observer mission on 6 March 2014; criticises the Russian authorities and the self-proclaimed Crimean authorities for not cooperating with the OSCE observer mission or granting its members full and safe access to the region;

12. Deplores the fact that the UN Secretary-General's Special Envoy to Crimea was forced to cut his mission short following violent threats against him;

13. Takes the view that certain aspects of the agreement of 21 February 2014, which was negotiated by three foreign affairs ministers on behalf of the EU but broken by Yanukovych, who failed to honour it by signing the new constitutional law, could still be helpful with a view to exiting the current impasse; takes the view, however, that nobody can negotiate and/or accept solutions that undermine the sovereignty and territorial integrity of Ukraine, and reaffirms the fundamental right of the Ukrainian people to determine their country's future freely;

14. Notes with great concern the reports that armed people are marking the houses of Ukrainian Tatars in areas of Crimea where Tatars and Russians live together; notes that Crimean Tatars, who returned to their homeland following Ukraine's independence after being deported by Stalin, have been calling on the international community to support the territorial integrity of Ukraine and a comprehensive legal and political agreement on the restoration of their rights as indigenous people of Crimea; calls on the international community, the Commission, the Council, the UN High Commissioner for Human Rights and the EU Special Representative for Human Rights to protect the rights of this, and any other, minority community on the Crimean peninsula; demands a full investigation into the intimidation of Jews and attacks on Jewish religious sites following the invasion of Crimea;

15. Welcomes the commitment of the Ukrainian Government to an ambitious reform agenda comprising political, economic and social change; welcomes, therefore, the Commission's decision to provide Ukraine with a short- and medium-term financial aid and support package worth EUR 11 billion in order to help stabilise the country's economic and financial situation; expects the Council and the Commission to come forward as swiftly as possible, together with the IMF, the World Bank, the European Bank for Reconstruction and Development, the European Investment Bank and other countries, with a long-term package of robust financial support to help Ukraine tackle its worsening economic and social situation and provide economic support to launch the necessary deep and comprehensive reforms of the Ukrainian economy; recalls the need to organise and coordinate an international donor conference, which should be convened by the Commission and take place as soon as possible; calls on the IMF to avoid imposing unbearable austerity measures, such as cutting the level of subsidies for energy, that will further aggravate the country's already difficult socioeconomic situation;

16. Calls on the Commission and the Member States, together with the Council of Europe and the Venice Commission, to provide, in addition to financial assistance, technical assistance as regards constitutional reform, the strengthening of the rule of law and the fight against corruption in Ukraine; looks forward to a positive track record in this respect, and stresses that the Maidan and all Ukrainians are expecting radical change and a proper system of governance;

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17. Calls for free, fair, transparent and nationwide elections with OSCE-ODIHR observation and reiterates its readiness to set up its own mission for this same purpose; invites the Ukrainian authorities to do their utmost to encourage high levels of voter participation in the presidential elections, including in the eastern and southern parts of the country; reiterates its call on the Ukrainian authorities to conduct parliamentary elections in accordance with the Venice Commission recommendations and supports the adoption of a proportional voting system that would facilitate proper representation of the local circumstances in the country; stresses the importance of the parliament and its members, at both central and local level, abiding by the rule of law;

18. Invites Ukraine not to give in to pressure to postpone the presidential elections scheduled for 25 May 2014;

19. Calls for a Government of Ukraine that is broad-based and as inclusive as possible in order to minimise the risk of renewed violence and territorial fragmentation; strongly warns Russia against actions that might contribute to heightened polarisation along ethnic or language lines; stresses the need to ensure that the rights of people belonging to national minorities, in accordance with international standards, including the rights of Russian-speaking Ukrainians, are fully protected and respected, working in close cooperation with the OSCE and the Council of Europe; reiterates its call for a new wide-ranging language regime supporting all minority languages;

20. Welcomes the decision of the Acting President to veto the bill aimed at repealing the Language Policy Law of 3 July 2012; recalls that in any case this law would not apply to Crimea; calls on the Verkhovna Rada to eventually reform the existing legislation, bringing it into line with Ukraine's obligations under the European Charter for Regional or Minority Languages;

21. Welcomes the readiness of the 28 EU heads of state or government to sign the political chapters of the Association Agreement (AA) as soon as possible and before the presidential elections on 25 May 2014, and to adopt unilateral measures, such as tariff cuts for Ukrainian exports to the EU, which allow Ukraine to benefit from the provisions of the Deep and Comprehensive Free Trade Agreement (DCFTA), as proposed by the Commission on 11 March 2014; points out that the EU stands ready to sign the full AA/DCFTA as soon as possible, and as soon as the Ukrainian Government is ready to take this step; insists on clear signals demonstrating to Russia that nothing in this agreement endangers or harms future cooperative bilateral political and economic relations between Ukraine and Russia; points out, furthermore, that, pursuant to Article 49 of the Treaty on European Union, Ukraine — like any other European state — has a European perspective and may apply to become a member of the Union, provided that it adheres to the principles of democracy, respects fundamental freedoms and human and minority rights, and ensures the rule of law;

22. Recalls, in this respect, that the export of arms and military technology can endanger the stability and peace of the entire region and should be immediately stopped; deeply deplores the fact that EU Member States have extensively exported arms and military technology to Russia, including major strategic conventional capacities;

23. Welcomes the European Council's decision of 6 March 2014 on a first wave of targeted measures towards Russia, such as the suspension of bilateral talks on visa matters and the New Agreement, as well as the decision by the Member States and EU institutions to suspend their participation in the G8 Summit in Sochi; warns, however, that in the absence of de-escalation or in the event of further escalation with the annexation of Crimea, the EU should quickly take appropriate measures, which should include an arms and dual-use technology embargo, restrictions on visas, the freezing of assets, the application of money laundering legislation against individuals involved in the decision-making process with respect to the invasion of Ukraine, and measures against Russian companies and their subsidiaries, particularly in the energy sector, to fully comply with EU law, and have consequences for existing political and economic ties with Russia;

24. Stresses that the parliamentary cooperation established between the European Parliament and the Russian State Duma and the Federation Council cannot be conducted along the lines of business as usual;

25. Welcomes the Council's decision to adopt sanctions focused on the freezing and recovery of misappropriated Ukrainian funds, targeting 18 individuals, including Yanukovych;

26. Calls, in this regard, on the Commission to support projects in the Southern Corridor that effectively diversify energy supplies, and urges Member States not to engage their public companies in projects with Russian companies that increase European vulnerability;

27. Stresses the importance of secure, diversified and affordable energy supply for Ukraine: underlines, in this connection, the strategic role of the Energy Community, of which Ukraine holds the presidency in 2014, and of building up Ukraine's resistance against energy threats coming from Russia; recalls the need to increase EU storage capacities and provide reverse flow of gas from EU Member States for Ukraine; welcomes the Commission's proposal to modernise Ukraine's Gas Transit System and to assist in its payment of debts to Gazprom; stresses the urgent need to make further progress towards achieving a common energy security policy, with a robust internal market and diversified energy supply, and to work for the full implementation of the Third Energy Package, thus making the EU less dependent on Russian oil and gas;

28. Calls on the Council to immediately authorise the Commission to speed up visa liberalisation with Ukraine, so as to advance along the path of introducing a visa-free regime, following the example of Moldova; calls, in the meantime, for the immediate introduction of temporary, very simple, low-cost visa procedures at EU and Member State level;

29. Strongly believes that events in Ukraine highlight the need for the EU to redouble its commitment to and support for the European choice and territorial integrity of Moldova and Georgia as they prepare to sign the Association and DCFTA Agreements with the EU later this year;

30. Instructs its President to forward this resolution to the Council, the Commission, the governments of the Member States, the acting President and the Government and Parliament of Ukraine, the Council of Europe, and the President, Government and Parliament of the Russian Federation.

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P7_TA(2014)0249

Implementation of the Treaty of Lisbon with respect to the European Parliament

European Parliament resolution of 13 March 2014 on the implementation of the Treaty of Lisbon with respect to the European Parliament (2013/2130(INI))

(2017/C 378/25)

The European Parliament,

— having regard to the Treaty on European Union and the Treaty on the Functioning of the European Union,

— having regard to its decision of 20 October 2010 on the revision of the framework agreement on relations between the European Parliament and the European Commission ([1]),

— having regard to its resolutions of 22 November 2012 on the elections to the European Parliament in 2014 ([2]), and of 4 July 2013 on improving the practical arrangements for the holding of the European elections in 2014 ([3]),

— having regard to the Framework Agreement on relations between the European Parliament and the European Commission ([4]),

— having regard to the ongoing negotiations on the revision of the Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information in the field of security and defence policy ([5]);

— having regard to its resolution of 7 May 2009 on Parliament's new role and responsibilities in implementing the Treaty of Lisbon ([6]),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on International Trade, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A7-0120/2014),

A. whereas the Treaty of Lisbon deepens the European Union's democratic legitimacy by strengthening the role of the European Parliament in the procedure leading to the election of the President of the European Commission and to the investiture of the European Commission;

B. whereas, according to the new procedure for the election of the President of the European Commission provided for by the Treaty of Lisbon, Parliament elects the President of the European Commission by a majority of its component members;

C. whereas the Treaty of Lisbon lays down that the European Council should take into account the result of the elections to the European Parliament and should consult the new Parliament before it proposes a candidate for President of the European Commission;

D. whereas each of the major European political parties is in the process of nominating its own candidate for the Presidency of the Commission;

([1]) OJ C 70 E, 8.3.2012, p. 98.
([2]) Texts adopted, P7_TA(2012)0462.
([3]) Texts adopted, P7_TA(2013)0323.
([4]) OJ L 304, 20.11.2010, p. 47.
([5]) OJ C 298, 30.11.2002, p. 1.
([6]) OJ C 212 E, 5.8.2010, p. 37.

E. whereas the elected President of the new Commission should make full use of the prerogatives conferred on him by the Treaty of Lisbon and take all appropriate steps to ensure the efficient functioning of the next Commission despite its size, which, due to the decisions of the European Council, will not diminish as envisaged in the Treaty of Lisbon;

F. whereas the Commission's accountability to Parliament should be strengthened through the Union's annual and multiannual programming as well as by creating symmetry between the majorities required for the election of the President of the Commission and for the motion of censure;

G. whereas Parliament's role as an agenda setter in legislative matters needs to be strengthened and the principle that in legislative matters Parliament and Council act on an equal footing, which is enshrined in the Treaty of Lisbon, has to be fully implemented;

H. whereas, on the occasion of the investiture of the new Commission, the existing interinstitutional agreements should be reviewed and improved;

I. whereas Article 36 of the Treaty on European Union (TEU) provides that the High Representative of the Union for Foreign Affairs and Security Policy (High Representative) is to regularly consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy, and inform it of how these policies evolve; the High Representative is to ensure that the views of the European Parliament are duly taken into consideration;

J. whereas the Declaration by the High Representative on Political Accountability ([1]), made upon the adoption of the EEAS Council Decision, states that the High Representative will review and where necessary propose to adjust the existing provisions ([2]) on access for Members of the European Parliament to classified documents and information in the field of security and defence policy;

K. whereas Article 218(10) of the Treaty on the Functioning of the European Union (TFEU) provides that the European Parliament is to be immediately and fully informed at all stages of the procedure for negotiating and concluding international agreements and whereas that provision also applies to agreements relating to the Common Foreign and Security Policy;

Legitimacy and political accountability of the Commission

(Investiture and removal of the Commission)

1. Stresses the need to strengthen the Commission's democratic legitimacy, independence and political role; states that the new procedure whereby the Commission President is elected by Parliament will strengthen the Commission's legitimacy and political role and will make the European elections more important, by linking the voters' choice in the elections to the European Parliament more directly to the election of the Commission President;

2. Stresses that the potentialities for the strengthening of the European Union's democratic legitimacy provided by the Treaty of Lisbon should be fully implemented, inter alia through the designation of candidates for the office of Commission President by the European political parties, thus conferring a new political dimension on the European elections and further connecting the citizens' vote to the election of the Commission President by the European Parliament;

3. Urges the next Convention to consider the way in which the Commission is formed with a view to reinforcing the Commission's democratic legitimacy; urges the next Commission President to consider in what way the Commission's composition, construction and political priorities will strengthen a policy of closeness to the citizens;

4. Reaffirms that all European political parties should appoint their candidates for President of the Commission sufficiently in advance of the scheduled date for the European elections;

([1]) OJ C 210, 3.8.2010, p. 1.

([2]) Interinstitutional agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy (OJ C 298, 30.11.2002, p. 1).

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5. Expects candidates for President of the Commission to play a significant role in the campaign for the European elections, by distributing and promoting in all Member States the political programme of their European political party;

6. Reiterates its invitation to the European Council to clarify, in a timely manner and before the elections, how it will take account of the elections to the European Parliament and honour the citizens' choice when putting forward a candidate for President of the Commission, in the framework of consultations to be conducted between Parliament and the European Council under Declaration 11 annexed to the Treaty of Lisbon; in this context, renews its call on the European Council to agree with the European Parliament the arrangements for the consultations referred to in Article 17(7) TEU and to guarantee the smooth functioning of the process leading to the election of the President of the European Commission, as provided for in Declaration 11 on Article 17(6) and 17(7) of the Treaty on European Union;

7. Requests that as many Members of the next Commission as possible be chosen from among elected Members of the European Parliament;

8. Is of the opinion that the President-elect of the Commission should act more autonomously in the process of selecting the other Members of the Commission; calls upon the governments of the Member States to make gender-balanced proposals for candidates; urges the President-elect of the Commission to insist with the governments of the Member States that the candidates for the office of Commissioner must enable him/her to compose a gender-balanced college, and allow him/her to reject any proposed candidate who fails to demonstrate general competence, European commitment or unquestionable independence;

9. Takes the view, further to the political understanding reached at the meeting of the European Council on 11 and 12 December 2008 and following the decision of the European Council on 22 May 2013 concerning the number of Members of the European Commission, that additional measures, such as the appointment of Commissioners without portfolio or the establishment of a system of Vice-Presidents of the Commission with responsibilities over major thematic clusters and with competences to coordinate the work of the Commission in the corresponding areas, should be envisaged for the more effective functioning of the Commission, without prejudice to the right to appoint one Commissioner per Member State and to the voting right of all Commissioners;

10. Calls on the next Convention to revisit the question of the size of the Commission, as well as that of its organisation and functioning;

11. Considers that the composition of the European Commission must ensure stability in the number and content of portfolios and at the same time guarantee a balanced decision-making process;

12. Stresses that, as mentioned in paragraph 2 of the Framework Agreement on relations between the European Parliament and the Commission, the candidate for President of the Commission should be requested to present to the European Parliament, after his or her designation by the European Council, the political guidelines for his or her mandate, followed by a comprehensive exchange of views, before Parliament elects the proposed candidate for President of the Commission;

13. Urges the future President-designate of the Commission to take due account of the proposals and recommendations for European Union legislation previously made by Parliament on the basis of own-initiative reports or resolutions which received the support of a wide majority of the Members of the European Parliament and which the former Commission had not satisfactorily followed up by the end of its mandate;

14. Considers that, in a future revision of the Treaties, the majority currently required under Article 234 TFEU for a motion of censure against the Commission should be lowered so as to require only a majority of the component Members of the European Parliament, without putting the functioning of the institutions at risk;

15. Considers that, notwithstanding the collective responsibility of the college for the actions of the Commission, individual Commissioners may be held accountable for the actions of their Directorates-General;

Legislative initiative and activity

(Parliamentary competence and scrutiny)

16. Emphasises that the Lisbon Treaty was intended as a step forward in ensuring that decision-making procedures were more transparent and democratic, reflecting the Treaty commitment to a closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen, by strengthening the role of the European Parliament and of the national parliaments, thus providing more democratic and transparent procedures for the adoption of Union acts, which are essential in the light of the impact these acts have on citizens and businesses; points out, however, that the achievement of this democratic aim is undermined if EU institutions do not respect one another's competences, the procedures laid down in the Treaties and the principle of loyal cooperation;

17. Stresses the need for sincere cooperation between the institutions involved in the legislative procedure in relation to the exchange of documents, such as legal opinions, so as to allow a constructive, frank and legally valid dialogue between institutions;

18. Notes that since the TFEU entered into force, Parliament has proved to be a committed and responsible co-legislator and that interaction between Parliament and the Commission has, overall, been positive and based on fluid communication and a cooperative approach;

19. Takes the view that, while the overall assessment of interinstitutional relations between Parliament and the Commission is positive, there are still a number of issues and shortcomings, which call for closer attention and action;

20. Stresses that the drive for efficiency must not mean poorer quality of legislation or giving up Parliament's own objectives; takes the view that, alongside this drive for efficiency, Parliament must maintain appropriate legislative standards and continue to pursue its own objectives, while ensuring that legislation is well designed, responds to clearly identified needs and complies with the principle of subsidiarity;

21. Stresses that the challenge of transparency is ever-present and common to all institutions, especially in first-reading agreements; notes that Parliament responded properly to this challenge by adopting the new Rules 70 and 70a of its Rules of Procedure;

22. Is concerned about the problems that still exist in applying the ordinary legislative procedure, especially in the framework of the Common Agricultural Policy (CAP), the Common Fisheries Policy (CFP) and the Area of Freedom, Security and Justice ('Stockholm Programme') as well as in aligning the acts of the former Third Pillar with the hierarchy of norms of the Lisbon Treaty, and in general with regard to the continuing 'asymmetry' regarding the transparency of the Commission's involvement in the preparatory work of the two branches of the legislative authority; in this regard, underlines the importance of the Council's working methods being adapted so as to make it possible for Parliament representatives to participate in some of its meetings when this is duly justified under the principle of mutual sincere cooperation between the institutions;

23. Points out that the choice of correct legal basis, as confirmed by the Court of Justice, is a question of a constitutional nature, as it determines the existence and extent of EU competence, the procedures to be followed and the respective competences of the institutional actors involved in the adoption of an act; regrets, therefore, the fact that Parliament has repeatedly had to bring actions before the Court of Justice for annulment of acts adopted by the Council because of the choice of legal basis, including against two acts adopted under the obsolete 'third pillar' long after the entry into force of the Lisbon Treaty ([1]);

24. Warns against circumventing Parliament's right to legislate by including provisions which should be subject to the ordinary legislative procedure in proposals for Council acts, by using mere Commission guidelines or non-applicable implementing or delegated acts or by failing to propose the legislation necessary for the implementation of the Common Commercial Policy (CCP) or international trade and investment agreements;

([1]) See Council Decision 2013/129/EU of 7 March 2013 on subjecting 4-methylamphetamine to control measures, and Council Implementing Decision 2013/496/EU of 7 October 2013 on subjecting 5-(2-aminopropyl) indole to control measures.

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25. Asks the Commission to make better use of the pre-legislative phase, in particular of the valuable input collected on the basis of Green and White Papers, and routinely inform the European Parliament of preparatory work carried out by its services, on an equal footing with the Council;

26. Takes the view that Parliament ought to further develop and make full use of its autonomous structure for assessing the impact of any substantial changes or modifications to the original proposal submitted by the Commission;

27. Emphasises that the European Parliament should also strengthen its autonomous assessment of the impact on fundamental rights of legislative proposals and amendments under consideration as part of the legislative process and establish mechanisms to monitor human rights violations;

28. Deplores the fact that while the Commission is formally fulfilling its responsibilities by replying within three months to Parliament's requests for legislative initiatives, it has not always proposed a real and substantial follow-up;

29. Requests that, at the next revision of the Treaties, Parliament's right of legislative initiative be fully recognised by making it mandatory for the Commission to follow up all requests submitted by Parliament under Article 225 TFEU by presenting a legislative proposal within an appropriate time limit;

30. Considers that, at the next revision of the Treaties, the Commission's power to withdraw legislative proposals should be limited to those cases where, after the adoption of Parliament's position at first reading, Parliament agrees that the proposal is no longer justified due to altered circumstances;

31. Points out that Parliament welcomed, in principle, the introduction of delegated acts in Article 290 TFEU as providing greater scope for oversight, but stresses that the conferral of such delegated powers or implementing powers under Article 291 is never an obligation; recognises that the use of delegated acts should be considered where flexibility and efficiency are needed and cannot be delivered by means of the ordinary legislative procedure, provided that the objective, content, scope and the duration of that delegation are explicitly defined and the conditions to which the delegation is subject are clearly laid down in the basic act; expresses concern at the Council's tendency to insist on using implementing acts for provisions where only the basic act or delegated acts should be used; stresses that the legislator may decide to allow implementing acts to be used only for the adoption of elements which do not amount to further political orientation; recognises that Article 290 explicitly limits the scope of delegated acts to non-essential elements of a legislative act and that delegated acts may not therefore be used in relation to rules essential to the subject matter of the relevant legislation;

32. Draws attention to the need to distinguish properly between the essential elements of a legislative act, which can only be decided upon by the legislative authority in the legislative act itself, and non-essential elements, which can be supplemented or amended by means of delegated acts;

33. Understands that delegated acts can be a flexible and effective tool; stresses the importance of the choice between delegated acts and implementing acts from the point of view of the respect of the Treaty requirements while safeguarding the rule-making prerogatives of Parliament, and reiterates its request to the Commission and the Council to agree with Parliament on the application of criteria for the use of Articles 290 and 291 TFEU, so that implementing acts are not used as a substitute for delegated acts;

34. Urges the Commission to involve Parliament adequately in the preparatory phase of the delegated acts and to provide its Members with all relevant information, pursuant to paragraph 15 of the Framework Agreement on relations between the European Parliament and the European Commission;

35. Asks the Commission to comply with the Framework Agreement concerning access for Parliament's experts to the Commission's expert meetings by preventing them from being regarded as 'comitology' committees provided that they are dealing with issues other than implementing measures within the meaning of Regulation (EU) No 182/2011;

36. Emphasises the particular significance and consequence of the inclusion of the Charter of Fundamental Rights in the Lisbon Treaty; points out that the Charter has become legally binding upon the EU institutions and upon the Member States when implementing Union law, thereby transforming basic values into specific rights;

37. Recalls that the Treaty of Lisbon introduced the new right to launch a European Citizens' Initiative (ECI); stresses the need to remove all the technical and bureaucratic barriers still hindering the effective use of the ECI, and encourages active participation by citizens in shaping EU policies;

38. Highlights the greater role given to national parliaments in the Lisbon Treaty and stresses that, alongside the role which they play in monitoring respect for the principles of subsidiarity and proportionality, they can and do make positive contributions in the framework of the Political Dialogue; considers that the active role which the national parliaments can play in guiding the members of the Council of Ministers, together with good cooperation between the European Parliament and the national parliaments, can help to establish a healthy parliamentary counterbalance to the exercise of executive power in the functioning of the EU; refers also to the reasoned opinions submitted by national parliaments under Article 7 (2) of Protocol No 2, which states that the broad scope of delegation under Article 290 TFEU in a proposed act does not make it possible to assess whether or not the concrete legislative reality would be in conformity with the principle of subsidiarity;

International relations

(Parliamentary competence and scrutiny)

39. Recalls that the Lisbon Treaty increased the role and powers of the European Parliament in the field of international agreements, and points out that international agreements now increasingly cover areas which concern the everyday lives of citizens and which traditionally, and under EU primary law, fall within the scope of ordinary legislative procedures; considers that it is imperative that the provision in Article 218(10) TFEU, which stipulates that Parliament must be immediately and fully informed at all stages of the procedure for concluding international agreements, is applied in a way which is compatible with Article 10 TEU, pursuant to which the functioning of the Union is based on representative democracy, which requires transparency and democratic debate on the issues to be decided;

40. Notes that the rejection of the SWIFT and ACTA agreements were demonstrations of Parliament using its newly acquired prerogatives;

41. Underlines, on the basis of Article 18 TEU, the HR/VP's responsibility for ensuring consistency of the EU's external action; underlines, furthermore, that the HR/VP, under Articles 17 and 36 TEU, is accountable to, and has Treaty obligations towards, Parliament;

42. Recalls, with regard to international agreements, Parliament's prerogative to ask the Council not to authorise the opening of negotiations until Parliament has stated its position on a proposed negotiating mandate, and believes that consideration should be given to a Framework Agreement with the Council;

43. Emphasises the need to ensure that Parliament is informed in advance by the Commission of its intention to launch an international negotiation, that it has a genuine opportunity to express an informed opinion on the negotiating mandates, and that its opinion is taken into account; insists that international agreements should include the appropriate conditionalities to comply with Article 21 TEU;

44. Attaches great importance to the inclusion of human rights clauses in international agreements and of sustainable development chapters in trade and investment agreements, and expresses satisfaction with Parliament's initiatives with a view to the adoption of roadmaps regarding key conditionalities; reminds the Commission of the need to take into account Parliament's views and resolutions and to provide feedback on how they have been incorporated into the negotiations on international agreements and into draft legislation; expresses its hope that the instruments needed to develop the EU's investment policy will become operative in due time;

45. Demands, in line with Article 218(10) TFEU, that Parliament be immediately, fully and accurately informed at all stages of the procedures for concluding international agreements, including agreements concluded in the area of CFSP, and be given access to the Union's negotiation texts subject to the appropriate procedures and conditions, so as to ensure that Parliament can take its final decision with an exhaustive knowledge of the subject matter; emphasises that for this provision to be meaningful, the committee members concerned should have access to negotiation mandates and other relevant negotiating documents;

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46. Points out, while respecting the principle that Parliament's consent to international agreements cannot be conditional, that it is entitled to make recommendations as to the application in practice of the agreements; asks, to this end, that the Commission present regular reports to Parliament on the implementation of international agreements, including the human rights and other conditions of the agreements.

47. Recalls the need to avoid the provisional application of international agreements before Parliament's consent has been given, unless Parliament agrees to make an exception; stresses that the rules needed for the internal application of international agreements cannot be adopted by the Council alone in its decision on the conclusion of the agreement and that the appropriate legislative procedures under the Treaties must be fully complied with;

48. Reaffirms the need for the Parliament to adopt the necessary measures in order to monitor the implementation of international agreements;

49. Insists that Parliament should have a say in decisions regarding the suspension or termination of international agreements whose conclusion needed the consent of Parliament;

50. Calls upon the HR/VP to enhance, in line with the Declaration on Political Accountability, a systematic ex-ante consultation with Parliament on new strategic documents, policy papers and mandates;

51. Calls, in line with the commitment made by the HR/VP in the Declaration on Political Accountability, for the urgent conclusion of the negotiations on an Interinstitutional Agreement between the European Parliament, the Council and the High Representative of the Union for Foreign Affairs and Security Policy concerning access by the European Parliament to classified information held by the Council and the European External Action Service in the area of the Common Foreign and Security Policy;

52. Reiterates its call for political reporting by Union delegations to key Parliament office-holders under regulated access;

53. Calls for the adoption of a Quadripartite Memorandum of Understanding between the European Parliament, the Council, the Commission and the EEAS on the coherent and effective provision of information in the area of external relations;

54. Recalls that the European Parliament is now a fully fledged institutional actor in the field of security policies, and is therefore entitled to participate actively in determining the features and priorities of those policies and in evaluating instruments in this field, a process to be conducted jointly by the European Parliament, national parliaments and the Council; believes that the European Parliament should play a crucial role in the evaluation and definition of internal security policies, as they have a profound impact on the fundamental rights of all those living in the EU; emphasises, therefore, the need to ensure that such policies fall within the remit of the only directly elected European institution as regards scrutiny and democratic oversight;

55. Points out that the TFEU has expanded the scope of the Union's exclusive competences in the field of the CCP, which now embraces not only all aspects of trade, but also foreign direct investment; highlights the fact that Parliament is now fully competent to decide, together with the Council, on law-making and on the approval of trade and investment agreements;

56. Highlights the importance of the EU institutions' cooperating in a loyal and effective manner, within their respective competences, when considering legislation and international agreements with a view to anticipating trade and economic trends, identifying priorities and options, establishing mid- and long-term strategies, determining mandates for international agreements, analysing/drafting and adopting legislation and monitoring the implementation of trade and investment agreements, as well as long-term initiatives in the field of CCP;

57. Underlines the importance of continuing the process of developing effective capacities, including the allocation of the necessary staff and financial resources, in order to actively define and achieve political objectives in the field of trade and investment, while ensuring legal certainty, the effectiveness of the EU's external action and respect for the principles and objectives enshrined in the Treaties;

58. Stresses the need to ensure a continuous flow of timely, accurate, comprehensive and impartial information for the purpose of enabling the high-quality analysis needed to enhance the capabilities of Parliament's policymakers and their sense of ownership, leading to greater interinstitutional synergy in respect of the CCP, and at the same time to ensure that Parliament is fully and accurately informed at all stages, including by means of access to the Union's negotiation texts under appropriate procedures and conditions, with the Commission being proactive and doing its utmost to guarantee such an information flow; underlines, furthermore, the importance of information being provided to Parliament with a view to preventing undesirable situations from arising that could potentially lead to misunderstandings between the institutions, and welcomes in this regard the regular technical briefing sessions organised by the Commission on a number of topics; regrets the fact that on a number of occasions relevant information has reached Parliament through alternative channels rather than from the Commission;

59. Reiterates the need for the institutions to work together in the implementation of the Treaties, secondary legislation and the Framework Agreement and the need for the Commission to work in an independent and transparent manner throughout the preparation, adoption and implementation of legislation in the field of CCP, and considers that its role is key throughout the process;

Constitutional dynamic

(Interinstitutional relations and interinstitutional agreements)

60. Stresses that, under Article 17(1) TEU, the Commission is to take initiatives with a view to achieving interinstitutional agreements on the Union's annual and multiannual programming; draws attention to the need to involve at an earlier stage not only Parliament but also the Council in the preparation of the Commission's annual work programme, and stresses the importance of ensuring there is realistic and reliable programming that can be effectively implemented and provide the basis for interinstitutional planning; takes the view that, in order to increase the political accountability of the Commission to Parliament, a mid-term review to assess the overall fulfilment by the Commission of the announced mandate could be envisaged;

61. Points out that Article 17(8) TEU expressly enshrines the principle that the Commission is politically accountable to the European Parliament, which is crucial to the proper functioning of the EU's political system;

62. Stresses that, under Article 48(2) TEU, Parliament has the competence to initiate Treaty changes and will make use of this right to present new ideas for the future of Europe and the institutional framework of the EU;

63. Considers that the Framework Agreement concluded between Parliament and the Commission, and its regular updates, are essential with a view to strengthening and developing structured cooperation between the two institutions;

64. Welcomes the fact that the Framework Agreement adopted in 2010 considerably strengthened the political accountability of the Commission vis-à-vis Parliament;

65. Underlines the fact that the rules on dialogue and access to information allow for more comprehensive parliamentary scrutiny of the activities of the Commission, thereby contributing to the equal treatment of Parliament and the Council by the Commission;

66. Notes that certain provisions of the current Framework Agreement still need to be implemented and developed; suggests that the outgoing Parliament adopt the general lines of this improvement so that appropriate proposals can be considered by the incoming Parliament;

67. Invites the Commission to reflect constructively with Parliament on the existing Framework Agreement and its implementation, paying particular attention to the negotiation, adoption and implementation of international agreements;

68. Takes the view that this mandate should fully explore the possibilities under the current Treaties to strengthen the political accountability of the executive and to streamline the existing provisions on legislative and political cooperation;

69. Recalls that a number of issues, such as delegated acts, implementing measures, impact assessments, the treatment of legislative initiatives, and parliamentary questions, need an update in the light of the experience gained during this legislative term;

70. Regrets that its repeated calls for the 2003 Interinstitutional Agreement on Better Lawmaking to be renegotiated in order to take account of the new legislative environment created by the Treaty of Lisbon, consolidate current best practice and bring the agreement up to date in line with the smart regulation agenda remain unanswered;

71. Invites the Council of Ministers to express its position on the possibility of participating in a trilateral agreement with Parliament and the Commission with the aim of making further progress on the issues set out so far in the Interinstitutional Agreement on Better Lawmaking;

72. Considers that matters solely connected to the relations between Parliament and the Commission should continue to be the subject of a bilateral framework agreement; stresses that Parliament will not settle for less than what has been achieved under the existing Framework Agreement;

73. Considers that one of the major challenges to the Lisbon Treaty's constitutional framework is the risk of intergovernmentalism jeopardising the 'community method', thus weakening the role of Parliament and the Commission to the benefit of the institutions representing the Member States' governments;

74. Points out that Article 2 TEU contains a list of the common values on which the Union is founded; believes that respect for those values should be properly ensured by both the Union and the Member States; points out that a proper legislative and institutional system should be established in order to protect the values of the Union;

75. Calls on all the EU institutions and the Member States' governments and parliaments to build on the new institutional and legal framework created by the Treaty of Lisbon in such a way as to devise a comprehensive internal human rights policy for the Union which ensures effective accountability mechanisms at national and EU level with which to address human rights violations;

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76. Instructs its President to forward this resolution to the Council and the Commission.

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P7_TA(2014)0250

Role of property and wealth creation in eradicating poverty and fostering sustainable development

European Parliament resolution of 13 March 2014 on the role of property rights, property ownership and wealth creation in eradicating poverty and fostering sustainable development in developing countries (2013/2026(INI))

(2017/C 378/26)

The European Parliament,

— having regard to Article 17 of the United Nations Universal Declaration of Human Rights concerning the right to property,

— having regard to the Millennium Declaration of 8 September 2000 setting out the Millennium Development Goals (MDGs), in particular goals 1, 3 and 7,

— having regard to the Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' signed on 20 December 2005, in particular paragraphs 11 and 92 thereof,

— having regard to the Commission Communication of 19 October 2004 entitled 'EU Guidelines to support land policy design and reform processes in developing countries' (COM(2004)0686),

— having regard to the Commission Communication of 31 March 2010 on 'An EU policy framework to assist developing countries in addressing food security challenges' (COM(2010)0127),

— having regard to the Commission Communication of 13 October 2011 entitled 'Increasing the impact of EU Development Policy: An agenda for change' (COM(2011)0637),

— having regard to the Commission Communication of 27 February 2013 entitled 'A decent life for all: Ending poverty and giving the world a sustainable future' (COM(2013)0092),

— having regard to the 'EU Land Policy Guidelines: Guidelines for support to land policy design and land policy reform processes in developing countries' adopted by the Commission in November 2004,

— having regard to the 2008 United Nations Human Settlements Programme (UN-Habitat) study entitled 'Secure Land Rights for All' and the UN-Habitat guide on 'How to Develop a Pro-Poor Land Policy: Process, Guide and Lessons',

— having regard to the report of 11 June 2009 by the United Nations Special Rapporteur on the Right to Food, Olivier De Schutter, entitled 'Large-scale land acquisitions and leases: a set of core principles and measures to address the human rights challenge',

— having regard to the declaration on 'Urbanisation Challenges and Poverty Reduction in ACP States' adopted in Nairobi, Kenya, in 2009,

— having regard to the declaration of the World Summit on Food Security, adopted in Rome in 2010,

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— having regard to the declaration on 'Making Slums History: A worldwide challenge for 2020' adopted at the international conference held in Rabat, Morocco, from 26 to 28 November 2012,

— having regard to the declaration on 'Sustainable Urbanisation as Response to Urban Poverty Eradication' adopted at the 2nd Tripartite ACP-European Commission-UN-Habitat Conference held in Kigali, Rwanda, from 3 to 6 September 2013,

— having regard to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and to the Indigenous and Tribal Peoples Convention (No 169) of 1989 of the International Labour Organisation (ILO),

— having regard to the Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (PRAI), to the Food and Agriculture Organisation's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, and to the African Union's Framework and Guidelines on Land Policy in Africa (ALPFG),

— having regard to the recommendations of the High Level Panel on the Post-2015 Development Agenda to include a goal on governance of land tenure for women and men, and to recognise that women and girls must have, inter alia 'the equal right to own land and other assets',

— having regard to its resolution of 27 September 2011 on an EU policy framework to assist developing countries in addressing food security challenges ([1]),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Development and the opinion of the Committee on Women's Rights and Gender Equality (A7-0118/2014),

A. whereas property rights can be defined as the rules that regulate the terms by which individual stakeholders, communities, and public and private actors acquire and maintain access to tangible and intangible assets through formal law or customary provisions; whereas according to UN-Habitat, land tenure specifically can be formal (freehold, leasehold, public and private rental), customary or religious in origin; whereas the EU Land Policy Guidelines state that land rights are not always limited to private ownership in the strict sense, but can resort to a balance between individual rights and duties, and collective regulations at different levels;

B. whereas 1,2 billion people worldwide inhabit property for which they do not hold formal rights and live without permanent homes or access to land; whereas, in particular, more than 90 % of the rural population in sub-Saharan Africa (of which 370 million people are considered to be poor) access land and natural resources via legally insecure customary and informal tenure systems;

C. whereas total extra-legal and unregistered wealth is estimated at over USD 9,3 trillion, which is 93 times larger than the total amount of foreign aid given to developing countries over the past 30 years;

D. whereas although MDG7 (Target 11) –aimed at improving the lives of 100 million slum inhabitants by 2020 — has been attained, the number of such inhabitants (estimated at 863 million in 2012), in absolute terms, continues to grow; whereas UN-Habitat estimates that as many as one billion people live in slums, and it is thought that an estimated three billion people will be residing in slums by 2050; whereas Article 11 of the International Covenant on Economic, Social and Cultural Rights recognises a universal right to housing and to continuous improvement of living conditions;

([1]) OJ C 56 E, 26.2.2013, p. 75.

E. whereas in rural areas, some 200 million people (almost 20 % of the world's poor) have no access to sufficient land to make a living; whereas rural land is coming under multiple pressures, such as population growth, land-use conversion, commercial investments, environmental degradation due to drought, soil erosion and nutrient depletion, as well as natural disasters and conflicts; and whereas securing land rights is necessary to promote social stability by reducing uncertainty and conflicts over land;

F. whereas private investors and governments have shown a growing interest in the acquisition or long-term lease of large portions of arable land, mostly in developing countries in Africa and Latin America;

G. whereas arbitrary land allocation by political authorities breeds corruption, insecurity, poverty and violence;

H. whereas land governance issues are closely linked with the key challenges of the 21st century, namely food security, energy scarcity, urban and population growth, environmental degradation, climate change, natural disasters and conflict resolution, reinforcing the need to prioritise comprehensive land reform;

I. whereas an estimated 1,4 billion hectares worldwide are governed by customary norms; whereas existing land tenure structures in Africa, Asia and Latin America are considerably different from each other and the local, customary arrangements that have developed — whether they be freehold or communal — cannot be disregarded when formalisation of land is undertaken;

J. whereas the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states that women and spouses shall have equal rights in respect of the ownership and acquisition of property; whereas, however, many land tenure and property rights regimes discriminate against women either formally or in practice;

K. whereas, in many developing countries, women's property rights, secured access to land and access to savings and credit are not socially recognised; whereas, starting from such a discriminatory basis, it is particularly difficult for women to assert their property rights, and especially rights to inheritance, by legal means;

L. whereas in particular women's land rights in developing countries are being violated through the increasing incidence of large-scale land acquisition by developed countries for commercial or strategic purposes, such as agricultural production, food security and energy and biofuel production; whereas women often lack the opportunity to harness legal aid and representation to successfully challenge violations of property rights in developing countries;

M. whereas providing secure land rights for women is important for poverty reduction, in view of women's roles as food producers in rural and peri-urban areas, their responsibilities for feeding family members; whereas women, who represent 70 % of Africa's farmers, formally own as little as 2 % of the land; whereas recent programmes throughout India, Kenya, Honduras, Ghana, Nicaragua and Nepal have found that female-headed households have greater food security, better health care and a stronger focus on education rather than male-headed households;

N. whereas more than 60 % of chronically hungry people are women and girls and, in the developing countries, 60-80 % of food is produced by women ([1]);

([1]) Food and Agriculture Organisation of the United Nations (FAO), Policy Brief No 5 — Economic and Social Perspectives, August 2009.

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O. whereas an estimated 370 million indigenous peoples worldwide have a strong spiritual, cultural, social and economic relationship with their traditional lands, the management of which is usually community-based;

P. whereas Article 17 of the Universal Declaration of Human Rights recognises the rights of everyone to own property either alone or in association with others, and that no one should be arbitrarily deprived of his or her property;

Q. whereas access to land for indigenous people has been afforded specific forms of protection under Convention no 169 of the ILO and the United Nations Declaration on the Rights of Indigenous Peoples;

R. whereas Article 10 of the UN Declaration on the Rights of Indigenous People guarantees the right not to be forcibly removed from one's lands or territories, and that no relocation can take place without the free, prior and informed consent of the indigenous people, and following agreement on just and fair compensation as well as wherever possible, the option of return;

Land rights, including property rights, and wealth creation

1. Considers registered property rights and secure land rights to be a catalyst for economic growth, while also promoting social cohesion and peace;

2. Emphasises that securing land rights and greater equity in land access provide a secure foundation for livelihoods, economic opportunities, and in rural areas, for household food production;

3. Underlines the fact that besides individual land titling, a variety of alternative tenure options, including building on customary tenure systems to legally secure rights to house plots, farmland and natural resources, should be recognised, as advocated by UN-Habitat;

4. Stresses that land tenure security for smallholders, who constitute 95 % of potential landowners in developing countries, stimulates local economies, increases food security, decreases migration and slows down slum urbanisation; points out that, in Ethiopia for example, where property rights have been introduced, productivity increased by up to 40 % per acre over three years, on account of this change alone ([1]);

5. Notes with concern that cultural traditions often leave women dependent on male relatives for tenure security and without legal protection; stresses the international obligations of States to ensure minimum economic social and cultural rights, which include the obligation of governments to ensure that land management is not discriminatory, in particular with regard to women and the poor, and that it does not violate other human rights;

6. Highlights the fact that empowering people to make decisions about their own resources, combined with formal inheritance provisions, strongly encourages smallholders to invest sustainably in their land, practise terracing and irrigation, and mitigate the effects of climate change; notes, in this connection, that studies have shown that a household with fully secure and transferable land is estimated to be 59,8 % more likely to invest in terracing than a household that expects to be redistributed within the village during the next five years;

7. Notes that with title deeds to land, a person may borrow money at reasonable rates of interest, which can be used to establish and develop a business; emphasises that the protection of property rights may promote a competitive business environment where the entrepreneurial and innovative spirit can grow;

8. Recognises that the challenge is to overcome the dissonance between legality, legitimacy and practices by building land tenure mechanisms based on shared norms, starting from a recognition of existing rights, while making sure that men and women, as well as vulnerable communities in developing countries, have secure rights over land and assets, and are fully protected against vested interests that could seize their property;

([1]) USAID Ethiopia, http://ethiopia.usaid.gov/programs/feed-future-initiative/projects/land-administration-nurture-development-land

9. Strongly condemns the practice of land-grabbing which, in particular, illegally dispossesses the rural poor and traditional Nomad populations of land without adequate compensation; highlights the fact that at least 32 million hectares worldwide have been part of at least 886 transnational large-scale land deals of this kind between 2000 and 2013 ([1]); highlights the fact that this figure is likely to represent a significant underestimation of the accurate number of large land deals concluded;

10. Calls on the Commission and the Member States, in their development assistance policies, to take account of large-scale land acquisition processes by developed countries' investors in developing countries, and on the African continent in particular, which are affecting local farmers and which have a devastating impact on women and children, with a view to protecting them from impoverishment, famine and forcible eviction from their villages and land;

11. Stresses that the removal of public incentives for the production of crop-based biofuels and subsidies is one way to combat land-grabbing;

12. Recalls that when land rights are not secure and governance is weak, high risks are brought about for local communities, in terms of food insecurity, risk of displacement, and the eviction of farmers and herders; urges the Member States, in this connection, to support the national capacity of developing countries to strengthen their governance systems;

13. Highlights the fact that both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights recognise the right to self-determination, which is defined as the right of all people to dispose freely of their natural wealth and resources, and that both stipulate that no person may be deprived of his or her own means of subsistence; stresses, in this connection, that the negotiation of large-scale leases and the acquisition of lands must entail transparency, adequate and informed participation on the part of the local communities concerned by land leases or purchases, and accountability in the use of revenues that should benefit the local population;

14. Calls on the Commission and the Member States to examine, via the UN, the impact that such acquisitions have on the desertification of farmland, on the loss of women's rights of residence and access to land, with particular reference to single women and those who are the head of the family, on food security and on their livelihood and that of their children and dependent persons;

15. Stresses that investment agreements on large-scale land acquisitions or leases should duly take into account the right of current land-users, as well as the rights of workers employed on farms; takes the view that the obligations of investors should be clearly defined and should be enforceable, for instance by means of the inclusion of sanction mechanisms in cases of non-compliance with human rights; considers that all land deals should also include a legal obligation whereby a certain minimum percentage of crops produced should be sold on the local market;

Roadmap to secure land rights, including property rights, and sustainable land governance in the developing world

16. Highlights the fact that land reform requires flexibility, tailored to local, social and cultural conditions, such as traditional forms of tribal ownership, and should be focused on empowering the most vulnerable;

17. Highlights the fact that the co-existence of customary land regimes and imposed colonial models represent one of the main causes of endemic land insecurity in developing countries; stresses, in this connection, the imperative to recognise the legitimacy of customary tenure arrangements that provide statutory rights to individuals and communities, and prevent dispossession and abuses of land rights, which are especially prevalent among African communities and the large indigenous populations of Latin America;

([1]) http://www.landmatrix.org/get-the-idea/global-map-investments/

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18. Emphasises that regularising tenure security for urban squatters has a significant effect on residential investment, with studies showing that the rate of housing renovation increases by more than 66 %;

19. Congratulates Rwanda on the progress it has made with regard to land data, which has made it possible to register all land in the country within a remarkably short period;

20. Warns against applying a one-size-fits-all approach in order to achieve land security; underlines the fact that formal land administration services are most effective when provided at local level; takes the view that the effective delivery of secure land rights may therefore depend on the reform of centralised state land agencies with a view to devolving responsibilities to local and customary institutions; considers that land registration can then be improved by means of the computerisation of land records and cadastral systems;

21. Recalls that agriculture remains a fundamental source of livelihood, subsistence and food security for rural communities; notes, however, that rural land is coming under multiple pressures, because of population growth, land-use conversion, commercial investments, and environmental degradation due to drought, soil erosion and nutrient depletion, as well as natural disasters and conflicts; believes, in this connection, that securing land tenure for rural communities is essential to achieve the millennium development goals (MDGs); takes the view that a range of policy instruments can help address these challenges, and they must be adapted to meet local conditions;

22. Believes that government officials should first identify those land management and tenure systems that already exist and that they should, secondly, build on these systems for the benefit of the poor and vulnerable groups;

23. Trusts that the decentralisation of land administration empowers local communities and individuals, and draws attention to the need to eliminate corrupt practices imposed by local chiefs through deals struck with foreign investors and any claims to unregistered individual plots of land;

24. Stresses that any shift in land use should only take place with the free, prior and informed consent of the local communities concerned; recalls that indigenous people have been granted specific forms of protection of their rights on land under international law; insists, in line with the United Nations Declaration on the Rights of Indigenous Peoples, that states shall provide effective mechanisms for the prevention of, and redress for, any action which has the aim or effect of dispossessing indigenous peoples of their lands, territories or resources;

25. Notes that the limited proportion of land which is registered in Africa (10 %) is recorded via outdated erroneous systems; underlines the fact that, according to World Bank estimates ([1]), the 27 economies that modernised their registries in the past seven years cut the average time for transferring property ownership by half, thereby increasing transparency, reducing corruption and simplifying revenue collection; emphasises that a high priority for development policy should be to establish and improve land registries in developing countries;

26. Recalls that tenure security can be safeguarded under various forms, provided that the rights of land users and owners are clear: recalls that in addition to formal titles, security can be achieved through clear, long-term rental contracts, or formal recognition of customary rights and informal settlements, with accessible and effective dispute settlement mechanisms; calls for the EU to channel support towards capacity development and training programmes in land management with the aim of securing land rights for the poor and vulnerable groups, including through cadastral surveying, registration, and efforts to equip educational institutions in developing countries;

27. Calls for the EU to strengthen the capacity of courts in developing countries to enforce property law effectively, to resolve land disputes and manage expropriations as part of a holistic approach aimed at consolidating judicial systems and the rule of law;

([1]) 2012b. Doing Business 2012: Doing Business in a More Transparent World. Washington, DC: World Bank.

28. Calls for the EU to help developing countries to implement their land reforms in order, to promote, in particular, the participation of all stakeholders, and in combination with awareness-raising programmes, so that the rights of all parties involved, especially the poor and vulnerable, are fully respected; cites the example of Madagascar and the local land offices, where simple local initiatives have greatly facilitated the registration of land titles;

29. Highlights the fact that building sound fiscal policies in developing countries by strengthening land registration and delineating valuation functions significantly increases annual land transaction revenue, such as in Thailand where it increased six-fold over a period of 10 years;

30. Points out that the formal recognition of land rights for women does not automatically entail the effective implementation of those rights; calls for the EU to pay particular attention in its land reform programmes to women's vulnerability to changes in family structure and the degree to which women can enforce their rights, as well as to ensure that in practice, household deeds have both spouses' names on the land title;

31. Calls on the Commission and the Member States, in their development and humanitarian policies, to ensure that developing countries introduce legislative measures to promote gender equality and prevent discrimination with regard to property rights based on ethnicity, race and civil status, and address the means of removing the significant social, political and cultural constraints on land rights acquisition;

32. Calls for the EU delegations in developing countries to monitor women's property rights to ensure they are not being breached, thereby protecting women from the risk of falling into poverty and social exclusion;

33. Calls for the EU to support the efforts of developing countries in reforming land rental markets to provide land access to the poor and promote growth, while avoiding excessive restrictions on lease markets;

Placing land rights, including property rights, at the heart of EU development policy

34. Highlights the fact that large-scale land acquisitions are, inter alia, a direct consequence of weak land governance in developing countries; underlines that EU aid should contribute to building the institutional capability required for the granting of secure land rights, so as to tackle rent-seeking and bureaucratic inertia, as well as corrupt and unaccountable practices;

35. Commends the EU's participation in global land initiatives; highlights the fact that, as the world's leading development actor, the EU has the capacity to enhance its currently limited approach in terms of both scope and visibility with a view to addressing land tenure;

36. Notes that along with improving property rights systems in developing countries, the EU must aim to ensure that people have access to social protection and insurance schemes in order to protect their livelihoods and protect their assets in the case of a disaster or shock;

37. Calls for the implementation of the Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries and Forests;

38. Urges the Commission to set a clearly defined budget line, shifting from a small-scale perspective to long-term land governance reform, with a view to streamlining land tenure;

39. Stresses that the challenge of providing secure land rights for displaced people and refugees is likely to increase under the pressures climate change; urges the EU, in this connection, to enhance its assistance with respect to the inclusion of land rights in humanitarian and development responses to disasters or civil conflicts, whereby land policies must guarantee secure land rights for different ethnic, social or generational groups in an equitable manner;

40. Calls on the Commission and the Member States to empower women in their rights and access to land, inheritance, access to credit and savings in post-conflict situations, especially in countries where women's rights are not legally enforceable and socially recognised, and where gender-biased laws, traditional attitudes toward women and male-dominated social hierarchies pose obstacles to women attaining equal and fair rights; calls on the EU to promote the involvement of the newly created UN Women's Organisation in this issue;

41. Welcomes the Land Transparency Initiative, launched by the G8 in June 2013, on the basis of the Extractive Industries Transparency Initiative and the recognition of the fact that transparency as regards the ownership of companies and land, combined with secure property rights and strong institutions, is crucial for poverty alleviation; stresses, however, that efforts need to be increased in order to facilitate the implementation of efficient land reform;

42. Reaffirms the EU's commitment to reduce poverty worldwide in the context of sustainable development, and reiterates that the EU should include a strong gender component in all of its policies and practices in its relations with developing countries ([1]);

43. Emphasises the fact that the strengthening of policies to place women's access to property in developing countries on an equal footing with that of men is necessary; takes the view that this must be taken into consideration in the country programmes and must be accompanied by the requisite financial support mechanisms (such as savings, credit, grants, micro-credits and insurance); believes that these strengthened policies will result in the empowerment of women and NGOs and promote women's entrepreneurship; considers that they will improve women's legal and financial literacy, support girls' education, increase the dissemination and accessibility of information, and establish legal aid services and gender-sensitivity training for financial services providers;

44. Calls on the Commission and the Member States, in their development work, actively to promote female entrepreneurship and property rights, as part of the process of enhancing women's independence from their husbands and strengthening their countries' economies;

45. Recalls that 15 October is the International Day of Rural Women and calls on the European Union and the Member States to promote awareness-raising campaigns in developing countries;

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46. Instructs its President to forward this resolution to the Council, the Commission, the governments and the parliaments of the Member States, the Secretary General of the United Nations, the President of the World Bank, the Association of Southeast Asian Nations, the Euro-Latin American Parliamentary Assembly and the Africa Caribbean Pacific-European Union Joint Parliamentary Assembly.

([1]) OJ C 46, 24.2.2006.

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P7_TA(2014)0251

Policy coherence for development

European Parliament resolution of 13 March 2014 on the EU 2013 Report on Policy Coherence for Development (2013/2058(INI))

(2017/C 378/27)

The European Parliament,

— having regard to paragraphs 9 and 35 of the joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' ([1]),

— having regard to Article 208 of the Treaty on the Functioning of the European Union, which reaffirms that the Union must take account of the objective of development cooperation in the policies that it implements which are likely to affect developing countries,

— having regard to the successive conclusions of the Council, the biennial reports by the Commission and the resolutions of the European Parliament on policy coherence for development (PCD), particularly its resolution of 25 October 2012 on the EU 2011 Report on Policy Coherence for Development ([2]),

— having regard to the Commission Staff Working Document on the EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-2015 (SEC(2010)0265) and to the Council Conclusions of 14 June 2010 on the Millennium Development Goals in which the respective EU Plan of Action is endorsed,

— having regard to the Commission Working Document on Policy Coherence for Development in 2013 (SWD(2013) 0456),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Development (A7-0161/2014),

A. whereas the EU Strategic Framework and Action Plan on Human Rights and Democracy adopted in 2012 states that the EU will work in favour of human rights in all areas of its external action without exception;

B. whereas only a European vision based on solidarity — which does not assume there to be any incompatibility between the objectives of tackling poverty inside and outside the European Union — can overcome conflicts of interest among the various policies of the Union and reconcile them with the imperatives of development;

C. whereas PCD is now recognised as an obligation and regarded as a tool of a comprehensive policy and a process which seeks to incorporate the multiple dimensions of development at all stages of policy formulation;

D. whereas, since all policies of the Union have an external impact, they must be designed to meet the long-term needs of developing countries in relation to combating poverty, providing social security and a decent income, and safeguarding fundamental human rights and economic and environmental rights;

E. whereas PCD must be based on recognition of the right of a country or region to determine democratically its own policies, priorities and strategies in order to provide its people with means of subsistence;

([1]) OJ C 46, 24.2.2006, p. 1.
([2]) Texts adopted, P7_TA(2012)0399.

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F. whereas the Union must take on a strong leadership role in promoting PCD;

G. whereas the current European framework for development lacks effective machinery to prevent or remedy incoherence arising from the policies pursued by the Union;

H. whereas, although the European Parliament has made progress in monitoring the policies which have a major impact on development, it still has some way to go with a view to achieving optimal coherence and avoiding certain inconsistencies so as to fully perform the institutional role assigned to it;

I. whereas, in the 'post-2015' framework, PCD must be based on action geared to shared but differentiated responsibilities favourable to inclusive political dialogue;

J. having regard to the lessons learned from the experience of the OECD countries, particularly the work of the PCD Unit in the OECD's Secretariat;

K. whereas coordination of EU Member States' development policies and aid programmes is an important part of the PCD agenda; whereas it is estimated that as much as EUR 800 million could be saved annually from cutting transaction costs if the EU and its Member States concentrated their aid efforts on fewer countries and activities;

L. whereas the effectiveness of EU development policy is hindered by fragmentation and duplication of aid policies and programmes across Member States; whereas a more coordinated EU-wide approach would reduce the administrative burden and reduce the related costs;

M. whereas the UNFPA (United Nations Population Fund) report 'ICPD Beyond 2014 Global Report' launched on 12 February 2014 emphasises that the protection of women and adolescents affected by violence must be a priority on the international agenda of development;

Attainment of PCD

1. Proposes that an arbitration system be established, to be operated by the President of the Commission, to bring about PCD, and that in the event of divergences among the various policies of the Union, the President of the Commission should fully shoulder his political responsibility for the overall approach and have the task of deciding among them on the basis of the commitments accepted by the Union with regard to PCD; takes the view that, once the problems have been identified, consideration could be given to a reform of the decision-making procedures within the Commission and in interdepartmental cooperation;

2. Calls on the European Union, the Member States and their partner institutions to ensure that the new 'post-2015' framework includes a PCD objective which makes it possible to develop reliable indicators to measure the progress of donors and partner countries and to assess the impact of the various policies on development, in particular by applying a 'PCD lens' to key issues such as population growth, global food security, illicit financial flows, migration, climate and green growth;

3. Points out the importance of the role of the European External Action Service in implementing PCD, in particular the role of the EU Delegations in monitoring, observing and facilitating consultations and dialogue with stakeholders and partner countries on EU policy impacts in developing countries; stresses that a wider discussion with all relevant stakeholders, such as NGOs and civil society organisations (CSOs), is needed;

4. Regrets the status of Document SWD(2013)0456 presented by the Commission — a mere working document — which, unlike the communication originally planned after the 2011 working document, does not require the approval of the college of Commissioners, which is paradoxical for a document concerning a field as political as PCD;

5. Calls on the Commission to maintain its commitment to the field of development and human rights, and recalls the role of the latter in imparting impetus to the Union's policies and coordinating them; considers that the Commission should actively promote a coherent and modern vision of human development in order to attain the Millennium Development Goals (MDGs) and honour the commitments given;

6. Asks the Commission to contract regular independent ex-post assessments of the development impact of key policies, as requested by the Council; emphasises the need to improve the Commission's impact assessment system by featuring PCD explicitly and ensuring that development becomes a fourth central element of the analysis, alongside the economic, social and environmental impacts;

7. Stresses the need to make proper arrangements for teaching about how to incorporate PCD into the various fields of political action, teaching being the key element to increase the awareness of European citizens in connection with '2015 — European Year for Development'; asks the Commission and the EEAS to provide specific training on PCD and development impact to staff in non-development services;

8. Confirms the need to appoint a permanent rapporteur on the development agenda for the period after 2015, who should also ensure that due account is taken of PCD;

9. Stresses the important role which the European Parliament could play in the process of promoting PCD by assigning it priority in Parliament's agendas, by increasing the number of meetings between committees and between parliaments relating to PCD, by promoting dialogue on PCD with partner countries and by fostering exchanges of views with civil society; recalls that structured annual meetings between the Member States' national parliaments and the European Parliament is an important way of strengthening PCD and coordination;

10. Stresses the need to establish an independent system within the Union to receive and formally process complaints by members of the public or communities affected by the Union's policies;

11. Stresses the need for PCD to ensure the active participation of civil society, including women's groups, the empowerment of women in decision-making processes as well as the full involvement of gender experts;

Priority areas of action

12. Calls for migration flow management to be consistent with the development policies of the EU and the partner countries; considers that this requires a strategy which addresses the political, socioeconomic and cultural circumstances and aims at revitalising the Union's overall relations with its immediate neighbours; stresses, furthermore, the importance of dealing with issues related to the social and professional integration of migrants and to citizenship by working jointly with the countries of origin and transit;

13. Stresses that trade and development do not always accord perfectly; considers that developing countries should selectively open up their markets; stresses the importance of social and environmental responsibility on the part of the private sector, and considers that, when liberalising trade, it is important not to forget social and environmental conditions such as ILO standards; recalls the need to include references to them in WTO agreements in order to avoid social and environmental dumping;

14. Recalls, in this context, that the cost of incorporating such standards is far less than the impact of failure to comply with them on social welfare, human health and life expectancy;

15. Welcomes the fact that the relevance of smallholder farming in combating hunger is recognised by the EU and calls for systematic assessment of the impact of European agricultural, trade and energy policies, including EU biofuel policy, which are likely to have adverse effects on developing countries;

16. Reiterates that more attention needs to be focused on maximising the synergies between EU climate change policies and the EU development objectives, especially in terms of tools and instruments used and the collateral development and/or climate change adaptation benefits;

17. Considers that the challenge of climate change must be tackled by means of structural reforms, and calls for systematic assessment of the risks associated with climate change in all aspects of political planning and the decision-making process, including in fields relating to trade, agriculture and food security; calls for the results of such assessments to be used in the context of the development cooperation instrument 2014-2020 to formulate clear and coherent national and regional strategy documents;

18. Considers that, while recognising the attention paid to several aspects of PCD, the EU should take concrete steps to combat tax evasion and tackle tax havens; calls upon the Commission to also include in the annual report on the implementation of the Raw Materials Initiative information on the impact of new agreements, programmes and initiatives on resource-rich developing countries;

19. Recognises the high level of responsibility borne by the EU in ensuring that its fisheries are based on the same standards in terms of ecological and social sustainability and transparency both inside and outside Union waters; notes that such coherence requires coordination both within the Commission itself and between the Commission and the governments of the individual Member States;

20. Recalls in particular its commitment to preventing the financing of large-scale energy infrastructure with adverse social and environmental repercussions;

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21. Instructs its President to forward this resolution to the Council and the Commission.

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P7_TA(2014)0252

EU priorities for the 25th session of the UN Human Rights Council

European Parliament resolution of 13 March 2014 on EU priorities for the 25th session of the UN Human Rights Council (2014/2612(RSP))

(2017/C 378/28)

The European Parliament,

— having regard to the Universal Declaration of Human Rights and to the UN human rights conventions and optional protocols thereto,

— having regard to United Nations General Assembly Resolution 60/251 establishing the Human Rights Council (UNHRC),

— having regard to the United Nations Millennium Declaration of 8 September 2000 and to the UN General Assembly resolutions thereon,

— having regard to the European Convention on Human Rights, the European Social Charter and the EU Charter of Fundamental Rights,

— having regard to the EU Strategic Framework on Human Rights and Democracy and the EU Action Plan on Human Rights and Democracy, as adopted at the 3179th Foreign Affairs Council meeting of 25 June 2012,

— having regard to its recommendation to the Council of 13 June 2012 on the EU Special Representative for Human Rights ([1]),

— having regard to its previous resolutions on the United Nations Human Rights Council (UNHRC), including Parliament's priorities in this context, and in particular that of 7 February 2013 ([2]),

— having regard to its urgent resolutions on human rights issues,

— having regard to its resolution of 11 December 2013 on the Annual Report on Human Rights and Democracy in the World 2012 and the European Union's policy on the matter ([3]),

— having regard to the EU Foreign Affairs Council's conclusions on the EU's priorities in the UN human rights fora, adopted on 10 February 2014,

— having regard to Articles 2, 3(5), 18, 21, 27 and 47 of the Treaty on European Union,

— having regard to the forthcoming sessions of the UNHRC in 2014, in particular the 25th regular session, to be held from 3 to 28 March 2014,

— having regard to Rule 110(2) and (4) of its Rules of Procedure,

A. whereas respect for, and the promotion and safeguarding of, the universality of human rights is part of the European Union's ethical and legal *acquis* and one of the cornerstones of European unity and integrity;

B. whereas the EU's credibility in the UNHRC will be bolstered by increasing consistency between its internal and external policies relating to human rights;

([1]) OJ C 332 E, 15.11.2013, p. 114.
([2]) Texts adopted, P7_TA(2013)0055.
([3]) Texts adopted, P7_TA(2013)0575.

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C. whereas the EU and its Member States should strive to speak out with one voice against human rights violations in order to achieve the best possible results, and should in this context continue to strengthen cooperation and enhance organisational arrangements and coordination among the Member States and among the EU institutions;

D. whereas the EU Foreign Affairs Council of 10 February 2014 set out its priorities ahead of the 25th regular session of the UN Human Rights Council and the forthcoming UN General Assembly Third Committee, which included the situation in Syria, the Democratic People's Republic of Korea, Iran, Sri Lanka, Myanmar/Burma, Belarus, the Central African Republic, South Sudan, the Democratic Republic of the Congo, Eritrea, Mali and Sudan; whereas the thematic priorities outlined by the Foreign Affairs Council included the death penalty, freedom of religion or belief, the rights of the child, women's rights, the post-2015 global agenda, freedom of opinion and expression, freedom of association and assembly, NGO cooperation with UN human rights bodies, torture, LGBTI issues, racism, indigenous peoples, economic, social and cultural rights, business and human rights, and support for UN human rights bodies and mechanisms;

E. whereas an EU Special Representative for Human Rights (EUSR) was appointed on 25 July 2012, whose role it is to enhance the effectiveness and visibility of EU human rights policy and to contribute to the implementation of the Strategic Framework and Action Plan on Human Rights and Democracy;

F. whereas 14 new members were elected to the UNHRC in October 2013 and took up their membership on 1 January 2014, namely Algeria, China, Cuba, France, the Maldives, Mexico, Morocco, Namibia, Saudi Arabia, South Africa, the former Yugoslav Republic of Macedonia, Vietnam, Russia and the United Kingdom; whereas nine EU Member States are now UNHRC members;

G. whereas the priority theme of the 58th session of the Commission on the Status of Women will be the challenges and achievements in the implementation of the Millennium Development Goals for women and girls;

H. whereas corruption in the public and private sectors perpetrates and aggravates inequalities and discrimination when it comes to equal enjoyment of civil, political, economic, social and cultural rights, and whereas it is proven that acts of corruption and human rights violations involve the misuse of power, lack of accountability and various forms of discrimination;

I. whereas the ratification of both of the Kampala amendments to the Rome Statute of the International Criminal Court (ICC) by states and the activation of the ICC's jurisdiction over the crime of aggression will further contribute to ending impunity for perpetrators of this crime;

1. Welcomes the priorities set out by the Council with a view to the 25th regular session of the UNHRC; urges the European External Action Service (EEAS) and the Member States to take into account its recommendations when promoting the EU's priorities in the UNHRC;

The work of the UN Human Rights Council

2. Reiterates its belief that elections to the UNHRC need to be competitive, and expresses its opposition to the arranging of uncontested elections by regional groups; reiterates the importance of standards for UNHRC membership as regards commitment and performance in the human rights field, and urges the Member States to insist on such standards when defining the candidates they will vote for; emphasises that UNHRC members are required to uphold the highest standards in the promotion and protection of human rights; reiterates the importance of strong and transparent criteria for reinstating suspended members;

3. Expresses its concern about human rights abuses in a number of newly elected members of the UNHRC, including Algeria, China, Cuba, Morocco, Russia, Saudi Arabia and Vietnam;

4. Notes that Kazakhstan is currently one of the 47 members of the HRC; points out that the human rights situation in that country has deteriorated further since the brutal police repression of peaceful demonstrators and oil workers, their families and supporters in Zhanaozen on 16 December 2011, which, according to official figures, left 15 people dead and over 100 injured; calls on the HRC to implement without delay the call made by the High Commissioner for Human Rights, Navi Pillay, for an independent international investigation into the killing of oil workers in Kazakhstan; calls on Kazakhstan, as a member of the HRC, to guarantee human rights, repeal Article 164 of its penal code on 'inciting social discord', end the repression of, and lift the administrative obstacles placed in the way of, independent media, release political prisoners — including Vadim Kuramshin, a lawyer for human rights defenders, Roza Tuletaeva, a union activist, and Vladimir Kozlow, an opposition politician — and drop all requests for the extradition of opposition politicians;

5. Continues to oppose 'bloc voting' in the UNHRC; urges the countries that are members of the UNHRC to remain transparent in their voting;

6. Regrets the fact that the space for interaction between civil society and the UNHRC is shrinking and that NGOs are being offered fewer opportunities to speak at these sessions; urges the EU and the UNHRC to ensure that civil society is allowed to contribute as fully as possible to the 25th session of the UNHRC, as well as to the Universal Periodic Review (UPR) process and other UN human rights mechanisms, without fear of reprisals upon return to their home country; condemns reports of such reprisals, and urges the EEAS and the Member States to ensure that such cases are followed up in a systematic manner;

7. Commends the UN High Commissioner for Human Rights, Navi Pillay, for her continued efforts in the treaty body strengthening processes; strongly reiterates the multi-stakeholder nature of the treaty bodies and stresses that civil society needs to be included on a permanent basis in these processes; emphasises, furthermore, that the independence and effectiveness of the treaty bodies must be preserved and enhanced;

Country-specific issues

Syria

8. Reiterates its strong condemnation of the widespread violations of human rights and international humanitarian law by the Syrian regime, including all acts of violence, systematic torture and executions of prisoners; condemns all human rights abuses and violations of international humanitarian law by armed groups opposing the regime; expresses serious concern about the severe impact of the three-year conflict on the civilian population, and the continued deterioration of the humanitarian situation within the country and in the region; calls on all armed actors to put an immediate end to the violence in Syria; fully supports the recent round of talks initiated on the basis of the Geneva communiqué, which should be the first step in a process that will lead to a political and democratic solution to the conflict, so as to facilitate a Syrian-led democratic transition that meets the legitimate aspirations of the Syrian people;

9. Urges all parties to the conflict, and in particular the Syrian regime, to ensure comprehensive and secure cross-border access for international humanitarian aid efforts, and to fulfil their promise of allowing women and children to escape besieged cities such as Homs and the Yarmouk camp; welcomes UN Security Council Resolution 2139 of 22 February 2014, calling for humanitarian aid convoys to be allowed access throughout the country in order to alleviate the suffering of the civilian population, and calls for its rapid implementation; calls for the release of peaceful activists in government detention and civilian hostages being held by armed groups;

10. Stresses that, in view of the unprecedented scale of the crisis, alleviating the suffering of millions of Syrians in need of basic goods and services must be a priority for the EU and the international community at large; reminds the EU Member States of their humanitarian responsibility towards the Syrian refugees, and notes that tragedies such as that in Lampedusa should not happen again; urges the Commission and the Member States to aid the refugees fleeing the conflict; notes that in its resolution of 9 October 2013, Parliament encouraged the Member States to address acute needs by providing safe entry into the EU to allow temporary admission of Syrians and through resettlement over and above existing national quotas, as well as humanitarian admission;

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11. Reiterates its call on the EEAS and the Member States to ensure that the situation in Syria continues to be treated as a matter of the highest priority within the UN framework, notably in the UNHRC;

12. Highlights the fact that deliberate starvation of civilians and attacks on health facilities are prohibited under international law and will be regarded as war crimes; reiterates the importance of ensuring accountability at all levels; commends in this context the work of the Independent Commission of Inquiry on Syria, including its latest report, to be discussed at the UNHRC, and calls on the Commission of Inquiry to investigate the recent report, which includes thousands of photographs of cases of torture reportedly perpetrated by the Syrian military; reiterates its call for the UN Security Council (UNSC) to refer the situation in Syria to the International Criminal Court for a formal investigation; asks the Vice-President/High Representative to take demonstrable action in this direction;

Egypt

13. Condemns the human rights abuses perpetrated in Egypt, including the harassment and detention of journalists, civil society and political opposition activists and the excessive use of force resulting in the deaths of a large number of civilians, for instance during the three-year anniversary of the revolution and the days around the referendum in January 2013; urges the Egyptian authorities to ensure that full, transparent and independent investigations are carried out into the deaths of civilians, in order to hold all perpetrators accountable; condemns the fact that tens of thousands of Egyptians are being held in prison and repressed, including the Muslim Brotherhood, which is described as a terrorist organisation, hindering the possibility of the inclusive reconciliation process that is necessary for the country's stability and development; calls on the UNHRC to condemn these human rights violations, to monitor any investigations that are held and to consider launching its own investigation in the absence of progress by the Egyptian authorities; stresses the importance of the swift opening of a regional OHCHR office in Cairo, as agreed by the Egyptian authorities;

14. Takes note of the new Egyptian constitution; notes the reference to the independence of Christian and Jewish religious affairs, and recognises progress with regard to freedom of religion; welcomes the constitution's reference to a civilian government and the equality of all citizens, including the improvement in women's rights, the provision on children's rights, the ban on torture in all its forms and manifestations, the prohibition and criminalisation of all forms of slavery and the commitment to abide by international human rights treaties signed by Egypt; strongly deplores the level of power the constitution places in the hands of the army and the military courts;

15. Is concerned about the fact that thousands of people, mainly refugees from Eritrea and Somalia, including many women and children, are losing their lives, disappearing or being kidnapped and held hostage for ransom, tortured, sexually exploited or killed for the organ trade by human traffickers in Sinai; recalls, in this context, that Article 89 of the new constitution declares that all forms of slavery, oppression, forced exploitation of human beings, the sex trade and other forms of human trafficking are prohibited and criminalised by law in Egypt;

Libya

16. Calls for the adoption of a resolution during the forthcoming UNHRC session, building upon the OHCHR report and strengthening the OHCHR's mandate to monitor and report to the UNHRC on the human rights situation and challenges faced in Libya; is concerned about the illegal conflict-related detentions and the practice of torture and extra-judicial killings, and welcomes in this context the recommendations of the UN Support Mission report on torture; voices its concern about the targeting of media workers and calls for the protection of media pluralism and freedom of expression; urges that support be provided for conflict resolution and national reconciliation;

Tunisia

17. Welcomes the adoption of a new constitution by Tunisia on 26 January 2014, which could serve as a source of inspiration for the countries in the region and beyond; encourages the Tunisian authorities to conduct inclusive, transparent and credible elections later this year;

Morocco

18. Calls on Morocco, as a new member of the UNHRC, to continue negotiations for a peaceful and long-lasting solution to the Western Sahara conflict, and reaffirms the right of the Sahrawi people to self-determination, which should be decided through a democratic referendum, in accordance with the relevant UN resolutions;

Palestine

19. Welcomes the participation of Palestine as a UN non-member observer state since November 2012; reiterates its support for this endeavour; notes the support expressed by the EU for Palestine's becoming a full member of the UN as part of a political solution to the Israel-Palestine conflict; reaffirms that the EU will not accept any changes to the pre-1967 borders, including with regard to Jerusalem, other than those agreed by the parties; shares, in this regard, the EU Council's conclusions on the Middle East Peace Process of 16 December 2013 that deplored Israel's continuous expansion of settlements, which are illegal under international law and constitute an obstacle to peace; deplores human rights abuses by the Palestinian authorities as well as the continued firing of rockets from Gaza into Israel;

Israel

20. Welcomes Israel's re-engagement with the UNHRC, and the upcoming adoption of the second-cycle UPR report on the country; calls on the Israeli authorities to cooperate with all Special Procedures, including the Special Rapporteur on the situation of human rights in the occupied territories; supports the conclusions of the reports of the UN Secretary-General and the UN High Commissioner for Human Rights in relation to Israel and the occupied Palestinian territories, and calls on Israel to implement the recommendations of the independent international fact-finding mission on the implications of Israeli settlements for the human rights of the Palestinian people; expresses its deep concern over the reported cases of political detention of children in Israeli places of detention;

Bahrain

21. Expresses concern about the situation of human rights defenders and political opposition activists in Bahrain; welcomes the statement of September 2013 on Bahrain in the UNHRC, signed by all EU Member States; calls for the immediate and unconditional release of all prisoners of conscience, political activists, journalists, human rights defenders and peaceful protesters; calls for the EU Member States to work towards the adoption during the next session of the UNHRC of a resolution on the human rights situation in Bahrain, focused on the implementation of Bahrain's commitments made during the UPR process and the recommendations, including those concerning human rights defenders, of the Bahrain Independent Commission of Inquiry, welcomed by the King of Bahrain;

Saudi Arabia

22. Calls on Saudi Arabia, as a newly elected member of the UNHRC, to heed the recommendations of the 17th Universal Periodic Review Working Group session to put an end to all forms of discrimination against women in legislation and in practice and to allow women to participate fully and equally in society; to take all necessary measures to combat domestic violence and ensure victims have access to mechanisms of protection and redress; to enact a law prohibiting all early and forced child marriages, and establish the minimum legal age of marriage at 18 years; to adopt laws to protect the freedoms of association, expression, peaceful assembly and religion; to impose a moratorium on the death penalty with a view to its eventual abolition; to allow for the registration of NGOs active in the area of human rights; and to ratify key human rights instruments;

Iran

23. Welcomes the resolution adopted by the UNHRC in March 2013 on the situation of human rights in the Islamic Republic of Iran and the extension of the mandate of the Special Rapporteur on the human rights situation in Iran; reaffirms its support for the continuation of the mandate, and calls on Iran to allow the UN Special Rapporteur entry into the country as a crucial step towards opening up a dialogue to assess the human rights situation in Iran; reiterates its

condemnation of the death penalty in Iran and the significant increase in executions, with 40 people hanged in the first two weeks of 2014, and the continued violation of the right to freedom of belief; notes the early signs of progress that the Iranian Government has shown with regard to human rights, including the release of political prisoners; calls on the EU and the UNHRC to continue to monitor closely the human rights situation, and to ensure that human rights remain a key priority in all dealings with the Iranian Government;

Russia

24. Strongly condemns the 'Foreign Agent' laws in Russia, which are being used to harass NGOs through the use of office raids, fines and other intimidating methods; calls on the EU and its Member States to maintain pressure on Russia, both at the UNHRC and outside, to end these clear violations of the freedoms of expression and of association; expresses strong concern at other continued human rights abuses in Russia, such as repression of the media, discriminatory laws towards sexual minorities, violation of the right of assembly and lack of judicial independence;

Belarus

25. Reiterates its support for the UNHRC's Special Rapporteur on the human rights situation in Belarus; calls for the mandate of the Special Rapporteur to be extended for another year when it comes to an end in June 2014; welcomes the resolution adopted on Belarus in June 2013 and the continued acknowledgement of, and attention paid to, the significant human rights abuses in the country; urges the EEAS and the Member States to maintain pressure on Belarus on the subject of human rights;

Uzbekistan

26. Welcomes the outcome of the UPR of Uzbekistan; views as regrettable the continued refusal by the Government of Uzbekistan to respond favourably to visit requests by UNHRC Special Procedures; urges the EU Member States to strive for the creation of a dedicated monitoring mechanism at the UNHRC on the situation of human rights in Uzbekistan;

Central African Republic

27. Reiterates its profound concern at the situation in the Central African Republic; calls on the international community to support as a matter of urgency the UN humanitarian appeal, which is severely underfunded, and calls for an improved security situation with a view to ensuring access to humanitarian assistance for the population; hopes that the rapid deployment of the EU CSDP mission will contribute to an improvement in the situation on the ground; welcomes UNSC Resolution 2136 (2014), the UN Human Rights Council resolution, its Special session on the situation in the Central African Republic of 20 January 2014, and the appointment of an Independent Expert on the human rights situation in the country; urges new interim President Samba-Panza to do all that she can to end the violence and calm sectarian tensions in the country;

Democratic Republic of the Congo

28. Highlights the UN's call for continued support for the conflict-torn eastern part of the Democratic Republic of the Congo (DRC), so as to ensure that it does not become a forgotten crisis; is seriously concerned about the recent massive displacement of population in the Katanga region; strongly condemns the attacks by rebel forces in the east of the country on the civilian population, including women and children; strongly condemns the systematic use of rape as a weapon of war; expresses deep concern about the ongoing use of children as soldiers and calls for their disarmament, rehabilitation and reintegration; considers that the UN Peace, Security and Cooperation Framework for the DRC and the Region remains a key framework for the achievement of sustainable peace; welcomes UNSC Resolution 2136 of 30 January 2014, which renews the arms embargo imposed on the DRC;

Eritrea

29. Urges continued attention and vigilance on the part of the EU and the UNHRC with regard to the human rights situation in Eritrea, as serious human rights violations are creating high numbers of refugees and migrants; welcomes the

UNHRC resolution on the human rights situation in Eritrea adopted unanimously in June 2013; commends the first report by the Special Rapporteur on the human rights situation in the country; calls for the renewal of the mandate of this Special Rapporteur during the 26th UNHRC session;

Mali

30. Welcomes the appointment of an Independent Expert on the human rights situation in Mali, the continued monitoring of the human rights situation post-conflict, and the strong leadership role played by other African states in improving the human rights situation in the country; calls for the renewal of the mandate of the Independent Expert;

South Sudan

31. Expresses its deep concern about the situation in South Sudan, including the political fight for leadership of the country, which has provoked increasing ethnic clashes and the displacement of more than 650 000 people; calls on the EU Member States to raise this matter in the UNHRC, in order to keep the issue of the situation in South Sudan high on the international agenda; welcomes the agreement on cessation of hostilities signed on 23 January 2014, but underlines the fact that this is only a first step towards peace and reconciliation; condemns the widespread human rights violations and abuses committed, and underlines that those responsible must be held accountable; welcomes the engagement of the African Union in creating a Commission of Inquiry to serve as a basis for justice and accountability and future reconciliation;

Sri Lanka

32. Condemns the ongoing attacks on religious minorities, and the harassment and intimidation of human rights defenders, lawyers and journalists; acknowledges the progress made in reconstruction and the implementation of some of the recommendations made by the Lessons Learnt and Reconciliation Commission, but regrets the fact that the Government of Sri Lanka continues to fail to provide for independent, credible investigations into past violations of international human rights and humanitarian law; strongly supports the recommendation by the UN High Commissioner for Human Rights to establish an independent international inquiry mechanism which would contribute to establishing the truth if domestic inquiry mechanisms fail;

Burma/Myanmar

33. Welcomes the resolution adopted by the UNHRC on Burma/Myanmar and the continued work of the Special Rapporteur; calls on the UNHRC not to discontinue or modify the mandate of the Special Rapporteur as long as an OHCHR country office with a full mandate is not established inside the country, and calls on Burma/Myanmar to ensure that the prisoner review committee continues its work on resolving all pending cases and repealing the controversial law affecting freedom of expression and of association (in particular the 2011 Peaceful Assembly and Processions Law); condemns the continued violence and abuses perpetrated against the Rohingya minority in Rakhine State and attacks against Muslim and other religious minorities, and calls for a full, transparent and independent investigation into such violations;

Democratic People's Republic of Korea

34. Welcomes the planned extension of the mandate of the Special Rapporteur on the human rights situation in the Democratic People's Republic of Korea (DPRK), the resolution adopted by consensus in March 2013, and the presentation of the report by the Commission of Inquiry on human rights in that country; reaffirms its call for the Government of the DPRK to cooperate fully with the Special Rapporteur and to facilitate his visit to the country; urges the UNHRC to heed the recommendations of the International Commission of Inquiry, with a particular focus on the need to condemn international crimes committed in the DPRK, to step up the UN's capacity to document human rights violations in the country, and to set up appropriate international mechanisms to ensure accountability for international crimes committed in the DPRK;

Cambodia, Côte d'Ivoire, Haiti, Somalia and Sudan

35. Welcomes the extension of the mandates of the independent experts on Cambodia, Côte d'Ivoire, Haiti, Somalia, and Sudan; urges the authorities of these countries to cooperate fully with mandate-holders;

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Thematic issues

Rights of the child

36. Welcomes the work of the UNHRC on the rights of the child, such as the resolution of September 2013 on preventable mortality and morbidity of children under five years of age as a human rights concern, and the work of the Committee on the Rights of the Child; calls on states to ratify the 3rd Optional Protocol to the UN Convention on the Rights of the Child, which will allow children to submit their complaints to the Committee; commends the upcoming UNHRC resolution on the rights of the child as an excellent example of cooperation between the EU and the Group of Latin American and Caribbean Countries in the United Nations (GRULAC); expresses its deep concern over the cases of torture and detention of children reported by organisations such as UNICEF and Amnesty International; calls on the UN to further explore such cases and to formulate recommendations for actions;

Women and girls

37. Calls for the EU to participate actively in the 58th session of the Commission on the Status of Women in order not to undermine the '*acquis*' of the UN Beijing Platform for Action, such as access to education and health as a basic human right, including sexual and reproductive rights; strongly condemns the use of sexual violence against women as a tactic of war, including crimes such as mass rape, sexual slavery, enforced prostitution, gender-based forms of persecution including female genital mutilation, trafficking, early and forced marriages, honour killings and all other forms of sexual violence of comparable gravity; calls again on the EU and all the Member States to sign and ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence;

Torture

38. Reiterates the importance of fighting torture and other forms of ill-treatment and the priority that the EU gives this issue, especially with regard to children; calls on the UNHRC to use the annual resolution on torture to renew the Special Rapporteur's mandate for another three years, and to ensure effective follow-up to past resolutions on torture; urges the EEAS, the Commission and the EU Member States to demonstrate their shared commitment to eradicating torture and to supporting victims, notably by continuing or, where applicable, starting to contribute to the UN Voluntary Fund for Victims of Torture and the Special Fund established by the Optional Protocol to the Convention against Torture;

Death penalty

39. Reaffirms its strong condemnation of the use of the death penalty, and strongly supports the moratorium as a step towards abolition; calls on the EU, its Member States and the UNHRC to continue to push for abolition worldwide; strongly urges countries still carrying out capital punishment to publish clear and accurate figures on the number of sentences and executions;

Freedom of religion or belief

40. Condemns the continued violations of the right to freedom of religion or belief worldwide; reiterates the importance which the EU places on this issue; calls on the Member States to continue working on this; welcomes the renewal of the mandate of the UN Special Rapporteur on freedom of religion or belief; restates once again that freedom of thought, conscience and religion, including the freedom to change or abandon one's religion or belief, is a fundamental human right; stresses therefore the need to effectively combat all forms of discrimination against religious minorities around the world;

LGBTI rights

41. Expresses concern about the recent increase in discriminatory laws and practices and acts of violence against individuals on the basis of their sexual orientation and gender identity; encourages close monitoring of the situation in Nigeria and Uganda, where new laws seriously threaten the freedom of sexual minorities; condemns the introduction of discriminatory laws and repression of free speech in Russia; reaffirms its support for the continued work by the High Commissioner on Human Rights to combat these discriminatory laws and practices, and the work of the UN more generally on this issue; recommends active participation by the EU Member States, the Council and the EEAS in combating the attempts to undermine these rights;

Caste-based discrimination

42. Condemns caste-based discrimination; expresses deep concern about the continued widespread human rights violations on the basis of caste and the acts of violence, including sexual violence against women belonging to the communities concerned; welcomes the work of the OHCHR and UN Special Procedures mandate-holders on combating this form of discrimination; urges the EU Member States to promote the endorsement of the draft UN Principles and Guidelines for the Effective Elimination of Discrimination based on Work, and calls on the UNHRC to adopt this framework;

Right to peaceful assembly

43. Calls on the EU to support the follow-up of the OHCHR report on effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, notably by supporting efforts to develop the international legal framework relating to the right of peaceful assembly;

Housing

44. Restates its welcome for the importance placed by the UNHRC on the right to housing; reiterates also its call on the Union and its Member States to promote access to adequate housing as a fundamental right;

Water and sanitation

45. Welcomes the resolution adopted in September 2013 by the UNHRC on the right to safe drinking water and sanitation, and the work of the UN Special Rapporteur on this issue, specifically through the development of a handbook on how to implement the right to safe drinking water and sanitation; calls on the EEAS, the EU Member States and the UNHRC to maintain focus on this often neglected but vitally important human right to water and sanitation;

Business and human rights

46. Strongly supports the implementation of the UN Guiding Principles on Business and Human Rights; calls on the EU and its Member States to take an active role in the 7th session of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises and to support efforts to align their policies with the OECD Guidelines for Multinational Enterprises and with the UN Guiding Principles on Business and Human rights; reiterates its request to the European Commission to report by the end of 2014 on implementation of the UN Guiding Principles on Business and Human Rights by the EU Member States; notes the emerging initiative to call for a legally binding international instrument on business and human rights to be concluded within the UN system;

Corruption and human rights

47. Calls on the EU and its Member States to support the establishment of a UN Special Rapporteur on financial crime, corruption and human rights;

Sport

48. Welcomes the resolution adopted in September 2013 on promoting human rights through sport and the Olympic ideal; expresses concern about the situation of migrant workers in Qatar, particularly in the build-up to the 2022 World Cup; takes note of Qatar's initiative to address this concern; calls on the Qatari authorities to reform their labour law, to abolish the sponsorship law ('kafala system') in place throughout the region and to ratify relevant international conventions; urges the EU to ensure that EU companies working in the construction industry in Qatar are not contributing to the human rights abuses faced by migrant workers; emphasises the importance of scrutinising all major sporting events and their interaction with human rights, such as the February 2014 Sochi Winter Olympics in Russia and the continued suppression of freedom of assembly and the rights of sexual minorities, and the forthcoming World Cup in Brazil, where there are reports of house evictions and population displacements throughout the country;

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Use of armed drones

49. Is concerned about the violations of human rights and international humanitarian law arising from unlawful targeted killings carried out by armed drones, which have led to unknown numbers of civilians being killed, seriously injured or traumatised outside declared conflict zones; supports the efforts under the relevant UN Special Procedures to promote transparent and accountable use of armed drones by states in line with the established international legal framework; calls on the EU, its Member States and the UNHRC to continue to support investigations into unlawful targeted killings and to follow up on the recommendations by the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions and on counter-terrorism and human rights;

International Criminal Court

50. Reiterates its full support for the International Criminal Court, and remains vigilant regarding any attempts to undermine its legitimacy; requests the active development of an EU position on the crime of aggression and the Kampala amendments;

Universal Periodic Review

51. Reaffirms the importance of universality of the Universal Periodic Review (UPR), with a view to arriving at a full understanding of the human rights situation in all UN member states, and reiterates the continued importance of this second cycle of review focusing on the implementation of the recommendations accepted during the first cycle; calls again, however, for the recommendations that were not accepted by states during the first cycle to be reconsidered in the continuation of the UPR process;

52. Calls on EU Member States participating in the UPR interactive dialogues to put forward recommendations that are specific and measurable, in order to improve the quality of the follow-up to, and implementation of, accepted recommendations; underlines the importance of the Commission and the EU Member States providing technical assistance in order to help the states under review to implement the recommendations to present mid-term updates in order to help improve implementation;

53. Stresses the need to include the UPR recommendations systematically in the EU's human rights dialogues and consultations and in EU human rights country strategies; reiterates its recommendation that Parliament raise these recommendations during its own delegation visits to third countries;

54. Welcomes all steps that allow a wide range of stakeholders, including civil society, to participate fully in the UPR process; stresses the importance of the EEAS and the Member States highlighting in the UNHRC the worrisome issue of the shrinking NGO space in a number of countries around the world;

Special Procedures

55. Reiterates its strong support for the Special Procedures; stresses the fundamental importance of the independence of these mandates and urges all UN states to cooperate fully with the Special Procedures, including by receiving mandate-holders for country visits, replying to their urgent requests for action and in connection with allegations of violations and ensuring proper follow-up to the recommendations made by the mandate-holders; supports the statement released on 10 December 2013 by the 72 Special Procedures experts and is concerned that states' lack of cooperation with Special Procedures hinders their capacity to implement their mandate;

56. Strongly condemns all forms of reprisal against human rights defenders and activists who cooperate with the UPR process and the Special Procedures, particularly in the case of China; calls on the UNHRC to investigate reports that indicate that a Chinese activist, Cao Shunli, who advocated civil society involvement in the UPR, has been detained since 14 September 2013; urges the UNHRC President actively to follow up on this and other similar cases, and for all states to provide adequate protection against such acts of intimidation; stresses that such acts undermine the whole UN human rights system;

EU involvement

57. Reiterates the importance of the EU participating actively in all UN human rights mechanisms, including the UNHRC; encourages the EU Member States to do so by co-sponsoring and leading on resolutions, by actively participating in debates and interactive dialogues, and by issuing statements; strongly supports the increasing practice on the part of the EU of cross-regional initiatives;

58. Reaffirms the importance of integrating the work being done in Geneva in the context of the UNHRC into the relevant internal and external activities of the EU, including those of Parliament, such as the committee and interparliamentary delegations, and UN Special Rapporteurs' contributions to committee meetings;

59. Encourages the EUSR to continue to enhance the effectiveness, coherence and visibility of the EU's human rights policy in the context of the UNHRC and in further developing close cooperation with the OHCHR and the Special Procedures, and regrets the absence of the VP/HR in the High-Level Segment of the UNHRC;

60. Stresses again the importance of effective coordination and cooperation between the EEAS, the Commission and EU Member States on human rights issues; encourages the EEAS, in particular through the EU Delegations in Geneva and New York, to increase EU coherence by means of timely and substantive consultation and to deliver a 'one-voice message';

61. Stresses the importance of the EU Member States supporting the UNHRC, by working together towards the fulfilment of the indivisibility and universality of human rights and, in particular, by ratifying all the international human rights instruments that this body has established; reiterates its regret that no EU Member State has ratified the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; reiterates the fact that several Member States have not yet adopted and/or ratified the Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; reiterates its call for all the Member States to ratify these conventions and protocols; stresses the importance of the Member States' submitting their periodic reports to the UN monitoring bodies in a timely manner; calls on the EU to actively develop an EU position on the crime of aggression and the Kampala amendments;

62. Reiterates the importance of continued EU support in defending the independence of the OHCHR so as to ensure it can continue to exercise its task in an effective and impartial manner; highlights that it is essential to the OHCHR's impartiality and functioning for it to be assured of sufficient funding, especially in view of the current need to open new OHCHR regional offices as a result of emerging situations; underlines the importance of securing sufficient funding to cover the treaty bodies' increasing workload; calls on the EU to take a leadership role in ensuring the effective functioning of the treaty body system, including with regard to adequate funding;

63. Reaffirms that the protection of human rights defenders is a key priority within the EU's human rights policy; values, therefore, the practical and financial support allocated to the urgent protection of, and support for, human rights defenders under the European Instrument for Democracy and Human Rights (EIDHR);

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64. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the EU Special Representative on Human Rights, the governments and parliaments of the Member States, the UN Security Council, the UN Secretary-General, the President of the 68th UN General Assembly, the President of the UN Human Rights Council, the UN High Commissioner for Human Rights and the EU-UN Working Group established by the Committee on Foreign Affairs.

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P7_TA(2014)0253

Russia: sentencing of demonstrators involved in the Bolotnaya Square events

European Parliament resolution of 13 March 2014 on Russia: sentencing of demonstrators involved in the Bolotnaya Square events (2014/2628(RSP))

(2017/C 378/29)

The European Parliament,

— having regard to its previous resolutions on Russia, in particular its resolution of 13 June 2013 on the rule of law in Russia [1],

— having regard to the statement by the Spokesperson of the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) of 24 February 2014 on the sentencing of demonstrators involved in the Bolotnaya Square events,

— having regard to the Constitution of Russia, in particular Article 118 thereof, which states that justice in the Russian Federation is to be administered by courts alone, and Article 120 thereof, which provides that judges are independent and are subordinate only to the Russian Constitution and federal law,

— having regard to the EU-Russia human rights consultations of 28 November 2013,

— having regard to the report of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 17 December 2013 on its periodic visit to the Russian Federation,

— having regard to the statement by the Human Rights Ombudsman of the Russian Federation, Vladimir Lukin, of 4 March 2014 on public demonstrations in Moscow and the steps taken by the law enforcement agencies,

— having regard to Rules 122(5) and 110(4) of its Rules of Procedure,

A. whereas the Russian Federation, as a full member of the Council of Europe and the Organisation for Security and Cooperation in Europe, has committed itself to the principles of democracy, the rule of law and respect for human rights; whereas as a result of several serious violations of the rule of law and the adoption of restrictive laws during the past months, there are increasing concerns with regard to Russia's compliance with international and national obligations;

B. whereas on 6 May 2012, on the eve of President Vladimir Putin's inauguration, several dozen of the estimated tens of thousands of protesters clashed sporadically with police, leading to minor injuries, in Bolotnaya Square;

C. whereas around 600 activists were briefly detained and criminal proceedings were started against 28 individuals; whereas the authorities opened an investigation into the actions of the protestors, deeming them 'mass riots', which, under Russian law, are mass actions that involve 'violence, pogroms, destruction of property, use of firearms, or armed resistance to the authorities'; whereas the authorities have alleged that the violence was planned and was part of a conspiracy to destabilise the country and overthrow the government;

D. whereas several trials and judicial proceedings over the past years have cast doubt on the independence and impartiality of the judicial institutions of the Russian Federation;

E. whereas numerous Russian and international human rights organisations reported that disproportionate measures and aggressive actions by the security forces as well as excessive use of violence led to the outbreak of violence followed by arbitrary arrests of the protesters; whereas the Human Rights Ombudsman of the Russian Federation confirmed in his assessment that accusations of mass riots were ungrounded;

[1] Texts adopted, P7_TA(2013)0284.

F. whereas on 24 February 2014 a Russian court handed down a guilty verdict against eight of those demonstrators, ranging from a suspended sentence to four years' imprisonment, following three more severe prison sentences in 2013, as well as the forced psychiatric treatment of the activist Mikhail Kosenko;

G. whereas a large number of detentions where made during peaceful demonstrations in support of the defendants in the Bolotnaya Square case on 21 and 24 February 2014; whereas over 200 people who had gathered outside the Zamoskvoretsky district court on 24 February 2014 to hear the verdict were detained over several hours; whereas opposition leaders Boris Nemtsov and Aleksei Navalny were subsequently sentenced to 10-day jail terms; whereas Aleksei Navalny has been placed under house arrest for the next two months, and on 5 March 2014 was fitted with an electronic bracelet to monitor his activities;

H. whereas the Russian authorities are expanding their mass surveillance programmes; whereas these programmes, combined with anti-LGBT laws and laws restricting the freedom of NGOs, provide the Russian authorities with a very powerful tool to monitor and oppress opposition voices;

I. whereas the human rights situation in Russia has deteriorated in recent years and the Russian authorities have adopted a series of laws containing ambiguous provisions and which could be used to place further restrictions on opposition and civil-society actors, and hinder the freedoms of expression and assembly; whereas this crackdown has involved actions such as police raids, confiscation of property, administrative fines and other measures aimed at preventing and dissuading civil society organisations from carrying out their work;

J. whereas leaders of the opposition parties and movements are subject to harassment by the Russian authorities, with some being detained under various allegations, such as Ilya Yashin, leader of the Solidarity movement, Gleb Fetisov, the co-chair of the Alliance of Greens and Social Democrats, and Yevgeny Vitishko, ecological activist and pre-eminent member of Yabloko;

K. whereas numerous accounts of ill-treatment and torture of prisoners by members of law enforcement agencies and the police were recorded by the Council of Europe's anti-torture Committee in December 2013;

1. Expresses its deep concern over the proceedings against the Bolotnaya Square demonstrators, which were deeply flawed from the start, with politically motivated charges;

2. Believes that the charges brought against the demonstrators and their sentences seem disproportionate in the light of the nature of the events and the offences of which they are accused; considers that the outcome of the trial, given the procedural shortcomings and long pre-trial detention, once again raises questions about the state of the rule of law;

3. Calls on the Russian judicial authorities to reconsider the sentences in the appeal process and to release the eight demonstrators, as well as Bolotnaya prisoner Mikhail Kosenko, who was sentenced to forced psychiatric treatment;

4. Expresses, equally, its deep concern over the detention of a large number of peaceful protesters following the Bolotnaya verdicts and calls for the dropping of all charges against the protesters; calls, furthermore, on the Russian Government to respect the rights of all citizens to exercise their fundamental freedoms and universal human rights;

5. Recalls the importance of Russia's full compliance with its international legal obligations, as a member of the Council of Europe and the Organisation for Security and Cooperation in Europe, and with the fundamental human rights and the rule of law enshrined in the European Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR); points out that recent developments have moved in the opposite direction to the reforms necessary to improve democratic standards, the rule of law and the independence of the judiciary in Russia;

6. Expresses its concern over developments in the Russian Federation with regard to respect for and protection of human rights and respect for commonly agreed democratic principles, rules and procedures, in particular with regard to the law on foreign agents, the anti-LGBT legislation, the re-incrimination of defamation, the treason law and the legislation regulating public protests; urges Russia to abide by its international commitments as a member of the Council of Europe;

7. Calls on the Russian Government to take concrete steps to address the deterioration of human rights, in particular by ceasing the campaign of harassment against civil-society organisations and activists; calls on the Russian executive and legislature to reconsider and eventually repeal recently adopted legislative acts and measures that are in conflict with the country's stated commitments on human rights and fundamental freedoms as a member of the Council of Europe, and to take into account the proposals of its Human Rights Ombudsman and those of the Human Rights Council to the President of the Russian Federation;

8. Urges the Russian judicial and law enforcement authorities to carry out their duties in an impartial and independent manner;

9. Stresses that freedom of assembly in the Russian Federation is granted under Article 31 of the Russian Constitution and under the European Convention on Human Rights, to which Russia is a signatory, obliging the Russian authorities to respect it;

10. Calls on the Russian Federation to bring its surveillance programmes into line with the European Convention on Human Rights;

11. Regrets the continuous crackdown on citizens who voice criticism against the regime, and on the remaining independent media outlets, including TV Dozhd (Rain) and Ekho Moskvy radio;

12. Calls on the High Representative and the European External Action Service (EEAS) to ensure that the cases of all persons prosecuted for political reasons are raised in EU-Russia human rights consultations, and that Russia's representatives in these consultations are formally requested to respond in each case;

13. Calls on the Presidents of the Council and the Commission, as well as the VP/HR to continue to follow these cases closely, to raise these issues in different formats and meetings with Russia, and to report back to Parliament on the exchanges with the Russian authorities;

14. Urges the Council to develop a unified policy towards Russia that commits the 28 EU Member States and EU institutions to a strong common message on the role of human rights in the EU-Russia relationship and the need to end the crackdown on freedom of expression, assembly and association in Russia; calls for this common message to be articulated in EU Foreign Affairs Council conclusions;

15. Urges the High Representative and the EEAS to ensure that the Union seeks every opportunity, within the boundaries of Russian domestic law, to continue to engage with and support Russian civil-society organisations, including those working to promote the values of democracy, human rights and the rule of law;

16. Urges the Commission and the EEAS, with regard to the ongoing programming phase of the EU financial instruments, to increase its financial assistance to Russian civil society through the European Instrument for Democracy and Human Rights and the civil-society organisations and local authorities funds, and to include the EU-Russia Civil Society Forum in the Partnership Instrument in order to ensure sustainable and credible long-term support;

17. Instructs its President to forward this resolution to the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the Council, the Commission, the governments and parliaments of the Member States, the Council of Europe, the Organisation for Security and Cooperation in Europe, and the President, Government and Parliament of the Russian Federation.

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P7_TA(2014)0254

Launching consultations to suspend Uganda and Nigeria from the Cotonou Agreement in view of recent legislation further criminalising homosexuality

European Parliament resolution of 13 March 2014 on launching consultations to suspend Uganda and Nigeria from the Cotonou Agreement in view of recent legislation further criminalising homosexuality (2014/2634(RSP))

(2017/C 378/30)

The European Parliament,

— having regard to international human rights obligations and instruments, including those contained in the UN conventions on human rights and in the European Convention on Human Rights and Fundamental Freedoms, guaranteeing human rights and fundamental freedoms and prohibiting discrimination,

— having regard to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the African Charter on Human and Peoples' Rights,

— having regard to UN Human Rights Council resolution 17/19 of 17 June 2011 on human rights, sexual orientation and gender identity,

— having regard to the second revision of the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Union and its Member States, of the other part (the Cotonou Agreement), and to the human rights and public health clauses and commitments contained therein, particularly Articles 8(4), 9, 31a(e) and 96,

— having regard to Articles 2, 3(5), 21, 24, 29 and 31 of the Treaty on European Union and Articles 10 and 215 of the Treaty on the Functioning of the European Union, which commit the EU and its Member States, in their relations with the wider world, to upholding and promoting universal human rights and the protection of individuals, and adopting restrictive measures in the event of grave human rights breaches,

— having regard to the Guidelines to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons, adopted by the Council on 24 June 2013,

— having regard to the statement of 15 January 2014 by Catherine Ashton, Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy (VP/HR), expressing her concern about the signing into law in Nigeria of the Same-Sex Marriage (Prohibition) Bill,

— having regard to the statement of 20 December 2013 by the VP/HR on the adoption of the Anti-Homosexuality Bill in Uganda,

— having regard to the statement made by President Obama on 16 February 2014 on the adoption of the Anti-Homosexuality Bill in Uganda and his request for President Museveni not to sign the bill into law;

— having regard to the statement of 18 February 2014 by the VP/HR on anti-homosexuality legislation in Uganda,

— having regard to the statement of 25 February 2014 by Ban Ki-moon urging the Ugandan authorities to revise or repeal the country's Anti-Homosexuality Bill;

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— having regard to the declaration of 4 March 2014 by the High Representative on behalf of the European Union concerning the Ugandan Anti-Homosexuality Act,

— having regard to its resolution of 5 July 2012 on violence against lesbian women and the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in Africa ([1]), to its position of 13 June 2013 on the draft Council decision on the conclusion of the Agreement amending for the second time 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, signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005 ([2]), and to its resolution of 11 December 2013 on the Annual Report on Human Rights and Democracy in the World 2012 and the European Union's policy on the matter ([3]),

— having regard to its resolutions of 17 December 2009 on 'Uganda: anti-homosexual draft legislation' ([4]), of 16 December 2010 on 'Uganda: the so-called "Bahati Bill" and discrimination against the LGBT population' ([5]), and of 17 February 2011 on 'Uganda: the killing of David Kato' ([6]),

— having regard to its resolutions of 15 March 2012 ([7]) and of 4 July 2013 ([8]) on the situation in Nigeria,

— having regard to its resolution of 16 January 2014 on recent moves to criminalise lesbian, gay, bisexual, transgender and intersex (LGBTI) people ([9]),

— having regard to its resolution of 28 September 2011 on human rights, sexual orientation and gender identity at the United Nations ([10]),

— having regard to Rules 122(5) and 110(4) of its Rules of Procedure,

A. whereas all human beings are born free and equal in dignity and rights; whereas all states have an obligation to prevent violence, incitement to hatred and stigmatisation based on individual characteristics, including sexual orientation, gender identity and gender expression;

B. whereas the European Union's Common Foreign and Security Policy (CFSP) aims to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms;

C. whereas as many as 76 countries continue to consider homosexuality a crime, with five countries providing for the death penalty for such crimes;

D. whereas consensual acts between people of the same sex were already punished with 14 years' imprisonment in Uganda under Section 145 of the Ugandan Penal Code and with seven years' imprisonment in Nigeria under Section 214 of the Nigerian Criminal Code (or the death penalty in the 12 states under Sharia law);

E. whereas on 20 December 2013 the Ugandan Parliament adopted the Anti-Homosexuality Bill, which punishes support for LGBTI people's rights with up to 7 years' imprisonment, persons keeping a house, room or rooms or a place of any kind for the 'purpose of homosexuality' with 7 years' imprisonment, and 'repeat offenders' or HIV-positive offenders with life imprisonment; whereas the bill was signed into law by President Yoweri Museveni Kaguta of the Republic of Uganda on 24 February 2014;

([1]) OJ C 349 E, 29.11.2013, p. 88.
([2]) Texts adopted, P7_TA(2013)0273.
([3]) Texts adopted, P7_TA(2013)0575.
([4]) OJ C 286 E, 22.10.2010, p. 25.
([5]) OJ C 169 E, 15.6.2012, p. 134.
([6]) OJ C 188 E, 28.6.2012, p. 62.
([7]) OJ C 251 E, 31.8.2013, p. 97.
([8]) Texts adopted, P7_TA(2013)0335.
([9]) Texts adopted, P7_TA(2014)0046.
([10]) OJ C 56 E, 26.2.2013, p. 100.

F. whereas the Ugandan authorities adopted the Anti-Pornography Act and the Public Order Management Act, which are further attacks on human rights and NGOs defending human rights; whereas this is indicative of the shrinking and deteriorating policy space being experienced by civil society;

G. whereas on 17 December 2013 the Nigerian Senate adopted the Same-Sex Marriage (Prohibition) Bill, which punishes people in a same-sex relationship with up to 14 years' imprisonment, and people witnessing same-sex marriages or operating or participating in LGBTI bars, organisations or societies with up to 10 years' imprisonment; whereas the bill was signed into law by President Goodluck Jonathan in January 2014;

H. whereas a number of media outlets, of members of the public, and of political and religious leaders in these countries are increasingly seeking to intimidate LGBTI people, limit their rights and those of NGOs and human rights groups, and legitimise violence against them; whereas shortly after President Museveni signed the bill, a Ugandan tabloid newspaper published a list of names and pictures of 200 Ugandan gays and lesbians, with serious negative consequences for their security situation; whereas the media have reported an increasing number of arrests and violence against LGBTI people in Nigeria;

I. whereas numerous heads of state and of government, United Nations leaders, government and parliamentary representatives, the EU (including the Council, Parliament, the Commission and the VP/HR) and numerous world figures have sternly condemned laws criminalising LGBTI people;

J. whereas EU cooperation should support the efforts of ACP states to develop supportive legal and policy frameworks and remove punitive laws, policies and practices, stigma and discrimination that undermine human rights, increase vulnerability to HIV/AIDS and inhibit access to effective HIV/AIDS prevention, treatment, care and support, including medicines, commodities and services, for people living with HIV/AIDS and for the populations most at risk;

K. whereas UN Aids and the Global Fund to Fight Aids, Tuberculosis and Malaria fear that LGBT people and 3,4 million HIV-infected citizens in Nigeria and Uganda will be denied vital health services, and are demanding that the 'constitutionality of the laws are urgently reviewed in light of serious public health and human right applications';

L. whereas further criminalising consensual activities between adults of the same sex will make it even harder to achieve both the Millennium Development Goals, especially with regard to gender equality and combating disease, and any success in respect of the post-2015 development framework;

M. whereas a number of Member States, including the Netherlands, Denmark and Sweden, and other countries such as the United States of America and Norway have decided either to withhold aid directed to the Ugandan Government or to redirect aid from government support to civil society support;

N. whereas under Article 96(1a) of the Cotonou Agreement a consultation procedure may be launched with a view to the suspension of signatories who are in breach of their human rights obligations under Articles 8(4) and 9;

1. Deplores the adoption of new laws that constitute grave threats to the universal rights to life, freedom of expression, of association and assembly, and freedom from torture and cruel, inhuman and degrading treatment; reiterates that sexual orientation and gender identity are matters falling within the remit of individuals' right to privacy, as guaranteed by international law and national constitutions; underlines the fact that LGBTI equality is an undeniable element of fundamental human rights;

2. Recalls statements by the African Commission and the UN Human Rights Committee that a state cannot, through its domestic law, negate its international human rights obligations;

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3. Calls on the President of Uganda to repeal the Anti-Homosexuality Act, as well as section 145 of the Ugandan Penal Code; calls on the President of Nigeria to repeal the Same-Sex Marriage (Prohibition) Bill, as well as sections 214 and 217 of the Nigerian Penal Code, as they violate international human rights obligations;

4. Notes that, by signing these laws, the Governments of Uganda and Nigeria failed to fulfil an obligation stemming from respect for human rights, democratic principles and the rule of law, referred to in Article 9(2) of the Cotonou Agreement;

5. Reiterates that these laws fall within the remit of Article 96(1a)(b) of the Cotonou Agreement as cases of special urgency, i.e. exceptional cases of particularly serious and flagrant violation of human rights and dignity, as referred to in paragraph 2 of Article 9, which therefore require an immediate reaction;

6. Calls on the Commission, therefore, to engage in a strengthened and urgent political dialogue under Article 8 at local and ministerial level, with a request to open discussion no later than at the EU-Africa Summit;

7. Urges the Commission and the Member States to review their development cooperation aid strategy with Uganda and Nigeria and to give priority to redirection of aid to civil society and other organisations over suspension — even on a sectoral basis — of aid;

8. Suggests to the African Union that it take the lead and set up an internal committee to look into these laws and issues;

9. Calls on African Union and European Union leaders to address these laws during the discussions of the 4th Africa-EU Summit, to be held on 2-3 April 2014;

10. Calls on the Member States, or the High Representative with the support of the Commission, to consider targeted sanctions, such as travel and visa bans, for the key individuals responsible for drafting and adopting these two laws;

11. Recalls the CJEU judgment of 7 November 2013 in X, Y, Z v Minister voor Immigratie en Asiel (cases C-199-201/12), which stresses that people of a specific sexual orientation targeted by laws criminalising their conduct or identity may constitute a particular social group for the purposes of granting asylum;

12. Regrets the generally increasing social, economic, and political predicament of African nations threatened by religious fundamentalism, which is becoming increasingly pervasive, with dire consequences for the dignity, development and freedom of individuals;

13. Calls on the Commission and the Council to include an explicit mention of non-discrimination based on sexual orientation in any future agreement taking the place of the Cotonou Agreement, as demanded on many occasions by Parliament;

14. Instructs its President to forward this resolution to the Commission, the Council, the European External Action Service, the Member States, the national governments and parliaments of Uganda, Nigeria, the Democratic Republic of Congo and India, and the Presidents of Uganda and Nigeria.

Thursday 13 March 2014

P7_TA(2014)0255

Security and human trafficking in Sinai

European Parliament resolution of 13 March 2014 on security and human trafficking in Sinai (2014/2630(RSP))

(2017/C 378/31)

The European Parliament,

— having regard to its resolutions of 15 March 2012 on human trafficking in Sinai, in particular the case of Solomon W. ([1]), of 16 December 2010 on Eritrean refugees held hostage in Sinai ([2]) and of 6 February 2014 on the situation in Egypt ([3]),

— having regard to the statements by Vice-President/High Representative of the Union for Foreign Affairs and Security Policy Catherine Ashton concerning the security situation in Sinai of 11 September 2013, 3 and 8 October 2013, 24 December 2013, 24 January 2014 and 17 February 2014 on the terrorist attack in Sinai,

— having regard to the Europol publication of 3 March 2014 entitled 'Irregular migrants from the Horn of Africa with European sponsors kidnapped for ransom and held in Sinai',

— having regard to Article 3 of the European Convention on Human Rights of 1950,

— having regard to the ACP-EU Cotonou Partnership Agreement,

— having regard to the UN Convention Relating to the Status of Refugees of 1951 and the 1967 protocol thereto, and to the UNHCR's memorandum of understanding with the Egyptian Government of 1954,

— having regard to the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa,

— having regard to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, and the Council of Europe Convention on Action against Trafficking in Human Beings of 2005,

— having regard to the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, especially Articles 6 and 9 thereof,

— having regard to the Brussels Declaration on Preventing and Combating Trafficking in Human Beings, adopted on 20 September 2002,

— having regard to Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking and Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims,

— having regard to Articles 2, 6.1, 7 and 17 ('Everyone has the right to the protection of the law against such interference or attacks') of the International Covenant on Civil and Political Rights,

— having regard to the EU-Egypt Association Agreement and in particular the preamble and Article 2 thereof,

([1]) OJ C 251 E, 31.8.2013, p. 106.
([2]) OJ C 169 E, 15.6.2012, p. 136.
([3]) Texts adopted, P7_TA(2014)0100.

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— having regard to Article 89 of the Constitution of the Arab Republic of Egypt and to Egypt's Law No 64 of 2010 on Combatting Human Trafficking,

— having regard to Israel's Law on Anti-Infiltration,

— having regard to the UNHCR Guidelines on Eritrea,

— having regard to Rules 122(5) and 110(4) of its Rules of Procedure,

A. whereas terrorist attacks, the proliferation of weapons, the infiltration of foreign and Egyptian jihadists and the radicalisation of a part of the local population in Sinai have created increasing security challenges for Egypt, Israel and other countries in the region; whereas the security situation in Sinai has rapidly deteriorated — with several extremist groups destabilising security conditions, and more than 250 terrorist attacks, mostly against Egyptian security forces and their installations, which killed more than 100 people, the majority of them police and military personnel — since the toppling of former president Mohamed Morsi in July 2013; whereas terrorist attacks in the Suez Canal zone and against gas pipelines are also a major source of concern;

B. whereas extremist infiltration undermines the efforts aimed at restoring security in Sinai; whereas various Al-Qaida-affiliated or -inspired terrorist groups continue to operate in the area; whereas some of these groups have extended the scope of their terrorist actions beyond Sinai; whereas other local militants operating in Sinai do not belong to any extremist group but are armed Bedouins involved in smuggling and human trafficking;

C. whereas Egyptian armed forces have recently launched military operations in Sinai in order to combat terrorist and extremist groups and to restore security; whereas the Egyptian Government and security forces seem unable to bring the security crisis in Sinai under control; whereas the lawlessness of the region enables criminal networks, human traffickers and other criminal gangs to work unhindered and unpunished; whereas trafficking appears to continue unabated in spite of the ongoing offensive of the Egyptian security forces in Sinai; whereas Sinai has long served as a smuggling route in and out of the Gaza Strip; whereas there are concerns about a media blackout on developments in Sinai;

D. whereas the socioeconomic marginalisation of the local Bedouin population is a major reason for security challenges in Sinai; whereas Sinai residents have long suffered from poverty, discrimination and limited access to health services and education, which has alienated them from official authorities that neglect their situation and ignore their demands;

E. whereas thousands of asylum seekers and migrants from the Horn of Africa flee their countries of origin every month due to human rights abuses and humanitarian crises; whereas from Eritrea alone, up to 3 000 people flee every month, according to the UN special rapporteur on the situation of human rights in Eritrea; whereas it is estimated that thousands of people have been kidnapped in eastern Sudan, taken to Egypt and tortured in Sinai, more than 4 000 of whom have died since the beginning of 2008, and it is believed that around 1 000 African refugees are currently being held in captivity;

F. whereas thousands of people lose their lives and disappear in Sinai every year while others, including many women and children, are kidnapped in refugee camps or surrounding areas, especially in the Sudanese Shagarab refugee camp or on their way to family reunions in Sudan or Ethiopia, and held hostage for ransom by human traffickers; whereas victims of human traffickers are abused in the most dehumanising and brutal manner and are subject to systemic violence and torture, rape and sexual abuse, and forced labour, or are killed for organ trade; whereas torture camps have been set up for this specific purpose, according to victims, neighbours and human rights organisations;

G. whereas there are credible reports of some Sudanese and Egyptian security forces colluding with traffickers of asylum seekers and migrants, and an almost complete failure by both Sudan and Egypt to investigate and prosecute officials responsible, thereby engaging both countries' obligations under the UN Convention Against Torture; whereas Egyptian authorities deny the existence of such cases;

H. whereas trafficking in human beings in Sinai is an extremely profitable business for organised crime; whereas, according to the UNHCR, complex trafficking networks have been set up involving people-smugglers, kidnappers such as groups of Rashaida tribesmen in Eritrea and north-east Sudan, intermediaries inside refugee camps, bribed military, police and border control staff, and criminal elements within the Egyptian Bedouin communities;

I. whereas those who are not able to collect the ransom are often killed, and even if the requested ransom is paid, there is no guarantee that the hostages will be released; whereas a new practice has arisen in the trafficking value chain in relation to hostages who are incapable of collecting the ransom;

J. whereas Sinai survivors are in need of physical and mental support; whereas most Sinai survivors, however, are detained, denied medical assistance and social services, asked to sign papers they do not understand and receive no legal assistance in destination countries, while many of them are repatriated to their home country in violation of the principle of non-refoulement;

K. whereas it is reported that the Egyptian authorities do not allow the UNHCR access to asylum seekers and migrants arrested in Sinai and do not attempt to identify potential trafficking victims among them; whereas reservations by Egypt regarding the UN Refugee Convention restrict refugees' rights to education, social security and work rights;

L. whereas many of the families of the victims live in EU Member States; whereas, according to the latest Europol publication, several EU Member States have had reports of blackmailing within the EU on behalf of Bedouin organised criminal groups in Sinai; whereas it is in the interests of the EU to know which criminal organisations are involved in the blackmailing process;

M. whereas according to UNHCR figures, Israel is home to 53 000 African asylum-seekers who have entered the country through Egypt since 2005; whereas prior to June 2012, an average of 1 500 asylum seekers entered Israel each month through Sinai while, according to the Israeli authorities, this number significantly decreased in 2013 due to the completion of the fence along the Israeli-Egyptian border; whereas the UNHCR has raised concerns over a recent amendment to Israel's anti-infiltration law that further limits the rights of asylum-seekers;

N. whereas the EU has repeatedly invited Egypt and Israel to develop and improve the quality of the assistance and protection offered to asylum seekers and refugees residing on, or transiting through, their territory; whereas on 7 November 2013 Sudanese officials sought EU help on trafficking;

1. Condemns the recent terrorist attacks against security forces and civilians in Sinai; is deeply concerned about the further deterioration of the security situation in Sinai, and calls for intensified efforts by the Egyptian interim government and security forces to restore security in line with international law and international standards on the use of force and policing, with the support of the international community; expresses concern that continuing unrest may have a destabilising effect on Egypt as a whole, in the ongoing period of transition;

2. Expresses its deep concern regarding the reported cases of human trafficking in Sinai and condemns in the strongest terms the terrible abuses to which the victims of traffickers are subjected; expresses its strong solidarity with the victims of human trafficking in Sinai and their families, and stresses again the responsibility of the Egyptian and Israeli governments to combat human trafficking in this area; notes the efforts of the authorities and underlines that any military and law-enforcing operation by Egyptian security forces in Sinai should include actions aimed at rescuing victims of human traffickers, protecting and assisting these victims, especially women and children, to ensure they do not become victims again, as well as arresting and prosecuting the traffickers, and any security officials colluding with them, in order to hold them to account;

3. Recalls that one of the root causes of the crises is the marginalisation of the Bedouins in Sinai; evokes that any possible solution to the crisis should include a comprehensive development programme aimed at improving the socioeconomic status and conditions of the local Bedouin population, including their access to the police and the military, as well as their participation in the political process;

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4. Calls on the Egyptian authorities to respect their own anti-trafficking laws, which guarantee trafficking victims immunity from prosecution and access to assistance and protection, as well as Article 89 of the new constitution, forbidding slavery and all forms of oppression and forced exploitation against humans, and to fully implement, through their national legislation, the principles of the conventions to which Egypt is party; notes the decree to establish a national coordinating committee for combating irregular migration, issued on 9 March 2014 by the Egyptian Prime Minister; calls on the Egyptian authorities to collect and publish statistics on the victims of trafficking;

5. Stresses the importance of the protection of and assistance to Sinai survivors, with special regard to medical, psychological and legal support; calls on all destination countries concerned to prevent the detention of Sinai survivors, to put in place improved systems to identify victims, to provide them with access to fair and effective asylum procedures and to the UNHCR, to assess all cases on an individual basis and to avoid the deportation of Sinai survivors in violation of the principle of non-refoulement; calls for full access of UN agencies and human rights organisations to the areas affected by human smuggling and trafficking in Sinai and for full and unimpeded access to be provided to detention facilities used for holding asylum-seekers and refugees;

6. Welcomes the decision of Israel's Supreme Court of 16 September 2013 to repeal the provision of the Prevention of Infiltration Act that mandated automatic detention, but calls on Israel to rescind its law of 10 December 2013 which allows for indefinite detention of asylum seekers; calls on destination countries' authorities to treat asylum-seekers in line with international refugee and human rights law;

7. Recalls that systematic and pervasive violations of human rights in Eritrea cause thousands of Eritreans to flee their country every month; reminds the Sudanese authorities of their obligation to ensure the security of refugees and asylum seekers and the priority to immediately develop and implement sustained and adequate security measures in the Shagarab refugee camp;

8. Underlines the importance of coordinated regional action in restoring security and combating human trafficking in Sinai, and calls for increased international support and more cooperation in this field among the governments of Egypt, Israel, Libya, Ethiopia, Eritrea and Sudan, as well as with relevant organisations, including the UN Multinational Force and Observers;

9. Encourages the EU and its Member States to support all efforts aimed at combating the human trafficking cycle in Sinai in line with their international obligations to combat trafficking in persons; calls on the Commission to emphasis respect for human rights in its relations with the Eritrean Government; emphasises once again the EU's offer to assist the authorities in developing and improving the quality of the assistance and protection offered to asylum seekers and refugees residing on, or transiting through, their territory; welcomes the Sudanese Government's call for EU support;

10. Calls on the VP/HR and the Commission to make this a high-priority topic on the agenda of political dialogue with Egypt, Israel and Sudan, as well as to actively work together with the UNHCR to set up an action group with states involved in the various stages of the trafficking chain, including sources, transit, and destination;

11. Is very concerned about the reports of blackmailing taking place from within the EU; reminds the EU authorities, therefore, of their responsibility to act and calls on EU Foreign Ministers and Ministers of Justice to take appropriate measures; calls on the EU institution to put pressure on Israel and Egypt to take steps to tackle trafficking in Sinai and to drive forward the implementation of Europol's forthcoming recommendations;

12. Applauds the efforts by some Bedouin community leaders and the activities of human rights organisations in Egypt and Israel, who are providing help, assistance and medical treatment to victims of human traffickers in Sinai, and urges the international community and the EU to continue funding NGO-led projects in the region;

13. Instructs its President to forward this resolution to the High Representative/Vice-President, the Council and the Commission, the governments and parliaments of the Member States, the Egyptian, Israeli, Eritrean and Sudanese Governments, the Egyptian Parliament, the Israeli Knesset, the Sudan National Assembly, the Eritrean National Assembly, the Secretary-General of the United Nations and the United Nations Human Rights Council.

Wednesday 12 March 2014

RECOMMENDATIONS

EUROPEAN PARLIAMENT

P7_TA(2014)0216

Humanitarian engagement of armed non-State actors in child protection

European Parliament recommendation to the Council of 12 March 2014 on humanitarian engagement of armed non-state actors in child protection (2014/2012(INI))

(2017/C 378/32)

The European Parliament,

— having regard to the proposal for a recommendation to the Council by Catherine Grèze, Eva Joly, Isabella Lövin, Judith Sargentini, Bart Staes and Keith Taylor, on behalf of the Verts/ALE Group, on humanitarian engagement of armed non-state actors in child protection (B7-0585/2013),

— having regard to the 2013 report of the UN Secretary-General on children and armed conflict and to other reports by relevant actors,

— having regard to the 2008 EU guidelines on children and armed conflict, the 2010 implementation strategy for the EU guidelines on children and armed conflict and the 2008 Checklist for the Integration of the Protection of Children affected by Armed Conflict into ESDP Operations,

— having regard to the 2008 Council conclusions on 'the promotion and protection of the rights of the child in the European Union's external action — the development and humanitarian dimensions',

— having regard to its resolutions of 19 February 2009 on a special place for children in EU external action ([1]), of 16 January 2008 entitled 'Towards an EU strategy on the rights of the child' ([2]), of 3 July 2003 on trafficking in children and child soldiers ([3]), of 6 July 2000 on the abduction of children by the Lord's Resistance Army (LRA) ([4]) and of 17 December 1998 on child soldiers ([5]),

— having regard to the United Nations resolutions on the rights of the child, especially UN Security Council resolution 1612 (2005),

— having regard to the 2002 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,

— having regard to the Paris Commitments to Protect Children from Unlawful Recruitment or use by Armed Forces or Armed Groups and to the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, both of which were adopted on 6 February 2007,

— having regard to Rule 121(3) and Rule 97 of its Rules of Procedure,

([1]) OJ C 76 E, 25.3.2010, p. 3.
([2]) OJ C 41 E, 19.2.2009, p. 24.
([3]) OJ C 74 E, 24.3.2004, p. 854.
([4]) OJ C 121, 24.4.2001, p. 401.
([5]) OJ C 98, 9.4.1999, p. 297.

— having regard to the report of the Committee on Development (A7-0160/2014),

A. whereas most contemporary armed conflicts involve one or more armed non-state actors fighting governments or other armed groups, with civilians and in particular children bearing the brunt of these wars;

B. whereas the spectrum of these non-state actors is very broad and encompasses a wide range of identities and motivations, as well as varying degrees of willingness and ability to observe international humanitarian law and other international law standards, but all require scrutiny in this regard;

C. whereas in order to improve the protection of civilians, and in particular children, consideration has to be given to all the parties in conflict;

D. whereas international humanitarian norms apply to and bind all parties in an armed conflict;

E. whereas armed conflicts have a particularly devastating impact on children's physical and mental development, with long-term consequences for human security and sustainable development;

F. whereas the Statute of the International Criminal Court criminalises the act of conscripting or enlisting children under the age of 15 into armed forces or groups, or using them to participate actively in hostilities;

G. whereas international law prohibits all forms of sexual violence, including against children, and whereas acts of sexual violence may amount to war crimes, crimes against humanity or genocide;

H. whereas the use of anti-personnel mines has decreased since the adoption of the Mine Ban Convention in 1997, but still poses a threat to children, especially in armed conflicts not of an international character;

I. whereas the international community has a moral duty to seek commitments from all parties involved in conflicts, including both states and armed non-state actors, in order to protect children;

J. whereas the demobilisation, rehabilitation and reintegration of child soldiers need to be included in any negotiation process and subsequent peace treaty, in addition to being addressed during the conflict itself;

K. whereas the successful demobilisation and reintegration of child soldiers can help to end the recurring cycle of violence;

1. Addresses the following recommendations to the Commissioner for Development and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy:

(a) encourage the signing of action plans for the protection of children in armed conflict with the UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict by concerned states and armed non-state actors, while recalling that such engagement with armed non-state actors does not imply support for, or recognition of the legitimacy of, these groups or their activities;

(b) recognise the efforts made by the UN and international and non-governmental organisations to persuade armed non-state actors to protect children, while reiterating that this does not imply support for, or recognition of, the legitimacy of the activities of those actors;

(c) include in political dialogues with third countries, for instance within the framework of the Cotonou Agreement, the goal of preventing and stopping the recruitment and forced involvement of children under the age of 18 and ensuring their release and reintegration into society;

(d) reiterate that states and armed non-state actors must comply with international humanitarian law and international humanitarian customary law, and support them in their efforts to take special measures to protect civilians, in particular children, while recalling that such activity with armed non-state actors does not imply support for, or recognition of the legitimacy of, these groups or their activities;

(e) recall that international humanitarian law is a legal framework which binds armed non-state groups and that Common Article 3 of the Geneva Conventions and the Second Additional Protocol of 1977 both serve to this end, as do a large number of customary international humanitarian law rules; examine, as a matter of importance, whether existing rules governing international humanitarian law are adequate to deal with non-state actors or whether further regulation is needed;

(f) engage directly, or indirectly through specialised NGOs and humanitarian organisations, with armed non-state actors on the issue of the protection of girls and boys, with a view to alleviating child suffering in armed conflict and urging armed non-state actors to sign the Deed of Commitment under the Geneva Call for the Protection of Children from the Effects of Armed Conflict;

(g) support humanitarian organisations that engage in dialogue with armed non-state actors in order to promote respect for international humanitarian norms in armed conflict, in particular the protection of children through political, diplomatic and financial means;

(h) call on the Member States to join international efforts to prevent attacks against and the military use of schools by armed actors through endorsing the draft Lucens Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict;

2. Instructs its President to forward this recommendation to the Commissioner for Development, the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the Commission, the Council and the European External Action Service.

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II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN PARLIAMENT

P7_TA(2014)0217

Number of interparliamentary delegations, delegations to joint interparliamentary committees and delegations to parliamentary cooperation committees and multilateral Parliamentary Assemblies

European Parliament decision of 12 March 2014 on the number of interparliamentary delegations, delegations to joint parliamentary committees and delegations to parliamentary cooperation committees and to multilateral parliamentary assemblies (2014/2632(RSO))

(2017/C 378/33)

The European Parliament,

— having regard to the proposal by the Conference of Presidents,

— having regard to the association, cooperation and other agreements concluded by the European Union with third countries,

— having regard to Rules 198 and 200 of its Rules of Procedure,

A. anxious to strengthen parliamentary democracy by pursuing continuous interparliamentary dialogue;

1. Decides on the number of delegations and their regional groupings as follows:

(a) **Europe, Western Balkans and Turkey**

Delegations to the:

— EU-Former Yugoslav Republic of Macedonia Joint Parliamentary Committee

— EU-Turkey Joint Parliamentary Committee

Delegation for relations with Switzerland and Norway and to the EU-Iceland Joint Parliamentary Committee and the European Economic Area (EEA) Joint Parliamentary Committee

Delegation to the EU-Serbia SAPC

Delegation to the EU-Albania SAPC

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Delegation to the EU-Montenegro SAPC

Delegation for relations with Bosnia and Herzegovina, and Kosovo

(b) **Russia and the Eastern Partnership states**

Delegation to the EU-Russia Parliamentary Cooperation Committee

Delegation to the EU-Ukraine Parliamentary Cooperation Committee

Delegation to the EU-Moldova Parliamentary Cooperation Committee

Delegation for relations with Belarus

Delegation to the EU-Armenia, EU-Azerbaijan and EU-Georgia Parliamentary Cooperation Committees

(c) **Maghreb, Mashreq, Israel and Palestine**

Delegations for relations with:

— Israel

— the Palestinian Legislative Council

— the Maghreb countries and the Arab Maghreb Union

— the Mashreq countries

(d) **The Arab Peninsula, Iraq and Iran**

Delegations for relations with:

— the Arab Peninsula

— Iraq

— Iran

(e) **The Americas**

Delegations for relations with:

— the United States

— Canada

— the Federative Republic of Brazil

— the countries of Central America

— the countries of the Andean Community

— Mercosur

Delegation to the EU-Mexico Joint Parliamentary Committee

Delegation to the EU-Chile Joint Parliamentary Committee

Delegation to the Cariforum — EU Parliamentary Committee

(f) **Asia/Pacific**

Delegations for relations with:

— Japan

— the People's Republic of China

— India

— Afghanistan

— the countries of South Asia

— the countries of Southeast Asia and the Association of Southeast Asian Nations (ASEAN)

— the Korean Peninsula

— Australia and New Zealand

Delegation to the EU-Kazakhstan, EU-Kyrgyzstan, EU-Uzbekistan and EU-Tajikistan Parliamentary Cooperation Committees, and for relations with Turkmenistan and Mongolia

(g) **Africa**

Delegations for relations with:

— South Africa

— the Pan-African Parliament

(h) **Multilateral assemblies**

Delegation to the ACP-EU Joint Parliamentary Assembly

Delegation to the Parliamentary Assembly of the Union for the Mediterranean

Delegation to the Euro-Latin American Parliamentary Assembly

Delegation to the Euronest Parliamentary Assembly

Delegation for relations with the NATO Parliamentary Assembly;

2. Decides that the membership of parliamentary committees created on the basis of the Economic Partnership Agreement (EPA) shall be drawn exclusively from the Committee on International Trade and the Committee on Development — ensuring the maintenance of the leading role of the Committee on International Trade as the committee responsible — and that they should actively coordinate their work with the ACP-EU Joint Parliamentary Assembly;

3. Decides that the membership of the Parliamentary Assembly of the Union for the Mediterranean, the Euro-Latin American Parliamentary Assembly and the Euronest Parliamentary Assembly shall be drawn exclusively from the bilateral or sub-regional delegations covered by each Assembly;

4. Decides that the membership of the Delegation for relations with the NATO Parliamentary Assembly shall be drawn exclusively from the Subcommittee on Security and Defence;

5. Decides that the Conference of Delegation Chairs should draw up a draft six-monthly calendar, to be adopted by the Conference of Presidents after consulting the Committee on Foreign Affairs, the Committee on Development and the Committee on International Trade, on the understanding, however, that the Conference of Presidents may modify the calendar in order to respond to political events;

6. Decides that the political groups and non-attached Members shall appoint permanent substitutes to serve on each type of delegation and that the number of those substitutes may not exceed the number of full members representing the groups or non-attached Members;

7. Decides to intensify cooperation with and consultation of the committees concerned by delegation work by organising joint meetings between these bodies in its usual places of work;

8. Will endeavour to ensure in practice that one or more committee rapporteurs or chairs may likewise take part in the proceedings of delegations, joint interparliamentary committees, parliamentary cooperation committees and multilateral parliamentary assemblies; and decides that the President, at the joint request of the chairs of the delegation and committee concerned, shall authorise missions of this type;

9. Decides that this decision will enter into force at the first part-session of the eighth parliamentary term;

10. Instructs its President to forward this decision to the Council, the Commission and the European External Action Service.

Tuesday 11 March 2014

III

(Preparatory acts)

EUROPEAN PARLIAMENT

P7_TA(2014)0180

Statistics of goods transport by inland waterways (delegated and implementing powers) ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1365/2006 on statistics of goods transport by inland waterways as regards conferring delegated and implementing powers upon the Commission for the adoption of certain measures (COM(2013)0484 — C7-0205/2013 — 2013/0226(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/34)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0484),

— having regard to Article 294(2) and Article 338(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0205/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism (A7-0003/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Tuesday 11 March 2014

P7_TC1-COD(2013)0226

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council amending Regulation (EC) No 1365/2006 on statistics of goods transport by inland waterways as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 338 (1) thereof,

Having regard to the proposal from the European Commission,

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

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

Whereas:

(1) As a consequence of the entry into force of the Treaty on the Functioning of the European Union ('the Treaty'), the powers conferred upon the Commission need to be aligned to Articles 290 and 291 of the Treaty.

(2) In connection with the adoption of Regulation (EU) No 182/2011 of the European Parliament and of the Council ([2]), the Commission has committed itself ([3]) to reviewing, in the light of the criteria laid down in the Treaty, legislative acts which were not adapted to the regulatory procedure with scrutiny before the entry into force of the Lisbon Treaty.

(3) Regulation (EC) No 1365/2006 of the European Parliament and of the Council ([4]) confers powers upon the Commission in order to implement some of the provisions of this Regulation.

(4) In the context of the alignment of Regulation (EC) No 1365/2006 to the new rules of the TFEU, implementing powers currently conferred upon the Commission should be provided for by powers to adopt delegated and implementing acts.

(5) As regards Regulation (EC) No 1365/2006, in order to take account of economic and technical trends, the power to adopt acts in accordance with Article 290 of the Treaty ***on the Functioning of the European Union*** should be delegated to the Commission ~~concerning~~ ***in respect of*** the adaptation of the threshold for statistical coverage of inland waterways transport, adaptation of the definitions and the adoption of additional definitions~~. In addition, the Commission should be empowered to adopt delegated acts in order to adapt the data collection scope and~~***, as well as adaptation of*** the content of the Annexes. **[Am. 1]**

(6) The Commission should ensure that these delegated acts do not impose a significant additional administrative burden on the Member States or on the ~~respondent units~~ ***respondents***. **[Am. 2]**

(7) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

([1]) Position of the European Parliament of 11 March 2014.

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

([3]) OJ L 55, 28.2.2011, p. 19.

([4]) Regulation (EC) No 1365/2006 of the European Parliament and of the Council of 6 September 2006 on statistics of goods transport by inland waterways (OJ L 264, 25.9.2006, p. 1).

(8) In order to ensure uniform conditions for the implementation of Regulation (EC) No 1365/2006, implementing powers should be conferred ~~upon~~ ***on*** the Commission to adopt arrangements for transmitting data including data interchange standards, for the dissemination of results by the Commission (Eurostat) and also to develop and publish methodological requirements and criteria designed to ensure the quality of the data produced. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. ***The examination procedure should be used for the adoption of those acts, given their general scope.*** **[Am. 3]**

(9) In accordance with the principle of proportionality, ***as set out in Article 5 of the Treaty on European Union,*** it is necessary and appropriate for the achievement of the basic objective of the alignment of the powers conferred ~~upon~~ ***on*** the Commission ~~to~~ ***with*** Articles 290 and 291 of the Treaty ***on the Functioning of the European Union*** to lay down ***common*** rules on such alignment in the domain of transport statistics. This Regulation does not go beyond what is necessary in order to achieve that objective, in accordance with Article 5(4) of the Treaty on ~~the~~ European Union. **[Am. 4]**

(10) In order to ensure legal certainty, it is necessary that the procedures for the adoption of measures which have been initiated but not completed before the entry into force of this Regulation are not affected by this Regulation.

(11) Regulation (EC) No 1365/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1365/2006 is amended as follows:

(-1a) In Article 2(4), point (b) is deleted; **[Am. 5]**

(-1b) In Article 2(4), point (c) is deleted; **[Am. 6]**

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

'5. The Commission shall be empowered to adopt delegated acts, ***where necessary,*** in accordance with Article 9, taking account of economic and technical trends, concerning the adaptation of the threshold for statistical coverage of inland waterways transport.' **[Am. 7]**

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

'The Commission shall be empowered to adopt delegated acts***, where necessary,*** in accordance with Article 9, taking account of economic and technical trends, concerning the adaptation of the definitions and the adoption of additional definitions.' **[Am. 8]**

(3) In Article 4, the following paragraph 4 is added:

'4. The Commission shall be empowered to adopt delegated acts***, where necessary,*** in accordance with Article 9, taking account of economic and technical trends, concerning the adaptation of the data collection scope and the content of the Annexes.' **[Am. 9]**

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

'2. Arrangements for transmitting data to the Commission (Eurostat), including data interchange standards, shall be adopted by the Commission in accordance with the examination procedure referred to in Article 10(2).'

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(5) In Article 6, the following subparagraph is added:

'Arrangements for the dissemination of results shall be adopted by the Commission in accordance with the examination procedure referred to in Article 10(2).'

(6) In Article 7, paragraph 1 is replaced by the following:

'1. The Commission shall adopt the methodological requirements and criteria designed to ensure the quality of the data produced in accordance with the examination procedure referred to in Article 10(2).'

(6a) In Article 7, the following paragraphs are added:

'3a. For the purposes of this Regulation, the quality criteria to be applied to the data to be transmitted are those referred to in Article 12(1) of Regulation (EC) No 223/2009 of the European Parliament and of the Council (*).

3b. The Commission shall, by means of implementing acts, specify the modalities, structure, periodicity and comparability elements for the quality reports. Those implementing acts shall be adopted in accordance with the examination procedure referred in Article 10(2).

(*) Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164.)'. **[Am. 10]**

(6b) In Article 8, the introductory wording of paragraph 1 is replaced by the following:

'By … (*) ***and every three years thereafter, the Commission, after consulting the Statistical Programme Committee, shall submit a report to the European Parliament and the Council on the implementation of this Regulation. In particular, that report shall:';*** **[Am. 11]**

(*) ***Three years after the date of entry into force of this Regulation.***

(7) Article 9 is replaced by the following:

'Article 9

Exercise of ~~delegated powers~~ ***the delegation*** **[Am. 12]**

1. The power to adopt delegated acts is conferred ~~upon~~ ***on*** the Commission subject to the conditions laid down in this Article. **[Am. 13]**

2. When exercising the powers delegated in Article 2(5), Article 3 and Article 4(4), the Commission shall ensure that the delegated acts do not impose a significant additional administrative burden on the Member States and on the respondents.

3. The power to adopt delegated acts referred to in Article 2(5), Article 3 and Article 4(4) shall be conferred on the Commission for ~~an indeterminate~~ ***a*** period of ~~time~~ ***five years*** from … (*). ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*** **[Am. 14]**

4. The delegation of power referred to in Article 2(5), Article 3 and Article 4(4) may be revoked at any time by the European Parliament or by the Council.

A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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 2(5), Article 3 and Article 4(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.'

(*) ***The date of entry into force of this amending Regulation.***

(8) Article 10 is replaced by the following:

'Article 10

Committee

1. The Commission shall be assisted by the European Statistical System Committee established by Regulation (EC) No 223/2009 of the European Parliament and of the Council (*). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (**).

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

2a. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply. **[Am. 15]**

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

(**) 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).'

(8a) In Annex B, Table B1 is replaced by the following:

'Table B1. Passenger and goods transport by nationality of the vessel and the type of vessel (annual data)

Elements	*Coding*	*Nomenclature*	*Unit*
Table	***2-Alpha***	***"B1"***	
Reporting country	***2-letter***	***NUTS0 (national code)***	
Year	***4-digit***	***"yyyy"***	

Elements	*Coding*	*Nomenclature*	*Unit*
Country/region of loading	*4-alpha*	*NUTS2* (*)	
Country/region of unloading	*4-alpha*	*NUTS2* (*)	
Type of transport	*1-digit*	*1= national*	
		2 = international (except transit)	
		3= transit	
Type of vessel	*1-digit*	*1= self-propelled barge*	
		2= barge not self-propelled	
		3= self-propelled tanker barge	
		4= tanker barge not self-propelled	
		5= other goods carrying vessel	
		6= seagoing vessel	
		7= cruise vessels transporting more than 100 passengers	
		8= ferries carrying passengers over more than 300 metres	
Nationality of vessel	*2-letter*	*NUTS0 (national code)* (**)	
Tonnes transported			*tonnes*
Tonnes-km			*tonnes-km*
Passengers transported	*12-digit*		*Passenger*
Passengers-km	*12-digit*		*Passenger*

Elements	*Coding*	*Nomenclature*	*Unit*
Passenger seats available	***12-digit***		***Passenger seat***

(*) ***When the regional code is unknown or not available the following codification will be used:***
— ***"NUTS0 + ZZ" when the NUTS code exists for the partner country.***
— ***"ISO code + ZZ" when the NUTS code does not exist for the partner country.***
— ***"ZZZZ" when the partner country is completely unknown.***

(**) ***When a NUTS code does not exist for the country of registration of the vessel, the ISO national code will be reported. In case the nationality of the vessel is unknown, the code to use is "ZZ".'***

[Am. 16]

(9) Annex G is deleted.

Article 2

This Regulation shall not affect the procedures for the adoption of measures provided for in Regulation (EC) No 1365/2006 which have been initiated but not completed before the entry into force of this Regulation.

Article 3

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

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

Done at …,

For the European Parliament
The President

For the Council
The President

Tuesday 11 March 2014

P7_TA(2014)0181

Statistics for the macroeconomic imbalances procedure ***I

Amendments adopted by the European Parliament on 11 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the provision and quality of statistics for the macroeconomic imbalances procedure (COM(2013)0342 — C7-0162/2013 — 2013/0181(COD)) ([1])

(Ordinary legislative procedure: first reading)

(2017/C 378/35)

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission	*Amendment*
(1) Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances ([1]) sets up an alert mechanism to facilitate the early identification and the monitoring of imbalances. Under this mechanism, the Commission is required to prepare an annual Alert Mechanism Report (AMR) containing a qualitative economic and financial assessment and identifying Member States that the Commission considers may be affected by, or may be at risk of being affected by, imbalances.	(1) Regulation (EU) No 1176/2011 of the European Parliament and of the Council ([1]) ***(MIP) sets*** up an alert mechanism to facilitate the early identification and the monitoring of imbalances. Under this mechanism, the Commission is required to prepare an annual Alert Mechanism Report (AMR) containing a qualitative economic and financial assessment and identifying Member States that the Commission considers may be affected by, or may be at risk of being affected by, imbalances.
([1]) OJ L 306, 23.11.11, p. 25.	([1]) ***Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances*** (OJ L 306, 23.11.2011, p. 25).

([1]) The matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0143/2014).

Tuesday 11 March 2014

Amendment 2

Proposal for a regulation

Recital 3

Text proposed by the Commission	*Amendment*
(3) Reliable statistical data are ***the basis*** for effective surveillance of macroeconomic imbalances. To guarantee sound and independent statistics, Member States should ensure the professional independence of national statistical authorities, consistent with the European statistics code of practice laid down in Regulation ***(EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics*** ***([3])***.	(3) Reliable***, accurate and useful*** statistical data are ***essential*** for effective surveillance of macroeconomic imbalances. To guarantee sound and independent statistics, ***the independence of Eurostat should be strengthened in accordance with the European Parliament's proposals for the revision of Regulation (EC) No 223/2009 of the European Parliament and of the Council*** ***([1a])*** ***and*** Member States should ensure the professional independence of national statistical authorities, consistent with the European statistics code of practice laid down in ***that*** Regulation.
([3]) OJ L 87, 31.3.2009, p. 164	***([1a])*** ***Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities*** (OJ L 87, 31.3.2009, p. 164).

Amendment 3

Proposal for a regulation

Recital 3 a (new)

Text proposed by the Commission	*Amendment*
	(3a) It is necessary that the Commission continue to address the need for reliable statistical information that enables Union policies to respond better to economic, social and territorial realities at regional level.

Tuesday 11 March 2014

Amendment 4

Proposal for a regulation

Recital 4

Text proposed by the Commission	*Amendment*
(4) The AMR, which is based on a scoreboard with a set of indicators the values of which are compared to their indicative thresholds, is an initial screening device whereby the Commission identifies Member States where it considers that developments warrant further in-depth analysis to determine whether imbalances exist or risk emerging. The AMR should include MIP relevant data. It is however in the following in-depth reviews that the driving forces behind the observed developments are analysed in detail with a view to determining the nature of the imbalances. The scoreboard and the thresholds ***are*** not interpreted mechanically, but ***are*** subject to economic reading. When carrying out in-depth reviews, the Commission will examine a broad range of economic variables and additional information taking due account of country specific circumstances. For these reasons, all the data that may be used for the purpose of the macroeconomic imbalances procedure cannot be listed in advance in an exhaustive manner, but should be defined by reference to the procedures set out in Regulation (EU) No 1176/2011 for the detection of macroeconomic imbalances as well as the prevention and correction of excessive macroeconomic imbalances within the Union. In implementing the macroeconomic imbalances procedure, the Commission and the ***Council*** should give preference to statistics which are compiled and transmitted, by Member States, to the Commission (Eurostat). Other statistics, which are not compiled and transmitted this way, should only be used when the former statistics do not provide the required information, and taking due account of the quality of these other statistics.	(4) The AMR, which is based on a scoreboard with a set of indicators the values of which are compared to their indicative thresholds, is an initial screening device whereby the Commission identifies Member States where it considers that developments warrant further in-depth analysis to determine whether imbalances exist or risk emerging. The AMR should include MIP relevant data. It is however in the following in-depth reviews that the driving forces behind the observed developments are analysed in detail with a view to determining the nature of the imbalances. The scoreboard and the thresholds ***should*** not ***be*** interpreted mechanically, but ***should be*** subject to economic reading. When carrying out in-depth reviews, the Commission will examine a broad range of economic variables and additional information taking due account of country specific circumstances. For these reasons, all the data that may be used for the purpose of the macroeconomic imbalances procedure cannot be listed in advance in an exhaustive manner, but should be defined by reference to the procedures set out in Regulation (EU) No 1176/2011 for the detection of macroeconomic imbalances as well as the prevention and correction of excessive macroeconomic imbalances within the Union. In implementing***, monitoring and assessing*** the macroeconomic imbalances procedure, the ***European Parliament, the Council and the*** Commission should give preference to statistics which are compiled and transmitted, by Member States, to the Commission (Eurostat). Other statistics, which are not compiled and transmitted this way, should only be used when the former statistics do not provide the required information, and taking due account of the quality of these other statistics.

Tuesday 11 March 2014

Amendment 5

Proposal for a regulation

Recital 5

Text proposed by the Commission	*Amendment*
(5) A reliable procedure should be set up for the compilation, monitoring and release of the data relevant for the macroeconomic imbalances procedure (hereinafter referred to as 'MIP relevant data') as well as a continuous improvement of the underlying statistical information in line with the Commission's quality management frameworks for European statistics ([4]). The Group of Directors of Macroeconomic Statistics (DMES), established by the Commission, is an appropriate expert group to provide the Commission (Eurostat) with the required assistance for the application of a robust quality monitoring procedure for the MIP relevant data.	(5) A reliable procedure should be set up for the ***collection,*** compilation, monitoring and release of the data relevant for the macroeconomic imbalances procedure (hereinafter referred to as 'MIP relevant data') as well as a continuous improvement of the underlying statistical information in line with the Commission's quality management frameworks for European statistics ([4]). The Group of Directors of Macroeconomic Statistics (DMES), established by the Commission***, which includes experts from the European Statistical System Committee and the European System of Central Banks***, is an appropriate expert group to provide the Commission (Eurostat) with the required assistance for the application of a robust quality monitoring procedure for the MIP relevant data.
([4]) COM(2005)217 final and COM(2011)211 final.	([4]) COM(2005)0217 final and COM(2011)0211 final.

Amendment 6

Proposal for a regulation

Recital 6

Text proposed by the Commission	*Amendment*
(6) It is essential that the statistical production necessary for the performance of the activities of the Union ***should only be*** based on reliable data. ***In the production of MIP relevant data, which is an essential input for the detection of macroeconomic imbalances as well as the prevention and correction of excessive macroeconomic imbalances within the Union, unreliable data can have a significant impact on the interest of the Union.*** Additional measures to make the enforcement of the production, provision and quality monitoring of MIP relevant data more effective are necessary for the performance of the macroeconomic imbalances procedure. Those measures should enhance the credibility of the underlying statistical information as well as of the provision and quality monitoring of the MIP relevant data. ***In order to deter against misrepresentation, whether intentional or due to serious negligence, of MIP relevant data, a mechanism of financial sanctions should be established, which will also serve the purpose of ensuring due diligence in the production of MIP relevant data.***	(6) It is essential that the statistical production necessary for the performance of the activities of the Union ***is*** based on reliable data. ***It is appropriate to supplement the procedures set down in Regulations (EU) No 1176/2011 and (EU) No 1174/2011 with a corresponding formal framework for the compilation, quality monitoring and release of MIP-relevant data, in accordance with the common quality criteria set down in Regulation (EC) No 223/2009***. Additional measures ***should*** make the enforcement of the production, provision and quality monitoring of MIP relevant data more effective ***and are necessary for the performance of the macroeconomic imbalances procedure. Those measures should*** enhance the credibility of the underlying statistical information as well as of the provision and quality monitoring of the MIP relevant data.

Tuesday 11 March 2014

Amendment 7

Proposal for a regulation

Recital 6 a (new)

Text proposed by the Commission	*Amendment*
	(6a) In order to discourage misrepresentation of MIP-relevant data, whether intentional or seriously negligent, a corrective mechanism should be established, which will also serve the purpose of ensuring due diligence in the production of MIP-relevant data.

Amendment 8

Proposal for a regulation

Recital 7

Text proposed by the Commission	*Amendment*
(7) To supplement the rules on calculating the fines for manipulation of statistics as well as the rules on the procedure to be followed by the Commission for the ***investigation of such actions***, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union ('the Treaty') should be delegated to the Commission in respect of detailed criteria for establishing the amount of the fine and for conducting the Commission's investigations. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.	(7) To supplement the rules on calculating the ***interest-bearing deposits and*** fines for manipulation of statistics as well as the rules on the procedure to be followed by the Commission for the ***investigations related to the manipulation of statistics***, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union ('the Treaty') should be delegated to the Commission in respect of detailed criteria for establishing the amount of the fine and for conducting the Commission's investigations. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Tuesday 11 March 2014

Amendment 9

Proposal for a regulation

Recital 8

Text proposed by the Commission	*Amendment*
(8) ***Close*** cooperation ***and on-going dialogue should be established*** between the Commission and Member States' statistical authorities in order to ensure the quality of the MIP relevant data reported by Member States and the underlying statistical information.	(8) ***The ongoing*** cooperation ***and coordination*** between the Commission (Eurostat) and Member States' statistical authorities ***is an important part of efficient coordination of statistical activities within the European Statistical System (ESS). That collaboration needs to be strengthened*** in order to ensure the quality of the MIP relevant data reported by Member States and the underlying statistical information; ***the institutional separation of the European System of Central Banks (ESCB) and the independence of central banks should be respected within the framework of developing, producing and disseminating MIP-relevant data under the respective governance structure and statistical work programmes of the ESS and the ESCB.***

Amendment 10

Proposal for a regulation

Recital 9

Text proposed by the Commission	*Amendment*
(9) Close cooperation between ***the European Statistical System and the European System of Central Banks*** should be ensured in relation to MIP relevant data, in line with Article 9 of Regulation (EC) No 223/2009, in order to minimise the reporting burden, guarantee coherence, improve the underlying statistics and ensure comparability.	(9) ***Since the ESS is responsible for producing a number of statistics underlying the MIP-relevant data and the ESCB is responsible for producing a number of other statistics underlying the MIP relevant data,*** close cooperation between the ***two systems*** should be ensured in relation to MIP relevant data, in line with Article 9 of Regulation (EC) No 223/2009, in order to minimise the reporting burden, guarantee coherence, improve the underlying statistics and ensure comparability. ***Practical operational arrangements for the cooperation between the ESS and the ESCB on quality assurance for MIP-relevant data could be laid down in a memorandum of understanding. Given its longstanding experience in the areas of statistics covered by the MIP-relevant data, the Committee on monetary, financial and balance of payments statistics (CMFB) established by the Council Decision 2006/856/EC ([1a.]) could provide advice on the practical operational arrangements for cooperation that could be reflected in such a memorandum of understanding.***

([1a.]) OJ L 332, 30.11.2006, p. 21.

Tuesday 11 March 2014

Amendment 11

Proposal for a regulation

Recital 9 a (new)

Text proposed by the Commission	*Amendment*
	(9a) The provisions laid down in this Regulation should be considered within the frame of the reinforcement of European economic governance, which calls for greater democratic accountability at the national and Union levels. The improved statistical monitoring system of MIP-relevant data should include a closer and more timely involvement of the national parliaments and the European Parliament. While recognising that the counterparts of the European Parliament in the framework of the dialogue are the relevant institutions of the Union and their representatives, the competent committee of the European Parliament may extend invitations to representatives of the National Statistical Institutes (NSIs) to participate voluntarily in hearings.

Amendment 12

Proposal for a regulation

Recital 9 b (new)

Text proposed by the Commission	*Amendment*
	(9b) The strengthening of economic governance through an improved statistical monitoring system of MIP-relevant data should include a closer and more timely involvement of the national parliaments and the European Parliament.

Amendment 13

Proposal for a regulation

Recital 12 a (new)

Text proposed by the Commission	*Amendment*
	(12a) However, the suspension of funds due to be triggered by the macroeconomic imbalances procedure should be used as a last resort and take into account an in-depth analyses of the unemployment, poverty and GDP contraction indicators.

Tuesday 11 March 2014

Amendment 14

Proposal for a regulation

Article 1 — paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a. Quality assurance procedures put in place in the framework of this Regulation shall take into consideration and build on best practices in existing quality assurance procedures. They shall not result in the duplication of quality assurance efforts or parallel data series.

Amendment 15

Proposal for a regulation

Article 2 — paragraph 2

Text proposed by the Commission	*Amendment*
2. The deadlines for the transmission of the MIP relevant data shall be those laid down pursuant to the relevant basic acts or shall be communicated by the Commission in specific calendars taking into account the needs of the Union.	2. The deadlines for the transmission of the MIP relevant data shall be those laid down pursuant to the relevant basic acts or shall be communicated by the Commission in specific calendars taking into account the ***European Semester framework and the*** needs of the Union.

Amendment 16

Proposal for a regulation

Article 2 — paragraph 3

Text proposed by the Commission	*Amendment*
3. The Commission shall indicate to the Member States, each year, the timetable of the annual Alert Mechanism Report established by Article 3 of Regulation (EU) No 1176/2011. Based on this timetable and on the deadlines and calendars referred to in paragraph 2, the Commission shall also decide on and communicate, to the Member States, a cut-off date ***for their transmission of all the most up-to-date*** MIP relevant data.	3. The Commission shall indicate to the Member States, each year, the timetable of the annual Alert Mechanism Report established by Article 3 of Regulation (EU) No 1176/2011. Based on this timetable and on the deadlines and calendars referred to in paragraph 2, the Commission shall also decide on and communicate, to the Member States, a cut-off date ***for the extraction by the Commission (Eurostat) of the MIP relevant data to compute for each Member State the MIP scoreboard indicators and set up a reference database on*** MIP relevant data.

Tuesday 11 March 2014

Amendment 17

Proposal for a regulation

Article 2 — paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. The Commission (Eurostat) shall provide each Member State with access to the reference database with the extracted MIP relevant data no later than five working days after the cut-off date for checking purposes. Member States shall check the data and shall confirm, or provide amendments to, the data during the seven working days following that five-day period.

Amendment 18

Proposal for a regulation

Article 3 — paragraph 1

Text proposed by the Commission	*Amendment*
1. When transmitting the MIP relevant data referred to in Article 1, Member States shall ***send***, to the Commission (Eurostat), information ***showing*** how these data are calculated, including any changes in the sources and methods, in the form of a quality report.	1. When transmitting the MIP relevant data referred to in Article 1, Member States shall ***submit***, to the Commission (Eurostat), information ***indicating*** how these data are calculated, including any changes in the sources and methods, in the form of a quality report.

Amendment 19

Proposal for a regulation

Article 3 — paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a. Member States shall transmit the quality report within seven days in accordance with Article 2(3a).

Tuesday 11 March 2014

Amendment 20

Proposal for a regulation

Article 3 — paragraph 3

Text proposed by the Commission	*Amendment*
3. The Commission shall adopt ***implementing*** acts with a view to defining the modalities, structure and periodicity of the quality reports. Those ***implementing*** acts shall be adopted in accordance with the examination procedure referred to in Article ***14(2)***.	3. The Commission shall adopt ***delegated*** acts with a view to defining the modalities, structure and periodicity of the quality reports ***referred to in paragraph 1***. Those ***delegated*** acts shall be adopted in accordance with the examination procedure referred to in Article ***12***.

Amendment 21

Proposal for a regulation

Article 6 — paragraph 2

Text proposed by the Commission	*Amendment*
2. Member States shall establish the inventories and send them to the Commission (Eurostat) at the latest on […][nine months after the ***adoption*** of this Regulation]. The Commission shall adopt ***implementing*** acts with a view to defining the structure and the modalities for the updating of these inventories by […][within six months after the ***adoption*** of this Regulation]. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ***14(2)***.	2. Member States shall establish the inventories and send them to the Commission (Eurostat) at the latest on […][nine months after the ***entry into force*** of this Regulation]. The Commission shall adopt ***delegated*** acts with a view to defining the structure and the modalities for the updating of these inventories by […][within six months after the ***entry into force*** of this Regulation]. Those delegated acts shall be adopted in accordance with the examination procedure referred to in Article ***12***.

Amendment 22

Proposal for a regulation

Chapter VI — title

Text proposed by the Commission	*Amendment*
MISSIONS TO MEMBER STATES	***DIALOGUE*** MISSIONS TO MEMBER STATES

Tuesday 11 March 2014

Amendment 23

Proposal for a regulation

Article 7 — paragraph 1

Text proposed by the Commission	*Amendment*
1. Where the Commission (Eurostat) identifies ***problems***, in particular in the context of the quality assessment under Article 5, it may decide to carry out missions to the Member State concerned.	1. Where the Commission (Eurostat) identifies ***a need to deepen its assessment of the quality of statistics***, in particular in the context of the quality assessment under Article 5, it may decide to carry out ***dialogue*** missions to the Member State concerned.

Amendment 24

Proposal for a regulation

Article 7 — paragraph 2

Text proposed by the Commission	*Amendment*
2. The aim of ***such*** missions shall be to investigate in depth the quality of the MIP relevant data concerned. The missions shall concentrate on methodological issues, the sources and methods described in the inventories, the data and supporting statistical processes with a view to assessing their compliance with the relevant accounting and statistical rules.	2. The aim of ***the dialogue*** missions ***referred to in paragraph 1*** shall be to investigate in depth the quality of the MIP relevant data concerned. The ***dialogue*** missions shall concentrate on methodological issues, the sources and methods described in the inventories, the data and supporting statistical processes with a view to assessing their compliance with the relevant accounting and statistical rules.

Amendment 25

Proposal for a regulation

Article 7 — paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a . When organising the dialogue missions, the Commission (Eurostat) shall transmit its provisional findings to the Member State concerned for comments.

Amendment 26

Proposal for a regulation

Article 7 — paragraph 3

Text proposed by the Commission	*Amendment*
3. The Commission (Eurostat) shall report to the Economic Policy Committee set up by Council Decision 74/122/EEC ([7]) on the findings of these missions, including any comments on these findings made by the Member State concerned. After having been transmitted to the Economic Policy Committee, these reports, along with any comments made by the Member State concerned, shall be made public, without prejudice to the provisions concerning statistical confidentiality in Regulation (EC) No 223/2009.	3. The Commission (Eurostat) shall report to the ***European Parliament and to the*** Economic Policy Committee set up by Council Decision 74/122/EEC ([7]) on the findings of these ***dialogue missions***, including any comments on these findings made by the Member State concerned. After having been transmitted to the ***European Parliament and to the*** Economic Policy Committee, these reports, along with any comments made by the Member State concerned, shall be made public, without prejudice to the provisions concerning statistical confidentiality in Regulation (EC) No 223/2009.
([7]) OJ L 63, 5.3.1974, p. 21	([7]) OJ L 63, 5.3.1974, p. 21

Amendment 27

Proposal for a regulation

Article 7 — paragraph 4

Text proposed by the Commission	*Amendment*
4. Member States shall, at the request of the Commission (Eurostat), provide the assistance from experts on statistical issues related to the macroeconomic imbalances procedure, including for the preparation and carrying-out of the missions. In the exercise of their duties, these experts shall provide independent expertise. A list of those experts shall be constituted by ***(date to be fixed)*** on the basis of proposals sent to the Commission (Eurostat) by the national authorities responsible for the MIP relevant data.	4. Member States shall, at the request of the Commission (Eurostat), provide the assistance from experts on statistical issues related to the macroeconomic imbalances procedure, including for the preparation and carrying-out of the ***dialogue*** missions. In the exercise of their duties, these experts shall provide independent expertise. A list of those experts shall be constituted by ***[Six months after entry into force of this Regulation]*** on the basis of proposals sent to the Commission (Eurostat) by the national authorities responsible for the MIP relevant data.

Tuesday 11 March 2014

Amendment 28

Proposal for a regulation

Article 7 — paragraph 5

Text proposed by the Commission	*Amendment*
5. The Commission (Eurostat) shall lay down the rules and procedures related to the selection of the experts, taking into account an appropriate distribution of experts across Member States and an appropriate rotation of experts between Member States, their working arrangements and the financial details. The Commission (Eurostat) shall share with the Member States the full cost incurred by the Member States for the assistance from their national experts.	5. The Commission (Eurostat) shall lay down the rules and procedures related to the selection of the experts taking into account an appropriate distribution of experts across Member States and an appropriate ***and timely*** rotation of experts between Member States, their working arrangements and the financial details. The Commission (Eurostat) shall share with the Member States the full cost incurred by the Member States for the assistance from their national experts.

Amendment 29

Proposal for a regulation

Article 7 — paragraph 6 a (new)

Text proposed by the Commission	*Amendment*
	6a. This Article shall not apply in cases where sectoral legislation already provides for Commission visits to Member States.

Amendment 30

Proposal for a regulation

Article 8 — paragraph 1

Text proposed by the Commission	*Amendment*
1. The Commission (Eurostat) shall ***provide*** the MIP relevant data used for the purposes of the macroeconomic imbalances procedure including by means of news releases and/or other channels as it considers appropriate.	1. The Commission (Eurostat) shall ***make public*** the MIP relevant data used for the purposes of the macroeconomic imbalances procedure including by means of news releases and/or other channels as it considers appropriate.

Amendment 31

Proposal for a regulation

Article 8 — paragraph 2

Text proposed by the Commission	*Amendment*
2. The Commission (Eurostat) shall not delay the provision of the MIP relevant data of Member States where a Member State has not transmitted its own data.	2. The Commission (Eurostat) shall ***determine the publication date for the news release and communicate it to Member States within ten working days after the cut-off date referred to in Article 2. It shall*** not delay the provision of the MIP relevant data of Member States where a Member State has not transmitted its own data.

Amendment 32

Proposal for a regulation

Article 8 — paragraph 3

Text proposed by the Commission	*Amendment*
3. The Commission (Eurostat) may express a reservation on the quality of a Member State's MIP relevant data. No later than ***three*** working days before the planned publication date, the Commission (Eurostat) shall communicate to the Member State concerned and to the ***President*** of the Economic Policy Committee the reservation it intends to express and make public. Where the issue is resolved after publication of the data and the reservation, withdrawal of the reservation shall be made public immediately thereafter.	3. The Commission (Eurostat) may express a reservation on the quality of a Member State's MIP relevant data. ***The Member State concerned shall be given the opportunity to defend its position.*** No later than ***ten*** working days before the planned publication date, the Commission (Eurostat) shall communicate to the Member State concerned and to the President of the Economic Policy Committee the reservation it intends to express and make public. Where the issue is resolved after publication of the data and the reservation, withdrawal of the reservation shall be made public immediately thereafter.

Amendment 33

Proposal for a regulation

Article 8 — paragraph 4

Text proposed by the Commission	*Amendment*
4. The Commission (Eurostat) may amend data transmitted by Member States and ***provide*** the amended data and a justification of the amendment where there is evidence that the data reported by Member States do not comply with the requirements of Article 3(2). No later than three working days before the planned publication date, the Commission (Eurostat) shall communicate to the Member State concerned and to the President of the Economic Policy Committee the amended data and the justification for the amendment.	4. The Commission (Eurostat) may amend data transmitted by Member States and ***make public*** the amended data and a justification of the amendment where there is evidence that the data reported by Member States do not comply with the requirements of Article 3(2) ***as well as with the applicable methodological standards and the requirements of completeness, reliability, timeliness and consistency of statistical data***. No later than three working days before the planned publication date, the Commission (Eurostat) shall communicate to the Member State concerned and to the President of the Economic Policy Committee the amended data and the justification for the amendment.

Tuesday 11 March 2014

Amendment 34

Proposal for a regulation

Article 9 — paragraph 1

Text proposed by the Commission	*Amendment*
1. The Council, acting on ***a proposal*** by the Commission, may decide to impose a fine on a Member State that intentionally or by serious negligence ***misrepresents*** the MIP relevant data.	1. The Council, acting on ***recommendations*** by the Commission, may decide ***in a two step procedure*** to impose ***an interest-bearing deposit and subsequently if the Commission assesses that the Member State has not complied with the corrective actions referred to in paragraph 1a and, as a last resort,*** a fine on a Member State that ***has acted*** intentionally ***to misrepresent the MIP relevant data*** or by ***way of*** serious negligence ***that has resulted in the misrepresentation of*** the MIP relevant data***, which as a consequence has impacted on the ability of the Commission to make a true and fair assessment***.

Amendment 35

Proposal for a regulation

Article 9 — paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	1a. The Member State shall report to the Commission within a specified deadline on the corrective actions necessary to address and remedy the misrepresentation or the serious negligence referred to in paragraph 1 and prevent similar circumstances to arise in future. The report shall be made public.

Amendment 36

Proposal for a regulation

Article 9 — paragraph 2

Text proposed by the Commission	*Amendment*
2. The ***fine*** referred to in paragraph 1 shall be effective, dissuasive and proportionate to the nature, seriousness and duration of the misrepresentation. The amount of the ***fine*** shall not exceed *0,05 %* of the GDP of the Member State concerned.	2. The ***interest-bearing deposit*** referred to in paragraph 1 shall be effective, dissuasive and proportionate to the nature, seriousness and duration of the misrepresentation. The amount of the ***interest bearing*** shall not exceed ***0,05 %*** of the GDP ***in the preceding year*** of the Member State concerned.

Tuesday 11 March 2014

Amendment 37

Proposal for a regulation

Article 9 –paragraph 3 — subparagraph 1

Text proposed by the Commission	*Amendment*
3. The Commission may conduct all investigations necessary to establish the existence of the misrepresentations referred to in paragraph 1. It may decide to initiate an investigation when it finds that there are serious indications of the existence of facts liable to constitute such a misrepresentation. In investigating the putative misrepresentations, the Commission shall take into account any comments submitted by the Member State concerned. In order to carry out its tasks, the Commission may request the Member State to provide information, and may conduct on-site inspections and access the underlying statistical information and documents related to the MIP relevant data. If the law of the Member State ***concerned requires prior judicial*** authorisation ***for*** on-site ***inspections, the Commission shall make the necessary applications***.	3. The Commission may***, in accordance with the Treaties and specific sectoral legislation, initiate and*** conduct all investigations necessary to establish the existence of the misrepresentations referred to in paragraph 1. It may decide to initiate an investigation when it finds that there are serious indications of the existence of facts liable to constitute such a misrepresentation. In investigating the putative misrepresentations, the Commission shall take into account any comments submitted by the Member State concerned. In order to carry out its tasks, the Commission may request the Member State ***under investigation*** to provide information, and may conduct on-site inspections and access the underlying statistical information and documents related to the MIP relevant data. If ***required by*** the law of the Member State ***under investigation,*** authorisation ***by the judicial authority shall be obtained before an*** on-site ***inspection***.

Amendment 38

Proposal for a regulation

Article 9 — paragraph 3 — subparagraph 2

Text proposed by the Commission	*Amendment*
Upon completion of its investigation, and before submitting any ***proposal*** to the Council, the Commission shall give the Member State ***concerned*** the opportunity of being heard ***in relation to*** the matters ***under investigation***. The Commission shall base any ***proposal*** to the Council only on facts on which the Member State concerned has had the opportunity to comment.	Upon completion of its investigation, and before submitting any ***recommendation*** to the Council, the Commission shall give the Member State ***under investigation*** the opportunity of being heard ***on*** the matters ***being investigated***. The Commission shall base any ***recommendation*** to the Council only on facts on which the Member State concerned has had the opportunity to comment.

Amendment 39

Proposal for a regulation

Article 9 — paragraph 3 — subparagraph 2 a (new)

Text proposed by the Commission	*Amendment*
	The Commission shall inform the competent Committee of the European Parliament of any investigation or recommendation made pursuant to this paragraph. The competent committee of the European Parliament may offer a Member State which is the subject of a Commission recommendation an opportunity to participate in an exchange of views.

Tuesday 11 March 2014

Amendment 40

Proposal for a regulation

Article 9 — paragraph 4 a (new)

Text proposed by the Commission	*Amendment*
	4a. The Commission may, following a reasoned request by the Member State concerned addressed to the Commission recommend that the Council reduce or cancel the amount of the interest-bearing deposit.
	The interest-bearing deposit shall bear an interest rate reflecting the Commission's credit risk and the relevant investment period.

Amendment 41

Proposal for a regulation

Article 9 — paragraph 5

Text proposed by the Commission	*Amendment*
5. The Court of Justice of the European Union shall have unlimited jurisdiction to review the decisions of the Council imposing ***fines*** under paragraph 1. It may annul, reduce or increase the ***fine*** so imposed.	5. The Court of Justice of the European Union shall have unlimited jurisdiction to review the decisions of the Council imposing ***interest-bearing deposits*** under paragraph 1. It may annul, reduce or increase the ***interest-bearing deposit*** so imposed.

Amendment 42

Proposal for a regulation

Chapter IX — Title

Text proposed by the Commission	*Amendment*
NATURE AND BUDGET ***DISTRIBUTION*** OF THE ***SANCTIONS***	NATURE AND BUDGET ***ALLOCATION*** OF THE ***FINES***

Amendment 43

Proposal for a regulation

Article 12 — paragraph 2

Text proposed by the Commission	*Amendment*
2. The power to adopt delegated acts referred to in Article 9 (4) shall be conferred on the Commission for a period of ***three*** years starting after one month following the adoption of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of that 3-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.	2. The power to adopt delegated acts referred to in ***Article 3 (3), Article 6(2) and*** Article 9(4) shall be conferred on the Commission for a period of ***two*** years starting after one month following the adoption of this Regulation. The Commission shall***, after consultating the relevant actors including the ECB in accordance with Article 127 TFEU,*** draw up a report in respect of the delegation of power not later than nine months before the end of that 3-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

Amendment 44

Proposal for a regulation

Article 12 — paragraph 3

Text proposed by the Commission	*Amendment*
3. The delegation of power referred to in Article 9(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	3. The delegation of power referred to in ***Article 3(3), Article 6(2) and*** Article 9(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Tuesday 11 March 2014

Amendment 45

Proposal for a regulation

Article 12 — paragraph 5

Text proposed by the Commission	*Amendment*
5. A delegated act adopted pursuant to Article 9(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ***two*** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by ***two*** months at the initiative of the European Parliament or of the Council.	5. A delegated act adopted pursuant to ***Article 3(3), Article 6 (2) and*** Article 9(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ***three*** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by ***three*** months at the initiative of the European Parliament or of the Council.

Amendment 46

Proposal for a regulation

Article 13

Text proposed by the Commission	*Amendment*
For the measures referred to in Article 9 the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.	For the measures referred to in Article 9 the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned. ***The decision referred to in Article 9(1) shall be deemed to be adopted by the Council unless the Council decides, by a qualified majority, to reject the recommendation within 10 days of its adoption by the Commission.***

Amendment 47

Proposal for a regulation

Article 13 — paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	A qualified majority of the members of the Council referred to in Article 9(1) shall be defined in accordance with point (a) of Article 238(3) TFEU.

Tuesday 11 March 2014

Amendment 48

Proposal for a regulation

Article 15

Text proposed by the Commission	*Amendment*
In line with Article 5 of Regulation (EC) No 223/2009, the national statistical institutes of the Member States (the ***NSI***) shall ensure the required coordination on the MIP relevant data at national level. ***All*** other national authorities shall ***report to*** the NSI for this purpose. The Member States shall take the necessary measures to ensure the application of this provision.	In line with Article 5 of Regulation (EC) No 223/2009, the national statistical institutes of the Member States (the ***NSIs***) shall ensure the required coordination on the MIP relevant data at national level. ***National central banks, in their capacity as ESCB members producing MIP relevant data, and where appropriate***, other ***relevant*** national authorities shall ***cooperate with*** the NSIs for this purpose. ***National authorities producing data shall be held responsible for that data.*** The Member States shall take the necessary measures to ensure the application of this provision.

Amendment 49

Proposal for a regulation

Article 17

Text proposed by the Commission	*Amendment*
The Commission (Eurostat) shall report ***regularly*** to the European Parliament and to the Council on the activities carried out by the Commission (Eurostat) for the purpose of implementing this Regulation.	The Commission (Eurostat) shall report ***at least annually*** to the European Parliament and to the Council on the activities carried out by the Commission (Eurostat) for the purpose of implementing this Regulation ***in the context of the European Semester as referred to in Regulation (EU) No 1175/2011 of the European Parliament and of the Council ([1a]).***
	([1a]) Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ L 306, 23.11.2011, p. 12).

Amendment 50

Proposal for a regulation

Article 18 — paragraph 1

Text proposed by the Commission	*Amendment*
1. By 14 December 2014 and every five years thereafter, the Commission shall review the application of this Regulation ***and report its findings to the European Parliament and the Council***.	1. By 14 December 2014 and every five years thereafter, the Commission shall review***, and submit a report to the European Parliament and the Council on,*** the application of this Regulation. ***Where appropriate, that report shall be accompanied by a legislative proposal.***

Tuesday 11 March 2014

Amendment 51

Proposal for a regulation

Article 18 — paragraph 2 — subparagraph 1 — point b

Text proposed by the Commission	*Amendment*
(b) the effectiveness of this Regulation and the applied monitoring process.	(b) the effectiveness ***and proportionality*** of this Regulation and the applied monitoring process.

Tuesday 11 March 2014

P7_TA(2014)0182

Extension of the EC-USA scientific and technological cooperation agreement ***

European Parliament legislative resolution of 11 March 2014 on the draft Council decision concerning the extension of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America (15854/2013 — C7-0462/2013 — 2013/0351(NLE))

(Consent)

(2017/C 378/36)

The European Parliament,

— having regard to the draft Council decision (15854/2013),

— having regard to Council Decision 98/591/EC of 13 October 1998 concerning the conclusion of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America,

— having regard to the request for consent submitted by the Council in accordance with Article 186 and Article 218(6), second subparagraph, point (a)(v), of the Treaty on the Functioning of the European Union (C7-0462/2013),

— having regard to Rule 81(1), subparagraphs 1 and 3, and Rules 81(2), 90(7) and 46(1) of its Rules of Procedure,

— having regard to the recommendation of the Committee on Industry, Research and Energy (A7-0126/2014),

1. Consents to the extension of the Agreement;

2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and of the United States of America.

Tuesday 11 March 2014

P7_TA(2014)0183

Nagoya Protocol on Access to Genetic Resources ***

European Parliament legislative resolution of 11 March 2014 on the draft Council decision on the conclusion, on behalf of the European Union, of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (06852/2013 — C7-0005/2014 — 2012/0279(NLE))

(Consent)

(2017/C 378/37)

The European Parliament,

— having regard to the draft Council Decision (06852/2013),

— having regard to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, attached to the above-mentioned draft Council decision,

— having regard to the request for consent submitted by the Council in accordance with Article 192(1) and Article 218(6), second subparagraph, point (a), of the Treaty on the Functioning of the European Union (C7-0005/2014),

— having regard to Rules 81 and 90(7) of its Rules of Procedure,

— having regard to the recommendation of the Committee on the Environment, Public Health and Food Safety and the opinions of the Committee on Development and the Committee on Agriculture and Rural Development (A7-0061/2014),

1. Consents to conclusion of the Protocol;

2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States.

Tuesday 11 March 2014

P7_TA(2014)0184

European Globalisation Adjustment Fund — application EGF/2013/008 ES/Comunidad Valenciana textiles

European Parliament resolution of 11 March 2014 on the proposal for a decision of the European Parliament and of the Council on mobilisation of the European Globalisation Adjustment Fund, in accordance with point 13 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management (application EGF/2013/008, ES/Comunidad Valenciana textiles from Spain) (COM(2014)0045 — C7-0019/2014 — 2014/2013(BUD))

(2017/C 378/38)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2014)0045 — C7-0019/2014),

— having regard to Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 on establishing the European Globalisation Adjustment Fund ([1]) (EGF Regulation),

— having regard to Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 ([2]), and in particular Article 12 thereof,

— having regard to the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management ([3]) (IIA of 2 December 2013), and in particular point 13 thereof,

— having regard to trilogue procedure provided for in point 13 of the IIA of 2 December 2013,

— having regard to the letter of the Committee on Employment and Social Affairs,

— having regard to the report of the Committee on Budgets (A7-0158/2014),

A. whereas the European Union has set up legislative and budgetary instruments to provide additional support to workers who are suffering from the consequences of major structural changes in world trade patterns and to assist their reintegration into the labour market,

B. whereas the Union's financial assistance to workers made redundant should be dynamic and made available as quickly and efficiently as possible, in accordance with the Joint Declaration of the European Parliament, the Council and the Commission adopted during the conciliation meeting on 17 July 2008, and having due regard for the IIA of 2 December 2013 in respect of the adoption of decisions to mobilise the EGF,

C. whereas Spain submitted application EGF/2013/008 ES/Comunidad Valenciana textiles for a financial contribution from the EGF, following 560 redundancies in 198 enterprises operating in the NACE Revision 2 Division 13 (Manufacture of textiles) ([4]) in the NUTS II region of Comunidad Valenciana (ES52) with 300 workers targeted for EFG co-funded measures, during the reference period from 1 November 2012 to 1 August 2013,

([1]) OJ L 406, 30.12.2006, p. 1.
([2]) OJ L 347, 20.12.2013, p. 884.
([3]) OJ C 373, 20.12.2013, p. 1.
([4]) Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

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D. whereas the application fulfils the eligibility criteria set up by the EGF Regulation,

1. Agrees with the Commission that the conditions set out in Article 2(b) of the EGF Regulation are met and that, therefore, Spain is entitled to a financial contribution under that Regulation;

2. Notes that the Spanish authorities submitted the application for EGF financial contribution on 8 October 2013, and that its assessment was made available by the Commission on 28 January 2014; welcomes the speedy evaluation of four months;

3. Considers that the redundancies in Comunidad Valenciana textile enterprises are linked to major structural changes in world trade patterns due to globalisation, referring to the closure of the WTO's Transitional Agreement on Textiles and Clothing at the end of 2004 and a greater exposure to the global competition particularly from China and other Far Eastern countries leading to a substantial increase of textiles imports into the Union and a loss of Union's market share in world textiles markets;

4. Notes that Comunidad Valenciana has been severely affected by globalisation with unemployment reaching 29,19 % in the first quarter of 2013; welcomes the fact that the region avails itself yet again of EGF aid to alleviate high unemployment by addressing for the second time lay-offs in textile sector;

5. Congratulates Comunidad Valenciana on the capacity to apply for and use EGF to address problems of its labour market characterised by a high percentage of SMEs; in this context recalls that Comunidad Valenciana region has already applied for the EGF support for textile, ceramic and natural stone as well as construction sector;

6. Underlines the capacity of EGF to help address fragile employment situation in the regions dependant on traditional sectors such as textiles or construction sectors; stresses that this capacity depends on the readiness and effectiveness of national and local authorities to apply for EGF support;

7. Notes that to date, the manufacture of textiles sector has been the subject of 11 EGF applications ([1]), all of them based on trade related globalisation while Comunidad Valenciana region submitted already six EGF applications: in September 2009 ([2]) (ceramics), March 2010 ([3]) (natural stone), March 2010 ([4]) (textiles), July ([5]) and December 2011 ([6]) (construction and footwear, respectively) and 2013 ([7]) (building materials);

8. Welcomes the fact that, in order to provide workers with speedy assistance, the Spanish authorities decided to initiate the implementation of the personalised services to the affected workers on 1 January 2014, well ahead of the final decision on granting the EGF support for the proposed coordinated package;

9. Notes that the coordinated package of personalised services to be co-funded includes measures for the reintegration of 300 redundant workers into employment such as profiling, occupational guidance, counselling, trainings (training in transversal skills, vocational training, on-the-job training, training towards entrepreneurship), support towards entrepreneurship, intensive job-search assistance, incentives (job-search incentive, support for setting up a business, outplacement incentives, contribution to commuting expenses and contribution for carers of dependent persons);

10. Welcomes the fact that the social partners, including trade unions (UGT-PV, CCOO-PV), were consulted during the preparation of EGF application and agreed on contributing 10 % of the total national co-funding of total costs of the applied measures, and that a policy of equality of women and men as well as the principle non-discrimination will be applied during the various stages of the implementation of and in access to the EGF;

([1]) EGF/2007/005 IT Sardegna (COM(2008)0609); EGF/2007/006 IT Piemonte (COM(2008)0609); EGF/2007/007 IT Lombardia (COM(2008)0609); EGF/2008/001 IT Toscana (COM(2008)0609); EGF/2008/003 LT Alytaus Textile (COM(2008)0547); EGF/2008/005 ES Cataluña (COM(2009)0371); EGF/2009/001 PT Norte-Centro (COM(2009)0371); EGF/2009/004 BE Oost en West Vlaanderen Textiel (COM(2009)0515); EGF/2009/005 BE Limburg Textiel (COM(2009)0515); EGF/2010/009 ES Comunidad Valenciana (COM(2010)0613) and EGF/2013/008 ES Comunidad Valenciana (the current case).

([2]) EGF/2009/014 ES Comunidad Valenciana ceramics (COM(2010)0216).

([3]) EGF/2010/005 ES Comunidad Valenciana cutting, shaping and finishing of stone (COM(2010)0617).

([4]) EGF/2010/009 ES Comunidad Valenciana (COM(2010)0613).

([5]) EGF/2011/006 ES Comunidad Valenciana construction (COM(2012)0053).

([6]) EGF/2011/020 ES Comunidad Valenciana footwear (COM(2012)0204).

([7]) EGF/2013/004 ES Comunidad Valenciana building materials (COM(2013)0635).

11. Recalls the importance of improving the employability of all workers by means of adapted training and the recognition of skills and competences gained throughout a worker's professional career; expects the training on offer in the coordinated package to be adapted not only to the needs of the dismissed workers but also to the actual business environment;

12. Welcomes the fact that the coordinated package includes vocational training focusing on sectors where opportunities exist or are likely to arise as well as contains on-the-job training which will match the identified needs of local enterprises;

13. Regrets that the Commission proposal does not outline the educational structure of the dismissed labour force;

14. Notes that the coordinated package foresees financial incentives for job-search (lump sum of EUR 300), mobility allowance, outplacement incentive (up to EUR 350) as well as contribution for carers of dependent persons; welcomes the fact that the overall amount of financial incentives is relatively limited leaving the majority of the contribution to be spent on training, counselling, job search assistance and support of entrepreneurship;

15. Notes that the case at hand typically reflects the social and economic landscape of a region with local economy characterised by a high percentage of SMEs;

16. Notes that the information provided on the coordinated package of personalised services to be funded from the EGF includes information on complementarity with actions funded by the Structural Funds; stresses that the Spanish authorities confirm that the eligible actions do not receive assistance from other Union financial instruments; reiterates its call to the Commission to present a comparative evaluation of those data in its annual reports in order to ensure full respect of the existing regulations and that no duplication of Union-funded services can occur;

17. Requests the institutions involved to make the necessary efforts to improve procedural arrangements in order to accelerate the mobilisation of the EGF; appreciates the improved procedure put in place by the Commission, following Parliament's request for the accelerated release of grants, aimed at presenting to the budgetary authority the Commission's assessment on the eligibility of an EGF application together with the proposal to mobilise the EGF; underlines that further improvements in the procedure have been integrated in the new Regulation on European Globalisation Adjustment Fund (2014-2020) ([1]) and that greater efficiency, transparency and visibility of the EGF will be achieved;

18. Stresses that, in accordance with Article 6 of the EGF Regulation, it shall be ensured that the EGF supports the reintegration of individual redundant workers into stable employment; stresses, furthermore, that EGF assistance can co-finance only active labour market measures which lead to durable, long-term employment; reiterates that assistance from the EGF must not replace actions which are the responsibility of companies by virtue of national law or collective agreements nor measures restructuring companies or sectors;

19. Welcomes the agreement reached between the European Parliament and the Council regarding the new EGF Regulation, for the period 2014-2020, to reintroduce the crisis mobilisation criterion, to increase Union financial contribution to 60 % of the total estimated cost of proposed measures, to increase efficiency for the treatment of EGF applications in the Commission and by the European Parliament and the Council by shortening time for assessment and approval, to widen eligible actions and beneficiaries by introducing self-employed persons and young people and to finance incentives for setting up own businesses;

20. Approves the decision annexed to this resolution;

21. Instructs its President to sign the decision with the President of the Council and arrange for its publication in the *Official Journal of the European Union*;

22. Instructs its President to forward this resolution, including its annex, to the Council and the Commission.

([1]) Regulation (EU) No 1309/2013 of the European Parliament and of the Council of 17 December 2013 on the European Globalisation Adjustment Fund (2014-2020) and repealing Regulation (EC) No 1927/2006 (OJ L 347, 20.12.2013, p. 855).

Tuesday 11 March 2014

ANNEX

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 13 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management (application EGF/2013/008 ES/Comunidad Valenciana textiles from Spain)

(The text of this annex is not reproduced here since it corresponds to the final act, Decision 2014/167/EU.)

Tuesday 11 March 2014

P7_TA(2014)0185

Production and making available on the market of plant reproductive material (plant reproductive material law) ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the production and making available on the market of plant reproductive material (plant reproductive material law) (COM(2013)0262 — C7-0121/2013 — 2013/0137(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/39)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0262),

— having regard to Article 294(2) and Article 43(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0121/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Austrian Federal Council and the Netherlands House of Representatives, asserting that the draft legislative act does not comply with the principle of subsidiarity,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Agriculture and Rural Development and the opinion of the Committee on the Environment, Public Health and Food Safety (A7-0112/2014),

1. Rejects the Commission proposal;

2. Calls on the Commission to withdraw its proposal and submit a new one;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Tuesday 11 March 2014

P7_TA(2014)0186

Remuneration and pensions of the officials and other servants of the European Union (adjustment as of 1 July 2011) ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a regulation of the European Parliament and of the Council adjusting with the effect from 1 July 2011 the remuneration and pension of the officials and other servants of the European Union and the correction coefficients applied thereto (COM(2013)0895 — C7-0459/2013 — 2013/0438(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/40)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0895),

— having regard to Article 294(2) of the Treaty on the Functioning of the European Union,

— having regard to the Staff Regulations of Officials of the European Union and in particular Article 10 of Annex XI thereto and the Conditions of Employment of Other Servants of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0459/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the Court of Justice of 4 March 2014 ([1]),

— having regard to the opinion of the Court of Auditors of 3 March 2014 ([2]),

— having regard to the undertaking given by the Council representative by letter of 7 March 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A7-0165/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0438

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council adjusting with effect from 1 July 2011 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 422/2014.)

([1]) Not yet published in the Official Journal.
([2]) Not yet published in the Official Journal.

Tuesday 11 March 2014

P7_TA(2014)0187

Remuneration and pensions of the officials and other servants of the European Union (adjustment as of 1 July 2012) ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a regulation of the European Parliament and of the Council adjusting with the effect from 1 July 2012 the remuneration and pensions of the officials and other servants of the European Union and the correction coefficients applied thereto (COM(2013)0896 — C7-0460/2013 — 2013/0439(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/41)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0896),

— having regard to Article 294(2) of the Treaty on the Functioning of the European Union,

— having regard to the Staff Regulations of Officials of the European Union and in particular Article 10 of Annex XI thereto and the Conditions of Employment of Other Servants of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0460/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the Court of Justice of 4 March 2014 ([1]),

— having regard to the opinion of the Court of Auditors of 3 March 2014 ([2]),

— having regard to the undertaking given by the Council representative by letter of 7 March 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A7-0164/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0439

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council adjusting with effect from 1 July 2012 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 423/2014.)

([1]) Not yet published in the Official Journal.
([2]) Not yet published in the Official Journal.

Tuesday 11 March 2014

P7_TA(2014)0188

EC-Serbia Stabilisation and Association Agreement ***II

European Parliament legislative resolution of 11 March 2014 on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part (17930/1/2013 — C7-0028/2014 — 2011/0465(COD))

(Ordinary legislative procedure: second reading)

(2017/C 378/42)

The European Parliament,

— having regard to the Council position at first reading (17930/1/2013 — C7-0028/2014),

— having regard to its position at first reading [1] on the Commission proposal to Parliament and the Council (COM(2011)0938),

— having regard to Article 294(7) of the Treaty on the Functioning of the European Union,

— having regard to Rule 72 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on International Trade (A7-0116/2014),

1. Approves the Council position at first reading;

2. Notes that the act is adopted in accordance with the Council position;

3. Instructs its President to sign the act with the President of the Council, in accordance with Article 297(1) of the Treaty on the Functioning of the European Union;

4. Instructs its Secretary-General to sign the act, once it has been verified that all the procedures have been duly completed, and, in agreement with the Secretary-General of the Council, to arrange for its publication in the *Official Journal of the European Union*;

5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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[1] Texts adopted of 25.10.2012, P7_TA(2012)0389.

Tuesday 11 March 2014

P7_TA(2014)0189

European Insurance and Occupational Pensions Authority and European Securities and Markets Authority ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (COM(2011)0008 — C7-0027/2011 — 2011/0006(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/43)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2011)0008),

— having regard to Article 294(2) and Articles 50, 53, 62 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0027/2011),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Central Bank of 4 May 2011 ([1]),

— having regard to the opinion of the European Economic and Social Committee of 5 May 2011 ([2]),

— having regard to the undertaking given by the Council representative by letter of 27 November 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A7-0077/2012),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2011)0006

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Directive 2014/…/EU of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Directive 2014/51/EU.)

([1]) OJ C 159, 18.5.2011, p. 10.
([2]) OJ C 218, 23.7.2011, p. 82.

Tuesday 11 March 2014

P7_TA(2014)0190

Information accompanying transfers of funds ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a regulation of the European Parliament and of the Council on information accompanying transfers of funds (COM(2013)0044 — C7-0034/2013 — 2013/0024(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/44)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0044),

— having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0034/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Central Bank of 17 May 2013 ([1]),

— having regard to the opinion of the European Economic and Social Committee of 11 November 2013 ([2]),

— having regard to Rules 55 of its Rules of Procedure,

— having regard to the joint deliberations of the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs under Rule 51 of the Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Development and the Committee on Legal Affairs (A7-0140/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0024

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council on information accompanying transfers of funds

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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([1]) OJ C 166, 12.6.2013, p. 2.
([2]) OJ C 271, 19.9.2013, p. 31.

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

(1) Flows of ~~dirty~~ ***illicit*** money through transfers of funds can damage the ***structure,*** stability and reputation of the financial sector and threaten the internal market ***as well as international development, and directly or indirectly undermine the confidence of citizens in the rule of law. The funding of terrorism and organised crime remains a significant problem which should be addressed at Union level.*** Terrorism ~~shakes~~ ***and organised crime damage the democratic institutions and shake*** the very foundations of our society. ***Crucial facilitators of illicit money flows are secretive corporate structures operating in and through secrecy jurisdiction, often also referred to as tax havens.*** The soundness, integrity and stability of the system of transfers of funds and confidence in the financial system as a whole ~~could be~~ ***is being*** seriously jeopardised by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to transfer funds for ***criminal activities or*** terrorist purposes. **[Am. 1]**

(2) In order to facilitate their criminal activities, money launderers and terrorist financers ~~could try to take~~ ***are taking*** advantage of the freedom of capital movements entailed by the integrated financial area, unless certain coordinating measures are adopted at Union ***and international*** level. ***International cooperation within the framework of the Financial Action Task Force (FATF) and the global implementation of its recommendations aim to prevent regulatory arbitrage and the distortion of competition.*** By its scale, Union action should ensure that ***FATF*** Recommendation 16 on wire transfers ~~of the Financial Action Task Force (FATF),~~ adopted in February 2012 is transposed uniformly throughout the Union, and, in particular, that there is no discrimination ***or discrepancy*** between national payments within a Member State and cross-border payments between Member States. Uncoordinated action by Member States alone in the field of cross border transfers of funds could have a significant impact on the smooth functioning of payment systems at Union level and therefore damage the internal market in the field of financial services. **[Am. 2]**

(2a) The implementation and enforcement of this Regulation, including FATF Recommendation 16, should not result in unjustified or disproportionate costs for payment service providers or citizens who use their services, and the free movement of legal capital should be fully guaranteed throughout the Union. **[Am. 3]**

(3) It has been pointed out in the Union's revised Strategy on Terrorist Financing of 17 July 2008 that efforts have to be maintained to prevent terrorist financing and the use by suspected terrorists of their own financial resources. It is recognised that FATF is constantly seeking to improve its Recommendations and working towards a common understanding of how these should be implemented. It is noted in the Union's revised Strategy that implementation of those Recommendations by all FATF members and members of FATF-style regional bodies is assessed on a regular basis and that from this point of view a common approach to implementation by Member States is important.

([1]) OJ C 166, 12.6.2013, p. 2.
([2]) OJ C 271, 19.9.2013, p. 31.
([3]) Position of the European Parliament of 11 March 2014.

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(4) In order to prevent terrorist funding, measures aimed at the freezing of funds and economic resources of certain persons, groups and entities have been taken, including Regulation (EC) No 2580/2001 ([1]), and Council Regulation (EC) No 881/2002 ([2]). To that same end, measures aimed at protecting the financial system against the channelling of funds and economic resources for terrorist purposes have been taken. Directive …/…/EU of the European Parliament and of the Council ([3]) (*) contains a number of such measures. Those measures do not, however, fully prevent terrorists and other criminals from having access to payment systems for moving their funds.

(5) In order to foster a coherent approach in the international context ~~in the field of combating~~ ***and increase the efficiency of the fight against*** money laundering and terrorist financing, further Union action should take account of developments at that level, namely the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted in 2012 by FATF, and in particular Recommendation 16 and the revised interpretative note for its implementation. **[Am. 4]**

(5a) Particular attention should be paid to the Union obligations set out in Article 208 TFEU in order to stem the increasing trend of money-laundering activities being moved from developed countries with stringent anti-money-laundering rules to developing countries where rules may be less stringent. **[Am. 5]**

(6) The full traceability of transfers of funds can be a particularly important and valuable tool in the prevention, investigation and detection of money laundering or terrorist financing. It is therefore appropriate, in order to ensure the transmission of information throughout the payment chain, to provide for a system imposing the obligation on payment service providers to have transfers of funds accompanied by information on the payer and the payee ***which should be accurate and up to date. In that regard, it is essential for financial institutions to report adequate, accurate and up-to-date information with respect to transfers of funds carried out for their clients to enable the competent authorities to prevent money laundering and terrorist financing more effectively.*** **[Am. 6]**

(7) The provisions of this Regulation apply without prejudice to national legislation transposing Directive 95/46/EC of the European Parliament and of the Council ~~of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data~~ ([4]). For example, personal data collected for the purpose of complying with this Regulation should not be further processed in a way inconsistent with Directive 95/46/EC. In particular, further processing for commercial purposes should be strictly prohibited. The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. Hence, in the application of this Regulation, the transfer of personal data to a third country which does not ensure an adequate level of protection in the meaning of Article 25 of Directive 95/46/EC should be permitted ***in accordance with*** Article 26(d) of ***that*** Directive. ***It is important that payment service providers operating in multiple jurisdictions with branches or subsidiaries located outside the Union are not unreasonably prevented from sharing information about suspicious transactions within the same organisation. This is without prejudice to international agreements between the Union and third countries which aim to combat money laundering including appropriate safeguards for citizens ensuring an equivalent or adequate level of protection.*** **[Am. 7]**

([1]) Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 70).

([2]) Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network (OJ L 139, 29.5.2002, p. 9).

([3]) Directive …/…/EU of the European Parliament and of the Council of… on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L , , p.).

(*) Number, date and OJ reference of the directive adopted on the basis of COD 2013/0025.

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

(8) Persons who merely convert paper documents into electronic data and are acting under a contract with a payment service provider do not fall within the scope of this Regulation; the same applies to any natural or legal person who provides payment service providers solely with messaging or other support systems for transmitting funds or with clearing and settlement systems.

(9) It is appropriate to exclude from the scope of this Regulation transfers of funds that represent a low risk of money laundering or terrorist financing. Such exclusions should cover credit or debit cards, mobile telephones or other digital or information technology (IT) devices, automated teller machine withdrawals, payments of taxes, fines or other levies, and transfers of funds where both the payer and the payee are payment service providers acting on their own behalf. In addition, in order to reflect the special characteristics of national payment systems, Member States may exempt electronic giro payments, provided that it is always possible to trace the transfer of funds back to the payer***, as well as transfers of funds carried out through cheque image exchanges or bills of exchange***. However, there must be no exemption when a debit or credit card, a mobile telephone or other digital or IT prepaid or postpaid device is used in order to effect a person-to-person transfer. ***Taking into account the dynamically evolving technological progress, consideration should be given to extend the scope of the Regulation to e-money and other new payment methods.*** **[Am. 8]**

(10) ***Payment service providers should ensure that the information on the payer and the payee is not missing or incomplete.*** In order not to impair the efficiency of payment systems, the verification requirements for transfers of funds made from an account should be separate from those for transfers of funds not made from an account. In order to balance the risk of driving transactions underground by imposing overly strict identification requirements against the potential terrorist threat posed by small transfers of funds, the obligation to check whether the information on the payer is accurate should, in the case of transfers of funds not made from an account, be ~~imposed only in respect of~~ ***restricted to the name of the payer for*** individual transfers of funds ~~that exceed~~ ***of up to*** EUR 1 000. For transfers of funds made from an account, payment service providers should not be required to verify information on the payer accompanying each transfer of funds where the obligations under Directive …/…/EU (*) have been met. **[Am. 9]**

(11) Against the background of the Union payment legislative acts — Regulation (EC) No 924/2009 of the European Parliament and of the Council ([1]), Regulation (EU) No 260/2012 of the European Parliament and of the Council ([2]) and Directive 2007/64/EC of the European Parliament and of the Council ([3]) — it is sufficient to provide for simplified information on the payer to accompany transfers of funds within the Union.

(12) In order to allow the authorities responsible for combating money laundering or terrorist financing in third countries to trace the source of funds used for those purposes, transfers of funds from the Union to outside the Union should carry complete information on the payer and the payee. Those authorities should be granted access to complete information on the payer only for the purposes of preventing, investigating and detecting money laundering or terrorist financing.

(12a) The authorities responsible for combating money laundering and terrorist financing, and relevant judicial and law enforcement agencies in the Member States, should intensify cooperation with each other and with relevant third-country authorities, including those in developing countries, in order further to strengthen transparency,

(*) Number of the directive adopted on the basis of COD 2013/0025.

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

([2]) Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).

([3]) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

the sharing of information and best practices. The Union should support capacity-building programmes in developing countries to facilitate such cooperation. Systems for collecting evidence and making available data and information relevant to the investigation of offences should be improved without in any way infringing the principles of subsidiarity or proportionality, or fundamental rights, in the Union. **[Am. 10]**

(12b) The payment service providers of the payer, the payee and the intermediary service providers should have in place appropriate technical and organisational measures to protect personal data against accidental loss, alteration, unauthorised disclosure or access. **[Am. 11]**

(13) For transfers of funds from a single payer to several payees to be sent in an inexpensive way in batch files containing individual transfers from the Union to outside the Union, provision should be made for such individual transfers to carry only the account number of the payer or the payer's unique transaction identifier provided that complete information on the payer and the payee is contained in the batch file.

(14) In order to check whether the required information on the payer and the payee accompanies transfers of funds, and to help to identify suspicious transactions, the payment service provider of the payee and the intermediary payment service provider should have effective procedures in place in order to detect whether information on the payer and the payee is missing ***or incomplete, in particular if numerous payment services are involved to improve the traceability of transfers of funds. Effective checks that the information is available and complete, in particular where several payment service providers are involved, can help make investigation procedures less time consuming and more effective, which, in turn, improves the traceability of transfers of funds. Competent authorities in the Member States should thus ensure that payment service providers include the required transaction information with the wire transfer or related message throughout the payment chain.*** **[Am. 12]**

(15) Owing to the potential terrorist financing threat posed by anonymous transfers, it is appropriate to require payment service providers to request information on the payer and the payee. In line with the risk-based approach developed by FATF, it is appropriate to identify areas of higher and lower risk with a view to better targeting money laundering and terrorist financing risks. Accordingly, the payment service provider of the payee and the intermediary service provider should establish effective risk-based procedures ***and assess and weigh risks so that resources can be explicitly steered towards high-risk areas of money laundering. Such effective risk-based procedures*** for cases where a transfer of funds lacks the required payer and payee information~~, in order to~~ ***will help payment service providers to*** decide ***more effectively*** whether to execute, reject or suspend that transfer and what appropriate follow-up action to take. Where the payment service provider of the payer is established outside the territory of the Union, enhanced customer due diligence should be applied, in accordance with Directive …/…/EU (*), in respect of cross-border correspondent banking relationships with that payment service provider. **[Am. 13]**

(16) The payment service provider of the payee and the intermediary payment service provider should exercise special vigilance, assessing the risks, when it becomes aware that information on the payer and the payee is missing or incomplete and should report suspicious transactions to the competent authorities, in accordance with the reporting obligations set out in Directive …/…/EU (**) and national transposition measures.

(17) The provisions on transfers of funds where information on the payer or the payee is missing or incomplete apply without prejudice to any obligations on payment service providers and the intermediary payment service providers to suspend or reject transfers of funds which violate provisions of civil, administrative or criminal law. ***The need for***

(*) Number of the directive adopted on the basis of COD 2013/0025.
(**) Number of the directive adopted on the basis of COD 2013/0025.

identity information on payer or the payee of individuals, legal persons, trusts, foundations, mutual societies, holdings and similar existing or future legal arrangements is a key factor in tracing criminals who might otherwise hide their identity behind corporate structure. **[Am. 14]**

(18) Until technical limitations that may prevent intermediary payment service providers from satisfying the obligation to transmit all the information they receive on the payer are removed, those intermediary payment service providers should keep records of that information. Such technical limitations should be removed as soon as payment systems are upgraded. ***In order to overcome technical limitations, the use of the SEPA credit transfer scheme could be encouraged in interbank transfers between Member States and third countries.*** **[Am. 15]**

(19) Since in criminal investigations it may not be possible to identify the data required or the individuals involved until many months, or even years, after the original transfer of funds and in order to be able to have access to essential evidence in the context of investigations, it is appropriate to require payment service providers to keep records of information on the payer and the payee for the purposes of preventing, investigating and detecting money laundering or terrorist financing. This period should be limited ***to five years, after which all personal data should be deleted, unless national law provides otherwise. Further retention should be permitted only if necessary for the prevention, detection or investigation of money laundering and terrorist financing and should not exceed ten years. Payment service providers should ensure that data retained under this Regulation is used only for the purposes described herein.*** **[Am. 16]**

(20) To enable prompt action to be taken in the fight against terrorism, payment service providers should respond promptly to requests for information on the payer from the authorities responsible for combating money laundering or terrorist financing in the Member State where they are established.

(21) The number of working days in the Member State of the payment service provider of the payer determines the number of days to respond to requests for information on the payer.

(22) In order to improve compliance with the requirements of this Regulation and in accordance with the Commission Communication of 9 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector', the power to adopt supervisory measures and the sanctioning powers of competent authorities should be enhanced. Administrative sanctions should be provided for and, given the importance of the fight against money laundering and terrorist financing, Member States should lay down sanctions that are effective, proportionate and dissuasive. Member States should notify the Commission thereof, as well as the European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ([1]), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ('EIOPA'), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([2]), and the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([3]).

([1]) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

([2]) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

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

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(23) In order to ensure uniform conditions for the implementation of ~~Articles XXX~~ ***Chapter V*** of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ~~of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers~~ ([1]). **[Am. 17]**

(24) A number of countries and territories which do not form part of the territory of the Union share a monetary union with a Member State, form part of the currency area of a Member State or have signed a monetary convention with the Union represented by a Member State, and have payment service providers that participate directly or indirectly in the payment and settlement systems of that Member State. In order to avoid the application of this Regulation to transfers of funds between the Member States concerned and those countries or territories having a significant negative effect on the economies of those countries or territories, it is appropriate to provide for the possibility for such transfers of funds to be treated as transfers of funds within the Member States concerned.

(25) In view of the amendments that would need to be made to Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds ([2]), that regulation should be repealed for reasons of clarity.

(26) Since the objectives of this Regulation cannot be sufficiently achieved by Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(27) This Regulation respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8) and the right to an effective remedy and to a fair trial (Article 47) and the principle of *ne bis in idem*.

(28) In order to ensure a smooth introduction of the new anti-money laundering and terrorist financing framework, it is appropriate to coincide the application date of this Regulation with the transposition deadline for Directive …/…/EU (*).

(28a) The European Data Protection Supervisor delivered an opinion on 4 July 2013 ([3]),

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, DEFINITIONS AND SCOPE

Article 1

Subject matter

This Regulation lays down rules on the information on the payer and the payee accompanying transfers of funds for the purposes of prevention, detection and investigation of money laundering and terrorist financing, when transferring funds.

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

([2]) OJ L 345, 8.12.2006, p. 1.

(*) Number of the directive adopted on the basis of COD 2013/0025.

([3]) ***OJ C 32, 4.2.2014, p. 9.***

Article 2

Definitions

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

(1) 'terrorist financing' means terrorist financing as defined in Article 1(4) of Directive …/…/EU (*);

(2) 'money laundering' means the money laundering activities referred to in Article 1(2) or (3) of Directive …/…/EU (*);

(3) 'payer' means a ~~natural or legal person who either carries out a transfer of funds from his or her own account or who places an order for a transfer of funds~~ ***payer as defined in Article 4(7) of Directive 2007/64/EC***;**[Am. 18]**

(4) 'payee' means a ~~natural or legal person who is the intended recipient of transferred funds~~ ***payee as defined in Article 4 (8) of Directive 2007/64/EC***; **[Am. 19]**

(5) 'payment service provider' means a ~~natural or legal person who provides the~~ ***payment*** service ~~of transferring funds in his or her professional capacity~~ ***provider as defined in Article 4(9) of Directive 2007/64/EC***; **[Am. 20]**

(6) 'intermediary payment service provider' means a payment service provider, neither of the payer nor of the payee, who receives and transmits a fund transfer on behalf of the payment service provider of the payer or of the payee or of another intermediary payment service provider;

(7) 'transfer of funds' means any transaction carried out by electronic means on behalf of a payer through a payment service provider, with a view to making funds available to a payee through a payment service provider, ***in particular 'money remittance services' and 'direct debit' within the meaning of Directive 2007/64/EC,*** irrespective of whether the payer and the payee are the same person; **[Am. 21]**

(8) 'batch file transfer' means a bundle of several individual transfers of funds put together for transmission;

(9) 'unique transaction identifier' means a combination of letters or symbols determined by the payment service provider, in accordance with the protocols of the payment and settlement systems or messaging systems used for the fund transfer, which permits traceability of the transaction back to the payer and the payee;

(10) 'person-to-person' transfer of funds means a transaction between two natural persons***, who, as consumers, act for purposes other than their trade, business or profession***. **[Am. 22]**

Article 3

Scope

1. This Regulation shall apply to transfers of funds, in any currency, which are sent or received by a payment service provider established in the Union.

(*) Number of the directive adopted on the basis of COD 2013/0025.

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2. This Regulation shall not apply to transfers of funds carried out using a credit, ~~or debit card~~***debit or prepaid card or voucher***, or a mobile telephone, ***e-money,*** or any other digital or information technology (IT) device ***defined in Directive 2014/…/EU [PSD]***, where the following conditions are fulfilled: **[Am. 23]**

(a) the card or device is used to pay goods and services ***to a company within professional trade or business***; **[Am. 24]**

(b) the number of the card or device accompanies all transfers flowing from the transaction.

However, this Regulation shall apply when a credit, ~~or~~ debit ***or prepaid*** card, or a mobile telephone, ***e-money*** or any other digital or ITdevice is used in order to effect a person-to-person transfer of funds. **[Am. 25]**

3. ***This Regulation shall not apply to natural or legal persons that have no activity other than to convert paper documents into electronic data and who act under a contract with a payment service provider or to those who have no activity other than to provide payment service providers with messaging or other support systems for transmitting funds or with clearing and settlement systems.*** **[Am. 26]**

This Regulation shall not apply to transfers of funds:

(a) where the transfer of funds entails the payer withdrawing cash from his or her own account;

(b) where funds are transferred to public authorities as payment for taxes, fines or other levies within a Member State;

(c) where both the payer and the payee are payment service providers acting on their own behalf.

CHAPTER II

OBLIGATIONS ON PAYMENT SERVICE PROVIDERS

SECTION 1

OBLIGATIONS ON THE PAYMENT SERVICE PROVIDER OF THE PAYER

Article 4

Information accompanying transfers of funds

1. The payment service provider of the payer shall ensure that the transfer of funds is accompanied by the following information on the payer:

(a) the name of the payer;

(b) the payer's account number, where such an account is used to process the transfer of funds, or a unique transaction identifier where no such account is used for that purpose;

(c) the payer's address, ~~national identity number, or~~ customer identification number, or date and place of birth. **[Am. 27]**

2. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payee:

(a) the name of the payee; and

(b) the payee's account number, where such an account is used to process the transaction, or a unique transaction identifier where no such account is used for that purpose.

3. Before transferring the funds, the payment service provider of the payer shall ***apply customer due diligence measures in accordance with Directive …/…/EU*** (*) ***and shall*** verify the accuracy ***and completeness*** of the information referred to in paragraph 1 on the basis of documents, data or information obtained from a reliable and independent source. **[Am. 28]**

4. Where funds are transferred from the payer's account, the verification referred to in paragraph 3 shall be deemed to have taken place in the following cases:

(a) where a payer's identity has been verified in connection with the opening of the account in accordance with Article 11 of Directive …/…/EU (**) and the information obtained by that verification has been stored in accordance with Article 39 of that Directive; or

(b) where Article 12(5) of Directive …/…/EU (**) applies to the payer.

5. However, by way of derogation from paragraph 3, in the case of transfers of funds not made from an account, the payment service provider of the payer shall ~~shall not~~ verify ~~the information referred to in paragraph 1 if the amount does not exceed~~ ***at least the name of the payer for transfers of funds of up to*** EUR 1 000 ~~and it does not appear to be linked to other transfers of funds which, together with the transfer in question,~~ ***and the complete information relating to the payer and the payee referred to in paragraph 1 where the transaction is carried out in several operations that appear to be linked or where they*** exceed EUR 1 000. **[Am. 29]**

Article 5

Transfers of funds within the Union

1. By way of derogation from Article 4(1) and (2), where the payment service provider(s) of both the payer and the payee are established in the Union, only the ***full name and the*** account number of the payer ***and the payee*** or ~~his~~ ***the*** unique transaction identifier shall be provided at the time of the transfer of funds***, without prejudice to the information requirements laid down in Article 5(2)(b) and (3)(b) of Regulation (EU) No 260/2012***. **[Am. 30]**

2. Notwithstanding paragraph 1, the payment service provider of the payer shall, ***in the case of an identified higher risk as referred to in the Article 16(2) or (3) of, or in Annex III to, Directive …/…/EU*** (***)***, require the complete information relating to the payer and to the payee or,*** upon request from the payment service provider of the payee or the intermediary payment service provider, make available the information on the payer or the payee in accordance with Article 4, within three working days of receiving that request. **[Am. 31]**

Article 6

Transfers of funds to outside the Union

1. In the case of batch file transfers from a single payer where the payment service providers of the payees are established outside the Union, Article 4(1) and (2) shall not apply to the individual transfers bundled together therein, provided that the batch file contains the information referred to in that Article and that the individual transfers carry the account number of the payer or his unique transaction identifier.

(*) ***Number of the directive adopted on the basis of COD 2013/0025.***
(**) Number of the directive adopted on the basis of COD 2013/0025.
(***) Number of the directive adopted on the basis of COD 2013/0025.

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2. By way of derogation from Article 4(1) and (2), where the payment service provider of the payee is established outside the Union, transfers of funds amounting to EUR 1 000 or less shall be accompanied ~~only~~ by: **[Am. 32]**

(a) the name of the payer;

(b) the name of the payee;

(c) the account number of both the payer and the payee or the unique transaction identifier.

This information need not be verified for accuracy, unless there is a suspicion of money laundering or terrorist financing.

SECTION 2

OBLIGATIONS ON THE PAYMENT SERVICE PROVIDER OF THE PAYEE

Article 7

Detection of missing information on the payer and the payee

1. The payment service provider of the payee shall detect whether the fields relating to the information on the payer and the payee in the messaging system or the payment and settlement system used to effect the transfer of funds, have been filled in using the characters or inputs admissible ***to the internal risk-based established anti-abuse procedures*** within the conventions of that ***messaging or payment and settlement*** system. **[Am. 33]**

2. The payment service provider of the payee shall have effective procedures in place in order to detect whether the following information on the payer and the payee is missing:

(a) for transfers of funds where the payment service provider of the payer is established in the Union, the information required under Article 5;

(b) for transfers of funds where the payment service provider of the payer is established outside the Union, the information on the payer and the payee referred to in Article 4(1) and (2) and, where applicable, the information required under Article 14; and

(c) for batch file transfers where the payment service provider of the payer is established outside the Union the information referred to in Article 4(1) and (2) in respect of the batch file transfer.

3. For transfers of funds amounting to more than EUR 1 000, where the payment service provider of the payer is established outside the Union, the payment service provider of the payee shall verify the identity of the payee if his or her identity has not already been verified.

4. For transfers amounting to EUR 1 000 or less, where the payment service provider of the payer is established outside the Union, the payment service provider of the payee need not verify the information pertaining to the payee, unless there is a suspicion of money laundering or terrorist financing.

Member States may reduce or waive the threshold where the national risk assessment has advised that checks of transfers of funds not made from an account be intensified. Member States making use of this derogation shall inform the Commission thereof. **[Am. 34]**

4a. Where the payment service provider of the payer is established in a third country which presents an increased level of risk, enhanced customer due diligence shall be applied, in accordance with Directive …/…/EU (*)***, in respect of cross-border correspondent banking relationships with that payment service provider.*** **[Am. 35]**

Article 8

Transfers of funds with missing or incomplete information on the payer and the payee

1. The payment service provider of the payee shall establish effective risk-based procedures***, based on the identified risks in Article 16(2) of, and Annex III to, Directive …/…/EU*** (**), for determining when to execute, reject or suspend a transfer of funds lacking the required ***complete*** payer and payee information and the appropriate follow-up action. **[Am. 36]**

In any event, the payment service provider of the payer and the payment service provider of the payee shall comply with any applicable law or administrative provisions relating to money laundering and terrorist financing, in particular Regulation (EC) No 2580/2001, Regulation (EC) No 881/2002 and Directive …/…/EU **(**). [Am. 37]**

If the payment service provider ~~of the payee~~ becomes aware, when receiving transfers of funds, that information on the payer and the payee required under Article 4(1) and (2), Article 5(1) and Article 6 is missing or incomplete ***or has not been completed using the characters or inputs admissible within the conventions of the messaging or payment and settlement system***, it shall either reject the transfer or ***suspend it and*** ask for complete information on the payer and the payee ***before executing the payment transaction***. **[Am. 38]**

2. Where a payment service provider regularly fails to supply the required ***complete*** information on the payer, the payment service provider of the payee shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider or deciding whether or not to restrict or terminate its business relationship with that payment service provider. **[Am. 39]**

The payment service provider of the payee shall report that fact to the authorities responsible for combating money laundering or terrorist financing.

Article 9

Assessment and Reporting

The payment service provider of the payee shall***, in accordance with the payment service provider's risk-based procedures,*** consider missing or incomplete information on the payer and the payee to be ~~a factor~~ ***one of the factors*** in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported to the Financial Intelligence Unit. ***The payment service provider shall, in its effective risk-based procedures, also focus on, and take appropriate measures regarding, other risk factors as identified in Article 16(3) of, and Annex III to, Directive …/…/EU*** (***). **[Am. 40]**

SECTION 3

OBLIGATIONS ON INTERMEDIARY PAYMENT SERVICE PROVIDERS

Article 10

Keeping information on the payer and the payee with the transfer

Intermediary payment service providers shall ensure that all the information received on the payer and the payee that accompanies a transfer of funds is kept with the transfer.

(*) Number of the directive adopted on the basis of COD 2013/0025.
(**) Number of the directive adopted on the basis of COD 2013/0025.
(***) Number of the directive adopted on the basis of COD 2013/0025.

Article 11

Detection of missing information on the payer and the payee

1. The intermediary payment service provider shall detect whether the fields relating to the information on the payer and the payee in the messaging system or the payment and settlement system used to effect the transfer of funds, have been filled in using the characters or inputs admissible within the conventions of that system.

2. The intermediary payment service provider shall have effective procedures in place in order to detect whether the following information on the payer and the payee is missing ***or incomplete***: **[Am. 41]**

(a) for transfers of funds where the payment service provider of the payer is established in the Union, the information required under Article 5;

(b) for transfers of funds where the payment service provider of the payer is established outside the Union, the information on the payer and the payee referred to in Article 4(1) and (2) or, where applicable, the information required under Article 14; and

(c) for batch file transfers, where the payment service provider of the payer is established outside the Union, the information referred to in Article 4(1) and (2) in respect of the batch file transfer.

Article 12

Transfers of funds with missing or incomplete information on the payer and the payee

1. The intermediary payment service provider shall establish effective risk-based procedures for determining ~~when to execute, reject or suspend a transfer of funds lacking the required payer and payee information and the~~ ***whether the information received on the payer and the payee is missing or incomplete and shall undertake*** appropriate follow up action. **[Am. 42]**

If the intermediary payment service provider becomes aware, when receiving transfers of funds, that information on the payer and the payee required under Article 4(1) and (2), Article 5(1) and Article 6 is missing or incomplete ***or has not been completed using the characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system***, it shall either reject ***or suspend*** the transfer ~~or~~ ***and*** ask for complete information on the payer and the payee ***before executing the payment transaction***. **[Am. 43]**

2. Where a payment service provider regularly fails to supply the required information on the payer, the intermediary payment service provider shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider or deciding whether or not to restrict or terminate its business relationship with that payment service provider.

The intermediary payment service provider shall report that fact to the authorities responsible for combating money laundering or terrorist financing.

Article 13

Assessment and Reporting

The intermediary payment service provider shall consider missing or incomplete information on the payer and the payee to be a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported to the Financial Intelligence Unit.

Article 14

Technical limitations

1. This Article shall apply where the payment service provider of the payer is established outside the Union and the intermediary payment service provider is situated within the Union.

2. Unless the intermediary payment service provider becomes aware, when receiving a transfer of funds, that information on the payer required under this Regulation is missing or incomplete, it may use a payment system with technical limitations which prevents information on the payer from accompanying the transfer of funds to send transfers of funds to the payment service provider of the payee.

3. Where the intermediary payment service provider becomes aware, when receiving a transfer of funds, that information on the payer required under this Regulation is missing or incomplete, it shall only use a payment system with technical limitations if it is able to inform the payment service provider of the payee thereof, either within a messaging or payment system that provides for communication of this fact or through another procedure, provided that the manner of communication is accepted by, or agreed between, both payment service providers.

4. Where the intermediary payment service provider uses a payment system with technical limitations, the intermediary payment service provider shall, upon request from the payment service provider of the payee, make available to that payment service provider all the information on the payer which it has received, irrespective of whether it is complete or not, within three working days of receiving that request.

CHAPTER III

COOPERATION AND RECORD KEEPING

Article 15

Cooperation obligations ***and equivalence*** **[Am. 44]**

1. Payment service providers ***and intermediary payment service providers*** shall respond fully and without delay, in accordance with the procedural requirements established in the national law of the Member State in which they are established, to enquiries ***exclusively*** from the authorities responsible for combating money laundering or terrorist financing of that Member State concerning the information required under this Regulation. ***Specific safeguards shall be put in place in order to ensure that such exchanges of information comply with data protection requirements. No other external authorities or parties shall have access to the data stored by the payment service providers.*** **[Am. 45]**

1a. Because a great proportion of illicit financial flows ends up in tax havens, the Union should increase its pressure on those countries to cooperate in order to combat such illicit financial flows and improve transparency. **[Am. 46]**

1b. Payment service providers established in the Union shall apply this Regulation with regard to their subsidiaries and branches operating in third countries that are not deemed to be equivalent.

The Commission shall be empowered to adopt delegated acts in accordance with Article 22a concerning the recognition of the legal and supervisory framework of jurisdictions outside the Union as equivalent to the requirements of this Regulation. **[Am. 47]**

Article 15a

Data Protection

1. With regard to the processing of personal data within the framework of this Regulation, payment service providers shall carry out their tasks for the purposes of this Regulation in accordance with national law transposing Directive 95/46/EC.

2. Payment service providers shall ensure that data retained under this Regulation is used only for the purposes described herein and that it is in no case used for commercial purposes.

3. Data protection authorities shall have powers, including the indirect access powers, to investigate, either on an ex-officio basis or on the basis of a complaint, any claims as regards problems with personal data processing. This should include, in particular, access to the data file at the payment service provider and competent national authorities. **[Am. 48]**

Article 15b

Transfer of personal data to third countries or international organisations

The transfer of personal data to a third country or to an international organisation which does not ensure an adequate level of protection within the meaning of Article 25 of Directive 95/46/EC, may take place only if:

(a) appropriate data protection measures and safeguards are put in place; and

(b) the supervisory authority has, after assessing those measure and safeguards, given prior authorisation for the transfer. **[Am. 49]**

Article 16

Record keeping

Information on the payer and the payee shall not be kept any longer than strictly necessary. The payment service provider of the payer and the payment service provider of the payee shall keep records of the information referred to in Articles 4, 5, 6 and 7 for ***a maximum of*** five years. In the cases referred to in Article 14(2) and (3), the intermediary payment service provider shall keep records of all information received for five years. Upon expiry of that period, personal data shall be deleted~~, unless otherwise provided for by national law, which shall determine under which circumstances payment service providers may or shall~~. Member States may allow or require ~~further~~ retention for a longer ~~retain data.~~ ***period*** only ***in exceptional circumstances, where justified and where reasons have been given, and only*** if necessary for the prevention, detection or investigation of money laundering and terrorist financing. The maximum retention period following carrying-out of the transfer of funds shall not exceed ten years ***and the storage of personal data shall comply with national law transposing Directive 95/46/EC.*** **[Am. 50]**

The payment service providers of the payer, the payee and the intermediary service providers, shall have in place appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access. **[Am. 51]**

The information collected on the payer or the payee by the payment service providers of the payer, the payee and the intermediary payment service providers shall be deleted following expiry of the retention period. **[Am. 52]**

Article 16a

Access to information and confidentiality

1. Payment service providers shall ensure that the information collected for the purposes of this Regulation is accessible only to designated persons or limited to persons strictly necessary for the completion of the undertaken risk.

2. Payment service providers shall ensure that the confidentiality of the data processed is respected.

3. Individuals who have access to and who are dealing with personal data of the payer or the payee, shall respect the confidentiality of the data processes as well as the data protection requirements.

4. Competent authorities shall ensure that specific data protection training is provided to persons who regularly collect or process personal data. **[Am. 53]**

CHAPTER IV

SANCTIONS AND MONITORING

Article 17

Sanctions

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

2. Member States shall ensure that where obligations apply to payment services providers, in the case of a breach sanctions may be applied to the members of the management body and to any other individuals who under national law are responsible for the breach.

3. By … (*) Member States shall notify the rules referred to in paragraph 1 to the Commission and to the Joint Committee of EBA, EIOPA and ESMA. They shall notify the Commission and the Joint Committee of the EBA, EIOPA and ESMA without delay of any subsequent amendment thereto.

4. Competent authorities shall have all investigatory powers that are necessary for the exercise of their functions. In the exercise of their sanctioning powers, competent authorities shall cooperate closely to ensure that sanctions or measures produce the desired results and coordinate their action when dealing with cross border cases.

Article 18

Specific provisions

1. This Article shall apply to the following breaches:

(a) repeated non-inclusion of required information on the payer and payee ***by a payment service provider***, in breach of Articles 4, 5 and 6; **[Am. 54]**

(b) serious failure of payment service providers to ensure record keeping in conformity with Article 16;

(c) failure of the payment service provider to put in place effective risk-based policies and procedures required under Articles 8 and 12.

(ca) serious failure by intermediary payment service providers to comply with Articles 11 and 12. **[Am. 55]**

2. In the cases referred to in paragraph 1, administrative measures and sanctions that can be applied include at least the following:

(a) a public statement which indicates the natural or legal person and the nature of the breach;

(b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(c) in the case of a payment service provider, withdrawal of the authorisation of the provider;

(d) a temporary ban against any member of the payment service provider's management body or any other natural person, who is held responsible, to exercise functions with the payment service provider;

(*) Two years after the entry into force of this Regulation.

(e) in the case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual turnover of that legal person in the preceding business year; where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year;

(f) in the case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on … (*);

(g) administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.

Article 19

Publication of sanctions

The competent authorities shall publish administrative sanctions and measures imposed in the cases referred to in Article 17 and Article 18(1) ~~shall be published~~ without undue delay including information on the type and nature of the breach and the identity of persons responsible for it~~, unless such publication would seriously jeopardise the stability of financial markets~~ ***if necessary and proportionate after a case-by-case evaluation***. **[Am. 56]**

Where publication would cause a disproportionate damage to the parties involved, competent authorities shall publish the sanctions on an anonymous basis.

Where the competent authority of a Member State imposes or applies an administrative penalty or other measure in accordance with Articles 17 and 18, it shall notify EBA of that penalty or measure and of the circumstances under which it was imposed or applied. EBA shall include such notification in the central database of administrative penalties established in accordance with Article 69 of Directive 2013/36/EU of the European Parliament and of the Council [1] ***and shall apply to it the same procedures as for all other published penalties.*** **[Am. 57]**

Article 20

Application of sanctions by the competent authorities

When determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the responsible natural or legal person;

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

(d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;

(e) the losses for third parties caused by the breach, insofar as they can be determined;

(f) the level of cooperation of the responsible natural or legal person with the competent authority;

(g) previous breaches by the natural or legal person responsible.

(*) The date of the entry into force of this Regulation.

(1) ***Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).***

Article 21

Reporting of breaches

1. Member States shall establish effective mechanisms to encourage reporting of breaches of the provisions of this Regulation to competent authorities. ***Appropriate technical and organisational measures shall be implemented to protect data against accidental or unlawful destruction, accidental loss, alteration, or unlawful disclosure.*** **[Am. 58]**

2. The mechanisms referred to in paragraph 1 shall include at least:

(a) specific procedures for the receipt of reports on breaches and their follow-up;

(b) appropriate protection for ***whistleblowers and*** persons who report potential or actual breaches; **[Am. 59]**

(c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in Directive 95/46/EC.

3. The payment service providers ***in cooperation with the competent authorities*** shall establish ***internal*** appropriate procedures for their employees to report breaches internally through a ~~specific~~ ***secure, independent and anonymous*** channel. **[Am. 60]**

Article 22

Monitoring

1. Member States shall require competent authorities to effectively monitor, and take necessary measures with a view to ensuring, compliance with the requirements of this Regulation. ***EBA may issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the processes for implementing this Regulation, taking into account the best practices of Member States.*** **[Am. 61]**

1a. The Commission shall coordinate and carefully monitor the application of this Regulation with regard to payment service providers outside the Union and shall strengthen cooperation, where appropriate, with third-country authorities responsible for investigating and penalising breaches under Article 18. **[Am. 62]**

1b. By 1 January 2017, the Commission shall submit a report to the European Parliament and to the Council on the application of Chapter IV, with particular regard to cross-border cases, third-country payment service providers and their national competent authorities' execution of investigatory and penalising powers. Should there be a risk of a breach relating to the storage of data, the Commission shall take appropriate and effective action, including submitting a proposal to amend this Regulation. **[Am. 63]**

Article 22a

Exercise of the delegation

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

2. The power to adopt delegated acts referred to in Article 15(1a) shall be conferred on the Commission for an indeterminate period of time from … (*).

(*) Two years after the entry into force of this Regulation.

3. The delegation of power referred to in Article 15(1a) 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. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 15(1a) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council. **[Am. 64]**

CHAPTER V

IMPLEMENTING POWERS

Article 23

Committee procedure

1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing ('the Committee'). The Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply***, provided that implementing provisions adopted under the procedure set out therein do not alter the basic provisions of this Regulation***. **[Am. 65]**

CHAPTER VI

DEROGATIONS

Article 24

Agreements with territories or countries ***not*** referred to in Article 355 of the Treaty**[Am. 66]**

1. ***Without prejudice to Article 15(1a),*** the Commission may***, in cases in which equivalence has been substantiated,*** authorise any Member State to conclude agreements with a country or territory which does not form part of the territory of the Union referred to in Article 355 of the Treaty, which contain derogations from this Regulation, in order to allow for transfers of funds between that country or territory and the Member State concerned to be treated as transfers of funds within that Member State. **[Am. 67]**

Such agreements may be authorised only if all of the following conditions are met:

(a) the country or territory concerned shares a monetary union with the Member State concerned, forms part of the currency area of that Member State or has signed a Monetary Convention with the Union represented by a Member State;

(b) payment service providers in the country or territory concerned participate directly or indirectly in payment and settlement systems in that Member State;

and

(c) the country or territory concerned requires payment service providers under its jurisdiction to apply the same rules as those established under this Regulation.

2. Any Member State wishing to conclude an agreement as referred to in paragraph 1 shall send an application to the Commission and provide it with all the necessary information.

Upon receipt by the Commission of an application from a Member State, transfers of funds between that Member State and the country or territory concerned shall be provisionally treated as transfers of funds within that Member State, until a decision is reached in accordance with the procedure set out in this Article.

If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify the additional information required.

Once the Commission has all the information it considers to be necessary for appraisal of the request, it shall notify the requesting Member State accordingly within one month and shall transmit the request to the other Member States.

3. Within three months of the notification referred to in the fourth subparagraph of paragraph 2, the Commission shall decide, in accordance with the procedure referred to in Article 23(2) whether to authorise the Member State concerned to conclude the agreement referred to in paragraph 1 of this Article.

In any event, a decision as referred to in the first subparagraph shall be adopted within 18 months of receipt of the application by the Commission.

3a. For authorised decisions relating to dependent or associated territories already in place, uninterrupted continuation shall be ensured, namely Commission Implementing Decision 2012/43/EU [1]***, Commission Decision 2010/259/EU*** [2]***, and Commission Decision 2008/982/EC*** [3]**. [Am. 68]**

CHAPTER VII

FINAL PROVISIONS

Article 25

Repeal

Regulation (EC) No 1781/2006 is repealed.

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

Article 26

Entry into force

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

It shall apply from … (*).

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(1) ***Commission Implementing Decision 2012/43/EU of 25 January 2012 authorising the Kingdom of Denmark to conclude agreements with Greenland and the Faeroe Islands for transfers of funds between Denmark and each of these territories to be treated as transfers of funds within Denmark, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 24, 27.1.2012, p. 12).***

(2) ***Commission Decision 2010/259/EU of 4 May 2010 authorising the French Republic to conclude an agreement with the Principality of Monaco for transfers of funds between the French Republic and the Principality of Monaco to be treated as transfers of funds within the French Republic, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 112, 5.5.2010, p. 23).***

(3) ***Commission Decision 2008/982/EC of 8 December 2008 authorising the United Kingdom to conclude an agreement with the Bailwick of Jersey, the Bailiwick of Guernsey and the Isle of Man for transfers of funds between the United Kingdom, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council (OJ L 352, 31.12.2008, p. 34).***

(*) The date of transposition of the directive adopted on the basis of COD 2013/0025.

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

Done at …,

For the European Parliament	*For the Council*
The President	*The President*

Tuesday 11 March 2014

ANNEX

Correlation table referred to in Article 25.

Regulation (EC) No 1781/2006	This Regulation
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4(1)
Article 5	Article 4
Article 6	Article 5
Article 7	Article 7
Article 8	Article 7
Article 9	Article 8
Article 10	Article 9
Article 11	Article 16
Article 12	Article 10
	Article 11
	Article 12
	Article 13
Article 13	Article 14
Article 14	Article 15
Article 15	Articles 17 to 22
Article 16	Article 23
Article 17	Article 24
Article 18	—
Article 19	—
	Article 25
Article 20	Article 26

Tuesday 11 March 2014

P7_TA(2014)0191

Prevention of the use of the financial system for the purpose of money laundering and terrorist financing ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (COM(2013)0045 — C7-0032/2013 — 2013/0025(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/45)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0045),

— having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0032/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Central Bank of 17 May 2013 ([1])

— having regard to the opinion of the European Economic and Social Committee of 23 May 2013 ([2]),

— having regard to commitments made at the G8 Summit of June 2013 in Northern Ireland;

— having regard to the Commission's recommendations of 6 December 2012 on aggressive tax planning;

— having regard to the OECD Secretary General Progress Report to the G20 on 5 September 2013;

— having regard to the opinion of the Economic and Monetary Affairs Committee of 9 December 2013 on the proposal for a directive amending Council Directive 78/660/EEC and 83/349/EEC as regards disclosure and non-financial and diversity information by certain large companies as groups;

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the joint deliberations of the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs under Rule 51 of the Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Development and the Committee on Legal Affairs (A7-0150/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

([1]) OJ C 166, 12.6.2013, p. 2.
([2]) OJ C 271, 19.9.2013, p. 31.

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P7_TC1-COD(2013)0025

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Directive 2014/…/EU of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

(1) Massive flows of ~~dirty~~ ***illicit*** money can damage the stability and reputation of the financial sector and threaten the internal market, and ~~terrorism~~ ***international development. Terrorism*** shakes the very foundations of our society. ***The key facilitators of illicit money flows are secretive corporate structures operating in and through secrecy jurisdiction, often also referred to as tax havens.*** In addition to ***further developing*** the criminal law approach~~, a preventive effort~~ ***at Union level, prevention*** via the financial system ***is indispensable and*** can produce ***complementary*** results. ***However, the preventive approach should be targeted and proportional, and should not result in the establishment of a comprehensive system for controlling the entire population.*** **[Am. 1]**

(2) The soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to channel lawful or unlawful money for terrorist purposes. In order to facilitate their criminal activities, money launderers and terrorist financers could try to take advantage of the freedom of capital movements and the freedom to supply financial services which the integrated financial area entails~~, if~~. ***Therefore***, certain coordinating measures are ~~not adopted~~ ***necessary*** at Union level. ***At the same time, the objectives of protection of society from criminals and protection of the stability and integrity of the European financial system should be balanced against the need to create a regulatory environment that allows companies to grow their businesses without incurring disproportionate compliance costs. Any requirement imposed on obliged entities to fight money laundering and terrorist financing should therefore be justified and proportionate.*** **[Am. 2]**

([1]) OJ C 166, 12.6.2013, p. 2.
([2]) OJ C 271, 19.9.2013, p. 31.
([3]) Position of the European Parliament of 11 March 2014.

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(3) The current proposal is the fourth directive to deal with the threat of money laundering. Council Directive 91/308/EEC ([1]) defined money laundering in terms of drugs offences and imposed obligations solely on the financial sector. Directive 2001/97/EC of the European Parliament and of the Council ([2]) extended the scope both in terms of the crimes covered and the range of professions and activities covered. In June 2003 the Financial Action Task Force (FATF) revised its Recommendations to cover terrorist financing, and provided more detailed requirements in relation to customer identification and verification, the situations where a higher risk of money laundering may justify enhanced measures and also situations where a reduced risk may justify less rigorous controls.

Those changes were reflected in Directive 2005/60/EC of the European Parliament and of the Council ([3]) and Commission Directive 2006/70/EC ([4]). ***In implementing the FATF Recommendations, the Union should fully respect its data protection law, as well as the Charter of Fundamental Rights of the European Union (Charter) and the European Convention for the Protection of Human Rights and Fundamental Freedoms.*** **[Am. 3]**

(4) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even Union level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the Union in that field should therefore be ~~consistent with~~ ***compatible with, and at least as stringent as,*** other action undertaken in ~~other~~ ***the*** international fora. ***Avoiding tax and mechanisms of non-disclosure and concealment can be used as strategies employed in money laundering and terrorist financing in order to avoid detection***. Union action should continue to take particular account of the FATF Recommendations, ~~which constitutes the foremost~~ ***and the recommendations of other*** international ~~body~~ ***bodies*** active in the fight against money laundering and terrorist financing. With a view to reinforce the efficacy of the fight against money laundering and terrorist financing, Directives 2005/60/EC and 2006/70/EC should***, where appropriate,*** be aligned with the new FATF Recommendations adopted and expanded in February 2012. ***However, it is essential for such an alignment with the non-binding FATF Recommendations to be carried out in full compliance with Union law, especially as regards Union data protection law and the protection of fundamental rights as enshrined in the Charter.*** **[Am. 4]**

(4a) Particular attention should be paid to the fulfilment of the obligations set out in Article 208 of the Treaty on the Functioning of the European Union (TFEU), which requires coherence in development cooperation policy in order to stem the increasing trend of money laundering activities being moved from developed countries to developing countries with less stringent anti-money laundering law. **[Am. 5]**

(4b) In view of the fact that illicit financial flows, and in particular money laundering, represent between 6 and 8,7 % of the GDP of developing countries ([5]), which is an amount 10 times larger than the assistance by the Union and its Member States to the developing world, the measures taken to combat money laundering and terrorist financing need to be coordinated and to take into account the Union's and the Member States' development strategy and policies which aim to fight against capital flight. **[Am. 6]**

([1]) Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.6.1991, p. 77).

([2]) Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (OJ L 344, 28.12.2001, p. 76).

([3]) Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

([4]) Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (OJ L 214, 4.8.2006, p. 29).

([5]) ***Sources: 'Tax havens and development. Status, analyses and measures', NOU, Official Norwegian Reports, 2009.***

(5) Furthermore, the misuse of the financial system to channel criminal or even clean money to terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system. Accordingly, the preventive measures of this Directive should cover ~~not only~~ the manipulation of money derived from ***serious*** crime ~~but also~~ ***and*** the collection of money or property for terrorist purposes. **[Am. 7]**

(5a) Irrespective of the penalties provided for in the Member States, the primary objective of all measures taken under this Directive should be to combat all practices which result in substantial illegal profits being generated. It should do so by taking all possible steps to prevent the financial system from being used to launder those profits. **[Am. 8]**

(6) The use of large cash payments is vulnerable to money laundering and terrorist financing. In order to increase vigilance and mitigate the risks posed by cash payments natural and legal persons ~~trading in goods~~ should be covered by this Directive to the extent that they make or receive cash payments of EUR 7 500 or more. Member States should be able to decide to adopt stricter provisions including a lower threshold. **[Am. 9]**

(6a) Electronic money products are increasingly used as a substitute for bank accounts. The issuers of such products should be under a strict obligation to prevent money laundering and terrorist financing. However, it should be possible to exempt electronic money products from customer due diligence if certain cumulative conditions are met. The use of electronic money that is issued without performing customer due diligence should be allowed for the purchase of goods and services only from merchants and providers who are identified and whose identification is verified by the electronic money issuer. For person-to-person transfers, the use of electronic money without performing customer due diligence should not be allowed. The amount stored electronically should be sufficiently small in order to avoid loopholes and to make sure that a person cannot obtain an unlimited amount of anonymous electronic money products. **[Am. 10]**

(6b) Estate agents are active in many different ways in the field of property transactions in the Member States. In order to reduce the risk of money laundering in the property sector estate agents should be included within the scope of this Directive where they are involved in financial transactions relating to property as part of their professional activities. **[Am. 11]**

(7) Legal professionals, as defined by the Member States, should be subject to the provisions of this Directive when participating in financial or corporate transactions, including providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering the proceeds of criminal activity or for the purpose of terrorist financing. There should, however, be exemptions from any obligation to report information obtained either before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client. Thus, legal advice should remain subject to the obligation of professional secrecy unless the legal counsellor is taking part in money laundering or terrorist financing, the legal advice is provided for money laundering or terrorist financing purposes or the lawyer knows that the client is seeking legal advice for money laundering or terrorist financing purposes.

(8) Directly comparable services should be treated in the same manner when provided by any of the professionals covered by this Directive. In order to ensure respect for the rights guaranteed by the Charter, in the case of auditors, external accountants and tax advisors, who, in some Member States, may defend or represent a client in the context of judicial proceedings or ascertain a client's legal position, the information they obtain in the performance of those tasks should not be subject to the reporting obligations in accordance with this Directive.

(9) It is important to highlight expressly that 'tax crimes' relating to direct and indirect taxes are included in the ~~broad~~ definition of 'criminal activity' under this Directive in line with the revised FATF Recommendations. ***The European Council of 23 May 2013 stated the need to deal with tax evasion and fraud and to fight money laundering in a comprehensive manner, both within the internal market and vis-à-vis non-cooperative third countries and***

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***jurisdictions. Agreeing on a definition of tax crimes is an important step in detecting those crimes, as too is public the disclosure of certain financial information by large companies operating in the Union on a country-by-country basis. It is also important to ensure that obliged entities and legal professionals, as defined by Member States, do not seek to frustrate the intent of this Directive or to facilitate or to engage in aggressive tax planning*. [Am. 12]**

***(9a) Member States should introduce General Anti-Avoidance Rules (GAAR) on tax matters with a view to curbing aggressive tax planning and avoidance in accordance with the European Commission's recommendations on Aggressive Tax Planning on 12 December 2012 and the OECD Progress Report to the G20 on 5 September 2013.* [Am. 13]**

***(9b) When they are performing or facilitating commercial or private transactions, entities which have a specific role in the financial system, such as the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD), the central banks of the Member States and central settlement systems should, as far as possible, observe the rules applicable to other obliged entities adopted pursuant to this Directive.* [Am. 14]**

(10) There is a need to identify any natural person who exercises ownership or control over a legal person. While finding a ***specific*** percentage shareholding will not automatically result in finding the beneficial owner, it is ~~an evidential~~ ***one*** factor ~~to be taken into account~~ ***among others for the identification of the beneficial owner***. Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and should follow the chain of ownership until the natural person who exercises ownership or control of the legal person that is the customer is found. **[Am. 15]**

(11) ***It is important to ensure, and to enhance, the traceability of payments.*** The ~~need for~~ ***existence of*** accurate and up-to-date information on the beneficial owner ***of any legal entity, such as legal persons, trusts, foundations, holdings and all other similar existing or future legal arrangements*** is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that companies retain information on their beneficial ownership and make ~~this~~ ***adequate, accurate and up-to-date*** information available ~~to competent authorities and obliged entities~~ ***through central public registers, accessible on-line and in an open and secure data format, in accordance with Union data protection rules and the right to privacy as enshrined in the Charter. Access to such registers should be granted to competent authorities, in particular FIUs and obliged entities, as well as to the public subject to prior identification of the person wishing to access the information and to the possible payment of a fee.*** In addition, trustees should declare their status to obliged entities. **[Am. 16]**

(11a) The establishment of beneficial ownership registers by Member States would significantly improve the fight against money laundering, terrorist financing, corruption, tax crimes, fraud and other financial crimes. This could be achieved by improving the operations of the existing business registers in the Member States. It is vital that registers are interconnected if effective use is to be made of the information contained therein, due to the cross-border nature of business transactions. The interconnection of business registers across the Union is already required by Directive 2012/17/EU of the European Parliament and of the Council [1] ***and should be further developed.* [Am. 17]**

(11b) Technological progress has provided tools which enable obliged entities to verify the identity of their customers when certain transactions occur. Such technological improvements provide time-effective and cost-effective solutions to businesses and to customers and should therefore be taken into account when evaluating risk. The

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[1] ***Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies register (OJ L 156, 16.6.2012, p. 1).***

competent authorities of Member States and obliged entities should be proactive in combating new and innovative ways of money laundering, while respecting fundamental rights, including the right to privacy and data protection. **[Am. 18]**

(12) This Directive should also apply to those activities of the obliged entities covered by this Directive which are performed on the internet.

(12a) The representatives of the Union in the governing bodies of the EBRD should encourage the EBRD to implement the provisions of this Directive and to publish on its website an anti-money laundering policy, containing detailed procedures that would give effect to this Directive. **[Am. 19]**

(13) The use of the gambling sector to launder the proceeds of criminal activity is of concern. In order to mitigate the risks related to the sector and to provide parity amongst the providers of gambling services, an obligation for ~~all~~ providers of gambling services to conduct customer due diligence for single transactions of EUR 2 000 or more should be laid down. ***When carrying out that due diligence a risk based approach should be adopted that reflects the different risks for different types of gambling services and whether they represent a high or low risk for money laundering. The special characteristics of different types of gambling should also be taken into account, by, for example, differentiating between casinos, on-line gambling or other providers of gambling services.*** Member States should consider applying that threshold to the collection of winnings as well as wagering a stake. Providers of gambling services ~~with physical premises (e.g. casinos and gaming houses)~~ should ensure that customer due diligence, if it is taken at the point of entry ~~to the premises,~~ can be linked to the transactions conducted by the customer ~~on those premises~~. **[Am. 20]**

(13a) Money laundering is becoming increasingly sophisticated and also includes illegal, and sometimes legal, betting, in particular in relation to sporting events. New forms of lucrative organised crime like match-fixing have arisen and have developed into a profitable form of criminal activity related to money laundering. **[Am. 21]**

(14) The risk of money laundering and terrorist financing is not the same in every case. Accordingly, a ***holistic*** risk-based approach ***based on minimum standards*** should be used. The risk-based approach is not an unduly permissive option for Member States and obliged entities. It involves the use of evidence-based decision making to better target the money laundering and terrorist financing risks facing the Union and those operating within it. **[Am. 22]**

(15) Underpinning the risk-based approach is a need for Member States ***and the Union*** to identify, understand and mitigate the money laundering and terrorist financing risks it faces. The importance of a supra-national approach to risk identification has been recognised at international level, and the European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ([1]); the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ('EIOPA'), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([2]); and the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([3]), should be tasked with issuing an opinion on the risks affecting the financial sector ***and, in cooperation with Member States, should develop minimum standards for risk assessments carried out by the competent national authorities. That process should, as far as possible, involve relevant stakeholders through public consultations.*** **[Am. 23]**

([1]) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

([2]) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

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

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(16) The results of risk assessments ~~at Member State level~~ should, where appropriate, be made available ***in a timely manner*** to obliged entities to enable them to identify, understand and mitigate their own risks. **[Am. 24]**

(17) In order to better understand and mitigate risks at Union level, ***a supranational risk analysis should be carried out so that the risks of money laundering and terrorist financing to which the internal market is exposed can be identified effectively. The Commission should require the Member States to deal with scenarios considered to be high risk in an effective way. Furthermore,*** Member States should share the results of their risk assessments with each other and with the Commission, EBA, EIOPA ~~and~~, ESMA ***(together referred to as the 'ESAs'), and Europol***, where appropriate. **[Am. 25]**

(18) When applying the provisions of this Directive, it is appropriate to take account of the characteristics and needs of small obliged entities which fall under its scope, and to ensure a treatment which is appropriate to the specific needs of small obliged entities, and the nature of the business.

(19) Risk itself is variable in nature, and the variables, either on their own or in combination, may increase or decrease the potential risk posed, thus having an impact on the appropriate level of preventative measures, such as customer due diligence measures. Thus, there are circumstances in which enhanced due diligence should be applied and others in which simplified due diligence may be appropriate.

(20) It should be recognised that certain situations present a greater risk of money laundering or terrorist financing. Although the identity and business profile of all customers should be established, there are cases where particularly rigorous customer identification and verification procedures are required.

(21) This is particularly true of ~~business~~ relationships with individuals who hold or have held important public positions, particularly those from countries where corruption is widespread***, within the Union and internationally***. Such relationships may expose the financial sector in particular to significant reputational and legal risks. The international effort to combat corruption also justifies the need to pay special attention to such cases and to apply appropriate enhanced customer due diligence measures in respect of persons who hold or have held prominent functions domestically or abroad and senior figures in international organisations. **[Am. 26]**

(21a) The need for enhanced customer due diligence measures in respect of persons who hold or have held prominent functions, whether domestically or abroad, and senior figures in international organisations should not, however, lead to a situation in which lists containing information on such persons are traded for commercial purposes. Member States should take appropriate measures to prohibit such activity. **[Am. 27]**

(22) Obtaining approval from senior management for establishing business relationships need not, in all cases, imply obtaining approval from the board of directors. Granting of such approval should be possible by someone with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to make decisions affecting its risk exposure.

(22a) It is essential for the Union to develop a common approach and a common policy to deal with non-cooperative jurisdictions that perform poorly in combating money laundering and terrorist financing. To that end, the Member States should act on and apply directly any lists of countries published by the FATF in their national systems to combat money laundering and terrorist financing. Furthermore, the Member States and the Commission should identify other non-cooperative jurisdictions on the basis of all information available. The Commission should develop a common approach to measures to be used to protect the integrity of the internal market against those non-cooperative jurisdictions. **[Am. 28]**

(23) In order to avoid repeated customer identification procedures, leading to delays and inefficiency in business, it is appropriate, subject to suitable safeguards, to allow customers whose identification has been carried out elsewhere to be introduced to the obliged entities. Where an obliged entity relies on a third party, the ultimate responsibility for the customer due diligence procedure remains with the obliged entity to whom the customer is introduced. The third

party, or the person that has introduced the customer, should also retain his own responsibility for compliance with the requirements in this Directive, including the requirement to report suspicious transactions and maintain records, to the extent that he has a relationship with the customer that is covered by this Directive.

(24) In the case of agency or outsourcing relationships on a contractual basis between obliged entities and external natural or legal persons not covered by this Directive, any anti-money laundering and anti-terrorist financing obligations for those agents or outsourcing service providers as part of the obliged entities, may arise only from contract and not from this Directive. The responsibility for complying with this Directive should remain ***primarily*** with the obliged entity ~~covered hereby.~~ ***In addition, Member States should ensure that any such third parties may be held liable for breaches of national provisions adopted pursuant to this Directive.*** **[Am. 29]**

(25) All Member States have, or should, set up ***operationally independent and autonomous*** financial intelligence units (FIUs) to collect and analyse the information which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing. Suspicious transactions should be reported to the FIUs, which should serve as a national centre for receiving, analysing and disseminating to the competent authorities suspicious transaction reports and other information regarding potential money laundering or terrorist financing. This should not compel Member States to change their existing reporting systems where the reporting is done through a public prosecutor or other law enforcement authorities, as long as the information is forwarded promptly and unfiltered to FIUs, allowing them to perform their tasks properly, including international cooperation with other FIUs. ***It is important that Member States provide FIUs with the necessary resources to ensure that they have full operational capacity to deal with the current challenges posed by money laundering and terrorist financing while respecting fundamental rights, including the right to privacy and data protection.*** **[Am. 30]**

(26) By way of derogation from the general prohibition on executing suspicious transactions, obliged entities may execute suspicious transactions before informing the competent authorities, where refraining from the execution thereof is impossible or likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation. This, however, should be without prejudice to the international obligations accepted by the Member States to freeze without delay funds or other assets of terrorists, terrorist organisations or those who finance terrorism, in accordance with the relevant United Nations Security Council resolutions.

(26a) Since a huge proportion of illicit financial flows ends up in tax havens, the Union should increase the pressure it brings to bear on those countries to cooperate, in order to combat money laundering and terrorist financing. **[Am. 31]**

(27) Member States should have the possibility to designate an appropriate self-regulatory body of the professions referred to in Article 2(1)(3)(a),(b), and (d) as the authority to be informed in the first instance in place of the FIU. In line with the case law of the European Court of Human Rights, a system of first instance reporting to a self-regulatory body constitutes an important safeguard to uphold the protection of fundamental rights as concerns the reporting obligations applicable to lawyers.

(28) Where a Member State decides to make use of the exemptions provided for in Article 33(2), it may allow or require the self-regulatory body representing the persons referred to therein not to transmit to the FIU any information obtained from those persons in the circumstances referred to in that Article.

(29) There have been a number of cases of ***individuals, including*** employees ***and representatives*** who report their suspicions of money laundering being subject to threats or hostile action. Although this Directive cannot interfere with Member States' judicial procedures, this is a crucial issue for the effectiveness of the anti-money laundering and anti-terrorist financing system. Member States should be aware of this problem and should do whatever they can to protect ***individuals, including*** employees ***and representatives*** from such threats or hostile action***, as well as from other adverse treatment or adverse consequences, making it easier for them to report suspicions, thereby strengthening the fight against money laundering***. **[Am. 32]**

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(30) Directive 95/46/EC of the European Parliament and of the Council ([1]), as transposed into national law, is applicable to the processing of personal data for the purposes of this Directive.

(30a) Regulation (EC) No 45/2001 of the European Parliament and of the Council ([2]) is applicable to the processing of personal data by the Union institutions and bodies for the purposes of this Directive. **[Am. 33]**

(31) Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data. The processing of personal data should be permitted in order to comply with the obligations laid down in this Directive, including carrying out customer due diligence, ongoing monitoring, investigation and reporting of unusual and suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, ***identification of a politically exposed person,*** sharing of information by competent authorities and sharing of information by financial institutions ***and obliged entities***. The personal data collected should be limited to what is strictly necessary for the purpose of complying with the requirements of this Directive and not further processed in a way inconsistent with Directive 95/46/EC. In particular, further processing of personal data for commercial purposes should be strictly prohibited. **[Am. 34]**

(32) The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. ***The eradication of such phenomena requires a resolute political will and cooperation at all levels.*** **[Am. 35]**

(32a) It is of the utmost importance that investment that is co-financed by the Union budget fulfils the highest standards in order to prevent financial crimes including corruption and tax evasion. In 2008, the EIB therefore adopted an internal guideline entitled 'Policy on preventing and deterring prohibited conduct in European Investment Bank activities' with Article 325 TFEU, Article 18 of the EIB Statute and Council Regulation (EC, Euratom) No 1605/2002 ([3]) as its legal basis. Following adoption of the policy, the EIB is to report on suspicions or alleged cases of money laundering affecting EIB supported projects, operations and transactions to the Luxembourg FIU. **[Am. 36]**

~~(33) This Directive is without prejudice to the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, including the provisions of Framework decision 2008/977/JHA.~~ **[Am. 37]**

(34) The rights of access of the data subject are applicable to the personal data processed for the purpose of this Directive. However, access by the data subject to information contained in a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Limitations on that right in accordance with Article 13 of Directive 95/46/EC may therefore be justified. ***However, such limitations have to be counterbalanced by the effective powers granted to the data protection authorities, including indirect access powers, laid down in Directive 95/46/EC, enabling them to investigate, on an ex officio basis or on the basis of a complaint, any claims concerning problems with personal data processing. This should in particular include access to the data file at the obliged entity.*** **[Am. 38]**

(35) Persons who merely convert paper documents into electronic data and act under a contract with a credit institution or a financial institution do not fall within the scope of this Directive, nor does any natural or legal person that provides credit or financial institutions solely with a message or other support systems for transmitting funds or with clearing and settlement systems.

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

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

([3]) ***Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1).***

(36) Money laundering and terrorist financing are international problems and the effort to combat them should be global. Where Union credit or financial institutions have branches or subsidiaries located in third countries where the law in that area is deficient, they should, in order to avoid the application of very different standards within the institution or group of institutions, apply Union standards or notify the competent authorities of the home Member State if application of such standards is impossible.

(37) Feedback should, ~~where practicable~~ ***where possible***, be made available to obliged entities on the usefulness and follow-up of the suspicious transactions reports they present. To make this possible, and to be able to review the effectiveness of their systems to combat money laundering and terrorist financing Member States should keep and improve the relevant statistics. To further enhance the quality and consistency of the statistical data collected at Union level, the Commission should keep track of the Union-wide situation with respect to the fight against money laundering and terrorist financing and publish regular overviews***, including an evaluation of national risk assessments. The Commission should carry out the first such overview within one year from the date of entry into force of this Directive.*** **[Am. 39]**

(37a) Member States should not only ensure that obliged entities comply with the relevant rules and guidelines, but should also have systems in place that actually minimise the risks of money laundering within those entities. **[Am. 40]**

(37b) In order to be able to review the effectiveness of their systems to combat money laundering and terrorist financing, Member States should keep and improve the relevant statistics. In order further to enhance the quality and consistency of the statistical data collected at Union level, the Commission should keep track of the Union-wide situation with respect to the fight against money laundering and terrorist financing and should publish regular overviews. **[Am. 41]**

(38) Competent authorities should ensure that, in regard to currency exchange offices, trust and company service providers or gambling service providers, the persons who effectively direct the business of such entities and the beneficial owners of such entities are fit and proper persons. The criteria for determining whether or not a person is fit and proper should, as a minimum, reflect the need to protect such entities from being misused by their managers or beneficial owners for criminal purposes.

(39) Taking into account the transnational character of money laundering and terrorist financing, coordination and cooperation between EU FIUs are extremely important. Such cooperation has so far been addressed only by Council Decision 2000/642/JHA ([1]). In order to ensure better coordination and cooperation between FUIs, and in particular to ensure that suspicious transactions reports reach the FIU of the Member State where the report would be of most use, more detailed, further going and up-dated rules should be included in this Directive.

(40) Improving the exchange of information between FIUs within the Union is of particular importance to face the transnational character of money laundering and terrorist financing. The use of secure facilities for the exchange of information~~, especially the decentralised computer network FIU.net~~ and the techniques offered by ~~that network~~ ***such facilities*** should be encouraged by Member States. **[Am. 42]**

(41) The importance of combating money laundering and terrorist financing should lead Member States to lay down effective, proportionate and dissuasive sanctions in national law for failure to respect the national provisions adopted pursuant to this Directive. Member States currently have a diverse range of administrative measures and sanctions for breaches of the key preventative measures. This diversity could be detrimental to the efforts put into combating money laundering and terrorist financing and the Union's response is at risk of being fragmented. This Directive should therefore include a range of administrative measures and sanctions that Member States shall have available for

([1]) Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (OJ L 271, 24.10.2000, p. 4).

systematic breaches of the requirements relating to customer due diligence measures, record keeping, reporting of suspicious transactions and internal controls of obliged entities. That range should be sufficiently broad to allow Member States and competent authorities to take account of the differences between obliged entities, in particular between financial institutions and other obliged entities, as regards their size, characteristics***, level of risk*** and areas of activity. In the application of this Directive, Member States should ensure that the imposition of administrative measures and sanctions in accordance with this Directive and of criminal sanctions in accordance with national law does not breach the principle of *ne bis in idem*. **[Am. 43]**

(42) Technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As bodies with highly specialised expertise, it would be efficient and appropriate to entrust the ESAs with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.

(42a) To allow competent authorities and obliged entities to better evaluate the risks arising from certain transactions, the Commission should draw up a list of the jurisdictions outside the Union that have implemented rules and regulations similar to those laid down in this Directive. **[Am. 44]**

(43) The Commission should adopt the draft regulatory technical standards developed by the ESAs pursuant to Article 42 of this Directive by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

(44) In view of the very substantial amendments that would need to be made to Directives 2005/60/EC and 2006/70/EC, they should be merged and replaced for reasons of clarity and consistency.

(45) Since the objective of this Directive, namely the protection of the financial system by means of prevention, investigation and detection of money laundering and terrorist financing, cannot be sufficiently achieved by the Member States, as individual measures adopted by Member States to protect their financial systems could be inconsistent with the functioning of the internal market and with the prescriptions of the rule of law and Union public policy but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 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 that objective.

(46) This Directive respects the fundamental rights and observes the principles recognised by the Charter, in particular, the respect for private and family life, the ***presumption of innocence, the*** right to protection of personal data, the freedom to conduct a business, the prohibition of discrimination, the right to an effective remedy and to a fair trial, and the right of defence. **[Am. 45]**

(47) In line with Article 21 of the Charterprohibiting any discrimination based on any ground, Member States have to ensure that this Directive is implemented, as regards risk assessments in the context of customer due diligence, without discrimination.

(48) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, 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.

(48a) Member States and obliged entities, when applying this Directive or national law transposing this Directive, are bound by Council Directive 2000/43/EC [1]**.** **[Am. 46]**

([1]) ***Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).***

(48b) The European Data Protection Supervisor delivered an opinion on 4 July 2013 ([1]),

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

SECTION 1

SUBJECT-MATTER, SCOPE AND DEFINITIONS

Article 1

1. Member States shall ensure that money laundering and terrorist financing are prohibited.

2. For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:

(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property ***or of avoiding freezing or confiscation orders*** or of assisting any person who is involved in the commission of such activity to evade the legal consequences of that person's action; **[Am. 47]**

(b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;

(c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;

(d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to in points (a), (b) and (c).

3. Money laundering shall be regarded as such even where the activities which generated the property to be laundered were carried out in the territory of another Member State or in that of a third country.

4. For the purposes of this Directive, 'terrorist financing' means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA ([2]), as amended by Council Framework Decision 2008/919/JHA ([3]).

5. Knowledge, intent or purpose required as an element of the activities referred to in paragraphs 2 and 4 may be inferred from objective factual circumstances.

Article 2

1. This Directive shall apply to the following obliged entities:

(1) credit institutions;

(2) financial institutions;

([1]) ***OJ C 32, 4.2.2014, p. 9.***

([2]) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

([3]) Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism (OJ L 330, 9.12.2008, p. 21).

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(3) the following natural or legal persons acting in the exercise of their professional activities:

(a) auditors, external accountants and tax advisors;

(b) notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their client in any financial or immovable property transaction, or by assisting in the planning or execution of transactions for their client concerning the:

(i) buying and selling of real property or business entities;

(ii) managing of client money, securities or other assets;

(iii) opening or management of bank, savings or securities accounts;

(iv) organisation of contributions necessary for the creation, operation or management of companies;

(v) creation, operation or management of trusts, ***foundations, mutuals,*** companies or similar structures; **[Am. 48]**

(c) trust or company service providers not already covered under point (a) or (b);

(d) estate agents, including letting agents***, in so far as they are involved in financial transactions***; **[Am. 49]**

(e) other natural or legal persons trading in goods ***or services***, only to the extent that payments are made or received in cash in an amount of EUR 7 500 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked; **[Am. 50]**

(f) providers of gambling services.

With the exception of casinos, Member States may decide to exempt in full or in part certain gambling services, as referred to in point (3)(f) of the first subparagraph, from national provisions transposing this Directive on the basis of the low risk posed by the nature of the services on the basis of risk assessments. Before applying any such an exemption, the Member State concerned shall seek the approval of the Commission. **[Am. 153]**

2. Member States may decide that natural or legal persons that engage in a financial activity on an occasional or very limited basis where there is little risk of money laundering or terrorist financing occurring, do not fall within the scope of this Directive provided that the natural or legal person fulfils all of the following criteria:

(a) the financial activity is limited in absolute terms;

(b) the financial activity is limited on a transaction basis;

(c) the financial activity is not the main activity;

(d) the financial activity is ancillary and directly related to the main activity;

(e) the main activity is not an activity referred to in paragraph 1, with the exception of the activity referred to in point (3)(e) of paragraph 1;

(f) the financial activity is provided only to the customers of the main activity and is not generally offered to the public.

The firstsubparagraph shall not apply to natural or legall persons engaged in the activity of money remittance within the meaning of Article 4(13) of Directive 2007/64/EC of the European Parliament and of the Council ([1]).

([1]) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

3. For the purposes of point (a) of paragraph 2, Member States shall require that the total turnover of the financial activity does not exceed a threshold, which must be sufficiently low. That threshold shall be established at national level, depending on the type of financial activity.

4. For the purposes of point (b) of paragraph 2, Member States shall apply a maximum threshold per customer and single transaction, whether the transaction is carried out in a single operation or in several operations which appear to be linked. That threshold shall be established at national level, depending on the type of financial activity. It shall be sufficiently low in order to ensure that the types of transactions in question are an impractical and inefficient method for laundering money or for terrorist financing, and shall not exceed EUR 1 000.

5. For the purposes of point (c) of paragraph 2, Member States shall require that the turnover of the financial activity does not exceed 5 % of the total turnover of the natural or legal person concerned.

6. In assessing the risk of money laundering or terrorist financing occurring for the purposes of this Article, Member States shall pay special attention to any financial activity which is regarded as particularly likely, by its nature, to be used or abused for money laundering or terrorist financing purposes.

7. Any decision pursuant to this Article shall state the reasons on which it is based. Member States shall provide for the possibility of withdrawing that decision should circumstances change.

8. Member States shall establish risk-based monitoring activities or take any other adequate measures to ensure that the exemption granted by decisions pursuant to this Article is not abused.

Article 3

For the purposes of this Directive the following definitions shall apply:

(1) 'credit institution' means a credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ([1]), including branches thereof, as defined in point 17 of Article 4(1) of that Regulation, located in the Union, whether its head office is situated within the Union or in a third country;

(2) 'financial institution' means:

(a) an undertaking other than a credit institution the principal activity of which is to pursue one or more of the activities listed in points (2) to (12) and points (14) and (15) of Annex I to Directive 2013/36/EU of the European Parliament and of the Council ([2]), including the activities of currency exchange offices (bureaux de change);

(b) an insurance company duly authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council ([3]), insofar as it carries out activities covered by that Directive;

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

([2]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

([3]) 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).

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(c) an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council ([1]);

(d) a collective investment undertaking marketing its units or shares;

(e) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council ([2]), with the exception of intermediaries as referred to in Article 2(7) of that Directive, when they act in respect of life insurance and other investment related services;

(f) branches of financial institutions as referred to in points (a) to (e) that are located in the Union, whether its head office is situated in the Union or in a third country;

(3) 'property' means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets;

(4) 'criminal activity' means any kind of criminal involvement in the commission of the following serious crimes:

(a) acts as defined in Articles 1 to 4 of Framework Decision 2002/475/JHA, as amended by Framework Decision 2008/919/JHA;

(b) any of the offences referred in Article 3(1)(a) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

(c) the activities of criminal organisations as defined in Article 1 of Council Joint Action 98/733/JHA ([3]);

(d) fraud affecting the Union's financial interests, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the Protection of the European Communities' Financial Interests ([4]);

(e) corruption;

(f) all offences, including tax ~~crimes~~ ***offences*** related to direct taxes and indirect taxes, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months; **[Am. 52; Am. does not concern all languages]**

(4a) 'self-regulatory body' means a body that has the power, recognised by national law, to establish the obligations and rules governing a certain profession or a certain field of economic activity, which must be complied with by natural or legal persons in that profession or field; **[Am. 53]**

([1]) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

([2]) Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3).

([3]) Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (OJ L 351, 29.12.1998, p. 1).

([4]) OJ C 316, 27.11.1995, p. 49.

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(5) 'beneficial owner' means any natural person who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted and includes at least:

(a) in the case of corporate entities:

(i) the natural person who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards.

~~A percentage~~ ***In any event, a shareholding*** of 25 % plus one share ~~shall be~~ ***by a natural person is*** evidence of ~~ownership or control through shareholding and applies to every level of~~ direct ~~and indirect~~ ownership; ***a shareholding of 25 % plus one share in the customer, held by a corporate entity, which is under the control of a natural person, or by multiple corporate entities, which are under the*** control ***of the same natural person, shall be an indication of indirect ownership; the notion of control shall be determined, inter alia, in accordance with the criteria laid down in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council*** [1]***; however, this applies without prejudice to the right for Member States to decide that a lower percentage may be evidence of ownership or control***;

(ii) if there is any doubt that the person identified in point (i) is the beneficial owner ***or if after taking all the necessary measures no person can be identified in point (i)***, the natural person who exercises control over the management of a legal entity through other means***, which may include the senior management***;

(iia) where no natural person is identified under point (i) or (ii), the natural person who holds the position of senior managing official, in which case, the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under points (i) and (ii) in order to prove the inability to identify such persons;

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts ***or mutuals***, which administer and distribute funds:

(i) the natural person who exercises control over 25 % or more of the property of a legal arrangement or entity; and

(ii) where the future beneficiaries have already been determined, the natural person who is the beneficiary of 25 % or more of the property of a legal arrangement or entity; or

(iii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates. For beneficiaries of trusts that are designated by characteristics or by class, obliged entities shall obtain sufficient information concerning the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights;

(iiia) for trusts, the identity of the settlor, trustee, the protector (if any), the beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership); **[Am. 54]**

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

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(6) 'trust or company service provider' means any natural or legal person which by way of business provides any of the following services to third parties:

(a) forming companies or other legal persons;

(b) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

(c) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;

(d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;

(e) acting as or arranging for another person to act as a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Union law or subject to equivalent international standards;

(7) (a) 'foreign politically exposed persons' means natural persons who are or have been entrusted with a prominent public function by a third country;

(b) 'domestic ***politically exposed*** persons' means natural persons who are or who have been entrusted by ~~a~~ ***the*** Member State with a prominent public function; **[Am. 55; Am. does not concern all languages]**

(c) 'persons who are or who have been entrusted with a prominent function by an international organisation' means directors, deputy directors and members of the board or equivalent function of an international organisation;

(d) 'natural persons who are or have been entrusted with a prominent public function' include the following:

(i) heads of State, heads of government, ministers and deputy or assistant ministers;

(ii) members of parliaments ***or similar legislative bodies***; **[Am. 56]**

(iii) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;

(iv) members of courts of auditors or of the boards of central banks;

(v) ambassadors, *chargés d'affaires* and high-ranking officers in the armed forces;

(vi) ***senior*** members of the administrative, management or supervisory bodies of State owned enterprises. **[Am. 57]**

None of the categories set out in points (i) to (vi) shall be understood as covering middle-ranking or more junior officials;

(e) 'family members' means:

(i) the spouse;

(ii) any partner considered to be equivalent to the spouse;

~~(iii) the children and their spouses or partners;~~ **[Am. 58]**

~~(iv) the parents;~~ **[Am. 59]**

(f) '~~persons known to be~~ close associates' means: **[Am. 87]**

(i) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in points (7)(a) to (d);

(ii) any natural person who has ~~sole~~ beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in points (7)(a) to (d); **[Am. 60]**

(8) 'senior management' means an officer or employee with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to make decisions affecting its risk exposure. It need not, in all cases, involve a member of the board of directors;

(9) 'business relationship' means a business, professional or commercial relationship which is connected with the professional activities of the obliged entities and which is expected, at the time when the contact is established, to have an element of duration;

(10) 'gambling services' means any service which involves wagering a stake with monetary value in games of chance including those with an element of skill such as lotteries, casino games, poker games and betting transactions that are provided at a physical location, or by any means at a distance, by electronic means or any other technology for facilitating communication, and at the individual request of a recipient of services;

(10a) 'betting transaction' means all the stages in the commercial relationship between, on the one hand, the gambling service provider and, on the other, the customer and the beneficiary of the registration of the bet and the stake until the payout of any winnings; **[Am. 61]**

(11) 'group' means group as defined in Article 2(12) of Directive 2002/87/EC of the European Parliament and of the Council ([1]);

(11a) 'non-face-to-face', means concluding a contract or carrying out a transaction, where the contractor or intermediary and the consumer are not simultaneously physically present, by exclusive means of the internet, telemarketing or other electronic means of communication up to and including the time at which the contract is concluded or the transaction is carried out. **[Am. 62]**

Article 4

1. Member States shall***, in accordance with the risk-based approach,*** ensure that the provisions of this Directive are extended in whole or in part to professions and to categories of undertakings, other than the obliged entities referred to in Article 2(1), which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes. **[Am. 63]**

2. Where a Member State decides to extend the provisions of this Directive to professions and to categories of undertakings other than those referred to in Article 2(1), it shall inform the Commission thereof.

Article 5

The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing***, provided that such provisions are in full compliance with Union law, especially as regards Union data protection rules and the protection of fundamental rights as enshrined in the Charter. Such provisions shall not unduly prevent consumers from accessing financial services and shall not constitute an obstacle to the functioning of the internal market***. **[Am. 64]**

([1]) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

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SECTION 2

RISK ASSESSMENT

Article 6

1. The ***Commission shall conduct an assessment on the money laundering and terrorist financing risks affecting the internal market, with particular reference to cross-border activities. To that end, the Commission shall consult the Member States, the ESAs*** ~~shall provide a joint opinion on the money laundering and terrorist financing risks affecting the internal market~~***, the European Data Protection Supervisor, the Article 29 Working Party, Europol and other relevant authorities***.

The risk assessment referred to in the first subparagraph shall cover at least the following:

(a) the overall extent of money laundering and the areas of the internal market that are at greater risk;

(b) the risks associated with each relevant sector, in particular the non-financial sectors and the gambling sector;

(c) the most widespread means used by criminals to launder illicit proceeds;

(d) the recommendations to the competent authorities on the effective deployment of resources;

(e) the role of EUR banknotes in criminal activities and money laundering.

The risk assessment shall also include proposals for minimum standards for risk assessments to be conducted by competent national authorities. Those minimum standards shall be developed in cooperation with Member States and shall involve the industry and other relevant stakeholders through public consultations and private stakeholders meetings as appropriate.

The Commission shall issue the ~~opinion~~ ***risk assessment*** by … (*) ***and shall update it a biannual basis or more frequently if appropriate***.

2. The Commission shall make the ~~opinion~~ ***risk assessment*** available to assist Member States and obliged entities to identify, manage and mitigate the risk of money laundering and terrorist financing***, and to allow other stakeholders, including national legislators, the European Parliament, the ESAs, Europol and the Committee of Union FIUs, to better understand the risks. A summary of the assessment shall be publicly available. That summary shall not contain classified information***.

2a. The Commission shall submit an annual report to the European Parliament and to the Council on the findings resulting from the regular risk assessments and the action taken based on those findings. **[Am. 65]**

Article 6a

1. Without prejudice to the infringement proceedings provided for in the TFEU, the Commission shall ensure that national law to combat money laundering and terrorist financing, adopted by Member States pursuant to this Directive is implemented effectively and is consistent with the European framework.

2. For the application of paragraph 1, the Commission shall be assisted, where appropriate, by the ESAs, Europol, the Committee of Union FIUs, and any other competent European authority.

3. Assessments of national law combat money laundering and terrorist financing provided for in paragraph 1 shall be without prejudice to those conducted by the Financial Action Task Force or Moneyval. **[Am. 66]**

(*) ***12 months*** after the date of entry into force of this Directive.

Article 7

1. Each Member State shall take appropriate steps to identify, assess, understand and mitigate the money laundering and terrorist financing risks affecting it, ***as well as any data protection concerns in that regard,*** and keep the assessment up-to-date.

2. Each Member State shall designate an authority to coordinate the national response to the risks referred to in paragraph 1. The identity of that authority shall be notified to the Commission, the ESAs, ***Europol*** and other Member States.

3. In carrying out the assessments referred to in paragraph 1, Member States ~~may~~ ***shall*** make use of the ~~opinion~~ ***risk assessment*** referred to in Article 6(1).

4. Each Member State shall carry out the assessment referred to in paragraph 1 and:

(a) use the assessment(s) to improve its anti-money laundering and combating terrorist financing regime, in particular by identifying any areas where obliged entities shall apply enhanced measures and, where appropriate, specifying the measures to be taken;

(aa) identify, where appropriate, sectors or areas of negligible, lower or greater risk of money laundering and terrorist financing;

(b) use the assessment(s) to assist it in the allocation and prioritisation of resources to combat money laundering and terrorist financing;

(ba) use the assessment(s) to ensure that appropriate rules are drawn up for each sector or area, in accordance with the risk of money laundering;

(c) make appropriate information available ***in a timely manner*** to obliged entities ***to enable them*** to carry out~~out~~ their own money laundering and terrorist financing risk assessments.

5. Member States shall make the results of their risk assessments available to the other Member States, the Commission, and the ESAs upon request. ***A summary of the assessment shall be made publicly available. That summary shall not contain classified information.*** **[Am. 67]**

Article 8

1. Member States shall ensure that obliged entities take appropriate steps to identify and assess their money laundering and terrorist financing risks taking into account risk factors including customers, countries or geographic areas, products, services, transactions or delivery channels. Those steps shall be proportionate to the nature and size of the obliged entities.

2. The assessments referred to in paragraph 1 shall be documented, kept up to date and be made available ***upon request*** to competent authorities and self-regulatory bodies. **[Am. 68]**

3. Member States shall ensure that obliged entities have policies, controls and procedures to mitigate and manage effectively the money laundering and terrorist financing risks identified at Union level, Member State level, and at the level of obliged entities. Policies, controls and procedures should be proportionate to the nature and size of those obliged entities ***and the risk of money laundering and terrorist financing and should respect data protection rules***. **[Am. 69]**

4. The policies and procedures referred to in paragraph 3 shall at least include:

(a) the development of internal policies, procedures and controls, including ***model risk management practices,*** customer due diligence, reporting, record keeping, internal control, compliance management (including, when appropriate to the size and nature of the business, the appointment of a compliance officer at management level) and employee screening. ***Those measures shall not allow the obliged entities to ask consumers to provide more personal data than necessary***; **[Am. 70]**

(b) when appropriate with regard to the size and nature of the business, an independent audit function to test internal policies, procedures and controls referred to in point (a).

5. Member States shall require obliged entities to obtain approval from senior management for the policies and procedures they put in place, and shall monitor and enhance the measures taken, where appropriate.

Article 8a

1. In order to develop a common approach and common policies against non-cooperative jurisdictions with deficiencies in the field of combating money laundering, Member States shall periodically endorse and adopt the lists of countries published by the FATF.

2. The Commission shall coordinate preparatory work at the Union level on the identification of third countries with grave strategic deficiencies in their money laundering systems that pose significant risks to the financial system of the Union, taking into account the criteria set out in point (3) of Annex III.

3. The Commission shall be empowered to adopt delegated acts in order to establish a list of countries as defined in paragraph 2.

4. The Commission shall monitor on a regular basis the evolution of the situation in the countries defined in paragraph 2 of this Article on the basis of criteria set out in point (3) of Annex III and, where appropriate, shall review the list referred to in paragraph 3 of this Article. **[Am. 71]**

CHAPTER II

CUSTOMER DUE DILIGENCE

SECTION 1

GENERAL PROVISIONS

Article 9

Member States shall prohibit their credit and financial institutions from keeping anonymous accounts ~~or~~, anonymous passbooks ***or from issuing anonymous electronic payment cards which do not meet the conditions laid down in Article 10a***. Member States shall in all cases require that the owners and beneficiaries of existing anonymous accounts ~~or~~, anonymous passbooks ***or anonymous payment cards*** be made the subject of customer due diligence measures as soon as possible and in any event before such accounts or passbooks are used in any way. **[Am. 72]**

Article 10

Member States shall ensure that obliged entities apply customer due diligence measures in the following cases:

(a) when establishing a business relationship;

(b) when carrying out occasional transactions amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(c) for natural or legal persons trading in goods, when carrying out occasional transactions in cash amounting to EUR 7 500 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(d) for ~~providers of gambling services~~ ***casinos***, when carrying out occasional transactions amounting to EUR 2 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(da) for on-line gambling when establishing the business relationship;

(db) for other providers of gambling services, when paying out winnings of EUR 2 000 or more; **[Am. 73]**

(e) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;

(f) when there are doubts about the veracity or adequacy of previously obtained customer identification data;

(fa) when a company is established. **[Am. 74]**

Article 10a

1. Member States may, on the basis of proven low risk, apply exemptions to obliged entities from customer due diligence with respect to electronic money as defined in Article 2(2) of Directive 2009/110/EC of the European Parliament and of the Council [1]***, if the following conditions are met:***

(a) the payment instrument is not reloadable;

(b) the maximum amount stored electronically does not exceed EUR 250; Member States may increase this limit up to EUR 500 for payment instruments that can only be used in that one particular Member State;

(c) the payment instrument is used exclusively to purchase goods or services;

(d) the payment instrument cannot be funded with electronic money;

(e) redemption in cash and cash withdrawal are forbidden unless identification and verification of the identity of the holder, adequate and appropriate policies and procedures on redemption in cash and cash withdrawal, and record keeping obligations are performed.

2. Member States shall ensure that customer due diligence measures are always applied before redemption of the monetary value of the electronic money exceeding EUR 250.

3. This Article shall not prevent Member States from allowing obliged entities to apply simplified customer due diligence measures in respect of electronic money in accordance with Article 13 of this Directive if the conditions laid down in this Article are not met. **[Am. 75]**

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[1] ***Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC*** (OJ L 267, 10.10.2009, p. 7).

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Article 11

1. Customer due diligence measures shall comprise:

(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;

(b) ~~identifying~~ ***in addition to the identification of*** the beneficial owner ~~and~~ ***listed in a register pursuant to Article 29,*** taking reasonable measures to verify the beneficial owner's identity to the satisfaction of the institution or person covered by this Directive, including, as regards legal persons, trusts***, foundations, mutuals, holdings*** and ***all other*** similar ***existing or future*** legal arrangements, taking ~~reasonable~~ ***all necessary*** measures to understand the ownership and control structure of the customer***, assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship***;

(c) assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;

(d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including~~, where necessary,~~ the source of funds and ensuring that the documents, data or information held are kept up to date. **[Am. 76]**

1a. When performing the measures referred to in points (a) and (b) of paragraph 1, obliged entities shall also be required to verify that any person purporting to act on behalf of the customer is so authorised to do so and shall be required to identify and verify the identity of that person. **[Am.** 77**]**

2. Member States shall ensure that obliged entities apply each of the customer due diligence requirements set out in paragraph 1, but may determine the extent of such measures on a risk-sensitive basis.

3. When assessing money laundering and terrorist financing risks, Member States shall require obliged entities to take into account at least the variables set out in Annex I.

4. Member States shall ensure that obliged entities are able to demonstrate to competent authorities or self-regulatory bodies that the measures are appropriate in view of the risks of money laundering and terrorist financing that have been identified.

5. For life or other investment-related insurance business, Member States shall ensure that financial institutions shall, in addition to the customer due diligence measures required for the customer and the beneficial owner, conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment related insurance policies, as soon as the beneficiaries are identified or designated:

(a) for beneficiaries that are identified as specifically named natural or legal persons or legal arrangements, taking the name of the person;

(b) for beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries to satisfy the financial institution that it will be able to establish the identity of the beneficiary at the time of the payout.

For both the cases referred to in points (a) and (b) of the first subparagraph, the verification of the identity of the beneficiaries shall occur at the time of the payout. In the case of assignment, in whole or in part, of the life or other investment related insurance to a third party, financial institutions aware of the assignment shall identify the beneficial owner at the time of the assignment to the natural or legal person or legal arrangement receiving for own benefit the value of the policy assigned.

Article 12

1. Member States shall require that the verification of the identity of the customer and the beneficial owner takes place before the establishment of a business relationship or the carrying out of the transaction.

2. By way of derogation from paragraph 1, Member States may allow the verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship ***or during the execution of the transaction for entities subject to the obligations referred to in Article 2(1) and, in any event, at the time when any winnings are paid out,*** if this is necessary not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring. In such situations those procedures shall be completed as soon as practicable after the initial contact. **[Am. 78]**

3. By way of derogation from paragraphs 1 and 2, Member States may allow the opening of a bank account provided that there are adequate safeguards in place to ensure that transactions are not carried out by the customer or on its behalf until full compliance with paragraphs 1 and 2 is obtained.

4. Member States shall require that, where the institution or person concerned is unable to comply with points (a), (b) and (c) of Article 11(1), it shall not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, and shall consider terminating the business relationship and making a suspicious transaction report to the FIU in accordance with Article 32 in relation to the customer.

Member States shall not apply the previous subparagraph to, notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that such an exemption relates to ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings.

5. Member States shall require that obliged entities apply the customer due diligence procedures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, including at times when the relevant circumstances of a customer change.

SECTION 2

SIMPLIFIED CUSTOMER DUE DILIGENCE

Article 13

1. Where a Member State or an obliged entity identifies areas of lower risk, that Member State may allow obliged entities to apply simplified customer due diligence measures.

2. Before applying simplified customer due diligence measures obliged entities shall ascertain that the customer relationship or transaction presents a lower degree of risk.

3. Member States shall ensure that obliged entities carry out sufficient monitoring of the ~~transaction~~ ***transactions*** or business ~~relationship~~ ***relationships*** to enable the detection of unusual or suspicious transactions. **[Am. 79]**

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Article 14

When assessing the money laundering and terrorist financing risks relating to types of customers, countries or geographic areas, and particular products, services, transactions or delivery channels, Member States and obliged entities shall take into account at least the factors ~~of~~ ***relating to customer and product, service, transaction or delivery channel as*** potentially lower risk situations set out in Annex II. **[Am. 80]**

Article 15

The ESAs shall, by … (*), issue guidelines addressed to competent authorities and the obliged entities referred to in Article 2 (1)(1) and (2) in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, on the risk factors to be taken into consideration and/or the measures to be taken in situations where simplified due diligence measures are appropriate. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be laid down. **[Am. 81]**

SECTION 3

ENHANCED CUSTOMER DUE DILIGENCE

Article 16

1. In cases identified in Articles 17 to 23 of this Directive and in other cases of higher risk that are identified by Member States or obliged entities, Member States shall require obliged entities to apply enhanced customer due diligence measures to manage and mitigate those risks appropriately.

2. Member States shall require obliged entities to examine~~, as far as reasonably possible,~~ the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose***, or which constitute tax offences within the meaning of Article 3(4)(f)***. In particular, they shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious. ***Where an obliged entity determines such an unusual or suspicious transaction or activity, it shall, without delay, inform the FIUs of all Member States that might be concerned.*** **[Am. 82]**

3. When assessing the money laundering and terrorist financing risks, Member States and obliged entities shall take into account at least the factors ~~of~~ ***relating to customer and product, service, transaction or delivery channel as*** potentially higher-risk situations set out in Annex III. **[Am. 83]**

4. The ESAs shall, by … (**), issue guidelines addressed to competent authorities and the obliged entities referred to Article 2(1)(1) and (2) in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 on the risk factors to be taken into consideration and/or the measures to be taken in situations where enhanced due diligence measures need to be applied. **[Am. 84]**

Article 17

In respect of cross-border correspondent banking relationships with respondent institutions from third countries, Member States shall, in addition to the customer due diligence measures as set out in Article 11, require their credit institutions to:

(a) gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision;

(*) ***12 months*** after the date of entry into force of this Directive.
(**) ***12 months*** after the date of entry into force of this Directive.

(b) assess the respondent institution's anti-money laundering and anti-terrorist financing controls;

(c) obtain approval from senior management before establishing new correspondent banking relationships;

(d) document the respective responsibilities of each institution;

(e) with respect to payable-through accounts, be satisfied that the respondent credit institution has verified the identity of and performed ongoing due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.

Article 18

In respect of transactions or business relationships with foreign politically exposed persons, Member States shall, in addition to the customer due diligence measures set out in Article 11, require obliged entities to:

(a) have appropriate risk-based procedures to determine whether the customer or the beneficial owner of the customer is such a person;

(b) obtain senior management approval for establishing or continuing business relationships with such customers;

(c) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;

(d) conduct enhanced ongoing monitoring of the business relationship.

Article 19

In respect of transactions or business relationships with domestic politically exposed persons or persons who are or who have been entrusted with a prominent function by an international organisation, Member States shall, in addition to the customer due diligence measures set out in Article 11, require obliged entities:

(a) to have appropriate risk-based procedures to determine whether the customer or the beneficial owner of the customer is such a person;

(b) in cases of higher risk business relationships with such persons, to apply the measures referred to in points (b), (c) and (d) of Article 18.

Article 19a

The Commission, in cooperation with Member States and international organisations, shall draw a list of domestic politically exposed persons and persons resident in a Member State who are or who have been entrusted with a prominent function by an international organisation. The list shall be accessible by competent authorities and by obliged entities.

The Commission shall notify the persons concerned that they have been placed on or removed from the list.

The requirements in this Article shall not exempt obliged entities from their customer due diligence obligations, and obliged entities shall not rely exclusively on that information as sufficient to fulfil those obligations.

Member States shall take all appropriate measures to prevent the trade of information for commercial purposes on foreign politically exposed persons, domestic politically exposed persons, or persons who are or who have been entrusted with a prominent function by an international organisation. **[Am. 85]**

Article 20

Obliged entities shall take reasonable measures***, in accordance with the risk-based approach,*** to determine whether the beneficiaries of a life or other investment related insurance policy and/or, where required, the beneficial owner of the beneficiary are politically exposed persons. Those measures shall be taken at the latest at the time of the payout or at the time of the assignment, in whole or in part, of the policy. Where there are higher risks identified, in addition to taking normal customer due diligence measures, Member States shall require obliged entities to: **[Am. 86]**

(a) inform senior management before the payout of the policy proceeds;

(b) conduct enhanced scrutiny on the whole business relationship with the policyholder.

Article 21

The measures referred to in Articles 18, 19 and ***20, but not those referred to in Article 19a,*** shall also apply to family members or persons ~~known to be~~ ***who, as indicated by evidence, are*** close associates of such foreign or domestic politically exposed persons. **[Am. 87]**

Article 22

Where a person referred to in Articles 18, 19 and 20 has ceased to be ***a foreign politically exposed person, a domestic politically exposed person*** or a peson who is or who has been entrusted with a prominent function by an international organisation, obliged entities shall be required to consider the continuing risk posed by that person and to apply such appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk. That period of time shall not be less than ~~18~~ ***12*** months. **[Am. 88]**

Article 23

1. Member States shall prohibit credit institutions from entering into or continuing a correspondent banking relationship with a shell bank and shall require that credit institutions take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a bank that is known to permit its accounts to be used by a shell bank.

2. For the purposes of paragraph 1, 'shell bank' shall mean a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group.

SECTION 4

PERFORMANCE BY THIRD PARTIES

Article 24

Member States may permit the obliged entities to rely on third parties to meet the requirements laid down in Article 11(1) (a), (b) and (c). However, the ultimate responsibility for meeting those requirements shall remain with the obliged entity which relies on the third party. ***In addition, Member States shall ensure that any such third parties may also be held liable for breaches of national provisions adopted pursuant to this Directive.*** **[Am. 89]**

Article 25

1. For the purposes of this Section, 'third parties' shall mean:

(a) obliged entities who are listed in Article 2; ***or***

(b) other institutions and persons situated in Member States or a third country, who apply customer due diligence requirements and record keeping requirements equivalent to those laid down in this Directive and their compliance with the requirements of this Directive is supervised in accordance with Section 2 of Chapter VI.

2. The ~~Member States~~ ***Commission*** shall consider information available on the level of geographical risk when deciding if a third country meets the conditions laid down in paragraph 1 and shall inform ~~each other,~~ the ~~Commission~~ ***Member States, the obliged entities*** and the ESAs to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, of cases where they consider that a third country meets such conditions.

2a. The Commission shall provide a list of jurisdictions having anti-money laundering measures equivalent to provisions of this Directive and other related rules and regulations of the Union.

2b. The list referred to in paragraph 2a shall be regularly reviewed and updated according to the information received from Member States pursuant to paragraph 2. **[Am. 90]**

Article 26

1. Member States shall ensure that obliged entities obtain from the third party being relied upon the necessary information concerning the requirements laid down in Article 11(1)(a), (b) and (c).

2. Member States shall ensure that obliged entities to which the customer is being referred take adequate steps to ensure that relevant copies of identification and verification data and other relevant documentation on the identity of the customer or the beneficial owner are immediately forwarded, on request, by the third party.

Article 27

1. Member States shall ensure that the home competent authority (for group-wide policies and controls) and the host competent authority (for branches and subsidiaries) may consider that an obliged entity applies the measures contained in Article 25(1) and Article 26 through its group programme, where the following conditions are met:

(a) an obliged entity relies on information provided by a third party that is part of the same group;

(b) that group applies customer due diligence measures, rules on record keeping and programmes against money laundering and terrorist financing in accordance with this Directive or equivalent rules;

(c) the effective implementation of requirements referred to in point (b) is supervised at group level by a ***home*** competent authority ***in cooperation with host competent authorities***. **[Am. 91]**

1a. The ESAs shall, by … (*), issue guidelines on the implementation of the supervisory regime by the competent authorities in the relevant Member States for group entities to ensure coherent and effective group level supervision. **[Am. 92]**

Article 28

This Section shall not apply to outsourcing or agency relationships where, on the basis of a contractual arrangement, the outsourcing service provider or agent is to be regarded as part of the obliged entity.

(*) 12 months after the date of entry into force of this Directive.

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CHAPTER III

BENEFICIAL OWNERSHIP INFORMATION

Article 29

1. Member States shall ensure that ~~corporate or~~ ***companies and other entities having*** legal ***personality, including trusts or*** entities ***with a similar structure or function to trusts, foundations, holdings and all other similar, in terms of structure or function, existing or future legal arrangements*** established ***or incorporated*** within their territory***, or governed under their law*** obtain ~~and~~, hold ***and transmit to a public central register, commercial register or companies register within their territory*** adequate, accurate ~~and~~, current ***and up-to-date*** information on ***them and on*** their beneficial ownership***, at the moment of establishment as well as any changes thereof.***

1a. The register shall contain the minimum information to clearly identify the company and its beneficial owner, namely the name, number, legal form and status of the entity, proof of incorporation, address of the registered office (and of the principal place of business if different from the registered office), the basic regulatory powers (such as those contained in the Memorandum and Articles of Association), the list of directors (including their nationality and date of birth) and shareholder/beneficial owner information, such as the names, dates of birth, nationality or jurisdiction of incorporation, contact details, number of shares, categories of shares (including the nature of the associated voting rights) and proportion of shareholding or control, if applicable.

The requirements stipulated in this Article shall not exempt obliged entities from their customer due diligence obligations, and obliged entities shall not rely exclusively on that information as sufficient to fulfil those obligations.

1b. Regarding trusts or other types of legal entities and arrangements, existing or future, with a similar structure or function, the information shall include the identity of the settlor, of the trustee(s), of the protector (if relevant), of the beneficiaries or class of beneficiaries, and of any other natural person exercising effective control over the trust. Member States shall ensure that trustees disclose their status to obliged entities when, as a trustee, the trustee forms a business relationship or carries out an occasional transaction above the threshold set out in points (b), (c) and (d) of Article 10. The information held should include the date of birth and nationality of all individuals. Member States shall follow the risk-based approach when publishing the trust deed and letter of wishes and shall ensure where applicable and while respecting the protection of personal information that information is disclosed to competent authorities, in particular to FIUs, and to obliged entities.

2. ~~Member States shall ensure that~~ The information referred to in ~~paragraph~~ ***paragraphs*** 1***, 1a and 1b*** ~~can be accessed~~ ***shall be accessible by competent authorities, in particular by FIUs, and by obliged entities of all Member States*** in a timely manner ~~by competent authorities and by obliged entities~~. ***Member States shall make the registers referred to in paragraph 1 publicly available following prior identification of the person wishing to access the information through basic online registration. The information shall be available online to all persons in an open and secure data format, in line with data protection rules, in particular as regards the effective protection of the rights of the data subject to access personal data and the rectification or deletion of inaccurate data. The fees charged for obtaining the information shall not exceed the administrative costs thereof. Any changes to the information displayed shall be clearly indicated in the register without delay and in any event within 30 days.***

The company registers referred to in paragraph 1 of this Article shall be interconnected by means of the European platform, the portal and optional access points established by the Member States pursuant to Directive 2012/17/EU. Member States, with the support of the Commission, shall ensure that their registers are interoperable within the system of register networking through the European platform.

2a. The Commission, in cooperation with Member States, shall rapidly, constructively and effectively seek cooperation with third countries to encourage that equivalent central registers containing beneficial ownership information are established and information referred to in paragraphs 1 and 1a of this Article in their countries is made publically accessible.

Priority shall be given to third countries that host a significant number of corporate or legal entities, including trusts, foundations, holdings and all other bodies that are similar in terms of structure or function and that hold shares indicating direct ownership pursuant to Article 3(5) in corporate or legal entities established in the Union.

2b. Member States shall lay down the rules on effective, proportionate and dissuasive penalties for natural or legal persons applicable to infringements of the national provisions adopted pursuant to this Article and shall take all measures necessary to ensure that such penalties are applied. For the purposes of this Article, Member States shall establish effective anti-abuse measures with view to preventing misuse based on bearer shares and bearer share warrants.

2c. The Commission shall, by … (*), submit to the European Parliament and to the Council a report on the application and mode of functioning of the requirements pursuant to this Article, if appropriate, accompanied, where appropriate by a legislative proposal. **[Am. 93]**

~~Article 30~~

~~1. Member States shall ensure that trustees of any express trust governed under their law obtain and hold adequate, accurate and current information on beneficial ownership regarding the trust. This information shall include the identity of the settlor, of the trustee(s), of the protector (if relevant), of the beneficiaries or class of beneficiaries, and of any other natural person exercising effective control over the trust.~~

~~2. Member States shall ensure that trustees disclose their status to obliged entities when, as a trustee, the trustee forms a business relationship or carries out an occasional transaction above the threshold set out in points (b), (c) and (d) of Article 10.~~

~~3. Member States shall ensure that the information referred to in paragraph 1 of this Article can be accessed in a timely manner by competent authorities and by obliged entities.~~

~~4. Member States shall ensure that measures corresponding to those in paragraphs 1, 2 and 3 apply to other types of legal entity and arrangement with a similar structure and function to trusts.~~ **[Am. 94]**

CHAPTER IV

REPORTING OBLIGATIONS

SECTION 1

GENERAL PROVISIONS

Article 31

1. Each Member State shall establish an FIU in order to prevent, detect and investigate money laundering and terrorist financing.

1a. The persons referred to in Article 2(1)(3)(a), (b), and (d), shall inform the FIU and/or the appropriate self-regulatory body of the profession concerned, as referred to in Article 33(1), if they suspect, or have reasonable grounds to suspect that their services are being misused for the purpose of criminal activity. **[Am. 95]**

2. Member States shall notify the Commission in writing of the name and address of the respective FIUs.

(*) 3 years after the date of entry into force of this Directive.

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3. The FIU shall be established as ~~a~~ ***an operationally independent and autonomous*** central national unit. It shall be responsible for receiving (and ~~to the extent permitted, requesting),~~ analysing ~~and~~ ***suspicious transaction reports and other information relevant to potential money laundering, associated predicate offences or potential terrorist financing. The FIU shall be responsible for*** disseminating ***the results of its analysis*** to ~~the~~ ***all*** competent authorities ~~disclosures of information which concern potential~~ ***where there are grounds to suspect*** money laundering or associated predicate offences~~, potential~~ ***or*** terrorist financing ~~or are required by national legislation or regulation~~. ***It shall be able to obtain relevant additional information from obliged entities for those purposes***. The FIU shall be provided with adequate ***financial, technical and human*** resources in order to fulfil its tasks. ***Member States shall ensure that the FIU is free from undue interference.*** **[Am. 96]**

4. Member States shall ensure that the FIU has access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that it requires to properly fulfil its tasks. In addition, FIUs shall respond to requests for information by law enforcement authorities in their Member State unless there are factual reasons to assume that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purposes for which it has been requested. ***When the FIU receives such a request, the decision to conduct analysis or dissemination of information to the requesting law enforcement authority should remain within the FIU. Member States shall require law enforcement authorities to provide feedback to the FIU about the use made of the information provided.*** **[Am. 97]**

5. Member States shall ensure that the FIU is empowered to take urgent action, either directly or indirectly, when there is a suspicion that a transaction is related to money laundering or terrorist financing, to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion.

6. The FIU's analysis function shall consist of an operational analysis which focusses on individual cases and specific targets and a strategic analysis addressing money laundering and terrorist financing trends and patterns.

Article 32

1. Member States shall require obliged entities, and where applicable their directors and employees, to cooperate fully by promptly:

(a) informing the FIU, on their own initiative, where the institution or person covered by this Directive knows, suspects or has reasonable grounds to suspect that funds are the proceeds of criminal activity or are related to terrorist financing and by promptly responding to requests by the FIU for additional information in such cases;

(b) providing the FIU, at its request, with all necessary information, in accordance with the procedures established by the applicable law.

2. The information referred to in paragraph 1 of this Article shall be forwarded to the FIU of the Member State in whose territory the institution or person forwarding the information is situated ***and to the FIU of the Member State where the obliged entity is established***. The person or persons designated in accordance with Article 8(4) shall forward the information. **[Am. 98]**

Article 33

1. By way of derogation from Article 32(1), Member States may, in the case of the persons referred to in Article 2(1)(3) (a), (b), ~~and~~ (d) ***and (e) and those professions and categories of undertaking referred to in Article 4,*** designate an appropriate self-regulatory body of the profession concerned as the authority to receive the information referred to in Article 32(1).

In all circumstances, Member States shall provide for the means and manner by which to achieve the protection of professional secrecy, confidentiality and privacy. **[Am. 99]**

Without prejudice to paragraph 2, the designated self-regulatory body shall in cases referred to in the first subparagraph forward the information to the FIU promptly and unfiltered.

2. Member States shall not apply the obligations laid down in Article 32(1) to notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that such an exemption relates to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

Article 34

1. Member States shall require obliged entities to refrain from carrying out transactions which they know or suspect to be related to money laundering or terrorist financing until they have completed the necessary action in accordance with Article 32(1)(a).

In accordance with national law, instructions may be given not to carry out the transaction.

2. Where such a transaction is suspected of giving rise to money laundering or terrorist financing and where to refrain in such a manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation, the obliged entities concerned shall inform the FIU immediately afterwards.

Article 35

1. Member States shall ensure that if, in the course of inspections carried out in the obliged entities by the competent authorities referred to in Article 45, or in any other way, those authorities discover facts that could be related to money laundering or terrorist financing, they shall promptly inform the FIU.

2. Member States shall ensure that supervisory bodies empowered by law or regulation to oversee the stock, foreign exchange and financial derivatives markets inform the FIU if they discover facts that could be related to money laundering or terrorist financing.

Article 36

Disclosure of information in good faith by an obliged entity or by an employee or director of such an obliged entity in accordance with Articles 32 and 33 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the obliged entity or its directors or employees in liability of any kind.

Article 37

Member States shall ~~take all appropriate measures in order to protect employees~~ ***ensure that individuals, including employees and representatives*** of the obliged entity who report suspicions of money laundering or terrorist financing either internally or to the FIU ***are duly protected*** from being exposed to threats or hostile action***, adverse treatment and adverse consequences, and in particular from adverse or discriminatory employment actions. Member States shall guarantee legal aid free of charge for such persons and shall provide secure communication channels for persons to report their suspicions of money laundering or terrorist financing. Such channels shall ensure that the identity of persons providing information is known only to the ESAs or to the FIU. Member States shall ensure that there are adequate witness protection programmes.*** **[Am. 100]**

SECTION 2

PROHIBITION OF DISCLOSURE

Article 38

1. Obliged entities and their directors and employees shall not disclose to the customer concerned or to other third persons the fact that information has been transmitted in accordance with Articles 32 and 33 or that a money laundering or terrorist financing investigation is being or may be carried out.

2. The prohibition laid down in paragraph 1 shall not include disclosure to the competent authorities of Member States, including the self-regulatory bodies, ***data protection authorities*** or disclosure for law enforcement purposes. **[Am. 101]**

3. The prohibition laid down in paragraph 1 shall not prevent disclosure between institutions from Member States, or from third countries which impose requirements equivalent to those laid down in this Directive provided that they belong to the same group.

4. The prohibition laid down in paragraph 1 shall not prevent disclosure between persons referred to in Article 2(1)(3)(a) and (b) from Member States, or from third countries which impose requirements equivalent to those laid down in this Directive, who perform their professional activities, whether as employees or not, within the same legal person or a network.

For the purposes of the first subparagraph, a 'network' shall mean the larger structure to which the person belongs and which shares common ownership, management***, standards, methods*** or compliance control. **[Am. 102]**

5. For entities or persons referred to in Article 2(1)(1), (2) and (3)(a) and (b) in cases related to the same customer and the same transaction involving two or more institutions or persons, the prohibition laid down in paragraph 1 of this Article shall not prevent disclosure between the relevant institutions or persons provided that they are situated in a Member State, or in a third country which imposes requirements equivalent to those laid down in this Directive, and that they are from the same professional category and are subject to obligations as regards professional secrecy and personal data protection.

5a. For the purposes of this Article, third-country requirements equivalent to those laid down in this Directive shall include data protection rules. **[Am. 103]**

6. Where the persons referred to in Article 2(1)(3)(a) and (b) seek to dissuade a client from engaging in illegal activity, this shall not constitute disclosure within the meaning of paragraph 1.

CHAPTER V

DATA PROTECTION, RECORD KEEPING AND STATISTICAL DATA **[Am. 104]**

Article 39

1. Member States shall require obliged entities to store the following documents and information in accordance with national law for the purpose of the prevention, detection and investigation of possible money laundering or terrorist financing by the FIU or by other competent authorities:

(a) in the case of the customer due diligence, a copy or the references of the evidence required, for a period of five years after the business relationship with their customer has ended ***or after the date of the occasional transaction***. Upon expiration of that retention period, personal data shall be deleted unless otherwise provided for by national law, which shall determine under which circumstances obliged entities may or shall further retain data. Member States may allow or require further retention only if necessary for the prevention, detection or investigation of money laundering and terrorist financing ***and if the extension of the data retention period is justified on a case-by-case basis.*** The maximum ***extension of the*** retention period ~~after the business relationship has ended shall not exceed ten~~ ***is five additional*** years;

(b) in the case of business relationships and transactions, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national law for a period of five years following either the carrying-out of the transactions or the end of the business relationship, whichever period is the shorter. Upon expiry of that retentionperiod, personal data shall be deleted, unless otherwise provided for by national law, which shall determine under which circumstances obliged entities may or shall further retain data. Member States may allow or require further retention only if necessary for the prevention, detection or investigation of money laundering and terrorist financing ***and if the extension of the data retention period is justified on a case by case basis.*** The maximum ***extension of the*** retention period ~~following either the carrying-out of the transactions or the end of the business relationship, whichever period ends first, shall not exceed ten~~ ***is five additional*** years.

2. Any personal data retained shall not be used for any purpose other than the purpose for which it has been retained, and under no circumstances shall it be used for commercial purposes. **[Am. 105]**

Article 39a

1. With regard to the processing of personal data carried out by Member States within the framework of this Directive, the provisions of Directive 95/46/EC apply. With regard to the processing of personal data by the ESAs, the provisions of Regulation (EC) No 45/2001 apply. The collection, processing and transfer of information for anti-money laundering purposes shall be considered as a public interest under those legal acts.

2. Personal data shall be processed on the basis of this Directive for the sole purpose of the prevention of money laundering and terrorist financing. Obliged entities shall inform new clients of the possible use of the personal data for money laundering prevention purposes before establishing a business relationship. Processing sensitive categories of data shall be done in accordance with Directive 95/46/EC.

3. The processing of data collected on the basis of this Directive for commercial purposes shall be prohibited.

4. The affected person to whom disclosure of information on processing his or her data is denied by an obliged entity or competent authority, shall have the right to request through his or her data protection authority any verifications of, access and corrections to or erasure of his or her personal data, as well as the right to lodge a judicial procedure.

5. Access by the person concerned to information contained in a suspicious transaction report shall be prohibited. The prohibition laid down in this paragraph shall not include disclosure to the data protection authorities.

6. Member States shall require the obliged entities and competent authorities to recognise and comply with the effective powers of data protection authorities in accordance with Directive 95/46/EC as regards the security of the processing and accuracy of personal data, on an ex officio basis or on the basis of a complaint by the person concerned. **[Am. 106]**

Article 40

-1. Member States shall have national centralised mechanisms enabling them to identify, in a timely manner, whether natural or legal persons hold or control bank accounts kept by financial institutions on their territory.

-1a. Member States shall also have mechanisms providing the competent authorities with a means of identifying property without giving prior notice to the owner.

1. Member States shall require that their obliged entities have systems in place that enable them to respond fully and rapidly to enquiries from the FIU, or from other authorities, in accordance with their national law, as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and on the nature of that relationship***, through secure channels and in a manner that ensures full confidentiality of the enquiries***. **[Am. 107]**

Article 40a

The collection, processing and transfer of information for anti-money laundering purposes shall be considered to be a matter of public interest under Directive 95/46/EC. **[Am. 108]**

Article 41

1. Member States shall, for the purposes of the preparation of national risk assessments pursuant to Article 7, ensure that they are able to review the effectiveness of their systems to combat money laundering or terrorist financing by maintaining comprehensive statistics on matters relevant to the effectiveness of such systems.

2. Statistics referred to in paragraph 1 shall include:

(a) data measuring the size and importance of the different sectors which fall under the scope of this Directive, including the number of entities and persons and the economic importance of each sector;

(b) data measuring the reporting, investigation and judicial phases of the national anti-money laundering and terrorist financing regime, including the number of suspicious transaction reports made to the FIU, the follow-up given to those reports and, on an annual basis, the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences and the value in euro of property that has been frozen, seized or confiscated;

(ba) data identifying the number and percentage of reports resulting in further investigation, with annual report to obliged institutions detailing the usefulness and follow-up of the reports they presented; **[Am. 109]**

(bb) data regarding the number of cross-border requests for information that were made, received, refused and partially or fully answered by the FIU. **[Am. 110]**

3. Member States shall ensure that a consolidated review of their statistical reports is published and shall transmit to the Commission the statistics referred to in paragraph 2.

CHAPTER VI

POLICIES, PROCEDURES AND SUPERVISION

SECTION 1

INTERNAL PROCEDURES, TRAINING AND FEEDBACK

Article 42

1. Member States shall require obliged entities that are part of a group to implement group-wide policies and procedures, including data protection policies and policies and procedures for sharing information within the group for anti-money laundering and combating terrorist financing purposes. Those policies and procedures shall be implemented effectively at the level of branches and majority-owned subsidiaries in Member States and third countries.

2. Member States shall ensure that where obliged entities have branches or majority-owned subsidiaries located in third countries where the minimum anti-money laundering and combating terrorist financing requirements are less strict than those of the Member State, their branches and majority-owned subsidiaries located in the third country implement the requirements of the Member State, including data protection, to the extent that the third country's laws and regulations so allow.

3. The Member States and the ESAs shall inform each other of cases where the third-country law does not permit application of the measures required under paragraph 1 and coordinated action could be taken to pursue a solution.

4. Member States shall require that, where third-country law does not permit application of the measures required under the first subparagraph of paragraph 1, obliged entities take additional measures to effectively handle the risk of money laundering or terrorist financing, and inform their home supervisors. If the additional measures are not sufficient, competent authorities in the home country shall consider additional supervisory actions, including, as appropriate, requesting the financial group to close down its operations in the host country.

5. The ESAs shall develop draft regulatory technical standards specifying the type of additional measures referred to in paragraph 4 of this Article and the minimum action to be taken by obliged entities referred to Article 2(1)(1) and (2) where third-country law does not permit application of the measures required under paragraphs 1 and 2 of this Article.

The ESAs shall submit those draft regulatory technical standards to the Commission by … (*). **[Am. 111]**

6. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 5 in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

7. Member States shall ensure that sharing of information within the group is allowed provided that it does not prejudice investigation into, or analysis of, possible money laundering or terrorist financing by the FIU or by other competent authorities in accordance with national law.

8. Member States may require electronic money issuers as defined in Article 2(3) of Directive 2009/110/EC and payment providers as defined in Article 4(9) of Directive 2007/64/EC established on their territory, and whose head office is situated in another Member State or outside the Union, to appoint a central contact point in their territory to oversee the compliance with anti-money laundering and terrorist financing rules.

9. The ESAs shall develop draft regulatory technical standards on the criteria for determining the circumstances when the appointment of a central contact point pursuant to paragraph 8 is appropriate, and what the functions of the central contact points should be.

The ESAs shall submit those draft regulatory technical standards to the Commission by … (**).

10. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 9 in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

Article 43

1. Member States shall require that obliged entities take measures proportionate to their risks, nature and size so that their relevant employees are aware of the provisions adopted pursuant to this Directive, including relevant data protection requirements.

Those measures shall include participation of their relevant employees in special ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases.

(*) ***18 months after*** the date of entry into force of this Directive.
(**) Two years after the date of entry into force of this Directive.

Where a natural person falling within any of the categories listed in Article 2(1)(3) performs professional activities as an employee of a legal person, the obligations in this Section shall apply to that legal person rather than to the natural person.

2. Member States shall ensure that obliged entities have access to up-to-date information on the practices of money launderers and terrorist financers and on indications leading to the recognition of suspicious transactions.

3. Member States shall ensure that, where practicable, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided ***to obliged entities***. **[Am. 112]**

3a. Member States shall require that obliged entities appoint the member(s) of the management board who are responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with this Directive. **[Am. 113]**

SECTION 2

SUPERVISION

Article 44

1. Member States shall provide that currency exchange offices and trust or company service providers be licensed or registered and providers of gambling services be authorised.

2. In respect of the entities referred to in paragraph 1, Member States shall require competent authorities to ensure that the persons who effectively direct or will direct the business of such entities or the beneficial owners of such entities are fit and proper persons.

3. In respect of the obliged entities referred to in point (3)(a), (b), (d) and (e) of Article 2(1), Member States shall ensure that competent authorities ***and self-regulatory bodies*** take the necessary measures to prevent ***convicted*** criminals ***in those areas*** or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function in those obliged entities. **[Am. 114]**

Article 45

1. Member States shall require the competent authorities to effectively monitor and to take the necessary measures with a view to ensure compliance with the requirements of this Directive.

2. Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is relevant to monitoring compliance and perform checks, and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of those authorities maintain high professional standards, including standards of confidentiality and data protection, they shall be of high integrity and be appropriately skilled.

3. In the case of credit and financial institutions and providers of gambling services, competent authorities shall have enhanced supervisory powers, notably the possibility to conduct on-site inspections. ***Competent authorities in charge of supervising credit and financial institutions shall monitor the adequacy of the legal advice they receive with a view to reducing legal and regulatory arbitrage in the case of aggressive tax planning and avoidance***. **[Am. 115]**

4. Member States shall ~~ensure~~ ***require*** that obliged entities that operate branches or subsidiaries in other Member States respect the national provisions of that other Member State pertaining to this Directive. **[Am. 116]**

5. Member States shall ensure that the competent authorities of the Member State in which the branch or subsidiary is established shall cooperate with the competent authorities of the Member State in which the obliged entity has its head office, to ensure effective supervision of the requirements of this Directive.

6. Member States shall ensure that ~~competent authorities that apply a risk-sensitive~~ ***when applying a risk-based*** approach to supervision***, competent authorities***: **[Am. 117]**

(a) have a clear understanding of the money laundering and terrorist financing risks present in their country;

(b) have on-site and off-site access to all relevant information on the specific domestic and international risks associated with customers, products and services of the obliged entities; and

(c) base the frequency and intensity of on-site and off-site supervision on the risk profile of the obliged entity, and on the money laundering and terrorist financing risks present in the country.

7. The assessment of the money laundering and terrorist financing risk profile of obliged entities, including the risks of non-compliance, shall be reviewed both periodically and when there are major events or developments in the management and operations of the obliged entity.

8. Member States shall ensure that competent authorities take into account the degree of discretion allowed to the obliged entity, and appropriately review the risk assessments underlying this discretion, and the adequacy and implementation of its policies, internal controls and procedures.

9. In the case of the obliged entities referred to in Article 2(1)(3)(a), (b) and (d) Member States may allow the functions referred to in paragraph 1 to be performed by self-regulatory bodies, provided that they comply with paragraph 2 of this Article.

10. The ESAs shall, by … (*), issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 on the factors to be applied when conducting supervision on a risk-sensitive basis. Specific account should be taken of the nature and size of the business, and where appropriate and proportionate, specific measures should be laid down.

SECTION 3

COOPERATION

Subsection I

National cooperation

Article 46

Member States shall ensure that policy makers, the FIU, law enforcement authorities, supervisors***, data protection authorities*** and other competent authorities involved in anti-money laundering and combating terrorist financing have effective mechanisms to enable them to cooperate and coordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. **[Am. 118]**

(*) 2 years after the date of entry into force of this Directive.

Subsection II

Cooperation with the ESAs

Article 47

Without prejudice to data protection rules, the competent authorities shall provide the ESAs with all the ***relevant*** information necessary to carry out their duties under this Directive. **[Am. 119]**

Subsection III

Cooperation between the Commission and the FIUs

Article 48

The Commission ~~may~~ ***shall*** lend such assistance as may be needed to facilitate coordination, including the exchange of information between Member State FIUs within the Union. It ~~may~~ ***shall*** regularly convene meetings ~~with~~ ***of the EU FIUs' Platform composed of*** representatives from Member States FIUs ***and, where appropriate, meetings of the EU FIUs' Platform with EBA, EIOPA or ESMA. The EU FIUs' Platform has been set up to formulate guidance on implementation issues relevant for FIUs and reporting entities,*** to facilitate ~~co-operation and to exchange views on co-operation related issues~~ ***the FIUs' activities, particularly those concerning international cooperation and joint analysis, to share information on trends and risk factors in the internal market, and to ensure the participation of the FIUs in the governance of the FIU.net system***. **[Am. 120]**

Article 49

Member States shall ensure that their FIUs cooperate with each other ***and with third-country FIUs*** to the greatest extent possible irrespective of whether they are administrative, law enforcement or judicial or hybrid authorities***, without prejudice to Union data protection rules***. **[Am. 121]**

Article 50

1. Member States shall ensure that FIUs exchange~~, spontaneously~~ ***with other Member State FIUs and with third-country FIUs***, ***automatically*** or upon request, any information that may be relevant for the processing or analysis of information or investigation by the FIU regarding financial transactions related to money laundering or terrorist financing and the natural or legal person involved. A request shall contain the relevant facts, background information, reasons for the request and how the information sought will be used. **[Am. 122]**

2. Member States shall ensure that the FIU to which the request is made is required to use the whole range of its powers which it has domestically available for receiving and analysing information when it replies to a request for information referred to in paragraph 1 from another FIU ~~based in the Union~~. The FIU to whom the request is made shall respond in a timely manner and both the requesting and requested FIU shall use secure digital means to exchange information, where possible. **[Am. 123]**

In particular, when a Member State FIU seeks to obtain additional information from an obliged entity of another Member State which operates on its territory, the request shall be addressed to the FIU of the Member State in whose territory the obliged entity is situated. That FIU shall transfer requests and answers promptly and without any filter. **[Am. 124]**

3. An FIU may refuse to disclose information which could lead to impairment of a criminal investigation being conducted in the requested Member State or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State or irrelevant to the purposes for which it has been collected. Any such refusal shall be appropriately justified to the FIU requesting the information.

Article 51

Information and documents received pursuant to Articles 49 and 50 shall be used for the accomplishment of the FIU's tasks as laid down in this Directive. When transmitting information and documents pursuant to Articles 49 and 50, the transmitting FIU may impose restrictions and conditions for the use of that information. The receiving FIU shall comply with those restrictions and conditions. This does not affect the use for criminal investigations and prosecutions linked to the FIU's tasks to prevent, detect and investigate money laundering and terrorist financing.

Article 52

Member States shall ensure that FIUs undertake all necessary measures, including security measures, to ensure that information submitted pursuant to Articles 49 and 50 is not accessible by any other authority, agency or department, unless prior approval is given by the FIU providing the information.

Article 53

1. Member States shall ~~encourage~~ ***require*** their FIUs to use protected channels of communication between ~~FIUs and to use the decentralised computer network FIU.net~~ ***themselves***. **[Am. 125]**

2. Member States shall ensure that, in order to fulfil their tasks as laid down in this Directive, their FIUs cooperate ***among themselves and, within its mandate, with Europol,*** to apply sophisticated technologies. Those technologies shall allow FIUs to match their data with other FIUs in an anonymous way by ensuring full protection of personal data with the aim to detect subjects of the FIU's interests in other Member States and identify their proceeds and funds. **[Am. 126]**

Article 54

Member States shall ~~ensure that~~ ***encourage*** their FIUs ***to*** cooperate with Europol regarding analyses ***of ongoing cases*** carried out having a cross-border dimension concerning at least two Member States. **[Am. 127]**

Article 54a

The Commission should increase the pressure that it brings to bear on the tax havens to improve their cooperation and exchange of information in order to combat money laundering and terrorist financing. **[Am. 128]**

SECTION 4

SANCTIONS

Article 55

1. Member States shall ensure that obliged entities can be held liable for breaches of the national provisions adopted pursuant to this Directive. ***The penalties shall be effective, proportionate and dissuasive.*** **[Am. 129]**

2. Without prejudice to the right of Member States to impose criminal penalties, Member States shall ensure that competent authorities may take appropriate administrative measures and impose administrative sanctions where obliged entities breach the national provisions, adopted in the implementation of this Directive, and shall ensure that they are applied. Those measures and sanctions shall be effective, proportionate and dissuasive.

3. Member States shall ensure that where obligations apply to legal persons, sanctions can be applied to the members of the management body or to any other individuals who under national law are responsible for the breach.

4. Member States shall ensure that the competent authorities have all the investigatory powers that are necessary for the exercise of their functions. In the exercise of their sanctioning powers, competent authorities shall cooperate closely to ensure that administrative measures or sanctions produce the desired results and coordinate their action when dealing with cross border cases.

Article 56

1. This Article shall at least apply to situations where obliged entities demonstrate systematic failings in relation to the requirements laid down in:

(a) Articles 9 to 23 (customer due diligence);

(b) Articles 32, 33 and 34 (suspicious transaction reporting);

(c) Article 39 (record keeping); and

(d) Articles 42 and 43 (internal controls).

2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative measures and sanctions that can be applied include at least the following:

(a) a public statement which indicates the natural or legal person and the nature of the breach***, if necessary and proportionate after a case-by-case evaluation***; **[Am. 130]**

(b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(c) in the case of an obliged entity subject to an authorisation, withdrawal of the authorisation;

(d) a temporary ban against any member of the obliged entity's management body, who is held responsible, to exercise functions in institutions;

(e) in the case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual turnover of that legal person in the preceding business year;

(f) in the case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000, or in the Member States where the euro is not the official currency, the corresponding value in the national currency on … (*);

(g) administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.

For the purpose of point (e) of the first subparagraph, where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the ~~consolidated~~ account of the ~~ultimate parent undertaking in the preceding business year~~ ***subsidiary***. **[Am. 131]**

Article 57

1. Member States shall ensure that competent authorities publish any sanction or measure imposed for breach of the national provisions adopted in the implementation of this Directive***, if necessary and proportionate after a case-by-case evaluation,*** without undue delay including information on the type and nature of the breach and the identity of persons responsible for it~~, unless such publication would seriously jeopardise the stability of financial markets~~. Where publication would cause a disproportionate damage to the parties involved, competent authorities ~~shall~~ ***may*** publish the sanctions on an anonymous basis. **[Am. 132]**

2. Member States shall ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including:

(a) the gravity and the duration of the breach;

(*) Date of entry into force of this Directive.

(b) the degree of responsibility of the natural or legal person responsible;

(c) the financial strength of the natural or legal person responsible as indicated by the total turnover of that person or the annual income of that person;

(d) the importance of profits gained or losses avoided by thenatural or legal person responsible, insofar as they can be determined;

(e) the losses to third parties caused by the breach, insofar as they can be determined;

(f) the level of cooperation of the natural or legal person responsiblewith the competent authority;

(g) previous breaches by the natural or legal person responsible.

3. ***In order to ensure their consistent application and dissuasive effect across the Union,*** the ESAs shall, by … ***(*)***, issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 on types of administrative measures and sanctions and level of administrative pecuniary sanctions applicable to obliged entities referred to in Article 2(1)(1) and (2). **[Am. 133]**

4. In the case of legal persons, Member States shall ensure that they may be held liable for infringements referred to in Article 56(1) which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on any of the following:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.

5. In addition to the cases referred to in paragraph 4 of this Article, Member States shall ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in that paragraph has made possible the commission of the infringements referred to in Article 56(1) for the benefit of a legal person by a person under its authority.

Article 58

1. Member States shall ensure that competent authorities establish effective mechanisms to encourage reporting of breaches of the national provisions implementing this Directive to competent authorities.

2. The mechanisms referred to in paragraph 1 shall include at least:

(a) specific procedures for the receipt of reports on breaches and their follow-up;

(b) appropriate protection for employees of institutions who report breaches committed within the institution;

(ba) appropriate protection for the accused person; **[Am. 134]**

(*) ***12 months*** after the date of entry into force of this Directive.

(c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in Directive 95/46/EC.

3. Member States shall require obliged entities to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and anonymous channel.

CHAPTER VII

FINAL PROVISIONS

Article 59

By … (*), the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and to the Council.

By … (**), the Commission shall submit to the European Parliament and to the Council a report on the provisions concerning serious tax offences and punishments in the Member States, on the cross-border significance of tax offences and on the possible need for a coordinated approach in the Union, accompanied if appropriate by a legislative proposal. **[Am. 135]**

Article 60

Directives 2005/60/EC and 2006/70/EC are repealed with effect from … (***).

References to the repealed directives shall be construed as being made to this Directive and should be read in accordance with the correlation table set out in Annex IV.

Article 61

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … (***). They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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 62

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

Article 63

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President

(*) Four years after the date of entry into force of this Directive.
(**) One year after the entry into force of this Directive.
(***) Two years after the entry into force of this Directive.

ANNEX I

The following is a non-exhaustive list of risk variables that obliged entities shall consider when determining to what extent to apply customer due diligence measures in accordance with Article 11(3):

(i) The purpose of an account or relationship;

(ii) The level of assets to be deposited by a customer or the size of transactions undertaken;

(iii) The regularity or duration of the business relationship.

Tuesday 11 March 2014

ANNEX II

The following is a non-exhaustive list of factors and types of evidence of potentially lower risk referred to in Article 14:

(1) Customer risk factors:

(a) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership;

(b) public administrations or enterprises;

(c) customers resident in lower risk geographical areas as set out in point (3);

(ca) beneficial owners of pooled accounts held by notaries and other independent legal professionals from the Member States, or from third countries provided that they are subject to requirements to combat money laundering or terrorist financing consistent with international standards and are supervised for compliance with those requirements, and provided that the information on the identity of the beneficial owner is available, on request, to the institutions that act as depository institutions for the pooled accounts; *[Am. 136]*

(cb) obliged entities where they are subject to requirements to combat money laundering and terrorist financing under this Directive and have effectively implemented those requirements. *[Am. 137]*

(2) Product, service, transaction or delivery channel risk factors:

(a) life insurance policies where the premium is low;

(b) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral;

(c) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme;

(d) financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes;

(e) products where the risk of money laundering/terrorist financing are managed by other factors such as purse limits or transparency of ownership (e.g. certain types of electronic money as defined in Article 2(2) of Directive 2009/110/EC);

(ea) long-term purpose-orientated savings agreements, serving for instance as a safeguard for retirement provisions or for the acquisition of self-used immovable property and where the incoming payments originate from a payment account which is identified in accordance with Articles 11 and 12 of this Directive; *[Am. 138]*

(eb) financial products low in value where repayment is conducted through a bank account in the name of the customer; *[Am. 139]*

(ec) financial products which relate to financial physical assets in the form of leasing agreements or of low value consumer credit, provided the transactions are carried out through bank accounts; *[Am. 140]*

(ed) non-face-to-face business relationships or transactions where the identity is capable of being verified electronically; *[Am. 141]*

(ee) such products, services and transactions identified as low risk by the competent authorities of the home Member State of the obliged entities. *[Am. 142]*

(3) Geographical risk factors:

(a) ~~other~~ Member States; **[Am. 143]**

(b) third countries ***identified, by credible sources, such as by FATF public statements, mutual evaluation or detailed assessment reports or published follow-up reports, as*** having effective anti-money laundering/combating terrorist financing systems; **[Am. 144]**

(c) third countries identified by credible sources as having a low level of corruption or other criminal activity;

(d) third countries which are subject to requirements to combat money laundering and terrorist financing consistent with the FATF Recommendations, have effectively implemented those requirements, and are effectively supervised or monitored in accordance with the Recommendations to ensure compliance with those requirements;

(da) jurisdictions identified by the Commission having anti-money laundering measures equivalent to those laid down by this Directive and other related rules and regulations of the Union. *[Am. 145]*

Tuesday 11 March 2014

ANNEX III

The following is a non-exhaustive list of factors and types of evidence of potentially higher risk referred to in Article 16(3):

(1) Customer risk factors:

(a) the business relationship is conducted in unusual circumstances;

(b) customers resident in countries set out in point (3);

(c) legal persons or arrangements that are personal asset-holding vehicles;

(d) companies that have nominee shareholders or shares in bearer form;

(e) businesses that are cash intensive;

(f) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business.

(2) Product, service, transaction or delivery channel risk factors:

(a) private banking;

(b) products or transactions that ***that allow for or that*** might favour anonymity; **[Am. 146]**

(c) non-face-to-face business relationships or transactions***, without certain safeguards, e.g. electronic signatures***; **[Am. 147]**

(d) payment received from unknown or unassociated third parties.

~~(e) new products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products.~~ **[Am. 148]**

(3) Geographical risk factors:

(a) countries identified by credible sources, such as by FATF public statements, mutual evaluation or detailed assessment reports or published follow-up reports, as not having effective anti-money laundering/combating terrorist financing systems;

(b) countries identified by credible sources as having significant levels of corruption or other criminal activity;

(c) countries subject to sanctions, embargos or similar measures issued by, for example, the ***Union or the*** United Nations; **[Am. 149]**

(d) countries providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.

ANNEX IIIA

The following are types of enhanced due diligence measures that Member States should as a minimum implement for the application of Article 16:

— ***Obtaining additional information on the customer (e.g. occupation, volume of assets, information available through public databases, internet, etc.), and updating more regularly the identification data of customer and beneficial owner;***

— ***Obtaining additional information on the intended nature of the business relationship;***

— ***Obtaining information on the customer's source of funds or source of wealth of the customer;***

— ***Obtaining information on the reasons for intended or performed transactions;***

— ***Obtaining the approval of senior management to commence or continue the business relationship;***

— ***Conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination;***

— ***Requiring the first payment to be carried out through an account opened in the customer's name with a bank subject to similar CDD standards.*** *[Am. 150]*

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ANNEX IV

Correlation table referred to in Article 60

Directive 2005/60/EC	This Directive
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
	Articles 6 to 8
Article 6	Article 9
Article 7	Article 10
Article 8	Article 11
Article 9	Article 12
Article 10(1)	Article 10(d)
Article 10(2)	—
Article 11	Articles 13, 14 and 15
Article 12	—
Article 13	Articles 16 to 23
Article 14	Article 24
Article 15	—
Article 16	Article 25
Article 17	—
Article 18	Article 26
	Article 27
Article 19	Article 28
	Article 29
	Article 30
Article 20	—
Article 21	Article 31
Article 22	Article 32
Article 23	Article 33
Article 24	Article 34
Article 25	Article 35
Article 26	Article 36
Article 27	Article 37
Article 28	Article 38
Article 29	—

Directive 2005/60/EC	This Directive
Article 30	Article 39
Article 31	Article 42
Article 32	Article 40
Article 33	Article 41
Article 34	Article 42
Article 35	Article 43
Article 36	Article 44
Article 37	Article 45
	Article 46
Article 37a	Article 47
Article 38	Article 48
	Articles 49 to 54
Article 39	Articles 55 to 58
Article 40	—
Article 41	—
Article 41a	—
Article 41b	—
Article 42	Article 59
Article 43	—
Article 44	Article 60
Article 45	Article 61
Article 46	Article 62
Article 47	Article 63

Directive 2006/70/EC	This Directive
Article 1	—
Article 2(1), (2) and (3)	Article 3(7)(d), (e) and (f)
Article 2(4)	—
Article 3	—
Article 4	Article 2(2) to (8)
Article 5	—
Article 6	—
Article 7	—

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P7_TA(2014)0192

EU guarantee to EIB against losses under financing operations supporting investment projects outside the Union ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a decision of the European Parliament and of the Council on granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union (COM(2013)0293 — C7-0145/2013 — 2013/0152(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/46)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0293),

— having regard to Article 294(2) and Articles 209 and 212 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0145/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the undertaking given by the Council representative by letter of 20 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union, and the related statement attached to the Coreper minutes, notified to Parliament by letter of the same date,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Budgets and the opinions of the Committee on Foreign Affairs, the Committee on Development, the Committee on International Trade and the Committee on Economic and Monetary Affairs (A7-0392/2013),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0152

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Decision No …/2014/EU of the European Parliament and of the Council granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Decision No 466/2014/EU.)

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P7_TA(2014)0193

Genetic Resources ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a regulation of the European Parliament and of the Council on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union (COM(2012)0576 — C7-0322/2012 — 2012/0278(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/47)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2012)0576),

— having regard to Article 294(2) and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0322/2012),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the French Senate, the Italian Senate and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,

— having regard to the opinion of the European Economic and Social Committee of 20 March 2013 ([1]),

— after consulting the Committee of the Regions,

— having regard to the undertaking given by the Council representative by letter of 11 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinions of the Committee on Development, the Committee on Agriculture and Rural Development and the Committee on Fisheries (A7-0263/2013),

1. Adopts its position at first reading hereinafter set out ([2]);

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2012)0278

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 511/2014.)

([1]) OJ C 161, 6.6.2013, p. 73.
([2]) This position replaces the amendments adopted on 12 September 2013 (Texts adopted, P7_TA(2013)0373).

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P7_TA(2014)0194

Roadworthiness tests for motor vehicles and their trailers ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a regulation of the European Parliament and of the Council on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC (COM(2012)0380 — C7-0186/2012 — 2012/0184(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/48)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2012)0380),

— having regard to Article 294(2) and Article 91 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0186/2012),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the French Senate, the Cypriot House of Representatives, the Netherlands House of Representatives, the Netherlands Senate and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,

— having regard to the opinion of the European Economic and Social Committee of 12 December 2012 ([1]),

— after consulting the Committee of the Regions,

— having regard to the undertaking given by the Council representative by letter of 19 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection (A7-0210/2013),

1. Adopts its position at first reading hereinafter set out ([2]);

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2012)0184

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Directive 2014/…/EU of the European Parliament and of the Council on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Directive 2014/45/EU.)

([1]) OJ C 44, 15.2.2013, p. 128.
([2]) This position replaces the amendments adopted on 2 July 2013 (Texts adopted, P7_TA(2013)0297).

Tuesday 11 March 2014

P7_TA(2014)0195

Registration documents for vehicles ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a directive of the European Parliament and of the Council amending Council Directive 1999/37/EC on the registration documents for vehicles (COM(2012)0381 — C7-0187/2012 — 2012/0185(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/49)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2012)0381),

— having regard to Article 294(2) and Article 91 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0187/2012),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Cypriot Parliament and by the Netherlands House of Representatives and the Netherlands Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,

— having regard to the opinion of the European Economic and Social Committee of 12 December 2012 ([1]),

— after consulting the Committee of the Regions,

— having regard to the undertaking given by the Council representative by letter of 19 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism (A7-0199/2013),

1. Adopts its position at first reading hereinafter set out ([2]);

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2012)0185

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Directive 2014/…/EU of the European Parliament and of the Council amending Council Directive 1999/37/EC on the registration documents for vehicles

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Directive 2014/46/EU.)

([1]) OJ C 44, 15.2.2013, p. 128.
([2]) This position replaces the amendments adopted on 2 July 2013 (Texts adopted, P7_TA(2013)0295).

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P7_TA(2014)0196

Roadworthiness of commercial vehicles ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC (COM(2012)0382 — C7-0188/2012 — 2012/0186(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/50)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2012)0382),

— having regard to Article 294(2) and Article 91 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0188/2012),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Cypriot Parliament, the Netherlands House of Representatives and the Netherlands Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,

— having regard to the opinion of the European Economic and Social Committee of 12 December 2012 ([1]),

— after consulting the Committee of Regions,

— having regard to the undertaking given by the Council representative by letter of 19 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on Industry, Research and Energy (A7-0207/2013),

1. Adopts its position at first reading hereinafter set out ([2]);

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2012)0186

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Directive 2014/…/EU of the European Parliament and of the Council on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Directive 2014/47/EU.)

([1]) OJ C 44, 15.2.2012, p. 128.
([2]) This position replaces the amendments adopted on 2 July 2013 (Texts adopted, P7_TA(2013)0296).

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P7_TA(2014)0197

Rail transport statistics ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 91/2003 of the European Parliament and of the Council on rail transport statistics, as regards the collection of data on goods, passengers and accidents (COM(2013)0611 — C7-0249/2013 — 2013/0297(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/51)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0611),

— having regard to Article 294(2) and Article 338(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0249/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism (A7-0002/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0297

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council amending Regulation (EC) No 91/2003 on rail transport statistics, as regards the collection of data on goods, passengers and accidents

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 338(1) thereof,

Having regard to the proposal from the European Commission,

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

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

Whereas:

(1) Regulation (EC) No 91/2003 of the European Parliament and of the Council ([2]) establishes a common framework for producing, transmitting, evaluating and disseminating comparable rail transport statistics in the Union.

(2) Statistics on the transport of goods and passengers by rail are necessary to enable the Commission to monitor and develop the common transport policy, and the transport elements of policies on the regions and on trans-European networks.

(3) Statistics on rail safety are also necessary to enable the Commission to prepare and monitor Union action in the field of transport safety. The European Rail Agency collects data on accidents under the Statistical Annex to Directive 2004/49/EC of the European Parliament and of the Council ([3]) as regards common safety indicators and common methods of calculating accident costs.

(3a) Eurostat should closely cooperate with the European Railway Agency in the collection of rail accident data in order to ensure that the data obtained are consistent and fully comparable. The role of the European Railway Agency in the field of rail safety should be continuously enhanced. **[Am. 1]**

(4) Most Member States transmitting passenger data to the Commission (Eurostat) under Regulation (EC) No 91/2003 have regularly provided the same data for both the provisional and final datasets.

(5) There should be a balance between the needs of the users and the burden on respondents when producing European statistics.

(6) Eurostat has conducted a technical analysis of the existing data on rail statistics collected under the Union legislation and of the dissemination policy, within its Working Group and Task Force on rail transport statistics, to simplify as much as possible the various activities necessary for producing statistics, while keeping the final output in line with present and future user needs.

(7) In its report to the European Parliament and the Council on the experience acquired in the application of the Regulation (EC) No 91/2003, the Commission mentions that long term developments will probably mean the suppression or simplification of the data already collected under the Regulation, and that the intention is to reduce the data transmission period for annual data on rail passengers. ***The Commission should continue to provide reports at regular intervals on the way in which this Regulation is implemented.*** **[Am. 2]**

(8) Regulation (EC) No 91/2003 confers powers on the Commission to implement some of the provisions of this Regulation. As a consequence of the entry into force of the Treaty on the Functioning of the European Union ('the Treaty'), the powers conferred on the Commission under this Regulation need to be aligned with Articles 290 and 291 of the Treaty.

(9) In order to reflect new developments in the Member States but at the same time to maintain harmonised rail data collection across the Union and with a view to maintaining the high quality of the data transmitted by the Member States, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission, with a view to adapting the definitions and thresholds for reporting and the contents of the Annexes, and to specifying the information to be supplied.

([1]) Position of the European Parliament of 11 March 2014.

([2]) Regulation (EC) No 91/2003 of the European Parliament and of the Council of 16 December 2002 on rail transport statistics (OJ L 14, 21.1.2003, p. 1).

([3]) Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (OJ L 164, 30.4.2004, p. 44).

(10) It is particularly important that the Commission carry out the appropriate consultations during its preparatory work, including at expert level***, and that it take into account the position of the rail sector***. The Commission should, when preparing and drawing up delegated acts, ensure simultaneous, timely and appropriate submission of the relevant documents to the European Parliament and to the Council. **[Am. 3]**

(11) The Commission should ensure that these delegated acts do not impose a significant additional administrative burden on the Member States and on the respondents.

(12) In order to ensure uniform conditions for implementation of Regulation (EC) No 91/2003, implementing powers should be conferred on the Commission as regards the specification of information to be supplied for the reports on the quality and comparability of the results***, and on arrangements for the dissemination of results by the Commission (Eurostat)***. These powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council [1]. ***The examination procedure should be used for the adoption of those acts, given their general scope***. **[Am. 4]**

(13) The European Statistical System Committee has been consulted.

(14) Regulation (EC) No 91/2003 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 91/2003 is amended as follows:

(1) Article 3 is amended as follows:

~~(a) In paragraph 1 points 24-30 are deleted.~~ **[Am. 5]**

(b) Paragraph 2 is replaced by the following:

'2. The Commission shall be empowered to adopt, in accordance with Article 10, delegated acts to adapt the technical definitions referred to in paragraph 1 and to provide additional definitions when needed to take into account new developments which require a certain level of technical detail to be defined in order to ensure harmonisation of statistics.'

(2) Article 4 is amended as follows:

(a) In paragraph 1, points b ~~d and h~~ ***and d*** are deleted. **[Am. 6]**

(aa) In paragraph 1, the following point is inserted:

'(ga) statistics on rail infrastructure (Annex Ga);' *[Am. 7]*

(ab) In paragraph 1, the following point is inserted:

'1a. Eurostat shall closely cooperate with the European Railway Agency (ERA) in the collection of accident data, including data qualifications, in order to ensure that the rail accident data collected by ERA

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

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under the Annex to Commission Directive 2009/149/EC (*) on railway safety is fully comparable to the accident data collected by Eurostat on other transport modes.

(*) Commission Directive 2009/149/EC of 27 November 2009 amending Directive 2004/49/EC of the European Parliament and of the Council as regards Common Safety Indicators and common methods to calculate accident costs (OJ L 313, 28.11.2009, p. 65).' **[Am. 8]**

(b) Paragraph 2 is replaced by the following:

'2. Under Annexes A and C, Member States shall report data for undertakings:

(a) whose total volume of goods transport is at least 200 million tonne-km or at least 500 000 tonnes;

(b) whose total volume of passenger transport is at least 100 million passenger-km;

(c) reporting in Annex A and Annex C is optional below these thresholds.'

(c) Paragraph 3 is replaced by the following:

'3. Under Annex L, Member States shall provide the total data for undertakings below the threshold referred to in paragraph 2 if these data are not reported under Annexes A and C, as specified in Annex L.'

(d) Paragraph 5 is replaced by the following:

'5. The Commission shall be empowered to adopt delegated acts, ***where necessary*** in accordance with Article 10, concerning the adaptation of the contents of the Annexes and the thresholds for reporting as referred to in paragraphs 1 and 3, in order to take account of economic and technical developments.' **[Am. 9]**

(e) The following paragraph is added:

'6. When exercising its power pursuant to this paragraph, the Commission shall ensure that the delegated acts adopted do not impose a significant additional administrative burden on the Member States and on the respondents.'

(3) In Article 5(2) point b is replaced by the following:

'(b) administrative data, including data collected by regulatory authorities, in particular the rail freight waybill if available'.

(4) Article 7 is replaced by the following:

'Article 7

Dissemination

Statistics based on the data specified in Annexes A, C, E, F, G***, GA, H*** and L shall be disseminated by the Commission (Eurostat) ***no later than 12 months after the end of the period to which the results relate***.

The arrangements for the dissemination of results shall be adopted by the Commission in accordance with the examination procedure referred to in Article 11(2).' **[Am. 10]**

(4a) In Article 8, the following paragraph is inserted:

'1a. Member States shall take all measures necessary to ensure the quality of the data transmitted.' **[Am. 11]**

(5) In Article 8, paragraphs are added:

'3. For the purposes of this Regulation, the quality criteria to be applied to the data to be transmitted are those referred to in Article 12(1) of Regulation (EC) No 223/2009 of the European Parliament and of the Council (*).

4. The Commission shall, by means of implementing acts, specify the modalities, structure, periodicity and comparability elements for the standard quality reports. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11.

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

(6) Article 9 is ~~deleted.~~ ***replaced by the following:***

'Article 9

Report

By … (*) ***and every three years thereafter, the Commission, after consulting the Statistical Programme Committee, shall submit a report to the European Parliament and the Council on the implementation of this Regulation. In particular, that report shall:***

(a) assess the benefits accruing to the Union, the Member States and the providers and users of statistical information of the statistics produced, in relation to their costs;

(b) assess the quality of the statistics produced, especially with regards to data losses, resulting from the deletion of simplified reporting;

(c) identify areas for potential improvement and any amendments considered necessary in the light of the results obtained.'. *[Am. 12]*

(*) ***Three years after the date of entry into force of this Regulation.***

(7) Article 10 is replaced by the following:

'Article 10

Exercise of the delegation

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

2. The power to adopt delegated acts referred to in Articles 3(2) and 4(5) shall be conferred on the Commission for ~~an indeterminate~~ ***a*** period of ~~time~~ ***five years*** from … (*). ***The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration unless the European Parliament or the Council opposes such extension no later than three months before the end of each period.*** **[Am. 13]**

3. The delegation of power referred to in Articles 3(2) and 4(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to Articles 3(2) and 4(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'

(*) The exact date of the entry into force of the amending Regulation.

(8) Article 11 is replaced by the following:

'Article 11

Committee

1. The Commission shall be assisted by the European Statistical System Committee, established by Regulation (EC) No 223/2009. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and the Council (*).

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

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

(9) Article 12 is deleted.

(10) Annexes B, D~~, H~~ and I are deleted. **[Am. 15]**

(11) Annex C is replaced as set out in the Annex to this Regulation.

(11a) Annex F is amended as follows:

(a) In column 2, row 1, paragraph 1 the following indent is added:

'— tonne-km'.

(b) In column 2, row 1, paragraph 2 the following indent is added:

'— passenger-km'. *[Am. 16]*

(c) In column 2, row 1 the following paragraph is inserted:

'— distance-based rail freight modal shares based on tonne-km according to the following distance breakdown:

— d ≤ 50 km

— 50 km < d ≤ 150 km

— 150 km < d ≤ 300 km

— 300 km < d ≤ 500 km

— 500 km < d ≤ 750 km

— ***750 km < d ≤ 1 000 km***

— ***d > 1 000 km'.*** *[Am. 17]*

(d) In column 2, row 3 is amended as follows:

'— For "tonnes" and "tonne-km": Every year;

— For "number of passengers" and "passenger-km": Every five years'. *[Am. 18]*

(11b) The following Annex is inserted:

'Annex Ga

Rail infrastructure data

1. Number of kilometres of rail infrastructure, equipped with ERTMS;

2. Length in kilometres of the rail network continuously equipped with ERTMS (in the Member State);

3. Number of cross-border rail infrastructure points, used more frequently for passenger transport than every hour, than every two hours and less frequently than every two hours;

4. Number of cross-border rail points, abandoned for use of passengers or freight transport or dismantled rail infrastructure;

5. Number of stations, barrier-free, accessible for persons with reduced mobility (PRMs) and disabled persons.'. *[Am. 23]*

(11c) Annex H is amended as follows:

(a) In column 2, row 1 the following indent is added:

'— number of incidents (Table H2)';

(b) In column 2, row 4, paragraph 2 is replaced by the following:

'Table H2: number of accidents and incidents involving the transport of dangerous goods';

(c) In column 2, row 7, paragraph 1, the third indent is replaced by the following:

'— accidents involving level crossings and those not caused by trains';

(d) In column 2, row 7, paragraph 2, the first indent is replaced by the following:

'— total number of accidents and incidents involving at least one railway vehicle transporting dangerous goods, as defined by the list of goods covered by Annex K';

(e) In column 2, row 7, paragraph 2, the second indent is replaced by the following:

'— number of such accidents and incidents in which dangerous goods are released'. *[Am. 19]*

(12) Annex L is added as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. ***It shall be consolidated with Regulation (EC) No 91/2003 within three months of its publication.*** **[Am. 21]**

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

Done at …

For the European Parliament	*For the Council*
The President	*The President*

Tuesday 11 March 2014

ANNEX

'Annex C

ANNUAL STATISTICS ON PASSENGER TRANSPORT — DETAILED REPORTING	
List of variables and units of measurement	Passengers transported in: — number of passengers — passenger-km Passenger train movements in: — train-km ***Locomotives equipped with ERTMS in:*** — ***number*** *[Am. 22]*
Reference period	Year
Frequency	Every year
List of tables with the break-down for each table	Table C3: passengers transported, by type of transport Table C4: international passengers transported, by country of embarkation and by country of disembarkation Table C5: passenger train movements
Deadline for transmission of data	Eight months after end of reference period
First reference period	2012
Notes	1. Type of transport is broken down as follows: — national — international 2. For Tables C3 and C4, Member States shall report data including information from ticket sales outside the reporting country. This information may be obtained either directly from the national authorities of other countries or through international compensation arrangements for tickets'

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'Annex L

Table L.1

LEVEL OF TRANSPORT ACTIVITY IN GOODS TRANSPORT	
List of variables and units of measurement	Goods transported in: — total tonnes — total tonne-km Goods train movements in: — total train-km
Reference period	One year
Frequency	Every year
Deadline for transmission of data	Five months after end of reference period
First reference period	201X
Notes	Only for undertakings with a total volume of freight transport of less than 200 million tonne-km and less than 500 000 tonnes and not reporting under Annex A (detailed reporting)

Table L.2

LEVEL OF TRANSPORT ACTIVITY IN PASSENGER TRANSPORT	
List of variables and units of measurement	Passengers transported in: — total passengers — total passenger-km Passenger train movements in: — total train-km
Reference period	One year
Frequency	Every year
Deadline for transmission of data	Eight months after end of reference period
First reference period	201X
Notes	Only for undertakings with a total volume of passenger transport of less than 100 million passenger-km and not reporting under Annex C (detailed reporting)'

Tuesday 11 March 2014

P7_TA(2014)0198

Electronic invoicing in public procurement ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a directive of the European Parliament and of the Council on electronic invoicing in public procurement (COM(2013)0449 — C7-0208/2013 — 2013/0213(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/52)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0449),

— having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0208/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 16 October 2013 ([1]),

— having regard to the opinion of the Committee of the Regions of 28 November 2013 ([2]),

— having regard to the undertaking given by the Council representative by letter of 24 January 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on the Internal Market and Consumer Protection (A7-0004/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0213

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Directive 2014/…/EU of the European Parliament and of the Council on electronic invoicing in public procurement

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Directive 2014/55/EU.)

([1]) OJ C 79, 6.3.2014, p. 67.
([2]) Not yet published in the Official Journal.

Tuesday 11 March 2014

P7_TA(2014)0199

Farm structure surveys and survey on agricultural production methods ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1166/2008 on farm structure surveys and the survey on agricultural production methods, as regards the financial framework for the period 2014-2018 (COM(2013)0757 — C7-0390/2013 — 2013/0367(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/53)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0757),

— having regard to Article 294(2) and Article 338(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0390/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Agriculture and Rural Development (A7-0111/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0367

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council amending Regulation (EC) No 1166/2008 as regards the financial framework for the period 2014-2018

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 378/2014.)

Tuesday 11 March 2014

P7_TA(2014)0200

Goods resulting from the processing of agricultural products ***I

European Parliament legislative resolution of 11 March 2014 on the proposal for a regulation of the European Parliament and of the Council laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products (COM(2013)0106 — C7-0048/2013 — 2013/0063(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/54)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0106),

— having regard to Article 294(2) and Articles 43(2) and 207(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0048/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 10 July 2013 ([1]),

— having regard to the undertaking given by the Council representative by letter of 4 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Agriculture and Rural Development and the opinion of the Committee on International Trade (A7-0260/2013),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0063

Position of the European Parliament adopted at first reading on 11 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 510/2014.)

([1]) OJ C 327, 12.11.2013, p. 90.

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Annex to the legislative resolution

Commission statement on delegated acts

In the context of this Regulation, the Commission recalls the commitment it has taken in paragraph 15 of the Framework Agreement on relations between the European Parliament and the European Commission to provide to the Parliament full information and documentation on its meetings with national experts within the framework of its work on the presentation of delegated acts.

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P7_TA(2014)0212

Protection of individuals with regard to the processing of personal data ***I

European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (COM(2012)0011 — C7-0025/2012 — 2012/0011(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/55)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2012)0011),

— having regard to Article 294(2) and Articles 16(2) and 114(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0025/2012),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Belgian Chamber of Representatives, the German Bundesrat, the French Senate, the Italian Chamber of Deputies and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,

— having regard to the opinion of the European Economic and Social Committee of 23 May 2012 ([1]),

— after consulting the Committee of the Regions,

— having regard to the opinion of the European Data Protection Supervisor of 7 March 2012 ([2]),

— having regard to the opinion of the European Union Agency for Fundamental Rights of 1 October 2012,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Employment and Social Affairs, the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs (A7-0402/2013),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

([1]) OJ C 229, 31.7.2012, p. 90.
([2]) OJ C 192, 30.6.2012, p. 7.

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P7_TC1-COD(2012)0011

Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2) and Article 114(1) thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

Having regard to the opinion of the European Data Protection Supervisor ([2])

Acting in accordance with the ordinary legislative procedure ([3])

Whereas:

(1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union ('Charter') and Article 16(1) of the Treaty lay down that everyone has the right to the protection of personal data concerning him or her.

(2) The processing of personal data is designed to serve man; the principles and rules on the protection of individuals with regard to the processing of their personal data should, whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms, notably their right to the protection of personal data. It should contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, the strengthening and the convergence of the economies within the internal market, and the well-being of individuals.

(3) Directive 95/46/EC of the European Parliament and of the Council ([4]) seeks to harmonise the protection of fundamental rights and freedoms of natural persons in respect of processing activities and to guarantee the free flow of personal data between Member States.

(4) The economic and social integration resulting from the functioning of the internal market has led to a substantial increase in cross-border flows. The exchange of data between economic and social, public and private actors across the Union increased. National authorities in the Member States are being called upon by Union law to co-operate and exchange personal data so as to be able to perform their duties or carry out tasks on behalf of an authority in another Member State.

([1]) OJ C 229, 31.7.2012, p. 90.
([2]) OJ C 192, 30.6.2012, p. 7.
([3]) Position of the European Parliament of 12 March 2014.
([4]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and collecting has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and requires to further facilitate the free flow of data within the Union and the transfer to third countries and international organisations, while ensuring an high level of the protection of personal data.

(6) These developments require building a strong and more coherent data protection framework in the Union, backed by strong enforcement, given the importance to create the trust that will allow the digital economy to develop across the internal market. Individuals should have control of their own personal data and legal and practical certainty for individuals, economic operators and public authorities should be reinforced.

(7) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the way data protection is implemented across the Union, legal uncertainty and a widespread public perception that there are significant risks for the protection of individuals associated notably with online activity. Differences in the level of protection of the rights and freedoms of individuals, notably to the right to the protection of personal data, with regard to the processing of personal data afforded in the Member States may prevent the free flow of personal data throughout the Union. These differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. This difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.

(8) In order to ensure consistent and high level of protection of individuals and to remove the obstacles to flows of personal data, the level of protection of the rights and freedoms of individuals with regard to the processing of such data should be equivalent in all Member States. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union.

(9) Effective protection of personal data throughout the Union requires strengthening and detailing the rights of data subjects and the obligations of those who process and determine the processing of personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for offenders in the Member States.

(10) Article 16(2) of the Treaty mandates the European Parliament and the Council to lay down the rules relating to the protection of individuals with regard to the processing of personal data and the rules relating to the free movement of personal data.

(11) In order to ensure a consistent level of protection for individuals throughout the Union and to prevent divergences hampering the free movement of data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide individuals in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different Member States. To take account of the specific situation of micro, small and medium-sized enterprises, this Regulation

includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation 2003/361/EC ([1]).

(12) The protection afforded by this Regulation concerns natural persons, whatever their nationality or place of residence, in relation to the processing of personal data. With regard to the processing of data which concern legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person, the protection of this Regulation should not be claimed by any person. This should also apply where the name of the legal person contains the names of one or more natural persons.

(13) The protection of individuals should be technologically neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means as well as to manual processing, if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Regulation.

(14) This Regulation does not address issues of protection of fundamental rights and freedoms or the free flow of data related to activities which fall outside the scope of Union law~~, nor does it cover the processing of personal data by the Union institutions, bodies, offices and agencies, which are subject to~~. Regulation (EC) No 45/2001~~, or the processing of personal data by the Member States when carrying out activities in relation to the common foreign and security policy of the Union~~ ***of the European Parliament and of the Council ([2]) should be brought in line with this Regulation and applied in accordance with this Regulation***. **[Am. 1]**

(15) This Regulation should not apply to processing of personal data by a natural person, which are exclusively personal***, family-related,*** or domestic, such as correspondence and the holding of addresses ***or a private sale***, and ~~without any gainful interest and thus~~ without any connection with a professional or commercial activity. ~~The exemption should also not apply to controllers or processors which provide the means for processing personal data for such personal or domestic activities.~~ ***However, this Regulation should apply to controllers and processors which provide the means for processing personal data for such personal or domestic activities.*** **[Am. 2]**

(16) The protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, is subject of a specific legal instrument at Union level. Therefore, this Regulation should not apply to the processing activities for those purposes. However, data processed by public authorities under this Regulation when used for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties should be governed by the more specific legal instrument at Union level (Directive 2014/…/EU of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data).

(17) This Regulation should be without prejudice to the application of Directive 2000/31/EC of the European Parliament and of the Council ([3]), in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.

([1]) Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

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

([3]) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1).

(18) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. ***Personal data in documents held by a public authority or public body may be disclosed by that authority or body in accordance with Union or Member State law regarding public access to official documents, which reconciles the right to data protection with the right of public access to official documents and constitutes a fair balance of the various interests involved.*** **[Am. 3]**

(19) Any processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union should be carried out in accordance with this Regulation, regardless of whether the processing itself takes place within the Union or not. Establishment implies the effective and real exercise of activity through stable arrangements. The legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in this respect.

(20) In order to ensure that individuals are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects ~~residing~~ in the Union by a controller not established in the Union should be subject to this Regulation where the processing activities are related to the offering of goods or services***, irrespective of whether connected to a payment or not,*** to such data subjects, or to the monitoring ~~of the behaviour~~ of such data subjects. ***In order to determine whether such a controller is offering goods or services to such data subjects in the Union, it should be ascertained whether it is apparent that the controller is envisaging the offering of services to data subjects in one or more Member States in the Union.*** **[Am. 4]**

(21) In order to determine whether a processing activity can be considered to 'monitor ~~the behaviour~~' ~~of~~ data subjects, it should be ascertained whether individuals are tracked ~~on the internet with~~***, regardless of the origins of the data, or if other data about them are collected, including from public registers and announcements in the Union that are accessible from outside of the Union, including with the intention to use, or potential of subsequent use of*** data processing techniques which consist of applying a 'profile' ~~to an individual~~, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes. **[Am. 5]**

(22) Where the national law of a Member State applies by virtue of public international law, this Regulation should also apply to a controller not established in the Union, such as in a Member State's diplomatic mission or consular post.

(23) The principles of ***data*** protection should apply to any information concerning an identified or identifiable ***natural*** person. To determine whether a person is identifiable, account should be taken of all the means ~~likely~~ reasonably ***likely*** to be used either by the controller or by any other person to identify ***or single out*** the individual ***directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the individual, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration both available technology at the time of the processing and technological development.*** The principles of data protection should ***therefore*** not apply to ***anonymous*** data ~~rendered anonymous in such a way that the data subject is no longer identifiable~~***, which is information that does not relate to an identified or identifiable natural person. This Regulation does therefore not concern the processing of such anonymous data, including for statistical and research purposes.*** **[Am. 6]**

(24) ~~When using online services, individuals may be associated with online~~ ***This Regulation should be applicable to processing involving*** identifiers provided by ~~their~~ devices, applications, tools and protocols, such as Internet Protocol addresses or cookie identifiers ***and Radio Frequency Identification tags, unless those identifiers do not relate to an identified or identifiable natural person***. ~~This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that identification numbers, location data, online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances~~. **[Am. 7]**

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(25) Consent should be given explicitly by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action ***that is the result of choice*** by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data~~, including by~~***. Clear affirmative action could include*** ticking a box when visiting an Internet website or ~~by~~ any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Silence***, mere use of a service*** or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided. **[Am. 8]**

(26) Personal data relating to health should include in particular all data pertaining to the health status of a data subject; information about the registration of the individual for the provision of health services; information about payments or eligibility for healthcare with respect to the individual; a number, symbol or particular assigned to an individual to uniquely identify the individual for health purposes; any information about the individual collected in the course of the provision of health services to the individual; information derived from the testing or examination of a body part or bodily substance, including biological samples; identification of a person as provider of healthcare to the individual; or any information on e.g. a disease, disability, disease risk, medical history, clinical treatment, or the actual physiological or biomedical state of the data subject independent of its source, such as e.g. from a physician or other health professional, a hospital, a medical device, or an in vitro diagnostic test.

(27) The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes~~, conditions~~ and means of processing through stable arrangements. This criterion should not depend whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore no determining criteria for a main establishment. The main establishment of the processor should be the place of its central administration in the Union.

(28) A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exercise a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented.

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data. ~~To determine when an individual is a child, this Regulation should take over the definition laid down by the UN Convention on the Rights of the Child.~~ ***Where data processing is based on the data subject's consent in relation to the offering of goods or services directly to a child, consent should be given or authorised by the child's parent or legal guardian in cases where the child is below the age of 13. Age-appropriate language should be used where the intended audience is children. Other grounds of lawful processing such as grounds of public interest should remain applicable, such as for processing in the context of preventive or counselling services offered directly to a child.*** **[Am. 9]**

(30) Any processing of personal data should be lawful, fair and transparent in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the data. The data should be adequate, relevant and limited to the minimum necessary

for the purposes for which the data are processed; this requires in particular ensuring that the data collected are not excessive and that the period for which the data are stored is limited to a strict minimum. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review.

(31) In order for processing to be lawful, personal data should be processed on the basis of the consent of the person concerned or some other legitimate basis, laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation. ***In case of a child or a person lacking legal capacity, relevant Union or Member State law should determine the conditions under which consent is given or authorised by that person.*** **[Am. 10]**

(32) Where processing is based on the data subject's consent, the controller should have the burden of proving that the data subject has given the consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and to what extent consent is given. ***To comply with the principle of data minimisation, the burden of proof should not be understood as requiring the positive identification of data subjects unless necessary. Similar to civil law terms (e.g. Council Directive 93/13/EEC ([1])), data protection policies should be as clear and transparent as possible. They should not contain hidden or disadvantageous clauses. Consent cannot be given for the processing of personal data of third persons.*** **[Am. 11]**

(33) In order to ensure free consent, it should be clarified that consent does not provide a valid legal ground where the individual has no genuine and free choice and is subsequently not able to refuse or withdraw consent without detriment. ***This is especially the case if the controller is a public authority that can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given. The use of default options which the data subject is required to modify to object to the processing, such as pre-ticked boxes, does not express free consent. Consent for the processing of additional personal data that are not necessary for the provision of a service should not be required for using the service. When consent is withdrawn, this may allow the termination or non-execution of a service which is dependent on the data. Where the conclusion of the intended purpose is unclear, the controller should in regular intervals provide the data subject with information about the processing and request a re-affirmation of his or her consent.*** **[Am. 12]**

~~(34) Consent should not provide a valid legal ground for the processing of personal data, where there is a clear imbalance between the data subject and the controller. This is especially the case where the data subject is in a situation of dependence from the controller, among others, where personal data are processed by the employer of employees' personal data in the employment context. Where the controller is a public authority, there would be an imbalance only in the specific data processing operations where the public authority can impose an obligation by virtue of its relevant public powers and the consent cannot be deemed as freely given, taking into account the interest of the data subject.~~**[Am. 13]**

(35) Processing should be lawful where it is necessary in the context of a contract or the intended entering into a contract.

(36) Where processing is carried out in compliance with a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority, the processing should have a legal basis in Union law, or in a Member State law which meets the requirements of the Charter for any limitation of the rights and freedoms. ***This should include also collective***

([1]) ***Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).***

agreements that could be recognised under national law as having general validity. It is also for Union or national law to determine whether the controller performing a task carried out in the public interest or in the exercise of official authority should be a public administration or another natural or legal person governed by public law, or by private law such as a professional association. **[Am. 14]**

(37) The processing of personal data should equally be regarded as lawful where it is necessary to protect an interest which is essential for the data subject's life.

(38) The legitimate interests of ~~a~~ ***the*** controller ***or, in case of disclosure, of the third party to whom the data are disclosed,*** may provide a legal basis for processing, provided ***that they meet the reasonable expectations of the data subject based on his or her relationship with the controller and*** that the interests or the fundamental rights and freedoms of the data subject are not overriding. This would need careful assessment in particular where the data subject is a child, given that children deserve specific protection. ***Provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, processing limited to pseudonymous data should be presumed to meet the reasonable expectations of the data subject based on his or her relationship with the controller.*** The data subject should have the right to object the processing~~, on grounds relating to their particular situation and~~ free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. ***The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing.*** Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks. **[Am. 15]**

(39) The processing of data to the extent strictly necessary ***and proportionate*** for the purposes of ensuring network and information security, i.e. the ability of a network or an information system to resist~~, at a given level of confidence,~~ accidental events or ~~unlawful or~~ malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted data, and the security of the related services offered by~~, or accessible via,~~ these networks and systems, by public authorities, Computer Emergency Response Teams — CERTs, Computer Security Incident Response Teams — CSIRTs, providers of electronic communications networks and services and by providers of security technologies and services, constitutes a legitimate interest of the concerned data controller. This could, for example, include preventing unauthorised access to electronic communications networks and malicious code distribution and stopping 'denial of service' attacks and damage to computer and electronic communication systems. ***This principle also applies to processing of personal data to restrict abusive access to and use of publicly available network or information systems, such as the blacklisting of electronic identifiers.*** **[Am. 16]**

(39a) ***Provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, the prevention or limitation of damages on the side of the data controller should be presumed as carried out for the legitimate interest of the data controller or, in case of disclosure, of the third party to whom the data are disclosed, and as meeting the reasonable expectations of the data subject based on his or her relationship with the controller. The same principle also applies to the enforcement of legal claims against a data subject, such as debt collection or civil damages and remedies.*** **[Am. 17]**

(39b) ***Provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, the processing of personal data for the purpose of direct marketing for own or similar products and services or for the purpose of postal direct marketing should be presumed as carried out for the legitimate interest of the controller or, in case of disclosure, of the third party to whom the data are disclosed, and as meeting the reasonable expectations of the data subject based on his or her relationship with the controller if highly visible***

information on the right to object and on the source of the personal data is given. The processing of business contact details should be generally regarded as carried out for the legitimate interest of the controller or, in case of disclosure, of the third party to whom the data are disclosed, and as meeting the reasonable expectations of the data subject based on his or her relationship with the controller. The same should apply to the processing of personal data made manifestly public by the data subject. **[Am. 18]**

~~(40) The processing of personal data for other purposes should be only allowed where the processing is compatible with those purposes for which the data have been initially collected, in particular where the processing is necessary for historical, statistical or scientific research purposes. Where the other purpose is not compatible with the initial one for which the data are collected, the controller should obtain the consent of the data subject for this other purpose or should base the processing on another legitimate ground for lawful processing, in particular where provided by Union law or the law of the Member State to which the controller is subject. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes should be ensured.~~ **[Am. 19]**

~~(41) Personal data which are, by their nature, particularly sensitive and vulnerable in relation to fundamental rights or privacy, deserve specific protection. Such data should not be processed, unless the data subject gives his explicit consent. However, derogations from this prohibition should be explicitly provided for in respect of specific needs, in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.~~ **[Am. 20]**

(42) Derogating from the prohibition on processing sensitive categories of data should also be allowed if done by a law, and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where grounds of public interest so justify and in particular for health purposes, including public health and social protection and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, ~~or~~ for historical, statistical and scientific research purposes***, or for archive services***. **[Am. 21]**

(43) Moreover, the processing of personal data by official authorities for achieving aims, laid down in constitutional law or international public law, of officially recognised religious associations is carried out on grounds of public interest.

(44) Where in the course of electoral activities, the operation of the democratic system requires in a Member State that political parties compile data on people's political opinions, the processing of such data may be permitted for reasons of public interest, provided that appropriate safeguards are established.

(45) If the data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. In case of a request for access, the controller should be entitled to ask the data subject for further information to enable the data controller to locate the personal data which that person seeks. ***If it is possible for the data subject to provide such data, controllers should not be able to invoke a lack of information to refuse an access request.*** **[Am. 22]**

(46) The principle of transparency requires that any information addressed to the public or to the data subject should be easily accessible and easy to understand, and that clear and plain language is used. This is in particular relevant where in situations, such as online advertising, the proliferation of actors and the technological complexity of practice makes it difficult for the data subject to know and understand if personal data relating to him or her are being collected, by whom and for what purpose. Given that children deserve specific protection, any information and communication, where processing is addressed specifically to a child, should be in such a clear and plain language that the child can easily understand.

(47) Modalities should be provided for facilitating the data subject's exercise of his or her rights provided by this Regulation, including mechanisms to ~~request~~ ***obtain***, free of charge, in particular access to data, rectification, erasure and to exercise the right to object. The controller should be obliged to respond to requests of the data subject within a ~~fixed~~ ***reasonable*** deadline and give reasons, in case he does not comply with the data subject's request. **[Am. 23]**

(48) The principles of fair and transparent processing require that the data subject should be informed in particular of the existence of the processing operation and its purposes, how long the data will be ***likely*** stored ***for each purpose***, ***if the data are to be transferred to third parties or third countries,*** on the existence ***of measures to object and*** of the right of access, rectification or erasure and on the right to lodge a complaint. Where the data are collected from the data subject, the data subject should also be informed whether they are obliged to provide the data and of the consequences, in cases they do not provide such data. ***This information should be provided, which can also mean made readily available, to the data subject after the provision of simplified information in the form of standardised icons. This should also mean that personal data are processed in a way that effectively allows the data subject to exercise his or her rights.*** **[Am. 24]**

(49) The information in relation to the processing of personal data relating to the data subject should be given to him or her at the time of collection, or, where the data are not collected from the data subject, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient.

(50) However, it is not necessary to impose this obligation where the data subject already ~~disposes of~~ ***knows*** this information, or where the recording or disclosure of the data is expressly laid down by law, or where the provision of information to the data subject proves impossible or would involve disproportionate efforts. ~~The latter could be particularly the case where processing is for historical, statistical or scientific research purposes; in this regard, the number of data subjects, the age of the data, and any compensatory measures adopted may be taken into consideration.~~ **[Am. 25]**

(51) Any person should have the right of access to data which have been collected concerning them, and to exercise this right easily, in order to be aware and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, for what ***estimated*** period, which recipients receive the data, what is the ***general*** logic of the data that are undergoing the processing and what might be~~, at least when based on profiling,~~ the consequences of such processing. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property ~~and in particular~~***, such as in relation to*** the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject. **[Am. 26]**

(52) The controller should use all reasonable measures to verify the identity of a data subject that requests access, in particular in the context of online services and online identifiers. A controller should not retain personal data for the unique purpose of being able to react to potential requests.

(53) Any person should have the right to have personal data concerning them rectified and a 'right to ~~be forgotten~~ ***erasure***' where the retention of such data is not in compliance with this Regulation. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. ~~This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet.~~ However, the further retention of the data should be allowed where it is necessary for historical, statistical and scientific research purposes, for reasons of public interest in the area of public health, for exercising the right of freedom of expression, when required by law or where there is a reason to restrict the processing of the data instead of erasing them. ***Also, the right to erasure should not apply when the retention of personal data is necessary for the performance of a contract with the data subject, or when there is a legal obligation to retain this data.*** **[Am. 27]**

(54) To strengthen the 'right to ~~be forgotten~~ ***erasure***' in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public ***without legal justification*** should be obliged to ~~inform third parties which are processing such data that a data subject requests them to erase any links to, or copies or replications of that personal data. To ensure this information, the controller should take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible. In relation to a third party publication of personal data, the controller should be considered responsible for the publication, where the controller has authorised the publication by the third party~~ ***take all necessary steps to have the data erased, including by third parties, without prejudice to the right of the data subject to claim compensation***. **[Am. 28]**

(54a) Data which are contested by the data subject and whose accuracy or inaccuracy cannot be determined should be blocked until the issue is cleared. **[Am. 29]**

(55) To further strengthen the control over their own data and their right of access, data subjects should have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain a copy of the data concerning them also in commonly used electronic format. The data subject should also be allowed to transmit those data, which they have provided, from one automated application, such as a social network, into another one. ***Data controllers should be encouraged to develop interoperable formats that enable data portability.*** This should apply where the data subject provided the data to the automated processing system, based on his or her consent or in the performance of a contract. ***Providers of information society services should not make the transfer of those data mandatory for the provision of their services.*** **[Am. 30]**

(56) In cases where personal data might lawfully be processed to protect the vital interests of the data subject, or on grounds of public interest, official authority or the legitimate interests of a controller, any data subject should nevertheless be entitled to object to the processing of any data relating to him or her***, free of charge and in a manner that can be easily and effectively invoked***. The burden of proof should be on the controller to demonstrate that his or her legitimate interests may override the interests or the fundamental rights and freedoms of the data subject. **[Am. 31]**

(57) Where ~~personal data are processed for the purposes of direct marketing,~~ the data subject ~~should have~~ ***has*** the right to object to ~~such~~ ***the*** processing ~~free of charge and in a manner that can be easily and effectively invoked~~***, the controller should explicitly offer it to the data subject in an intelligible manner and form, using clear and plain language and should clearly distinguish it from other information***. **[Am. 32]**

(58) ***Without prejudice to the lawfulness of the data processing, every*** natural person should have the right ~~not to be subject~~ ***to object*** to ~~a measure which is based on~~ profiling ~~by means of automated processing. However, such measure~~***. Profiling which leads to measures producing legal effects concerning the data subject or does similarly significantly affect the interests, rights or freedoms of the concerned data subject*** should ***only*** be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human ~~intervention~~ ***assessment*** and that such measure should not concern a child. ***Such measures should not lead to discrimination against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, sexual orientation or gender identity.*** **[Am. 33]**

(58a) Profiling based solely on the processing of pseudonymous data should be presumed not to significantly affect the interests, rights or freedoms of the data subject. Where profiling, whether based on a single source of pseudonymous data or on the aggregation of pseudonymous data from different sources, permits the controller to attribute pseudonymous data to a specific data subject, the processed data should no longer be considered to be pseudonymous. **[Am. 34]**

(59) Restrictions on specific principles and on the rights of information, ~~access,~~ rectification and erasure or on the right ***of access and*** to ***obtain*** data ~~portability~~, the right to object, ~~measures based on~~ profiling, as well as on the communication of a personal data breach to a data subject and on certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to

safeguard public security, including the protection of human life especially in response to natural or man made disasters, the prevention, investigation and prosecution of criminal offences or of breaches of ethics for regulated professions, other ***specific and well-defined*** public interests of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, or the protection of the data subject or the rights and freedoms of others. Those restrictions should be in compliance with requirements set out by the Charter and by the European Convention for the Protection of Human Rights and Fundamental Freedoms. **[Am. 35]**

(60) Comprehensive responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established***, in particular with regard to documentation, data security, impact assessments, the data protection officer and oversight by data protection authorities***. In particular, the controller should ensure and be ~~obliged~~ ***able*** to demonstrate the compliance of each processing operation with this Regulation. ***This should be verified by independent internal or external auditors.*** **[Am. 36]**

(61) The protection of the rights and freedoms of data subjects with regard to the processing of personal data requires that appropriate technical and organisational measures are taken, both at the time of the design of the processing and at the time of the processing itself, to ensure that the requirements of this Regulation are met. In order to ensure and demonstrate compliance with this Regulation, the controller should adopt internal policies and implement appropriate measures, which meet in particular the principles of data protection by design and data protection by default. ***The principle of data protection by design requires data protection to be embedded within the entire life cycle of the technology, from the very early design stage, right through to its ultimate deployment, use and final disposal. This should also include the responsibility for the products and services used by the controller or processor. The principle of data protection by default requires privacy settings on services and products which should by default comply with the general principles of data protection, such as data minimisation and purpose limitation.*** **[Am. 37]**

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processor, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes~~, conditions~~ and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller. ***The arrangement between the joint controllers should reflect the joint controllers' effective roles and relationships. The processing of personal data under this Regulation should include the permission for a controller to transmit the data to a joint controller or to a processor for the processing of the data on his or her behalf.*** **[Am. 38]**

(63) Where a controller not established in the Union is processing personal data of data subjects ~~residing~~ in the Union ~~whose processing activities are related to the offering of goods or services to such data subjects, or to the monitoring their behaviour~~, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the ~~controller is a small or medium sized enterprise or~~ ***processing relates to fewer than 5 000 data subjects during any consecutive 12-month period and is not carried out on special categories of personal data, or is*** a public authority or body or where the controller is only occasionally offering goods or services to such data subjects. The representative should act on behalf of the controller and may be addressed by any supervisory authority. **[Am. 39]**

(64) In order to determine whether a controller is only occasionally offering goods and services to data subjects ~~residing~~ in the Union, it should be ascertained whether it is apparent from the controller's overall activities that the offering of goods and services to such data subjects is ancillary to those main activities. **[Am. 40]**

(65) In order to ***be able to*** demonstrate compliance with this Regulation, the controller or processor should ~~document each processing operation~~ ***maintain the documentation necessary in order to fulfill the requirements laid down in this Regulation***. Each controller and processor should be obliged to co-operate with the supervisory authority and

make this documentation, on request, available to it, so that it might serve for ~~monitoring those processing operations~~ ***evaluating the compliance with this Regulation. However, equal emphasis and significance should be placed on good practice and compliance and not just the completion of documentation***. **[Am. 41]**

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. These measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, ~~the Commission should promote~~ technological neutrality, interoperability and innovation ***should be promoted*** and, where appropriate, ~~cooperate~~ ***cooperation*** with third countries ***should be encouraged***. **[Am. 42]**

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the individual concerned. Therefore, ~~as soon as the controller becomes aware that such a breach has occurred,~~ the controller should notify the breach to the supervisory authority without undue delay ~~and, where feasible, within 24~~***,which should be presumed to be not later than 72*** hours. ~~Where this cannot achieved within 24 hours~~ ***If applicable***, an explanation of the reasons for the delay should accompany the notification. The individuals whose personal data could be adversely affected by the breach should be notified without undue delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of a data subject where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation. The notification should describe the nature of the personal data breach and formulate recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the chance for data subjects to mitigate an immediate risk of harm would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay. **[Am. 43]**

(68) In order to determine whether a personal data breach is notified to the supervisory authority and to the data subject without undue delay, it should be ascertained whether the controller has implemented and applied appropriate technological protection and organisational measures to establish immediately whether a personal data breach has taken place and to inform promptly the supervisory authority and the data subject, before a damage to personal and economic interests occurs, taking into account in particular the nature and gravity of the personal data breach and its consequences and adverse effects for the data subject.

(69) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

(70) Directive 95/46/EC provided for a general obligation to notify processing of personal data to the supervisory authorities. While this obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Therefore such indiscriminate general notification obligation should be abolished, and replaced by effective procedures and mechanism which focus instead on those processing operations which are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. In such cases, a data protection impact assessment should be carried out by the controller

or processor prior to the processing, which should include in particular the envisaged measures, safeguards and mechanisms for ensuring the protection of personal data and for demonstrating the compliance with this Regulation.

(71) This should in particular apply to newly established large scale filing systems, which aim at processing a considerable amount of personal data at regional, national or supranational level and which could affect a large number of data subjects.

(71a) Impact assessments are the essential core of any sustainable data protection framework, making sure that businesses are aware from the outset of all possible consequences of their data processing operations. If impact assessments are thorough, the likelihood of any data breach or privacy-intrusive operation can be fundamentally limited. Data protection impact assessments should consequently have regard to the entire lifecycle management of personal data from collection to processing to deletion, describing in detail the envisaged processing operations, the risks to the rights and freedoms of data subjects, the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure compliance with this Regulation. **[Am. 44]**

(71b) Controllers should focus on the protection of personal data throughout the entire data lifecycle from collection to processing to deletion by investing from the outset in a sustainable data management framework and by following it up with a comprehensive compliance mechanism. **[Am. 45]**

(72) There are circumstances under which it may be sensible and economic that the subject of a data protection impact assessment should be broader than a single project, for example where public authorities or bodies intend to establish a common application or processing platform or where several controllers plan to introduce a common application or processing environment across an industry sector or segment or for a widely used horizontal activity.

~~(73) Data protection impact assessments should be carried out by a public authority or public body if such an assessment has not already been made in the context of the adoption of the national law on which the performance of the tasks of the public authority or public body is based and which regulates the specific processing operation or set of operations in question.~~ **[Am. 46]**

(74) Where a data protection impact assessment indicates that processing operations involve a high degree of specific risks to the rights and freedoms of data subjects, such as excluding individuals from their right, or by the use of specific new technologies, ***the data protection officer or*** the supervisory authority should be consulted, prior to the start of operations, on a risky processing which might not be in compliance with this Regulation, and to make proposals to remedy such situation. ~~Such~~ ***A*** consultation ***of the supervisory authority*** should equally take place in the course of the preparation either of a measure by the national parliament or of a measure based on such legislative measure which defines the nature of the processing and lays down appropriate safeguards. **[Am. 47]**

(74a) Impact assessments can only be of help if controllers make sure that they comply with the promises originally laid down in them. Data controllers should therefore conduct periodic data protection compliance reviews demonstrating that the data processing mechanisms in place comply with assurances made in the data protection impact assessment. It should further demonstrate the ability of the data controller to comply with the autonomous choices of data subjects. In addition, in case the review finds compliance inconsistencies, it should highlight these and present recommendations on how to achieve full compliance. **[Am. 48]**

(75) Where the processing is carried out in the public sector or where, in the private sector, processing ~~is carried out by a large enterprise~~ ***relates to more than 5000 data subjects within 12 months***, or where its core activities, regardless of the size of the enterprise, involve processing operations ***on sensitive data, or processing operations*** which require regular and systematic monitoring, a person should assist the controller or processor to monitor internal compliance with this Regulation. ***When establishing whether data about a large number of data subjects are processed, archived data that are restricted in such a way that they are not subject to the normal data access and processing operations of the controller and can no longer be changed should not be taken into account.*** Such data

protection officers, whether or not an employee of the controller ***and whether or not performing that task full time***, should be in a position to perform their duties and tasks independently ***and enjoy special protection against dismissal. Final responsibility should stay with the management of an organisation. The data protection officer should in particular be consulted prior to the design, procurement, development and setting-up of systems for the automated processing of personal data, in order to ensure the principles of privacy by design and privacy by default***. **[Am. 49]**

(75a) ***The data protection officer should have at least the following qualifications: extensive knowledge of the substance and application of data protection law, including technical and organisational measures and procedures; mastery of technical requirements for privacy by design, privacy by default and data security; industry-specific knowledge in accordance with the size of the controller or processor and the sensitivity of the data to be processed; the ability to carry out inspections, consultation, documentation, and log file analysis; and the ability to work with employee representation. The controller should enable the data protection officer to take part in advanced training measures to maintain the specialised knowledge required to perform his or her duties. The designation as a data protection officer does not necessarily require fulltime occupation of the respective employee.*** **[Am. 50]**

(76) Associations or other bodies representing categories of controllers should be encouraged***, after consultation of the representatives of the employees,*** to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors. ***Such codes should make compliance with this Regulation easier for industry.*** **[Am. 51]**

(77) In order to enhance transparency and compliance with this Regulation, the establishment of certification mechanisms, data protection seals and ***standardised*** marks should be encouraged, allowing data subjects to quickly***, reliably and verifiably*** assess the level of data protection of relevant products and services. ***A 'European Data Protection Seal' should be established at European level to create trust among data subjects, legal certainty for controllers, and at the same time export European data protection standards by allowing non-European companies to more easily enter European markets by being certified.*** **[Am. 52]**

(78) Cross-border flows of personal data are necessary for the expansion of international trade and international co-operation. The increase in these flows has raised new challenges and concerns with respect to the protection of personal data. However, when personal data are transferred from the Union to third countries or to international organisations, the level of protection of individuals guaranteed in the Union by this Regulation should not be undermined. In any event, transfers to third countries may only be carried out in full compliance with this Regulation.

(79) This Regulation is without prejudice to international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects ***ensuring an adequate level of protection for the fundamental rights of citizens***. **[Am. 53]**

(80) The Commission may decide with effect for the entire Union that certain third countries, or a territory or a processing sector within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations which are considered to provide such level of protection. ~~In these cases, transfers of personal data to these countries may take place without needing to obtain any further authorisation~~ ***The Commission may also decide, having given notice and a complete justification to the third country, to revoke such a decision***. **[Am. 54]**

(81) In line with the fundamental values on which the Union is founded, in particular the protection of human rights, the Commission should, in its assessment of the third country, take into account how a given third country respects the rule of law, access to justice as well as international human rights norms and standards.

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(82) The Commission may equally recognise that a third country, or a territory or a processing sector within a third country, or an international organisation offers no adequate level of data protection. ***Any legislation which provides for extra-territorial access to personal data processed in the Union without authorisation under Union or Member State law should be considered as an indication of a lack of adequacy.*** Consequently the transfer of personal data to that third country should be prohibited. In that case, provision should be made for consultations between the Commission and such third countries or international organisations. **[Am. 55]**

(83) In the absence of an adequacy decision, the controller or processor should take measures to compensate for the lack of data protection in a third country by way of appropriate safeguards for the data subject. Such appropriate safeguards may consist of making use of binding corporate rules, standard data protection clauses adopted by the Commission, standard data protection clauses adopted by a supervisory authority or contractual clauses authorised by a supervisory authority~~, or other suitable and proportionate measures justified in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations and where authorised by a supervisory authority~~. ***Those appropriate safeguards should uphold a respect of the data subject's rights adequate to intra-EU processing, in particular relating to purpose limitation, right to access, rectification, erasure and to claim compensation. Those safeguards should in particular guarantee the observance of the principles of personal data processing, safeguard the data subject's rights and provide for effective redress mechanisms, ensure the observance of the principles of data protection by design and by default, guarantee the existence of a data protection officer.*** **[Am. 56]**

(84) The possibility for the controller or processor to use standard data protection clauses adopted by the Commission or by a supervisory authority should neither prevent the possibility for controllers or processors to include the standard data protection clauses in a wider contract nor to add other clauses ***or supplementary safeguards*** as long as they do not contradict, directly or indirectly, the standard contractual clauses adopted ~~by the Commission or~~ by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects. ***The standard data protection clauses adopted by the Commission could cover different situations, namely transfers from controllers established in the Union to controllers established outside the Union and from controllers established in the Union to processors, including sub-processors, established outside the Union. Controllers and processors should be encouraged to provide even more robust safeguards via additional contractual commitments that supplement standard protection clauses.*** **[Am. 57]**

(85) A corporate group should be able to make use of approved binding corporate rules for its international transfers from the Union to organisations within the same corporate group of undertakings, as long as such corporate rules include ***all*** essential principles and enforceable rights to ensure appropriate safeguards for transfers or categories of transfers of personal data. **[Am. 58]**

(86) Provisions should be made for the possibility for transfers in certain circumstances where the data subject has given his consent, where the transfer is necessary in relation to a contract or a legal claim, where important grounds of public interest laid down by Union or Member State law so require or where the transfer is made from a register established by law and intended for consultation by the public or persons having a legitimate interest. In this latter case such a transfer should not involve the entirety of the data or entire categories of the data contained in the register and, when the register is intended for consultation by persons having a legitimate interest, the transfer should be made only at the request of those persons or if they are to be the recipients***, taking into full account the interests and fundamental rights of the data subject***. **[Am. 59]**

(87) These derogations should in particular apply to data transfers required and necessary for the protection of important grounds of public interest, for example in cases of international data transfers between competition authorities, tax or customs administrations, financial supervisory authorities, between services competent for social security matters ***or for public health***, or to competent ***public*** authorities for the prevention, investigation, detection and prosecution of criminal offences***, including for the prevention of money laundering and the fight against terrorist financing.***

A transfer of personal data should equally be regarded as lawful where it is necessary to protect an interest which is essential for the data subject's or another person's life, if the data subject is incapable of giving consent. Transferring personal data for such important grounds of public interest should only be used for occasional transfers. In each and every case, a careful assessment of all circumstances of the transfer should be carried out. **[Am. 60]**

(88) ~~Transfers which cannot be qualified as frequent or massive, could also be possible for the purposes of the legitimate interests pursued by the controller or the processor, when they have assessed all the circumstances surrounding the data transfer.~~ For the purposes of processing for historical, statistical and scientific research purposes, the legitimate expectations of society for an increase of knowledge should be taken into consideration. **[Am. 61]**

(89) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller or processor should make use of solutions that provide data subjects with a ***legally binding*** guarantee that they will continue to benefit from the fundamental rights and safeguards as regards processing of their data in the Union once those data have been transferred***, to the extent that the processing is not massive, not repetitive and not structural. That guarantee should include financial indemnification in cases of loss or unauthorised access or processing of the data and an obligation, regardless of national legislation, to provide full details of all access to the data by public authorities in the third country.*** **[Am. 62]**

(90) Some third countries enact laws, regulations and other legislative instruments which purport to directly regulate data processing activities of natural and legal persons under the jurisdiction of the Member States. The extraterritorial application of these laws, regulations and other legislative instruments may be in breach of international law and may impede the attainment of the protection of individuals guaranteed in the Union by this Regulation. Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may inter alia be the case where the disclosure is necessary for an important ground of public interest recognised in Union law or in a Member State law to which the controller is subject. The conditions under which an important ground of public interest exists should be further specified by the Commission in a delegated act. ***In cases where controllers or processors are confronted with conflicting compliance requirements between the jurisdiction of the Union on the one hand, and that of a third country on the other, the Commission should ensure that Union law takes precedence at all times. The Commission should provide guidance and assistance to the controller and processor, and it should seek to resolve the jurisdictional conflict with the third country in question.*** **[Am. 63]**

(91) When personal data move across borders it may put at increased risk the ability of individuals to exercise data protection rights in particular to protect themselves from the unlawful use or disclosure of that information. At the same time, supervisory authorities may find that they are unable to pursue complaints or conduct investigations relating to the activities outside their borders. Their efforts to work together in the cross-border context may also be hampered by insufficient preventative or remedial powers, inconsistent legal regimes, and practical obstacles like resource constraints. Therefore, there is a need to promote closer co-operation among data protection supervisory authorities to help them exchange information and carry out investigations with their international counterparts.

(92) The establishment of supervisory authorities in Member States, exercising their functions with complete independence, is an essential component of the protection of individuals with regard to the processing of their personal data. Member States may establish more than one supervisory authority, to reflect their constitutional, organisational and administrative structure. ***An authority shall have adequate financial and personal resources to fully carry out its role, taking into account the size of the population and the amount of personal data processing.*** **[Am. 64]**

(93) Where a Member State establishes several supervisory authorities, it should establish by law mechanisms for ensuring the effective participation of those supervisory authorities in the consistency mechanism. That Member State should in particular designate the supervisory authority which functions as a single contact point for the effective participation of those authorities in the mechanism, to ensure swift and smooth co-operation with other supervisory authorities, the European Data Protection Board and the Commission.

(94) Each supervisory authority should be provided with the adequate financial and human resources, ***paying particular attention to ensuring adequate technical and legal skills of staff,*** premises and infrastructure, which is necessary for the effective performance of their tasks, including for the tasks related to mutual assistance and co-operation with other supervisory authorities throughout the Union. **[Am. 65]**

(95) The general conditions for the members of the supervisory authority should be laid down by law in each Member State and should in particular provide that those members should be ~~either~~ appointed by the parliament or the government of the Member State ***taking due care to minimise the possibility of political interference***, and include rules on the personal qualification of the members***, the avoidance of conflicts of interest*** and the position of those members. **[Am. 66]**

(96) The supervisory authorities should monitor the application of the provisions pursuant to this Regulation and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the internal market. For that purpose, the supervisory authorities should co-operate with each other and the Commission.

(97) Where the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union takes place in more than one Member State, one single supervisory authority should ~~be competent for monitoring the activities of~~ ***act as the single contact point and the lead authority responsible for supervising*** the controller or processor throughout the Union and taking the related decisions, in order to increase the consistent application, provide legal certainty and reduce administrative burden for such controllers and processors. **[Am. 67]**

(98) The ~~competent~~ ***lead*** authority, providing such one-stop shop, should be the supervisory authority of the Member State in which the controller or processor has its main establishment ***or its representative***. ***The European Data Protection Board may designate the lead authority through the consistency mechanism in certain cases at the request of a competent authority.*** **[Am. 68]**

(98a) Data subjects whose personal data are processed by a data controller or processor in another Member State should be able to complain to the supervisory authority of their choice. The lead data protection authority should coordinate its work with that of the other authorities involved. **[Am. 69]**

(99) While this Regulation applies also to the activities of national courts, the competence of the supervisory authorities should not cover the processing of personal data when courts are acting in their judicial capacity, in order to safeguard the independence of judges in the performance of their judicial tasks. However, this exemption should be strictly limited to genuine judicial activities in court cases and not apply to other activities where judges might be involved in, in accordance with national law.

(100) In order to ensure consistent monitoring and enforcement of this Regulation throughout the Union, the supervisory authorities should have in each Member State the same duties and effective powers, including powers of investigation, legally binding intervention, decisions and sanctions, particularly in cases of complaints from individuals, and to engage in legal proceedings. Investigative powers of supervisory authorities as regards access to premises should be exercised in conformity with Union law and national law. This concerns in particular the requirement to obtain a prior judicial authorisation.

(101) Each supervisory authority should hear complaints lodged by any data subject ***or by associations acting in the public interest*** and should investigate the matter. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject ***or the association*** of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject. **[Am. 70]**

(102) Awareness raising activities by supervisory authorities addressed to the public should include specific measures directed at controllers and processors, including micro, small and medium-sized enterprises, as well as data subjects.

(103) The supervisory authorities should assist each other in performing their duties and provide mutual assistance, so as to ensure the consistent application and enforcement of this Regulation in the internal market.

(104) Each supervisory authority should have the right to participate in joint operations between supervisory authorities. The requested supervisory authority should be obliged to respond to the request in a defined time period.

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to take a measure as regards processing operations that are related to the offering of goods or services to data subjects in several Member States, or to the monitoring ***of*** such data subjects, or that might substantially affect the free flow of personal data. It should also apply where any supervisory authority or the Commission requests that the matter should be dealt with in the consistency mechanism. ***Furthermore, the data subjects should have the right to obtain consistency, if they deem a measure by a Data Protection Authority of a Member State has not fulfilled this criterion***. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties. **[Am. 71]**

(106) In application of the consistency mechanism, the European Data Protection Board should, within a determined period of time, issue an opinion, if a simple majority of its members so decides or if so requested by any supervisory authority or the Commission.

(106a) In order to ensure the consistent application of this Regulation, the European Data Protection Board may in individual cases adopt a decision which is binding on the competent supervisory authorities. **[Am. 72]**

~~(107) In order to ensure compliance with this Regulation, the Commission may adopt an opinion on this matter, or a decision, requiring the supervisory authority to suspend its draft measure.~~ **[Am. 73]**

(108) There may be an urgent need to act in order to protect the interests of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded. Therefore, a supervisory authority should be able to adopt provisional measures with a specified period of validity when applying the consistency mechanism.

(109) The application of this mechanism should be a condition for the legal validity and enforcement of the respective decision by a supervisory authority. In other cases of cross-border relevance, mutual assistance and joint investigations might be carried out between the concerned supervisory authorities on a bilateral or multilateral basis without triggering the consistency mechanism.

(110) At Union level, a European Data Protection Board should be set up. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of a head of a supervisory authority of each Member State and of the European Data Protection Supervisor. ~~The Commission should participate in its activities.~~ The European Data Protection Board should contribute to the consistent application of this Regulation throughout the Union, including by advising the ~~Commission~~ ***institutions of the Union*** and promoting co-operation of the supervisory authorities throughout the Union***, including the coordination of joint operations***. The European Data Protection Board should act independently when exercising its tasks. ***The European Data Protection Board should strengthen the dialogue with concerned stakeholders such as data subjects' associations, consumer organisations, data controllers and other relevant stakeholders and experts.*** **[Am. 74]**

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(111) ~~Every data~~ ***Data*** ~~subject~~ ***subjects*** should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to ~~a~~ ***an effective*** judicial remedy ***in accordance with Article 47 of the Charter*** if they consider that their rights under this Regulation are infringed or where the supervisory authority does not react on a complaint or does not act where such action is necessary to protect the rights of the data subject. **[Am. 75]**

(112) Any body, organisation or association which ~~aims to protects the rights and interests of data subjects in relation to the protection of their data~~ ***acts in the public interest*** and is constituted according to the law of a Member State should have the right to lodge a complaint with a supervisory authority ***on behalf of data subjects with their consent*** or exercise the right to a judicial remedy ~~on behalf of~~ ***if mandated by the*** data ~~subjects~~***subject***, or to lodge, independently of a data subject's complaint, an own complaint where it considers that a ~~personal data~~ breach ***of this Regulation*** has occurred. **[Am. 76]**

(113) Each natural or legal person should have the right to a judicial remedy against decisions of a supervisory authority concerning them. Proceedings against a supervisory authority should be brought before the courts of the Member State, where the supervisory authority is established.

(114) In order to strengthen the judicial protection of the data subject in situations where the competent supervisory authority is established in another Member State than the one where the data subject is residing, the data subject may ~~request~~ ***mandate*** any body, organisation or association ~~aiming to protect the rights and interests of data subjects in relation to the protection of their data~~ ***acting in the public interest*** to bring ~~on the data subject's behalf~~ proceedings against that supervisory authority to the competent court in the other Member State. **[Am. 77]**

(115) In situations where the competent supervisory authority established in another Member State does not act or has taken insufficient measures in relation to a complaint, the data subject may request the supervisory authority in the Member State of his or her habitual residence to bring proceedings against that supervisory authority to the competent court in the other Member State. ***This does not apply to non-EU residents.*** The requested supervisory authority may decide, subject to judicial review, whether it is appropriate to follow the request or not. **[Am. 78]**

(116) For proceedings against a controller or processor, the plaintiff should have the choice to bring the action before the courts of the Member States where the controller or processor has an establishment or***, in case of EU residence,*** where the data subject resides, unless the controller is a public authority ***of the Union or a Member State*** acting in the exercise of its public powers. **[Am. 79]**

(117) Where there are indications that parallel proceedings are pending before the courts in different Member States, the courts should be obliged to contact each other. The courts should have the possibility to suspend a case where a parallel case is pending in another Member State. Member States should ensure that court actions, in order to be effective, should allow the rapid adoption of measures to remedy or prevent an infringement of this Regulation.

(118) Any damage***, whether pecuniary or not,*** which a person may suffer as a result of unlawful processing should be compensated by the controller or processor, who may be exempted from liability ***only*** if ~~they prove~~ ***he proves*** that ~~they are~~ ***he is*** not responsible for the damage, in particular where he establishes fault on the part of the data subject or in case of force majeure. **[Am. 80]**

(119) Penalties should be imposed to any person, whether governed by private or public law, who fails to comply with this Regulation. Member States should ensure that the penalties should be effective, proportionate and dissuasive and should take all measures to implement the penalties. ***The rules on penalties should be subject to appropriate procedural safeguards in conformity with the general principles of Union law and the Charter, including those concerning the right to an effective judicial remedy, due process and the principle of ne bis in idem.*** **[Am. 81]**

(119a) In applying penalties, Member States should show full respect for appropriate procedural safeguards, including the right to an effective judicial remedy, due process, and the principle of ne bis in idem. **[Am. 82]**

(120) In order to strengthen and harmonise administrative sanctions against infringements of this Regulation, each supervisory authority should have the power to sanction administrative offences. This Regulation should indicate these offences and the upper limit for the related administrative fines, which should be fixed in each individual case proportionate to the specific situation, with due regard in particular to the nature, gravity and duration of the breach. The consistency mechanism may also be used to cover divergences in the application of administrative sanctions.

(121) ~~The processing of personal data solely for journalistic purposes, or for the purposes of artistic or literary expression should qualify for exemption~~ ***Whenever necessary, exemptions or derogations*** from the requirements of certain provisions of this Regulation ***for the processing of personal data should be provided for*** in order to reconcile the right to the protection of personal data with the right to freedom of expression, and notably the right to receive and impart information, as guaranteed in particular by Article 11 of the Charter. ~~This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries.~~ Therefore, Member States should adopt legislative measures, which should lay down exemptions and derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities, ~~and~~ on co-operation and consistency ***and on specific data processing situations***. This should not, however, lead Member States to lay down exemptions from the other provisions of this Regulation. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom~~, such as journalism,~~ broadly~~. Therefore, Member States should classify activities as 'journalistic' for the purpose of the exemptions and derogations to be laid down under this Regulation if the object of these~~ ***to cover all*** activities ~~is~~ ***which aim at*** the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them***, also taking into account technological development***. They should not be limited to media undertakings and may be undertaken for profit-making or for non-profit making purposes. **[Am. 83]**

(122) The processing of personal data concerning health, as a special category of data which deserves higher protection, may often be justified by a number of legitimate reasons for the benefit of individuals and society as a whole, in particular in the context of ensuring continuity of cross-border healthcare. Therefore this Regulation should provide for harmonised conditions for the processing of personal data concerning health, subject to specific and suitable safeguards so as to protect the fundamental rights and the personal data of individuals. This includes the right for individuals to have access to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided.

(122a) A professional who processes personal data concerning health should receive, if possible, anonymised or pseudonymised data, leaving the knowledge of the identity only to the general practitioner or to the specialist who has requested such data processing. **[Am. 84]**

(123) The processing of personal data concerning health may be necessary for reasons of public interest in the areas of public health, without consent of the data subject. In that context, 'public health' should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council [1] ~~of 16 December 2008 on Community statistics on public health and health and safety at work~~, meaning all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, health care

[1] ***Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70).***

needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality. ~~Such processing of personal data concerning health for reasons of public interest should not result in personal data being processed for other purposes by third parties such as employers, insurance and banking companies.~~ **[Am. 85]**

(123a) The processing of personal data concerning health, as a special category of data, may be necessary for reasons of historical, statistical or scientific research. Therefore this Regulation foresees an exemption from the requirement of consent in cases of research that serves a high public interest. **[Am. 86]**

(124) The general principles on the protection of individuals with regard to the processing of personal data should also be applicable to the employment ***and the social security*** context. ~~Therefore, in order~~ ***Member States should be able*** to regulate the processing of employees' personal data in the employment ***and the processing of personal data in the social security*** context ***in accordance with the rules and minimum standards set out in***~~, Member States should be able, within the limits of~~ this Regulation~~, to adopt by law specific rules for~~***. Where a statutory basis is provided in the Member State in question for the regulation of employment matters by agreement between employee representatives and the management of the undertaking or the controlling undertaking of a group of undertakings (collective agreement) or under Directive 2009/38/EC of the European Parliament and of the Council [1]***, the processing of personal data in ~~the~~***an*** employment ~~sector~~***context may also be regulated by such an agreement***. **[Am. 87]**

(125) The processing of personal data for the purposes of historical, statistical or scientific research should, in order to be lawful, also respect other relevant legislation such as on clinical trials.

(125a) Personal data may also be processed subsequently by archive services whose main or mandatory task is to collect, conserve, provide information about, exploit and disseminate archives in the public interest. Member State legislation should reconcile the right to the protection of personal data with the rules on archives and on public access to administrative information. Member States should encourage the drafting, in particular by the European Archives Group, of rules to guarantee the confidentiality of data vis-à-vis third parties and the authenticity, integrity and proper conservation of data. **[Am. 88]**

(126) Scientific research for the purposes of this Regulation should include fundamental research, applied research, and privately funded research and in addition should take into account the Union's objective under Article 179(1) of the Treaty on the Functioning of the European Union of achieving a European Research Area. ***The processing of personal data for historical, statistical and scientific research purposes should not result in personal data being processed for other purposes, unless with the consent of the data subject or on the basis of Union or Member State law.*** **[Am. 89]**

(127) As regards the powers of the supervisory authorities to obtain from the controller or processor access to personal data and access to its premises, Member States may adopt by law, within the limits of this Regulation, specific rules in order to safeguard the professional or other equivalent secrecy obligations, in so far as necessary to reconcile the right to the protection of personal data with an obligation of professional secrecy.

(128) This Regulation respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States, as recognised in Article 17 of the Treaty on the Functioning of the European Union. As a consequence, where a church in a Member State applies, at the time of entry into force of this

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[1] Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16.5.2009, p. 28).

Regulation, ~~comprehensive~~ ***adequate*** rules relating to the protection of individuals with regard to the processing of personal data, these existing rules should continue to apply if they are brought in line with this Regulation ***and recognised as compliant***. ~~Such churches and religious associations should be required to provide for the establishment of a completely independent supervisory authority.~~ **[Am. 90]**

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of ~~lawfulness of processing~~; specifying ~~the criteria and conditions in relation to the consent of a child; processing of special categories of data; specifying the criteria and conditions for manifestly excessive requests and fees for exercising the rights of the data subject; criteria and requirements for the information to the data subject and in relation to the right of access~~ ***conditions of icon-based mode for provision of information***; the right to ~~be forgotten and to~~ erasure; ~~measures based on profiling; criteria and requirements in relation to the responsibility of the controller and to data protection by design and by default; a processor; criteria and requirements for the documentation and the security of processing; criteria and requirements for establishing a personal data breach and for its notification to the supervisory authority, and on the circumstances where a personal data breach is likely to adversely affect the data subject; the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements for determining a high degree of specific risks which require prior consultation; designation and tasks of the data protection officer;~~ ***declaring that*** codes of conduct ***are in line with this Regulation***; criteria and requirements for certification mechanisms; ***the adequate level of protection afforded by a third country or an international organisation;*** criteria and requirements for transfers by way of binding corporate rules; ~~transfer derogations;~~ administrative sanctions; processing for health purposes; ***and*** processing in the employment context ~~and processing for historical, statistical and scientific research purposes~~. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, ***in particular with the European Data Protection Board***. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and ***to the*** Council. **[Am. 91]**

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission for: specifying standard forms ***for specific methods to obtain verifiable consent*** in relation to the processing of personal data of a child; standard ~~procedures and~~ forms for ~~exercising the rights of~~ ***the communication to the*** data subjects ***on the exercise of their rights***; standard forms for the information to the data subject; standard forms ~~and procedures~~ in relation to the right of access ***including for communicating the personal data to the data subject***; ~~the right to data portability;~~ standard forms in relation to ~~the responsibility of the controller to data protection by design and by default and to~~ the documentation ***to be kept by the controller and the processor***; ~~specific requirements for the security of processing;~~ the standard ~~format and the procedures~~ ***form*** for the notification of a personal data breach to the supervisory authority and ~~the communication of a personal data breach to the data subject~~ ***for documenting a personal data breach***; ~~standards and procedures for a data protection impact assessment;~~ forms ~~and procedures~~ for prior ~~authorisation and prior~~ consultation~~; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism~~ ***and information to the supervisory authority***. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the

European Parliament and of the Council ~~of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers~~ ([1]). In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises. **[Am. 92]**

(131) The examination procedure should be used for the adoption of specifying standard forms ~~in relation to the~~ ***: for specific methods to obtain verifiable*** consent ***in relation to the processing of personal data*** of a child; ~~standard procedures and forms~~ for ~~exercising the~~ ***the communication to the data subjects on the exercice of their*** rights ~~of data subjects~~; ~~standard forms~~ for the information to the data subject; ~~standard forms and procedures~~ in relation to the right of access ***including for communicating the personal data to the data subject***~~, the right to data portability; standard forms~~ in relation to the ~~responsibility of~~ ***documentation to be kept by*** the controller ~~to data protection by design and by default and to the documentation~~ ***and the processor***; ~~specific requirements for the security of processing; the standard format and the procedures~~ for the notification of a personal data breach to the supervisory authority and ~~the communication of~~ ***for documenting*** a personal data breach ~~to the data subject~~; ~~standards and procedures for a data protection impact assessment; forms and procedures~~ for prior ~~authorisation and prior~~ consultation~~; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; disclosures not authorized by Union law; mutual assistance; joint operations; decisions under the consistency mechanism~~, ***and information to the supervisory authority,*** given that those acts are of general scope. **[Am. 93]**

~~(132) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to a third country or a territory or a processing sector within that third country or an international organisation which does not ensure an adequate level of protection and relating to matters communicated by supervisory authorities under the consistency mechanism, imperative grounds of urgency so require.~~ **[Am. 94]**

(133) Since the objectives of this Regulation, namely to ensure an equivalent level of protection of individuals and the free flow of data throughout the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(134) Directive 95/46/EC should be repealed by this Regulation. However, Commission decisions adopted and authorisations by supervisory authorities based on Directive 95/46/EC should remain in force. ***Commission decisions and authorisations by supervisory authorities relating to transfers of personal data to third countries pursuant to Article 41(8) should remain in force for a transition period of five years after the entry into force of this Regulation unless amended, replaced or repealed by the Commission before the end of this period.*** **[Am. 95]**

(135) This Regulation should apply to all matters concerning the protection of fundamental rights and freedom vis-à-vis the processing of personal data, which are not subject to specific obligations with the same objective set out in Directive 2002/58/EC of the European Parliament and of the Council ([2]), including the obligations on the controller and the rights of individuals. In order to clarify the relationship between this Regulation and Directive 2002/58/EC, the latter Directive should be amended accordingly.

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

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

(136) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* to the extent that it applies to the processing of personal data by authorities involved in the implementation of that *acquis*, within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis* ([1]).

(137) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* to the extent that it applies to the processing of personal data by authorities involved in the implementation of that *acquis*, within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ([2]).

(138) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* to the extent that it applies to the processing of personal data by authorities involved in the implementation of that *acquis*, within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ([3]).

(139) In view of the fact that, as underlined by the Court of Justice of the European Union, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other fundamental rights, in accordance with the principle of proportionality, this Regulation respects all fundamental rights and observes the principles recognised in the Charter as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and objectives

1. This Regulation lays down rules relating to the protection of individuals with regard to the processing of personal data and rules relating to the free movement of personal data.

2. This Regulation protects the fundamental rights and freedoms of natural persons, and in particular their right to the protection of personal data.

3. The free movement of personal data within the Union shall neither be restricted nor prohibited for reasons connected with the protection of individuals with regard to the processing of personal data.

([1]) OJ L 176, 10.7.1999, p. 36.
([2]) OJ L 53, 27.2.2008, p. 52.
([3]) OJ L 160, 18.6.2011, p. 21.

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Article 2

Material scope

1. This Regulation applies to the processing of personal data wholly or partly by automated means, ***irrespective of the method of processing,*** and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

2. This Regulation does not apply to the processing of personal data:

(a) in the course of an activity which falls outside the scope of Union law~~, in particular concerning national security~~;

~~(b) by the Union institutions, bodies, offices and agencies;~~

(c) by the Member States when carrying out activities which fall within the scope of Chapter 2 ***of Title V*** of the Treaty on European Union;

(d) by a natural person ~~without any gainful interest~~ in the course of ~~its own~~ ***an*** exclusively personal or household activity***. This exemption shall also apply to a publication of personal data where it can be reasonably expected that they will be only accessed by a limited number of persons***;

(e) by competent ***public*** authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

3. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive. **[Am. 96]**

Article 3

Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union***, whether the processing takes place in the Union or not***.

2. This Regulation applies to the processing of personal data of data subjects ~~residing~~ in the Union by a controller ***or processor*** not established in the Union, where the processing activities are related to:

(a) the offering of goods or services***, irrespective of whether a payment of the data subject is required,*** to such data subjects in the Union; or

(b) the monitoring of ~~their behaviour~~***such data subjects***.

3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where the national law of a Member State applies by virtue of public international law. **[Am. 97]**

Article 4

Definitions

For the purposes of this Regulation:

~~(1) 'data subject' means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;~~

(2) 'personal data' means any information relating to ~~a~~ ***an identified or identifiable natural person (*****'**data subject**'**); ***an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, unique identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or gender identity of that person;***

(2a) 'pseudonymous data' means personal data that cannot be attributed to a specific data subject without the use of additional information, as long as such additional information is kept separately and subject to technical and organisational measures to ensure non-attribution;

(2b) 'encrypted data' means personal data, which through technological protection measures are rendered unintelligible to any person who is not authorised to access them;

(3) 'processing' means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, erasure or destruction;

(3a) 'profiling' means any form of automated processing of personal data intended to evaluate certain personal aspects relating to a natural person or to analyse or predict in particular that natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour;

(4) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;

(5) 'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes~~, conditions~~ and means of the processing of personal data; where the purposes~~, conditions~~ and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

(6) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(7) 'recipient' means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed;

(7a) 'third party' means any natural or legal person, public authority, agency or any other body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data;

(8) 'the data subject's consent' means any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to him or her being processed;

(9) 'personal data breach' means ~~a breach of security leading to~~ the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

(10) 'genetic data' means all ***personal*** data~~, of whatever type, concerning~~ ***relating to*** the ***genetic*** characteristics of an individual which ~~are~~ ***have been*** inherited or acquired ~~during early prenatal development~~ ***as they result from an analysis of a biological sample from the individual in question, in particular by chromosomal, desoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis or analysis of any other element enabling equivalent information to be obtained***;

(11) 'biometric data' means any ***personal*** data relating to the physical, physiological or behavioural characteristics of an individual which allow his or her unique identification, such as facial images, or dactyloscopic data;

(12) 'data concerning health' means any ~~information~~ ***personal data*** which relate to the physical or mental health of an individual, or to the provision of health services to the individual;

(13) 'main establishment' means ~~as regards the controller, the place of its establishment~~ ***the place of establishment of the undertaking or group of undertakings*** in the Union***, whether controller or processor,*** where the main decisions as to the purposes~~, conditions~~ and means of the processing of personal data are taken.~~; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, 'main establishment' means the place of its central administration in the Union~~ ***The following objective criteria may be considered among others: the location of the controller or processor's headquarters; the location of the entity within a group of undertakings which is best placed in terms of management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; the location where effective and real management activities are exercised determining the data processing through stable arrangements***;

(14) 'representative' means any natural or legal person established in the Union who, explicitly designated by the controller, ~~acts and may be addressed by any supervisory authority and other bodies in the Union instead of~~ ***represents*** the controller, with regard to the obligations of the controller under this Regulation;

(15) 'enterprise' means any entity engaged in an economic activity, irrespective of its legal form, thus including, in particular, natural and legal persons, partnerships or associations regularly engaged in an economic activity;

(16) 'group of undertakings' means a controlling undertaking and its controlled undertakings;

(17) 'binding corporate rules' means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State of the Union for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings;

(18) 'child' means any person below the age of 18 years;

(19) 'supervisory authority' means a public authority which is established by a Member State in accordance with Article 46. **[Am. 98]**

CHAPTER II

PRINCIPLES

Article 5

Principles relating to personal data processing

Personal data ~~must~~***shall*** be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject ***(lawfulness, fairness and transparency)***;

(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes ***(purpose limitation)***;

(c) adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed; they shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not involve personal data ***(data minimisation)***;

(d) accurate and***, where necessary,*** kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ***(accuracy)***;

(e) kept in a form which permits ***direct or indirect*** identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for historical, statistical or scientific research ***or for archive*** purposes in accordance with the rules and conditions of ~~Article~~ ***Articles*** 83 ***and 83a*** and if a periodic review is carried out to assess the necessity to continue the storage***, and if appropriate technical and organisational measures are put in place to limit access to the data only for these purposes (storage minimisation)***;

(ea) processed in a way that effectively allows the data subject to exercise his or her rights (effectiveness);

(eb) processed in a way that protects against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (integrity);

(f) processed under the responsibility and liability of the controller, who shall ensure and ***be able to*** demonstrate ~~for each processing operation~~ the compliance with the provisions of this Regulation ***(accountability)***. **[Am. 99]**

Article 6

Lawfulness of processing

1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

(a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is necessary in order to protect the vital interests of the data subject;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the purposes of the legitimate interests pursued by ~~a~~ ***the*** controller ***or, in case of disclosure, by the third party to whom the data are disclosed, and which meet the reasonable expectations of the data subject based on his or her relationship with the controller***, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data~~, in particular where the data subject is a child~~. This shall not apply to processing carried out by public authorities in the performance of their tasks.

2. Processing of personal data which is necessary for the purposes of historical, statistical or scientific research shall be lawful subject to the conditions and safeguards referred to in Article 83.

3. The basis of the processing referred to in points (c) and (e) of paragraph 1 must be provided for in:

(a) Union law, or

(b) the law of the Member State to which the controller is subject.

The law of the Member State must meet an objective of public interest or must be necessary to protect the rights and freedoms of others, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued. ***Within the limits of this Regulation, the law of the Member State may provide details of the lawfulness of processing, particularly as regards data controllers, the purpose of processing and purpose limitation, the nature of the data and the data subjects, processing measures and procedures, recipients, and the duration of storage.***

~~4. Where the purpose of further processing is not compatible with the one for which the personal data have been collected, the processing must have a legal basis at least in one of the grounds referred to in points (a) to (e) of paragraph 1. This shall in particular apply to any change of terms and general conditions of a contract.~~

~~5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the conditions referred to in point (f) of paragraph 1 for various sectors and data processing situations, including as regards the processing of personal data related to a child.~~ **[Am. 100]**

Article 7

Conditions for consent

1. ***Where processing is based on consent,*** ~~The~~ ***the*** controller shall bear the burden of proof for the data subject's consent to the processing of his or her personal data for specified purposes.

2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give consent must be presented ***clearly*** distinguishable in its appearance from this other matter. ***Provisions on the data subject's consent which are partly in violation of this Regulation are fully void.***

3. ***Notwithstanding other legal grounds for processing,*** ~~The~~ ***the*** data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. ***It shall be as easy to withdraw consent as to give it. The data subject shall be informed by the controller if withdrawal of consent may result in the termination of the services provided or of the relationship with the controller.***

4. Consent shall ~~not provide a legal basis for the processing, where there is a significant imbalance between the position of the data subject and the controller~~ ***be purpose-limited and shall lose its validity when the purpose ceases to exist or as soon as the processing of personal data is no longer necessary for carrying out the purpose for which they were originally collected. The execution of a contract or the provision of a service shall not be made conditional on the consent to the processing of data that is not necessary for the execution of the contract or the provision of the service pursuant to Article 6(1), point (b)***. **[Am. 101]**

Article 8

Processing of personal data of a child

1. For the purposes of this Regulation, in relation to the offering of ~~information society~~ ***goods or*** services directly to a child, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent or ~~custodian~~***legal guardian***. The controller shall make reasonable efforts to ~~obtain verifiable~~ ***verify such*** consent, taking into consideration available technology ***without causing otherwise unnecessary processing of personal data***.

1a. Information provided to children, parents and legal guardians in order to express consent, including about the controller's collection and use of personal data, should be given in a clear language appropriate to the intended audience.

2. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.

3. The ~~Commission~~ ***European Data Protection Board*** shall be ~~empowered to adopt delegated acts in accordance with Article 86 for the purpose~~ ***entrusted with the task*** of ~~further specifying the criteria and requirements~~ ***issuing guidelines, recommendations and best practices*** for the methods ~~to obtain verifiable~~ ***of verifying*** consent referred to in paragraph 1***, in accordance with Article 66***. ~~In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.~~

~~4. The Commission may lay down standard forms for specific methods to obtain verifiable consent referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ **[Am. 102]**

Article 9

~~Processing of special~~ ***Special*** categories of ~~personal~~ data

1. The processing of personal data, revealing race or ethnic origin, political opinions, religion or ***philosophical*** beliefs, ***sexual orientation or gender identity,*** trade-union membership ***and activities***, and the processing of genetic ***or biometric*** data or data concerning health or sex life ~~or~~***, administrative sanctions, judgments,*** criminal ***or suspected offences,*** convictions or related security measures shall be prohibited.

2. Paragraph 1 shall not apply ~~where~~***if one of the following applies***:

(a) the data subject has given consent to the processing of those personal data ***for one or more specified purposes***, subject to the conditions laid down in Articles 7 and 8, except where Union law or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject; or

(aa) processing is necessary for the performance or execution of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law in so far as it is authorised by Union law or Member State law ***or collective agreements*** providing for adequate safeguards ***for the fundamental rights and the interests of the data subject such as the right to non-discrimination, subject to the conditions and safeguards referred to in Article 82***; or

(c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving consent; or

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subject; or

(e) the processing relates to personal data which are manifestly made public by the data subject; or

(f) processing is necessary for the establishment, exercise or defence of legal claims; or

(g) processing is necessary for the performance of a task carried out ~~in the~~ ***for reasons of high*** public interest, on the basis of Union law, or Member State law which shall ***be proportionate to the aim pursued, respect the essence of the right to data protection and*** provide for suitable measures to safeguard the ***fundamental rights and the*** ~~data subject's legitimate~~ interests ***of the data subject***; or

(h) processing of data concerning health is necessary for health purposes and subject to the conditions and safeguards referred to in Article 81; or

(i) processing is necessary for historical, statistical or scientific research purposes subject to the conditions and safeguards referred to in Article 83; or

(ia) processing is necessary for archive services subject to the conditions and safeguards referred to in Article 83a; or

(j) processing of data relating to ***administrative sanctions, judgments,*** criminal ***offences,*** convictions or related security measures is carried out either under the control of official authority or when the processing is necessary for compliance with a legal or regulatory obligation to which a controller is subject, or for the performance of a task carried out for important public interest reasons, and in so far as authorised by Union law or Member State law providing for adequate safeguards~~. A complete~~ ***for the fundamental rights and the interests of the data subject***. ***Any*** register of criminal convictions shall be kept only under the control of official authority.

3. The ~~Commission~~ ***European Data Protection Board*** shall be ~~empowered to adopt delegated acts in accordance with Article 86 for the purpose~~***entrusted with the task*** of ~~further specifying the criteria, conditions and appropriate safeguards~~ ***issuing guidelines, recommendations and best practices*** for the processing of the special categories of personal data referred to in paragraph 1 and the exemptions laid down in paragraph 2***, in accordance with Article 66***. **[Am. 103]**

Article 10

Processing not allowing identification

1. If the data processed by a controller do not permit the controller ***or processor*** to ***directly or indirectly*** identify a natural person, ***or consist only of pseudonymous data,*** the controller shall not ~~be obliged to~~ ***process or*** acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation.

2. Where the data controller is unable to comply with a provision of this Regulation because of paragraph 1, the controller shall not be obliged to comply with that particular provision of this Regulation. Where as a consequence the data controller is unable to comply with a request of the data subject, it shall inform the data subject accordingly. **[Am. 104]**

Article 10a

General principles for the rights of the data subject

1. The basis of data protection is clear and unambiguous rights for the data subject which shall be respected by the data controller. The provisions of this Regulation aim to strengthen, clarify, guarantee and, where appropriate, codify these rights.

2. Such rights include, inter alia, the provision of clear and easily understandable information regarding the processing of the data subject's personal data, the right of access, rectification and erasure of his or her data, the right to obtain data, the right to object to profiling, the right to lodge a complaint with the competent data protection authority and to bring legal proceedings as well as the right to compensation and damages resulting from an unlawful processing operation. Such rights shall in general be exercised free of charge. The data controller shall respond to requests from the data subject within a reasonable period of time. **[Am. 105]**

CHAPTER III

RIGHTS OF THE DATA SUBJECT

SECTION 1

TRANSPARENCY AND MODALITIES

Article 11

Transparent information and communication

1. The controller shall have ***concise,*** transparent***, clear*** and easily accessible policies with regard to the processing of personal data and for the exercise of the data subject's rights.

2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, ~~adapted to the data subject,~~ in particular for any information addressed specifically to a child. **[Am. 106]**

Article 12

Procedures and mechanisms for exercising the rights of the data subject

1. ~~The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19.~~ Where personal data are processed by automated means, the controller shall also provide means for requests to be made electronically ***where possible***.

2. The controller shall inform the data subject without ***undue*** delay and, at the latest within ~~one month~~ ***40 calendar days*** of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for a further month, if several data subjects exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing ***and, where possible, the controller may provide remote access to a secure system which would provide the data subject with direct access to his or her personal data***. Where the data subject makes the request in electronic form, the information shall be provided in electronic form ***where possible***, unless otherwise requested by the data subject.

3. If the controller ~~refuses to~~ ***does not*** take action at the request of the data subject, the controller shall inform the data subject of the reasons for the ~~refusal~~***inaction*** and on the possibilities of lodging a complaint to the supervisory authority and seeking a judicial remedy.

4. The information and the actions taken on requests referred to in paragraph 1 shall be free of charge. Where requests are manifestly excessive, in particular because of their repetitive character, the controller may charge a ***reasonable*** fee ***taking into account the administrative costs*** for providing the information or taking the action requested~~, or the controller may not take the action requested~~. In that case, the controller shall bear the burden of proving the manifestly excessive character of the request.

~~5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the manifestly excessive requests and the fees referred to in paragraph 4.~~

~~6. The Commission may lay down standard forms and specifying standard procedures for the communication referred to in paragraph 2, including the electronic format. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized enterprises. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ **[Am. 107]**

Article 13

~~Rights in relation to recipients~~ ***Notification requirement in the event of rectification and erasure***

The controller shall communicate any rectification or erasure carried out in accordance with Articles 16 and 17 to each recipient to whom the data have been ~~disclosed~~ ***transferred***, unless this proves impossible or involves a disproportionate effort. ***The controller shall inform the data subject about those recipients if the data subject requests this.*** **[Am. 108]**

Article 13a

Standardised information policies

1. Where personal data relating to a data subject are collected, the controller shall provide the data subject with the following particulars before providing information pursuant to Article 14:

(a) whether personal data are collected beyond the minimum necessary for each specific purpose of the processing;

(b) whether personal data are retained beyond the minimum necessary for each specific purpose of the processing;

(c) whether personal data are processed for purposes other than the purposes for which they were collected;

(d) whether personal data are disseminated to commercial third parties;

(e) whether personal data are sold or rented out;

(f) whether personal data are retained in encrypted form.

2. The particulars referred to in paragraph 1 shall be presented pursuant to the Annex to this Regulation in an aligned tabular format, using text and symbols, in the following three columns:

(a) the first column depicts graphical forms symbolising those particulars;

(b) the second column contains essential information describing those particulars;

(c) the third column depicts graphical forms indicating whether a specific particular is met.

3. The information referred to in paragraphs 1 and 2 shall be presented in an easily visible and clearly legible way and shall appear in a language easily understood by the consumers of the Member States to whom the information is provided. Where the particulars are presented electronically, they shall be machine readable.

4. Additional particulars shall not be provided. Detailed explanations or further remarks regarding the particulars referred to in paragraph 1 may be provided together with the other information requirements pursuant to Article 14.

5. The Commission shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 86 for the purpose of further specifying the particulars referred to in paragraph 1 and their presentation as referred to in paragraph 2 and in the Annex to this Regulation. **[Am. 109]**

SECTION 2

INFORMATION AND ACCESS TO DATA

Article 14

Information to the data subject

1. Where personal data relating to a data subject are collected, the controller shall provide the data subject with at least the following information***, after the particulars pursuant to Article 13a have been provided***:

(a) the identity and the contact details of the controller and, if any, of the controller's representative and of the data protection officer;

(b) the purposes of the processing for which the personal data are intended, ***as well as information regarding the security of the processing of personal data,*** including the contract terms and general conditions where the processing is based on point (b) of Article 6(1) and ~~the legitimate interests pursued by the controller where the processing is based on~~ ***, where applicable, information on how they implement and meet the requirements of*** point (f) of Article 6 (1);

(c) the period for which the personal data will be stored***, or if this is not possible, the criteria used to determine this period***;

(d) the existence of the right to request from the controller access to and rectification or erasure of the personal data concerning the data subject, ~~or~~ to object to the processing of such personal data***, or to obtain data***;

(e) the right to lodge a complaint with the supervisory authority and the contact details of the supervisory authority;

(f) the recipients or categories of recipients of the personal data;

(g) where applicable, that the controller intends to transfer ***the data*** to a third country or international organisation and ~~on the level of protection afforded by that third country or international organisation by reference to~~ ***the existence or absence of*** an adequacy decision by the Commission***, or in case of transfers referred to in Article 42 or 43, reference to the appropriate safeguards and the means to obtain a copy of them***;

(ga) where applicable, information about the existence of profiling, of measures based on profiling, and the envisaged effects of profiling on the data subject;

(gb) meaningful information about the logic involved in any automated processing;

(h) any further information ***which is*** necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are collected. ***or processed, in particular the existence of certain processing activities and operations for which a personal data impact assessment has indicated that there may be a high risk;***

(ha) where applicable, information whether personal data were provided to public authorities during the last consecutive 12-month period.

2. Where the personal data are collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, whether the provision of personal data is ~~obligatory~~ ***mandatory*** or ~~voluntary~~***optional***, as well as the possible consequences of failure to provide such data.

2a. In deciding on further information which is necessary to make the processing fair under point (h) of paragraph 1, controllers shall have regard to any relevant guidance under Article 34.

3. Where the personal data are not collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, from which source the ***specific*** personal data originate. ***If personal data originate from publicly available sources, a general indication may be given.***

4. The controller shall provide the information referred to in paragraphs 1, 2 and 3:

(a) at the time when the personal data are obtained from the data subject ***or without undue delay where the above is not feasible***; or

(aa) at the request of a body, organisation or association referred to in Article 73;

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection, having regard to the specific circumstances in which the data are collected or otherwise processed, or, if a ~~disclosure~~ ***transfer*** to another recipient is envisaged, and at the latest ~~when the data are first disclosed.~~***at the time of the first transfer, or, if the data are to be used for communication with the data subject concerned, at the latest at the time of the first communication to that data subject; or***

(ba) only on request where the data are processed by a small or micro enterprise which processes personal data only as an ancillary activity.

5. Paragraphs 1 to 4 shall not apply, where:

(a) the data subject has already the information referred to in paragraphs 1, 2 and 3; or

(b) the data ***are processed for historical, statistical or scientific research purposes subject to the conditions and safeguards referred to in Articles 81 and 83,*** are not collected from the data subject and the provision of such information proves impossible or would involve a disproportionate effort ***and the controller has published the information for anyone to retrieve***; or

(c) the data are not collected from the data subject and recording or disclosure is expressly laid down by law ***to which the controller is subject, which provides appropriate measures to protect the data subject's legitimate interests, considering the risks represented by the processing and the nature of the personal data***; or

(d) the data are not collected from the data subject and the provision of such information will impair the rights and freedoms of ~~others~~ ***other natural persons***, as defined in Union law or Member State law in accordance with Article 21;

(da) the data are processed in the exercise of his profession by, or are entrusted or become known to, a person who is subject to an obligation of professional secrecy regulated by Union or Member State law or to a statutory obligation of secrecy, unless the data are collected directly from the data subject.

6. In the case referred to in point (b) of paragraph 5, the controller shall provide appropriate measures to protect the data subject's ***rights or*** legitimate interests.

~~7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria for categories of recipients referred to in point (f) of paragraph 1, the requirements for the notice of potential access referred to in point (g) of paragraph 1, the criteria for the further information necessary referred to in point (h) of paragraph 1 for specific sectors and situations, and the conditions and appropriate safeguards for the exceptions laid down in point (b) of paragraph 5. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized-enterprises.~~

~~8. The Commission may lay down standard forms for providing the information referred to in paragraphs 1 to 3, taking into account the specific characteristics and needs of various sectors and data processing situations where necessary. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ **[Am. 110]**

Article 15

Right ~~of~~ ***to*** access ***and to obtain data*** for the data subject

1. ~~The~~***Subject to Article 12(4), the*** data subject shall have the right to obtain from the controller at any time, on request, confirmation as to whether or not personal data relating to the data subject are being processed~~. Where such personal data are being processed,~~ ***and, in clear and plain language,*** ~~the controller shall provide~~ the following information:

(a) the purposes of the processing ***for each category of personal data***;

(b) the categories of personal data concerned;

(c) the recipients ~~or categories of recipients~~ to whom the personal data are to be or have been disclosed, ~~in particular~~ ***including*** to recipients in third countries;

(d) the period for which the personal data will be stored***, or if this is not possible, the criteria used to determine this period***;

(e) the existence of the right to request from the controller rectification or erasure of personal data concerning the data subject or to object to the processing of such personal data;

(f) the right to lodge a complaint with the supervisory authority and the contact details of the supervisory authority;

~~(g) communication of the personal data undergoing processing and of any available information as to their source;~~

(h) the significance and envisaged consequences of such processing~~, at least in the case of measures referred to in Article 20.~~;

(ha) meaningful information about the logic involved in any automated processing;

(hb) without prejudice to Article 21, in the event of disclosure of personal data to a public authority as a result of a public authority request, confirmation of the fact that such a request has been made.

2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing. Where the data subject makes the request in electronic form, the information shall be provided in ***an*** electronic ~~form~~ ***and structured format***, unless otherwise requested by the data subject. ***Without prejudice to Article 10, the controller shall take all reasonable steps to verify that the person requesting access to the data is the data subject.***

2a. Where the data subject has provided the personal data where the personal data are processed by electronic means, the data subject shall have the right to obtain from the controller a copy of the provided personal data in an electronic and interoperable format which is commonly used and allows for further use by the data subject without hindrance from the controller from whom the personal data are withdrawn. Where technically feasible and available, the data shall be transferred directly from controller to controller at the request of the data subject.

2b. This Article shall be without prejudice to the obligation to delete data when no longer necessary under point (e) of Article 5(1).

2c. There shall be no right of access in accordance with paragraphs 1 and 2 when data within the meaning of point (da) of Article 14(5) are concerned, except if the data subject is empowered to lift the secrecy in question and acts accordingly.

~~3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the communication to the data subject of the content of the personal data referred to in point (g) of paragraph 1.~~

~~4. The Commission may specify standard forms and procedures for requesting and granting access to the information referred to in paragraph 1, including for verification of the identity of the data subject and communicating the personal data to the data subject, taking into account the specific features and necessities of various sectors and data processing situations. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ **[Am. 111]**

SECTION 3

RECTIFICATION AND ERASURE

Article 16

Right to rectification

The data subject shall have the right to obtain from the controller the rectification of personal data relating to him or her which are inaccurate. The data subject shall have the right to obtain completion of incomplete personal data, including by way of supplementing a corrective statement.

Article 17

Right to ~~be forgotten and to~~ erasure

1. The data subject shall have the right to obtain from the controller the erasure of personal data relating to him or her and the abstention from further dissemination of such data, ~~especially in relation to personal data which are made available by the data subject while he or she was a child,~~ ***and to obtain from third parties the erasure of any links to, or copy or replication of, those data*** where one of the following grounds applies:

(a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

(b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the storage period consented to has expired, and where there is no other legal ground for the processing of the data;

(c) the data subject objects to the processing of personal data pursuant to Article 19;

(ca) a court or regulatory authority based in the Union has ruled as final and absolute that the data concerned must be erased;

(d) the ~~processing of the~~ data ~~does not comply with this Regulation for other reasons~~ ***have been unlawfully processed***.

1a. The application of paragraph 1 shall be dependent upon the ability of the controller to verify that the person requesting the erasure is the data subject.

2. Where the controller referred to in paragraph 1 has made the personal data public ***without a justification based on Article 6(1)***, it shall take all reasonable steps~~, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication~~ ***to have the data erased, including by third parties, without prejudice to Article 77. The controller shall inform the data subject, where possible, of the action taken by the relevant third parties***.

3. The controller ***and, where applicable, the third party*** shall carry out the erasure without delay, except to the extent that the retention of the personal data is necessary:

(a) for exercising the right of freedom of expression in accordance with Article 80;

(b) for reasons of public interest in the area of public health in accordance with Article 81;

(c) for historical, statistical and scientific research purposes in accordance with Article 83;

(d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued;

(e) in the cases referred to in paragraph 4.

4. Instead of erasure, the controller shall restrict processing of personal data ***in such a way that it is not subject to the normal data access and processing operations and cannot be changed anymore,*** where:

(a) their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data;

(b) the controller no longer needs the personal data for the accomplishment of its task but they have to be maintained for purposes of proof;

(c) the processing is unlawful and the data subject opposes their erasure and requests the restriction of their use instead;

(ca) a court or regulatory authority based in the Union has ruled as final and absolute that the processing concerned must be restricted;

(d) the data subject requests to transmit the personal data into another automated processing system in accordance with ***paragraphs 2a of*** Article ~~18(2).~~***15;***

(da) the particular type of storage technology does not allow for erasure and has been installed before the entry into force of this Regulation.

5. Personal data referred to in paragraph 4 may, with the exception of storage, only be processed for purposes of proof, or with the data subject's consent, or for the protection of the rights of another natural or legal person or for an objective of public interest.

6. Where processing of personal data is restricted pursuant to paragraph 4, the controller shall inform the data subject before lifting the restriction on processing.

~~7. The controller shall implement mechanisms to ensure that the time limits established for the erasure of personal data and/or for a periodic review of the need for the storage of the data are observed.~~

8. Where the erasure is carried out, the controller shall not otherwise process such personal data.

8a. The controller shall implement mechanisms to ensure that the time limits established for the erasure of personal data and/or for a periodic review of the need for the storage of the data are observed.

9. The Commission shall be empowered to adopt***, after requesting an opinion of the European Data Protection Board,*** delegated acts in accordance with Article 86 for the purpose of further specifying:

(a) the criteria and requirements for the application of paragraph 1 for specific sectors and in specific data processing situations;

(b) the conditions for deleting links, copies or replications of personal data from publicly available communication services as referred to in paragraph 2;

(c) the criteria and conditions for restricting the processing of personal data referred to in paragraph 4. **[Am. 112]**

~~Article 18~~

~~Right to data portability~~

~~1. The data subject shall have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain from the controller a copy of data undergoing processing in an electronic and structured format which is commonly used and allows for further use by the data subject.~~

~~2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have the right to transmit those personal data and any other information provided by the data subject and retained by an automated processing system, into another one, in an electronic format which is commonly used, without hindrance from the controller from whom the personal data are withdrawn.~~

~~3. The Commission may specify the electronic format referred to in paragraph 1 and the technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ **[Am. 113]**

SECTION 4

RIGHT TO OBJECT AND PROFILING

Article 19

Right to object

1. The data subject shall have the right to object~~, on grounds relating to their particular situation,~~ at any time to the processing of personal data which is based on points (d), ***and*** (e) ~~and (f)~~ of Article 6(1), unless the controller demonstrates compelling legitimate grounds for the processing which override the interests or fundamental rights and freedoms of the data subject.

2. Where ***the processing of*** personal data ~~are processed for direct marketing purposes~~ ***is based on point (f) of Article 6 (1)***, the data subject shall have, ***at any time and without any further justification,*** the right to object free of charge ***in general or for any particular purpose*** to the processing of his or her personal data ~~for such marketing~~. ~~This right shall be explicitly offered to the data subject in an intelligible manner and shall be clearly distinguishable from other information.~~

2a. The right referred to in paragraph 2 shall be explicitly offered to the data subject in an intelligible manner and form, using clear and plain language, in particular if addressed specifically to a child, and shall be clearly distinguishable from other information.

2b. In the context of the use of information society services, and notwithstanding Directive 2002/58/EC, the right to object may be exercised by automated means using a technical standard which allows the data subject to clearly express his or her wishes.

3. Where an objection is upheld pursuant to paragraphs 1 and 2, the controller shall no longer use or otherwise process the personal data concerned ***for the purposes determined in the objection***. **[Am. 114]**

Article 20

~~Measures based on profiling~~***Profiling***

1. ***Without prejudice to the provisions in Article 6,*** ~~Every~~ ***every*** natural person shall have the right ***to object*** ~~not~~ to ~~be subject to a measure which produces legal effects concerning this natural person or significantly affects this natural person, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this natural person or to analyse or predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour~~ ***profiling in accordance with Article 19. The data subject shall be informed about the right to object to profiling in a highly visible manner***.

2. Subject to the other provisions of this Regulation, a person may be subjected to ~~a measure of the kind referred to in paragraph 1~~ ***profiling which leads to measures producing legal effects concerning the data subject or does similarly significantly affect the interests, rights or freedoms of the concerned data subject*** only if the processing:

(a) is ~~carried out in the course of~~ ***necessary for*** the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied ~~or where~~***, provided that*** suitable measures to safeguard the data subject's legitimate interests have been adduced~~, such as the right to obtain human intervention~~; or

(b) is expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data subject's legitimate interests; or

(c) is based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards.

3. ~~Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person~~***Profiling that has the effect of discriminating against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, sexual orientation or gender identity, or that results in measures which have such effect, shall be prohibited. The controller shall implement effective protection against possible discrimination resulting from profiling. Profiling*** shall not be based solely on the special categories of personal data referred to in Article 9.

~~4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject.~~

~~5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for~~ ***Profiling which leads to measures producing legal effects concerning the data subject or does similarly significantly affect the interests, rights or freedoms of the concerned data subject shall not be based solely or predominantly on automated processing and shall include human assessment, including an explanation of the decision reached after such an assessment. The*** suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2 ***shall include the right to obtain human assessment and an explanation of the decision reached after such assessment***.

5a. The European Data Protection Board shall be entrusted with the task of issuing guidelines, recommendations and best practices in accordance with point (b) of Article 66(1) for further specifying the criteria and conditions for profiling pursuant to paragraph 2. **[Am. 115]**

SECTION 5

RESTRICTIONS

Article 21

Restrictions

1. Union or Member State law may restrict by way of a legislative measure the scope of the obligations and rights ~~provided for~~ in ~~points (a) to (e) of Article 5 and~~ Articles 11 to ~~20~~***19*** and Article 32, when such a restriction ~~constitutes~~ ***meets a clearly defined objective of public interest, respects the essence of the right to protection of personal data, is proportionate to the legitimate aim pursued and respects the fundamental rights and interests of the data subject and is*** a necessary and proportionate measure in a democratic society to safeguard:

(a) public security;

(b) the prevention, investigation, detection and prosecution of criminal offences;

(c) ~~other public interests of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and~~ taxation matters ~~and the protection of market stability and integrity~~;

(d) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;

(e) a monitoring, inspection or regulatory function ~~connected, even occasionally, with~~ ***in the framework of*** the exercise of ~~official~~ ***a competent public*** authority in cases referred to in (a), (b), (c) and (d);

(f) the protection of the data subject or the rights and freedoms of others.

2. In particular, any legislative measure referred to in paragraph 1 ***must be necessary and proportionate in a democratic society and*** shall contain specific provisions at least as to ~~the objectives to be pursued by the processing and the determination of the controller.~~:

(a) the objectives to be pursued by the processing;

(b) the determination of the controller;

(c) the specific purposes and means of processing;

(d) the safeguards to prevent abuse or unlawful access or transfer;

(e) the right of data subjects to be informed about the restriction.

2a. Legislative measures referred to in paragraph 1 shall neither permit nor oblige private controllers to retain data additional to those strictly necessary for the original purpose. **[Am. 116]**

CHAPTER IV

CONTROLLER AND PROCESSOR

SECTION 1

GENERAL OBLIGATIONS

Article 22

Responsibility ***and accountability*** of the controller

1. The controller shall adopt ***appropriate*** policies and implement appropriate ***and demonstrable technical and organisational*** measures to ensure and be able to demonstrate ***in a transparent manner*** that the processing of personal data is performed in compliance with this Regulation***, having regard to the state of the art, the nature of personal data processing, the context, scope and purposes of the processing, the risks for the rights and freedoms of the data subjects and the type of the organisation, both at the time of the determination of the means for processing and at the time of the processing itself***.

1a. Having regard to the state of the art and the cost of implementation, the controller shall take all reasonable steps to implement compliance policies and procedures that persistently respect the autonomous choices of data subjects. Those compliance policies shall be reviewed at least every two years and updated where necessary.

~~2. The measures provided for in paragraph 1 shall in particular include:~~

~~(a) keeping the documentation pursuant to Article 28;~~

~~(b) implementing the data security requirements laid down in Article 30;~~

~~(c) performing a data protection impact assessment pursuant to Article 33;~~

~~(d) complying with the requirements for prior authorisation or prior consultation of the supervisory authority pursuant to Article 34(1) and (2);~~

~~(e) designating a data protection officer pursuant to Article 35(1).~~

3. The controller shall ~~implement mechanisms to ensure the verification of the~~ ***be able to demonstrate the adequacy and*** effectiveness of the measures referred to in paragraphs 1 and 2. ~~If proportionate, this verification shall be carried out by independent internal or external auditors~~ ***Any regular general reports of the activities of the controller, such as the obligatory reports by publicly traded companies, shall contain a summary description of the policies and measures referred to in paragraph 1***.

3a. The controller shall have the right to transmit personal data inside the Union within the group of undertakings the controller is part of, where such processing is necessary for legitimate internal administrative purposes between connected business areas of the group of undertakings and an adequate level of data protection as well as the interests of the data subjects are safeguarded by internal data protection provisions or equivalent codes of conduct as referred to in Article 38.

~~4. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures referred to in paragraph 1 other than those already referred to in paragraph 2, the conditions for the verification and auditing mechanisms referred to in paragraph 3 and as regards the criteria for proportionality under paragraph 3, and considering specific measures for micro, small and medium-sized-enterprises.~~ **[Am. 117]**

Wednesday 12 March 2014

Article 23

Data protection by design and by default

1. Having regard to the state of the art ~~and the cost of implementation~~, ***current technical knowledge, international best practices and the risks represented by the data processing,*** the controller ***and the processor, if any,*** shall, both at the time of the determination of the ***purposes and*** means for processing and at the time of the processing itself, implement appropriate ***and proportionate*** technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject***, in particular with regard to the principles laid down in Article 5. Data protection by design shall have particular regard to the entire lifecycle management of personal data from collection to processing to deletion, systematically focusing on comprehensive procedural safeguards regarding the accuracy, confidentiality, integrity, physical security and deletion of personal data. Where the controller has carried out a data protection impact assessment pursuant to Article 33, the results shall be taken into account when developing those measures and procedures***.

1a. In order to foster its widespread implementation in different economic sectors, data protection by design shall be a prerequisite for public procurement tenders according to Directive 2004/18/EC of the European Parliament and of the Council [1] ***as well as according to Directive 2004/17/EC of the European Parliament and of the Council*** [2] ***(Utilities Directive).***

2. The controller shall ~~implement mechanisms for ensuring~~ ***ensure*** that, by default, only those personal data are processed which are necessary for each specific purpose of the processing and are especially not collected ~~or~~, retained ***or disseminated*** beyond the minimum necessary for those purposes, both in terms of the amount of the data and the time of their storage. In particular, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals ***and that data subjects are able to control the distribution of their personal data***.

~~3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraph 1 and 2, in particular for data protection by design requirements applicable across sectors, products and services.~~

~~4. The Commission may lay down technical standards for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ **[Am. 118]**

Article 24

Joint controllers

Where ~~a controller determines~~ ***several controllers jointly determine*** the purposes~~, conditions~~ and means of the processing of personal data ~~jointly with others~~, the joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of an arrangement between them. ***The arrangement shall duly reflect the joint controllers' respective effective roles and relationships vis-à-vis data subjects, and the essence of the arrangement shall be made available for the data subject. In case of unclarity of the responsibility, the controllers shall be jointly and severally liable.*** **[Am. 119]**

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[1] ***Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).***

[2] ***Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector (OJ L 134, 30.4.2004, p. 1).***

Article 25

Representatives of controllers not established in the Union

1. In the situation referred to in Article 3(2), the controller shall designate a representative in the Union.

2. This obligation shall not apply to:

(a) a controller established in a third country where the Commission has decided that the third country ensures an adequate level of protection in accordance with Article 41; or

(b) ~~an enterprise employing fewer than 250 persons~~***a controller processing personal data which relate to less than 5 000 data subjects during any consecutive 12-month period and not processing special categories of personal data as referred to in Article 9(1), location data or data on children or employees in large-scale filing systems***; or

(c) a public authority or body; or

(d) a controller ~~offering~~ only occasionally ***offering*** goods or services to data subjects ~~residing~~ in the Union***, unless the processing of personal data concerns special categories of personal data as referred to in Article 9(1), location data or data on children or employees in large-scale filing systems***.

3. The representative shall be established in one of those Member States where ~~the data subjects whose personal data are processed in relation to~~ the offering of goods or services to ~~them~~***the data subjects***, or ~~whose behaviour is monitored, reside~~ ***the monitoring of them***, ***takes place***.

4. The designation of a representative by the controller shall be without prejudice to legal actions which could be initiated against the controller itself. **[Am. 120]**

Article 26

Processor

1. Where ~~a~~ processing ~~operation~~ is to be carried out on behalf of a controller, the controller shall choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject, in particular in respect of the technical security measures and organisational measures governing the processing to be carried out and shall ensure compliance with those measures.

2. The carrying out of processing by a processor shall be governed by a contract or other legal act binding the processor to the controller. ***The controller and the processor shall be free to determine respective roles and tasks with respect to the requirements of this Regulation, and shall provide that*** ~~and stipulating in particular that~~ the processor shall:

(a) ~~act~~ ***process personal data*** only on instructions from the controller, ~~in particular, where the transfer of the personal data used is prohibited~~***, unless otherwise required by Union law or Member State law***;

(b) employ only staff who have committed themselves to confidentiality or are under a statutory obligation of confidentiality;

(c) take all required measures pursuant to Article 30;

(d) ~~enlist~~ ***determine the conditions for enlisting*** another processor only with the prior permission of the controller***, unless otherwise determined***;

(e) insofar as this is possible given the nature of the processing, create in agreement with the controller the ~~necessary~~ ***appropriate and relevant*** technical and organisational requirements for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;

(f) assist the controller in ensuring compliance with the obligations pursuant to Articles 30 to 34***, taking into account the nature of processing and the information available to the processor***;

(g) ~~hand over~~ ***return*** all results to the controller after the end of the processing, ~~and~~ not process the personal data otherwise ***and delete existing copies unless Union or Member State law requires storage of the data***;

(h) make available to the controller ~~and the supervisory authority~~ all information necessary to ~~control~~ ***demonstrate*** compliance with the obligations laid down in this Article ***and allow on-site inspections***.

3. The controller and the processor shall document in writing the controller's instructions and the processor's obligations referred to in paragraph 2.

3a. The sufficient guarantees referred to in paragraph 1 may be demonstrated by adherence to codes of conduct or certification mechanisms pursuant to Article 38 or 39 of this Regulation.

4. If a processor processes personal data other than as instructed by the controller ***or becomes the determining party in relation to the purposes and means of data processing***, the processor shall be considered to be a controller in respect of that processing and shall be subject to the rules on joint controllers laid down in Article 24.

~~5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the responsibilities, duties and tasks in relation to a processor in line with paragraph 1, and conditions which allow facilitating the processing of personal data within a group of undertakings, in particular for the purposes of control and reporting.~~ **[Am. 121]**

Article 27

Processing under the authority of the controller and processor

The processor and any person acting under the authority of the controller or of the processor who has access to personal data shall not process them except on instructions from the controller, unless required to do so by Union or Member State law.

Article 28

Documentation

1. Each controller and processor ~~and, if any, the controller's representative,~~ shall maintain ***regularly updated*** documentation ~~of all processing operations under its responsibility~~ ***necessary to fulfill the requirements laid down in this Regulation***.

2. ~~The~~ ***In addition, each controller and processor shall maintain*** documentation ~~shall contain at least~~ ***of*** the following information:

(a) the name and contact details of the controller, or any joint controller or processor, and of the representative, if any;

(b) the name and contact details of the data protection officer, if any;

~~(c) the purposes of the processing, including the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);~~

~~(d) a description of categories of data subjects and of the categories of personal data relating to them;~~

(e) the ~~recipients or categories of recipients of the personal data, including~~ ***name and contact details of*** the controllers to whom personal data are disclosed ~~for the legitimate interest pursued by them~~***, if any***;

~~(f) where applicable, transfers of data to a third country or an international organisation, including the identification of that third country or international organisation and, in case of transfers referred to in point (h) of Article 44(1), the documentation of appropriate safeguards;~~

~~(g) a general indication of the time limits for erasure of the different categories of data;~~

~~(h) the description of the mechanisms referred to in Article 22(3).~~

~~3. The controller and the processor and, if any, the controller's representative, shall make the documentation available, on request, to the supervisory authority.~~

~~4. The obligations referred to in paragraphs 1 and 2 shall not apply to the following controllers and processors:~~

~~(a) a natural person processing personal data without a commercial interest; or~~

~~(b) an enterprise or an organisation employing fewer than 250 persons that is processing personal data only as an activity ancillary to its main activities.~~

~~5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the documentation referred to in paragraph 1, to take account of in particular the responsibilities of the controller and the processor and, if any, the controller's representative.~~

~~6. The Commission may lay down standard forms for the documentation referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ **[Am. 122]**

Article 29

Co-operation with the supervisory authority

1. The controller and***, if any,*** the processor and~~, if any,~~ the representative of the controller, shall co-operate, on request, with the supervisory authority in the performance of its duties, in particular by providing the information referred to in point (a) of Article 53(2) and by granting access as provided in point (b) of that paragraph.

2. In response to the supervisory authority's exercise of its powers under Article 53(2), the controller and the processor shall reply to the supervisory authority within a reasonable period to be specified by the supervisory authority. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority. **[Am. 123]**

SECTION 2

DATA SECURITY

Article 30

Security of processing

1. The controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing ~~and the nature of the personal data to be protected~~, ***taking into account the results of a data protection impact assessment pursuant to Article 33,*** having regard to the state of the art and the costs of their implementation.

1a. Having regard to the state of the art and the cost of implementation, such a security policy shall include:

(a) the ability to ensure that the integrity of the personal data is validated;

(b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of systems and services processing personal data;

(c) the ability to restore the availability and access to data in a timely manner in the event of a physical or technical incident that impacts the availability, integrity and confidentiality of information systems and services;

(d) in the case of sensitive personal data processing according to Articles 8 and 9, additional security measures to ensure situational awareness of risks and the ability to take preventive, corrective and mitigating action in near real time against vulnerabilities or incidents detected that could pose a risk to the data;

(e) a process for regularly testing, assessing and evaluating the effectiveness of security policies, procedures and plans put in place to ensure ongoing effectiveness.

2. The ~~controller and the processor shall, following an evaluation of the risks, take the~~ measures referred to in paragraph 1 ~~to protect personal data against accidental or unlawful destruction or accidental loss and to prevent any unlawful forms of processing, in particular any unauthorised disclosure, dissemination or access, or alteration of personal data.~~ ***shall at least:***

(a) ensure that personal data can be accessed only by authorised personnel for legally authorised purposes;

(b) protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, and unauthorised or unlawful storage, processing, access or disclosure; and

(c) ensure the implementation of a security policy with respect to the processing of personal data.

3. The ~~Commission~~ ***European Data Protection Board*** shall be ~~empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions~~ ***entrusted with the task of issuing guidelines, recommendations and best practices in accordance with point (b) of Article 66(1)*** for the technical and organisational measures referred to in paragraphs 1 and 2, including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default~~, unless paragraph 4 applies~~.

~~4. The Commission may adopt, where necessary, implementing acts for specifying the requirements laid down in paragraphs 1 and 2 to various situations, in particular to:~~

~~(a) prevent any unauthorised access to personal data;~~

~~(b) prevent any unauthorised disclosure, reading, copying, modification, erasure or removal of personal data;~~

~~(c) ensure the verification of the lawfulness of processing operations.~~

~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~
[Am. 124]

Article 31

Notification of a personal data breach to the supervisory authority

1. In the case of a personal data breach, the controller shall without undue delay ~~and, where feasible, not later than 24 hours after having become aware of it,~~ notify the personal data breach to the supervisory authority. ~~The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within 24 hours.~~

2. ~~Pursuant to point (f) of Article 26(2), the~~ ***The*** processor shall alert and inform the controller ~~immediately~~ ***without undue delay*** after the establishment of a personal data breach.

3. The notification referred to in paragraph 1 shall at least:

(a) describe the nature of the personal data breach including the categories and number of data subjects concerned and the categories and number of data records concerned;

(b) communicate the identity and contact details of the data protection officer or other contact point where more information can be obtained;

(c) recommend measures to mitigate the possible adverse effects of the personal data breach;

(d) describe the consequences of the personal data breach;

(e) describe the measures proposed or taken by the controller to address the personal data breach ***and mitigate its effects***.

The information may, if necessary, be provided in phases.

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This documentation must ***be sufficient to*** enable the supervisory authority to verify compliance with this Article ***and with Article 30***. The documentation shall only include the information necessary for that purpose.

4a. The supervisory authority shall keep a public register of the types of breaches notified.

5. The ~~Commission~~ ***European Data Protection Board*** shall be ~~empowered to adopt delegated acts in accordance with Article 86 for the purpose~~ ***entrusted with the task*** of ~~further specifying the criteria and requirements~~ ***issuing guidelines, recommendations and best practices in accordance with point (b) of Article 66(1)*** for establishing the data breach ***and determining the undue delay*** referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor ~~is~~***are*** required to notify the personal data breach.

~~6. The Commission may lay down the standard format of such notification to the supervisory authority, the procedures applicable to the notification requirement and the form and the modalities for the documentation referred to in paragraph 4, including the time limits for erasure of the information contained therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ **[Am. 125]**

Article 32

Communication of a personal data breach to the data subject

1. When the personal data breach is likely to adversely affect the protection of the personal data***, the*** ~~or~~ privacy***, the rights or the legitimate interests*** of the data subject, the controller shall, after the notification referred to in Article 31, communicate the personal data breach to the data subject without undue delay.

2. The communication to the data subject referred to in paragraph 1 shall ***be comprehensive and use clear and plain language. It shall*** describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b) ~~and~~, (c) ***and (d)*** of Article 31(3) ***and information about the rights of the data subject, including redress***.

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3. The communication of a personal data breach to the data subject shall not be required if the controller demonstrates to the satisfaction of the supervisory authority that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

4. Without prejudice to the controller's obligation to communicate the personal data breach to the data subject, if the controller has not already communicated the personal data breach to the data subject, the supervisory authority, having considered the likely adverse effects of the breach, may require it to do so.

5. The ~~Commission~~***European Data Protection Board*** shall be ~~empowered to adopt delegated acts in accordance with Article 86 for the purpose~~ ***entrusted with the task*** of ~~further specifying the criteria and requirements~~ ***issuing guidelines, recommendations and best practices in accordance with point (b) of Article 66(1)*** as to the circumstances in which a personal data breach is likely to adversely affect the personal data***, the privacy, the rights or the legitimate interests of the data subject*** referred to in paragraph 1.

~~6. The Commission may lay down the format of the communication to the data subject referred to in paragraph 1 and the procedures applicable to that communication. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ **[Am. 126]**

Article 32a

Risk analysis

1. The controller, or where applicable the processor, shall carry out a risk analysis of the potential impact of the intended data processing on the rights and freedoms of the data subjects, assessing whether its processing operations are likely to present specific risks.

2. The following processing operations are likely to present specific risks:

(a) processing of personal data relating to more than 5 000 data subjects during any consecutive 12-month period;

(b) processing of special categories of personal data as referred to in Article 9(1), location data or data on children or employees in large scale filing systems;

(c) profiling on which measures are based that produce legal effects concerning the individual or similarly significantly affect the individual;

(d) processing of personal data for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;

(e) automated monitoring of publicly accessible areas on a large scale;

(f) other processing operations for which the consultation of the data protection officer or supervisory authority is required pursuant to point (b) of Article 34(2);

(g) where a personal data breach would likely adversely affect the protection of the personal data, the privacy, the rights or the legitimate interests of the data subject;

(h) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects;

(i) where personal data are made accessible to a number of persons which cannot reasonably be expected to be limited.

3. According to the result of the risk analysis:

(a) where any of the processing operations referred to in point (a) or (b) of paragraph 2 exist, controllers not established in the Union shall designate a representative in the Union in line with the requirements and exemptions laid down in Article 25;

(b) where any of the processing operations referred to in point (a), (b) or (h)of paragraph 2 exist, the controller shall designate a data protection officer in line with the requirements and exemptions laid down in Article 35;

(c) where any of the processing operations referred to in point (a), (b), (c), (d), (e), (f), (g) or (h) of paragraph 2 exist, the controller or the processor acting on the controller's behalf shall carry out a data protection impact assessment pursuant to Article 33;

(d) where processing operations referred to in point (f) of paragraph 2 exist, the controller shall consult the data protection officer, or in case a data protection officer has not been appointed, the supervisory authority pursuant to Article 34.

4. The risk analysis shall be reviewed at the latest after one year, or immediately, if the nature, the scope or the purposes of the data processing operations change significantly. Where pursuant to point (c) of paragraph 3 the controller is not obliged to carry out a data protection impact assessment, the risk analysis shall be documented. **[Am. 127]**

SECTION 3

LIFECYCLE DATA PROTECTION ~~IMPACT ASSESSMENT AND PRIOR AUTHORISATION~~***MANAGEMENT*** **[Am. 128]**

Article 33

Data protection impact assessment

1. Where ~~processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes,~~ ***required pursuant to point (c) of Article 32a(3)*** the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on the ***rights and freedoms of the data subjects, especially their right to*** protection of personal data. ***A single assessment shall be sufficient to address a set of similar processing operations that present similar risks.***

~~2. The following processing operations in particular present specific risks referred to in paragraph 1:~~

~~(a) a systematic and extensive evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour, which is based on automated processing and on which measures are based that produce legal effects concerning the individual or significantly affect the individual;~~

~~(b) information on sex life, health, race and ethnic origin or for the provision of health care, epidemiological researches, or surveys of mental or infectious diseases, where the data are processed for taking measures or decisions regarding specific individuals on a large scale;~~

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~~(c) monitoring publicly accessible areas, especially when using optic-electronic devices (video surveillance) on a large scale;~~

~~(d) personal data in large scale filing systems on children, genetic data or biometric data;~~

~~(e) other processing operations for which the consultation of the supervisory authority is required pursuant to point (b) of Article 34(2).~~

3. The assessment shall ***have regard to the entire lifecycle management of personal data from collection to processing to deletion. It shall*** contain at least ~~a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned~~:.

(a) a systematic description of the envisaged processing operations, the purposes of the processing and, if applicable, the legitimate interests pursued by the controller;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;

(c) an assessment of the risks to the rights and freedoms of data subjects, including the risk of discrimination being embedded in or reinforced by the operation;

(d) a description of the measures envisaged to address the risks and minimise the volume of personal data which are processed;

(e) a list of safeguards, security measures and mechanisms to ensure the protection of personal data, such as pseudonymisation, and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned;

(f) a general indication of the time limits for erasure of the different categories of data;

(g) an explanation which data protection by design and default practices pursuant to Article 23 have been implemented;

(h) a list of the recipients or categories of recipients of the personal data;

(i) where applicable, a list of the intended transfers of data to a third country or an international organisation, including the identification of that third country or international organisation;

(j) an assessment of the context of the data processing.

3a. If the controller or the processor has designated a data protection officer, he or she shall be involved in the impact assessment proceeding.

3b. The assessment shall be documented and lay down a schedule for regular periodic data protection compliance reviews pursuant to Article 33a(1). The assessment shall be updated without undue delay, if the results of the data protection compliance review referred to in Article 33a show compliance inconsistencies. The controller and the processor and, if any, the controller's representative shall make the assessment available, on request, to the supervisory authority.

~~4. The controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of the processing operations.~~

~~5. Where the controller is a public authority or body and where the processing results from a legal obligation pursuant to point (c) of Article 6(1) providing for rules and procedures pertaining to the processing operations and regulated by Union law, paragraphs 1 to 4 shall not apply, unless Member States deem it necessary to carry out such assessment prior to the processing activities.~~

~~6. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment referred to in paragraph 3, including conditions for scalability, verification and auditability. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.~~

~~7. The Commission may specify standards and procedures for carrying out and verifying and auditing the assessment referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ **[Am. 129]**

Article 33a

Data protection compliance review

1. At the latest two years after the carrying out of an impact assessment pursuant to Article 33(1), the controller or the processor acting on the controller's behalf shall carry out a compliance review. This compliance review shall demonstrate that the processing of personal data is performed in compliance with the data protection impact assessment.

2. The compliance review shall be carried out periodically at least once every two years, or immediately when there is a change in the specific risks presented by the processing operations.

3. Where the compliance review results show compliance inconsistencies, the compliance review shall include recommendations on how to achieve full compliance.

4. The compliance review and its recommendations shall be documented. The controller and the processor and, if any, the controller's representative shall make the compliance review available, on request, to the supervisory authority.

5. If the controller or the processor has designated a data protection officer, he or she shall be involved in the compliance review proceeding. **[Am. 130]**

Article 34

Prior ~~authorisation and prior~~ consultation

~~1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.~~

2. The controller or processor acting on the controller's behalf shall consult the ***data protection officer, or in case a data protection officer has not been appointed, the*** supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

(a) a data protection impact assessment as provided for in Article 33 indicates that processing operations are by virtue of their nature, their scope or their purposes, likely to present a high degree of specific risks; or

(b) ***the data protection officer or*** the supervisory authority deems it necessary to carry out a prior consultation on processing operations that are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope and/or their purposes, and specified according to paragraph 4.

3. Where the ***competent*** supervisory authority ~~is of the opinion~~ ***determines in accordance with its power*** that the intended processing does not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall prohibit the intended processing and make appropriate proposals to remedy such non-compliance.

4. The ~~supervisory authority~~ ***European Data Protection Board*** shall establish and make public a list of the processing operations which are subject to prior consultation pursuant to ~~point (b) of~~ paragraph 2. ~~The supervisory authority shall communicate those lists to the European Data Protection Board.~~

~~5. Where the list provided for in paragraph 4 involves processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57 prior to the adoption of the list.~~

6. The controller or processor shall provide the supervisory authority***, on request,*** with the data protection impact assessment ~~provided for in~~ ***pursuant to*** Article 33 and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

7. Member States shall consult the supervisory authority in the preparation of a legislative measure to be adopted by the national parliament or of a measure based on such a legislative measure, which defines the nature of the processing, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects.

~~8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of specific risk referred to in point (a) of paragraph 2.~~

~~9. The Commission may set out standard forms and procedures for prior authorisations and consultations referred to in paragraphs 1 and 2, and standard forms and procedures for informing the supervisory authorities pursuant to paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~
[Am. 131]

SECTION 4

DATA PROTECTION OFFICER

Article 35

Designation of the data protection officer

1. The controller and the processor shall designate a data protection officer in any case where:

(a) the processing is carried out by a public authority or body; or

(b) the processing is carried out by ~~an enterprise employing 250 persons or more~~ ***a legal person and relates to more than 5 000 data subjects in any consecutive 12-month period***; or

(c) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects.***; or***

(d) the core activities of the controller or the processor consist of processing special categories of data pursuant to Article 9(1), location data or data on children or employees in large scale filing systems.

2. ~~In the case referred to in point (b) of paragraph 1, a~~ ***A*** group of undertakings may appoint a ~~single~~ ***main responsible*** data protection officer***, provided it is ensured that a data protection officer is easily accessible from each establishment***.

3. Where the controller or the processor is a public authority or body, the data protection officer may be designated for several of its entities, taking account of the organisational structure of the public authority or body.

4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may designate a data protection officer.

5. The controller or processor shall designate the data protection officer on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 37. The necessary level of expert knowledge shall be determined in particular according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.

6. The controller or the processor shall ensure that any other professional duties of the data protection officer are compatible with the person's tasks and duties as data protection officer and do not result in a conflict of interests.

7. The controller or the processor shall designate a data protection officer for a period of at least ~~two~~ ***four*** years ***in case of an employee or two years in case of an external service contractor***. The data protection officer may be reappointed for further terms. During ~~their~~ ***his or her*** term of office, the data protection officer may only be dismissed, if ~~the data protection officer~~ ***he or she*** no longer fulfils the conditions required for the performance of ~~their~~ ***his or her*** duties.

8. The data protection officer may be employed by the controller or processor, or fulfil his or her tasks on the basis of a service contract.

9. The controller or the processor shall communicate the name and contact details of the data protection officer to the supervisory authority and to the public.

10. Data subjects shall have the right to contact the data protection officer on all issues related to the processing of the data subject's data and to request exercising the rights under this Regulation.

~~11. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the core activities of the controller or the processor referred to in point (c) of paragraph 1 and the criteria for the professional qualities of the data protection officer referred to in paragraph 5.~~
[Am. 132]

Article 36

Position of the data protection officer

1. The controller or the processor shall ensure that the data protection officer is properly and in a timely manner involved in all issues which relate to the protection of personal data.

2. The controller or processor shall ensure that the data protection officer performs the duties and tasks independently and does not receive any instructions as regards the exercise of the function. The data protection officer shall directly report to the ***executive*** management of the controller or the processor. ***The controller or processor shall for this purpose designate an executive management member who shall be responsible for the compliance with the provisions of this Regulation.***

3. The controller or the processor shall support the data protection officer in performing the tasks and shall provide ***all means, including*** staff, premises, equipment and any other resources necessary to carry out the duties and tasks referred to in Article 37***, and to maintain his or her professional knowledge***.

4. Data protection officers shall be bound by secrecy concerning the identity of data subjects and concerning circumstances enabling data subjects to be identified, unless they are released from that obligation by the data subject. **[Am. 133]**

Article 37

Tasks of the data protection officer

~~1.~~ The controller or the processor shall entrust the data protection officer at least with the following tasks:

(a) ***to raise awareness,*** to inform and advise the controller or the processor of their obligations pursuant to this Regulation***, in particular with regard to technical and organisational measures and procedures,*** and to document this activity and the responses received;

(b) to monitor the implementation and application of the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, the training of staff involved in the processing operations, and the related audits;

(c) to monitor the implementation and application of this Regulation, in particular as to the requirements related to data protection by design, data protection by default and data security and to the information of data subjects and their requests in exercising their rights under this Regulation;

(d) to ensure that the documentation referred to in Article 28 is maintained;

(e) to monitor the documentation, notification and communication of personal data breaches pursuant to Articles 31 and 32;

(f) to monitor the performance of the data protection impact assessment by the controller or processor and the application for prior ~~authorisation or prior~~ consultation, if required pursuant ***to*** Articles ***32a,*** 33 and 34;

(g) to monitor the response to requests from the supervisory authority, and, within the sphere of the data protection officer's competence, co-operating with the supervisory authority at the latter's request or on the data protection officer's own initiative;

(h) to act as the contact point for the supervisory authority on issues related to the processing and consult with the supervisory authority, if appropriate, on his or her own initiative;

(i) to verify the compliance with this Regulation under the prior consultation mechanism laid down in Article 34;

(j) to inform the employee representatives on data processing of the employees.

~~2. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for tasks, certification, status, powers and resources of the data protection officer referred to in paragraph 1.~~**[Am. 134]**

SECTION 5

CODES OF CONDUCT AND CERTIFICATION

Article 38

Codes of conduct

1. The Member States, the supervisory authorities and the Commission shall encourage the drawing up of codes of conduct ***or the adoption of codes of conduct drawn up by a supervisory authority*** intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors, in particular in relation to:

(a) fair and transparent data processing;

(aa) respect for consumer rights;

(b) the collection of data;

(c) the information of the public and of data subjects;

(d) requests of data subjects in exercise of their rights;

(e) information and protection of children;

(f) transfer of data to third countries or international organisations;

(g) mechanisms for monitoring and ensuring compliance with the code by the controllers adherent to it;

(h) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with respect to the processing of personal data, without prejudice to the rights of the data subjects pursuant to Articles 73 and 75.

2. Associations and other bodies representing categories of controllers or processors in one Member State which intend to draw up codes of conduct or to amend or extend existing codes of conduct may submit them to an opinion of the supervisory authority in that Member State. The supervisory authority ~~may~~ ***shall without undue delay*** give an opinion ***on*** whether ***the processing under*** the draft code of conduct or the amendment is in compliance with this Regulation. The supervisory authority shall seek the views of data subjects or their representatives on these drafts.

3. Associations and other bodies representing categories of controllers ***or processors*** in several Member States may submit draft codes of conduct and amendments or extensions to existing codes of conduct to the Commission.

4. The Commission ~~may adopt implementing acts~~ ***shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 86*** for deciding that the codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to paragraph 3 ***are in line with this Regulation and*** have general validity within the Union. Those ~~implementing acts~~ ***delegated acts*** shall ~~be adopted in accordance with the examination procedure set out in Article 87(2)~~ ***confer enforceable rights on data subjects***.

5. The Commission shall ensure appropriate publicity for the codes which have been decided as having general validity in accordance with paragraph 4. **[Am. 135]**

Article 39

Certification

~~1. The Member States and the Commission shall encourage, in particular at European level, the establishment of data protection certification mechanisms and of data protection seals and marks, allowing data subjects to quickly assess the level of data protection provided by controllers and processors. The data protection certifications mechanisms shall contribute to the proper application of this Regulation, taking account of the specific features of the various sectors and different processing operations.~~

1a. Any controller or processor may request any supervisory authority in the Union, for a reasonable fee taking into account the administrative costs, to certify that the processing of personal data is performed in compliance with this Regulation, in particular with the principles set out in Article 5, 23 and 30, the obligations of the controller and the processor, and the data subject's rights.

1b. The certification shall be voluntary, affordable, and available via a process that is transparent and not unduly burdensome.

1c. The supervisory authorities and the European Data Protection Board shall cooperate under the consistency mechanism pursuant to Article 57 to guarantee a harmonised data protection certification mechanism including harmonised fees within the Union.

1d. During the certification procedure, the supervisory authorities may accredit specialised third party auditors to carry out the auditing of the controller or the processor on their behalf. Third party auditors shall have sufficiently qualified staff, be impartial and free from any conflict of interests regarding their duties. Supervisory authorities shall revoke accreditation, if there are reasons to believe that the auditor does not fulfil its duties correctly. The final certification shall be provided by the supervisory authority.

1e. Supervisory authorities shall grant controllers and processors, who pursuant to the auditing have been certified that they process personal data in compliance with this Regulation, the standardised data protection mark named 'European Data Protection Seal'.

1f. The 'European Data Protection Seal' shall be valid for as long as the data processing operations of the certified controller or processor continue to fully comply with this Regulation.

1 g. Notwithstanding paragraph 1f, the certification shall be valid for maximum five years.

1h. The European Data Protection Board shall establish a public electronic register in which all valid and invalid certificates which have been issued in the Member States can be viewed by the public.

1i. The European Data Protection Board may on its own initiative certify that a data protection-enhancing technical standard is compliant with this Regulation.

2. The Commission shall be empowered to adopt***, after requesting an opinion of the European Data Protection Board and consulting with stakeholders, in particular industry and non-governmental organisations,*** delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the data protection certification mechanisms referred to in ~~paragraph 1~~***paragraphs 1a to 1h***, including ***requirements for accreditation of auditors,*** conditions for granting and withdrawal, and requirements for recognition within the Union and in third countries. ***Those delegated acts shall confer enforceable rights on data subjects.***

~~3. The Commission may lay down technical standards for certification mechanisms and data protection seals and marks and mechanisms to promote and recognize certification mechanisms and data protection seals and marks. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).~~ **[Am. 136]**

CHAPTER V

TRANSFER OF PERSONAL DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

Article 40

General principle for transfers

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation.

Article 41

Transfers with an adequacy decision

1. A transfer may take place where the Commission has decided that the third country, or a territory or a processing sector within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any ~~further~~***specific*** authorisation.

2. When assessing the adequacy of the level of protection, the Commission shall give consideration to the following elements:

(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law ***as well as the implementation of this legislation***, the professional rules and security measures which are complied with in that country or by that international organisation, ***jurisprudential precedents,*** as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or international organisation in question responsible for ensuring compliance with the data protection rules, ***including sufficient sanctioning powers,*** for assisting and advising the data subjects in exercising their rights and for co-operation with the supervisory authorities of the Union and of Member States; and

(c) the international commitments the third country or international organisation in question has entered into***, in particular any legally binding conventions or instruments with respect to the protection of personal data***.

3. The Commission ~~may~~***shall be empowered to adopt delegated acts in accordance with Article 86 to*** decide that a third country, or a territory or a processing sector within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2. ~~Those implementing acts~~ ***Such delegated acts*** shall ~~be adopted in accordance with the examination procedure referred to in Article 87(2)~~ ***provide for a sunset clause if they concern a processing sector and shall be revoked according to paragraph 5 as soon as an adequate level of protection according to this Regulation is no longer ensured***.

4. The ~~implementing~~***delegated*** act shall specify its ~~geographical~~***territorial*** and sectoral application, and, where applicable, identify the supervisory authority mentioned in point (b) of paragraph 2.

4a. The Commission shall, on an on-going basis, monitor developments in third countries and international organisations that could affect the elements listed in paragraph 2 where a delegated act pursuant to paragraph 3 has been adopted.

5. The Commission ~~may~~***shall be empowered to adopt delegated acts in accordance with Article 86 to*** decide that a third country, or a territory or a processing sector within that third country, or an international organisation does not ensure ***or no longer ensures*** an adequate level of protection within the meaning of paragraph 2 of this Article, in particular in cases where the relevant legislation, both general and sectoral, in force in the third country or international organisation, does not guarantee effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred. ~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2), or, in cases of extreme urgency for individuals with respect to their right to personal data protection, in accordance with the procedure referred to in Article 87(3).~~

6. Where the Commission decides pursuant to paragraph 5, any transfer of personal data to the third country, or a territory or a processing sector within that third country, or the international organisation in question shall be prohibited, without prejudice to Articles 42 to 44. At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the ~~Decision~~ ***decision*** made pursuant to paragraph 5 of this Article.

6a. Prior to adopting a delegated act pursuant to paragraphs 3 and 5, the Commission shall request the European Data Protection Board to provide an opinion on the adequacy of the level of protection. To that end, the Commission shall provide the European Data Protection Board with all necessary documentation, including correspondence with the government of the third country, territory or processing sector within that third country or the international organisation.

7. The Commission shall publish in the *Official Journal of the European Union* ***and on its website*** a list of those third countries, territories and processing sectors within a third country and international organisations where it has decided that an adequate level of protection is or is not ensured.

8. Decisions adopted by the Commission on the basis of Article 25(6) or Article 26(4) of Directive 95/46/EC shall remain in force, until ***five years after the entry into force of this Regulation unless*** amended, replaced or repealed by the Commission ***before the end of that period***. **[Am. 137]**

Article 42

Transfers by way of appropriate safeguards

1. Where the Commission has taken no decision pursuant to Article 41, ***or decides that a third country, or a territory or processing sector within that third country, or an international organisation does not ensure an adequate level of protection in accordance with Article 41(5),*** a controller or processor may ***not*** transfer personal data to a third country or an international organisation ~~only if~~ ***unless*** the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.

2. The appropriate safeguards referred to in paragraph 1 shall be provided for, in particular, by:

(a) binding corporate rules in accordance with Article 43; or

(aa) a valid 'European Data Protection Seal' for the controller and the recipient in accordance with paragraph 1e of Article 39; or

~~(b) standard data protection clauses adopted by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2); or~~

(c) standard data protection clauses adopted by a supervisory authority in accordance with the consistency mechanism referred to in Article 57 when declared generally valid by the Commission pursuant to point (b) of Article 62(1); or

(d) contractual clauses between the controller or processor and the recipient of the data authorised by a supervisory authority in accordance with paragraph 4.

3. A transfer based on standard data protection clauses***, a 'European Data Protection Seal'*** or binding corporate rules as referred to in point (a), ~~(b)~~ ***(aa)*** or (c) of paragraph 2 shall not require any ~~further~~***specific*** authorisation.

4. Where a transfer is based on contractual clauses as referred to in point (d) of paragraph 2 of this Article the controller or processor shall obtain prior authorisation of the contractual clauses ~~according to point (a) of Article 34(1)~~ from the supervisory authority. If the transfer is related to processing activities which concern data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

5. ~~Where the appropriate safeguards with respect to the protection of personal data are not provided for in a legally binding instrument, the controller or processor shall obtain prior authorisation for the transfer, or a set of transfers, or for provisions to be inserted into administrative arrangements providing the basis for such transfer. Such authorisation by the supervisory authority shall be in accordance with point (a) of Article 34(1). If the transfer is related to processing activities which concern data subjects in another Member State or other Member States, or substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57.~~ Authorisations by a supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid, until ***two years after the entry into force of this Regulation unless*** amended, replaced or repealed by that supervisory authority ***before the end of that period***. **[Am. 138]**

Article 43

Transfers by way of binding corporate rules

1. ~~A~~***The*** supervisory authority shall in accordance with the consistency mechanism set out in Article 58 approve binding corporate rules, provided that they:

(a) are legally binding and apply to and are enforced by every member within the controller's ~~or processor's~~ group of undertakings ***and those external subcontractors that are covered by the scope of the binding corporate rules***, and include their employees;

(b) expressly confer enforceable rights on data subjects;

(c) fulfil the requirements laid down in paragraph 2.

1a. With regard to employment data, the representatives of the employees shall be informed about and, in accordance with Union or Member State law and practice, be involved in the drawing-up of binding corporate rules pursuant to Article 43.

2. The binding corporate rules shall at least specify:

(a) the structure and contact details of the group of undertakings and its members ***and those external subcontractors that are covered by the scope of the binding corporate rules***;

(b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question;

(c) their legally binding nature, both internally and externally;

(d) the general data protection principles, in particular purpose limitation, ***data minimisation, limited retention periods,*** data quality, ***data protection by design and by default,*** legal basis for the processing, processing of sensitive personal data; measures to ensure data security; and the requirements for onward transfers to organisations which are not bound by the policies;

(e) the rights of data subjects and the means to exercise these rights, including the right not to be subject to a measure based on profiling in accordance with Article 20, the right to lodge a complaint with the competent supervisory authority and before the competent courts of the Member States in accordance with Article 75, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules;

(f) the acceptance by the controller ~~or processor~~ established on the territory of a Member State of liability for any breaches of the binding corporate rules by any member of the group of undertakings not established in the Union; the controller ~~or the processor~~ may only be exempted from this liability, in whole or in part, if he proves that that member is not responsible for the event giving rise to the damage;

(g) how the information on the binding corporate rules, in particular on the provisions referred to in points (d), (e) and (f) of this paragraph is provided to the data subjects in accordance with Article 11;

(h) the tasks of the data protection officer designated in accordance with Article 35, including monitoring within the group of undertakings the compliance with the binding corporate rules, as well as monitoring the training and complaint handling;

(i) the mechanisms within the group of undertakings aiming at ensuring the verification of compliance with the binding corporate rules;

(j) the mechanisms for reporting and recording changes to the policies and reporting these changes to the supervisory authority;

(k) the co-operation mechanism with the supervisory authority to ensure compliance by any member of the group of undertakings, in particular by making available to the supervisory authority the results of the verifications of the measures referred to in point (i) of this paragraph.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the ***format, procedures,*** criteria and requirements for binding corporate rules within the meaning of this Article, in particular as regards the criteria for their approval, ***including transparency for data subjects,*** the application of points (b), (d), (e) and (f) of paragraph 2 to binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned.

~~4. The Commission may specify the format and procedures for the exchange of information by electronic means between controllers, processors and supervisory authorities for binding corporate rules within the meaning of this Article. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).~~
[Am. 139]

Wednesday 12 March 2014

Article 43a

Transfers or disclosures not authorised by Union law

1. No judgment of a court or tribunal and no decision of an administrative authority of a third country requiring a controller or processor to disclose personal data shall be recognised or be enforceable in any manner, without prejudice to a mutual legal assistance treaty or an international agreement in force between the requesting third country and the Union or a Member State.

2. Where a judgment of a court or tribunal or a decision of an administrative authority of a third country requests a controller or processor to disclose personal data, the controller or processor and, if any, the controller's representative, shall notify the supervisory authority of the request without undue delay and must obtain prior authorisation for the transfer or disclosure by the supervisory authority.

3. The supervisory authority shall assess the compliance of the requested disclosure with this Regulation and in particular whether the disclosure is necessary and legally required in accordance with points (d) and (e) of Article 44(1) and Article 44(5). Where data subjects from other Member States are affected, the supervisory authority shall apply the consistency mechanism referred to in Article 57.

4. The supervisory authority shall inform the competent national authority of the request. Without prejudice to Article 21, the controller or processor shall also inform the data subjects of the request and of the authorisation by the supervisory authority and, where applicable, inform the data subject whether personal data were provided to public authorities during the last consecutive 12-month period, pursuant to point (ha) of Article 14(1). **[Am. 140]**

Article 44

Derogations

1. In the absence of an adequacy decision pursuant to Article 41 or of appropriate safeguards pursuant to Article 42, a transfer or a set of transfers of personal data to a third country or an international organisation may take place only on condition that:

(a) the data subject has consented to the proposed transfer, after having been informed of the risks of such transfers due to the absence of an adequacy decision and appropriate safeguards; or

(b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request; or

(c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person; or

(d) the transfer is necessary for important grounds of public interest; or

(e) the transfer is necessary for the establishment, exercise or defence of legal claims; or

(f) the transfer is necessary in order to protect the vital interests of the data subject or of another person, where the data subject is physically or legally incapable of giving consent; or

(g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, to the extent that the conditions laid down in Union or Member State law for consultation are fulfilled in the particular case; or

~~(h) the transfer is necessary for the purposes of the legitimate interests pursued by the controller or the processor, which cannot be qualified as frequent or massive, and where the controller or processor has assessed all the circumstances surrounding the data transfer operation or the set of data transfer operations and based on this assessment adduced appropriate safeguards with respect to the protection of personal data, where necessary.~~

2. A transfer pursuant to point (g) of paragraph 1 shall not involve the entirety of the personal data or entire categories of the personal data contained in the register. When the register is intended for consultation by persons having a legitimate interest, the transfer shall be made only at the request of those persons or if they are to be the recipients.

~~3. Where the processing is based on point (h) of paragraph 1, the controller or processor shall give particular consideration to the nature of the data, the purpose and duration of the proposed processing operation or operations, as well as the situation in the country of origin, the third country and the country of final destination, and adduced appropriate safeguards with respect to the protection of personal data, where necessary.~~

4. Points (b), ***and*** (c) ~~and (h)~~ of paragraph 1 shall not apply to activities carried out by public authorities in the exercise of their public powers.

5. The public interest referred to in point (d) of paragraph 1 must be recognised in Union law or in the law of the Member State to which the controller is subject.

~~6. The controller or processor shall document the assessment as well as the appropriate safeguards adduced referred to in point (h) of paragraph 1 of this Article in the documentation referred to in Article 28 and shall inform the supervisory authority of the transfer.~~

7. The ~~Commission~~ ***European Data Protection Board*** shall be ~~empowered to adopt delegated acts in accordance with Article 86~~ ***entrusted with the task of issuing guidelines, recommendations and best practices in accordance with point (b) of Article 66(1)*** for the purpose of further specifying ~~'important grounds of public interest' within the meaning of point (d) of paragraph 1 as well as~~ the criteria and requirements for ~~appropriate safeguards referred to in point (h)~~ ***data transfers on the basis*** of paragraph 1. **[Am. 141]**

Article 45

International co-operation for the protection of personal data

1. In relation to third countries and international organisations, the Commission and supervisory authorities shall take appropriate steps to:

(a) develop effective international co-operation mechanisms to ~~facilitate~~ ***ensure*** the enforcement of legislation for the protection of personal data; **[Am. 142]**

(b) provide international mutual assistance in the enforcement of legislation for the protection of personal data, including through notification, complaint referral, investigative assistance and information exchange, subject to appropriate safeguards for the protection of personal data and other fundamental rights and freedoms;

(c) engage relevant stakeholders in discussion and activities aimed at furthering international co-operation in the enforcement of legislation for the protection of personal data;

(d) promote the exchange and documentation of personal data protection legislation and practice.;

(da) clarify and consult on jurisdictional conflicts with third countries. **[Am. 143]**

2. For the purposes of paragraph 1, the Commission shall take appropriate steps to advance the relationship with third countries or international organisations, and in particular their supervisory authorities, where the Commission has decided that they ensure an adequate level of protection within the meaning of Article 41(3).

Article 45a

Report by the Commission

The Commission shall submit to the European Parliament and to the Council at regular intervals, starting not later than four years after the date referred to in Article 91(1), a report on the application of Articles 40 to 45. For that purpose, the Commission may request information from the Member States and supervisory authorities, which shall be supplied without undue delay. The report shall be made public. **[Am. 144]**

CHAPTER VI

INDEPENDENT SUPERVISORY AUTHORITIES

SECTION 1

INDEPENDENT STATUS

Article 46

Supervisory authority

1. Each Member State shall provide that one or more public authorities are responsible for monitoring the application of this Regulation and for contributing to its consistent application throughout the Union, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union. For these purposes, the supervisory authorities shall co-operate with each other and the Commission.

2. Where in a Member State more than one supervisory authority are established, that Member State shall designate the supervisory authority which functions as a single contact point for the effective participation of those authorities in the European Data Protection Board and shall set out the mechanism to ensure compliance by the other authorities with the rules relating to the consistency mechanism referred to in Article 57.

3. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to this Chapter, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Article 47

Independence

1. The supervisory authority shall act with complete independence ***and impartiality*** in exercising the duties and powers entrusted to it***, notwithstanding co-operation and consistency arrangements pursuant to Chapter VII of this Regulation***. **[Am. 145]**

2. The members of the supervisory authority shall, in the performance of their duties, neither seek nor take instructions from anybody.

3. Members of the supervisory authority shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.

4. Members of the supervisory authority shall behave, after their term of office, with integrity and discretion as regards the acceptance of appointments and benefits.

5. Each Member State shall ensure that the supervisory authority is provided with the adequate human, technical and financial resources, premises and infrastructure necessary for the effective performance of its duties and powers, including those to be carried out in the context of mutual assistance, co-operation and participation in the European Data Protection Board.

6. Each Member State shall ensure that the supervisory authority has its own staff which shall be appointed by and be subject to the direction of the head of the supervisory authority.

7. Member States shall ensure that the supervisory authority is subject to financial control which shall not affect its independence. Member States shall ensure that the supervisory authority has separate annual budgets. The budgets shall be made public.

7a. Each Member State shall ensure that the supervisory authority shall be accountable to the national parliament for reasons of budgetary control. **[Am. 146]**

Article 48

General conditions for the members of the supervisory authority

1. Member States shall provide that the members of the supervisory authority must be appointed either by the parliament or the government of the Member State concerned.

2. The members shall be chosen from persons whose independence is beyond doubt and whose experience and skills required to perform their duties notably in the area of protection of personal data are demonstrated.

3. The duties of a member shall end in the event of the expiry of the term of office, resignation or compulsory retirement in accordance with paragraph 5.

4. A member may be dismissed or deprived of the right to a pension or other benefits in its stead by the competent national court, if the member no longer fulfils the conditions required for the performance of the duties or is guilty of serious misconduct.

5. Where the term of office expires or the member resigns, the member shall continue to exercise the duties until a new member is appointed.

Article 49

Rules on the establishment of the supervisory authority

Each Member State shall provide by law within the limits of this Regulation:

(a) the establishment and status of the supervisory authority;

(b) the qualifications, experience and skills required to perform the duties of the members of the supervisory authority;

(c) the rules and procedures for the appointment of the members of the supervisory authority, as well the rules on actions or occupations incompatible with the duties of the office;

(d) the duration of the term of the members of the supervisory authority which shall be no less than four years, except for the first appointment after entry into force of this Regulation, part of which may take place for a shorter period where this is necessary to protect the independence of the supervisory authority by means of a staggered appointment procedure;

(e) whether the members of the supervisory authority shall be eligible for reappointment;

(f) the regulations and common conditions governing the duties of the members and staff of the supervisory authority;

(g) the rules and procedures on the termination of the duties of the members of the supervisory authority, including in case that they no longer fulfil the conditions required for the performance of their duties or if they are guilty of serious misconduct.

Article 50

Professional secrecy

The members and the staff of the supervisory authority shall be subject, both during and after their term of office ***and in conformity with national legislation and practice***, to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties***, whilst conducting their duties with independence and transparency as set out in this Regulation***. **[Am. 147]**

SECTION 2

DUTIES AND POWERS

Article 51

Competence

1. Each supervisory authority shall ***be competent to perform the duties and to*** exercise~~, on the territory of its own Member State,~~ the powers conferred on it in accordance with this Regulation ***on the territory of its own Member State, without prejudice to Articles 73 and 74***. ***Data processing by a public authority shall be supervised only by the supervisory authority of that Member State***. **[Am. 148]**

~~2. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the controller or processor shall be competent for the supervision of the processing activities of the controller or the processor in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.~~ **[Am. 149]**

3. The supervisory authority shall not be competent to supervise processing operations of courts acting in their judicial capacity.

Article 52

Duties

1. The supervisory authority shall:

(a) monitor and ensure the application of this Regulation;

(b) hear complaints lodged by any data subject, or by an association ~~representing that data subject~~ in accordance with Article 73, investigate, to the extent appropriate, the matter and inform the data subject or the association of the progress and the outcome of the complaint within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary; **[Am. 150]**

(c) share information with and provide mutual assistance to other supervisory authorities and ensure the consistency of application and enforcement of this Regulation;

(d) conduct investigations either on its own initiative or on the basis of a complaint or ***of specific and documented information received alleging unlawful processing or*** on request of another supervisory authority, and inform the data subject concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period; **[Am. 151]**

(e) monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies and commercial practices;

(f) be consulted by Member State institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data;

(g) ~~authorise and~~ be consulted on the processing operations referred to in Article 34;

(h) issue an opinion on the draft codes of conduct pursuant to Article 38(2);

(i) approve binding corporate rules pursuant to Article 43;

(j) participate in the activities of the European Data Protection Board.;

(ja) certify controllers and processors pursuant to Article 39. **[Am. 152]**

2. Each supervisory authority shall promote the awareness of the public on risks, rules, safeguards and rights in relation to the processing of personal data ***and on appropriate measures for personal data protection***. Activities addressed specifically to children shall receive specific attention. **[Am. 153]**

2a. Each supervisory authority shall together with the European Data Protection Board promote the awareness for controllers and processors on risks, rules, safeguards and rights in relation to the processing of personal data. This includes keeping a register of sanctions and breaches. The register should enrol both all warnings and sanctions as detailed as possible and the resolving of breaches. Each supervisory authority shall provide micro, small and medium sized enterprise controllers and processors, on request, with general information on their responsibilities and obligations in accordance with this Regulation. **[Am. 154]**

3. The supervisory authority shall, upon request, advise any data subject in exercising the rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

4. For complaints referred to in point (b) of paragraph 1, the supervisory authority shall provide a complaint submission form, which can be completed electronically, without excluding other means of communication.

5. The performance of the duties of the supervisory authority shall be free of charge for the data subject.

6. Where requests are manifestly excessive, in particular due to their repetitive character, the supervisory authority may charge a ***reasonable*** fee or not take the action requested by the data subject. ***Such a fee shall not exceed the costs of taking the action requested.*** The supervisory authority shall bear the burden of proving the manifestly excessive character of the request. **[Am. 155]**

Article 53

Powers

1. Each supervisory authority shall***, in line with this Regulation,*** have the power:

(a) to notify the controller or the processor of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, order the controller or the processor to remedy that breach, in a specific manner, in order to improve the protection of the data subject***, or to order the controller to communicate a personal data breach to the data subject***;

(b) to order the controller or the processor to comply with the data subject's requests to exercise the rights provided by this Regulation;

(c) to order the controller and the processor, and, where applicable, the representative to provide any information relevant for the performance of its duties;

(d) to ensure the compliance with ~~prior authorisations and~~ prior consultations referred to in Article 34;

(e) to warn or admonish the controller or the processor;

(f) to order the rectification, erasure or destruction of all data when they have been processed in breach of the provisions of this Regulation and the notification of such actions to third parties to whom the data have been disclosed;

(g) to impose a temporary or definitive ban on processing;

(h) to suspend data flows to a recipient in a third country or to an international organisation;

(i) to issue opinions on any issue related to the protection of personal data;

(ia) to certify controllers and processors pursuant to Article 39;

(j) to inform the national parliament, the government or other political institutions as well as the public on any issue related to the protection of personal data.;

(ja) to put in place effective mechanisms to encourage confidential reporting of breaches of this Regulation, taking into account guidance issued by the European Data Protection Board pursuant to Article 66(4b).

2. Each supervisory authority shall have the investigative power to obtain from the controller or the processor ***without prior notice***:

(a) access to all personal data and to all ***documents and*** information necessary for the performance of its duties;

(b) access to any of its premises, including to any data processing equipment and means~~, where there are reasonable grounds for presuming that an activity in violation of this Regulation is being carried out there~~.

The powers referred to in point (b) shall be exercised in conformity with Union law and Member State law.

3. Each supervisory authority shall have the power to bring violations of this Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

4. Each supervisory authority shall have the power to sanction administrative offences, in ~~particular those referred to in~~ ***accordance with*** Article 79~~(4), (5) and (6)~~. ***This power shall be exercised in an effective, proportionate and dissuasive manner.*** **[Am. 156]**

Article 54

Activity report

Each supervisory authority must draw up ~~an annual~~ ***a*** report on its activities ***at least every two years***. The report shall be presented to the ~~national~~ ***respective*** parliament and shall be made ~~be~~ available to the public, the Commission and the European Data Protection Board. **[Am. 157]**

Article 54a

Lead Authority

1. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, or where personal data of the residents of several Member States are processed, the supervisory authority of the main establishment of the controller or processor shall act as the lead authority responsible for the supervision of the processing activities of the controller or the processor in all Member States, in accordance with the provisions of Chapter VII of this Regulation.

2. The lead authority shall take appropriate measures for the supervision of the processing activities of the controller or processor for which it is responsible only after consulting all other competent supervisory authorities within the meaning of Article 51(1) in an endeavour to reach a consensus. For that purpose it shall in particular submit any relevant information and consult the other authorities before it adopts a measure intended to produce legal effects vis-à-vis a controller or a processor within the meaning of Article 51(1). The lead authority shall take the utmost account of the opinions of the authorities involved. The lead authority shall be the sole authority empowered to decide on measures intended to produce legal effects as regards the processing activities of the controller or processor for which it is responsible.

3. The European Data Protection Board shall, at the request of a competent supervisory authority, issue an opinion on the identification of the lead authority responsible for a controller or processor, in cases where:

(a) it is unclear from the facts of the case where the main establishment of the controller or processor is located; or

(b) the competent authorities do not agree on which supervisory authority shall act as lead authority; or

(c) the controller is not established in the Union, and residents of different Member States are affected by processing operations within the scope of this Regulation.

4. Where the controller exercises also activities as a processor, the supervisory authority of the main establishment of the controller shall act as lead authority for the supervision of processing activities.

5. The European Data Protection Board may decide on the identification of the lead authority. **[Am. 158]**

CHAPTER VII

CO-OPERATION AND CONSISTENCY

SECTION 1

CO-OPERATION

Article 55

Mutual assistance

1. Supervisory authorities shall provide each other relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior ~~authorisations and~~ consultations, inspections ***and investigations*** and prompt information on the opening of cases and ensuing developments ***where the controller or processor has establishments in several Member States or*** where data subjects in several Member States are likely to be affected by processing operations. ***The lead authority as defined in Article 54a shall ensure the coordination with involved supervisory authorities and shall act as the single contact point for the controller or processor.*** **[Am. 159]**

2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without delay and no later than one month after having received the request. Such measures may include, in particular, the transmission of relevant information on the course of an investigation or enforcement measures to bring about the cessation or prohibition of processing operations contrary to this Regulation.

3. The request for assistance shall contain all the necessary information, including the purpose of the request and reasons for the request. Information exchanged shall be used only in respect of the matter for which it was requested.

4. A supervisory authority to which a request for assistance is addressed may not refuse to comply with it unless:

(a) it is not competent for the request; or

(b) compliance with the request would be incompatible with the provisions of this Regulation.

5. The requested supervisory authority shall inform the requesting supervisory authority of the results or, as the case may be, of the progress or the measures taken in order to meet the request by the requesting supervisory authority.

6. Supervisory authorities shall supply the information requested by other supervisory authorities by electronic means and within the shortest possible period of time, using a standardised format.

7. No fee shall be charged ***to the requesting supervisory authority*** for any action taken following a request for mutual assistance. **[Am. 160]**

8. Where a supervisory authority does not act within one month on request of another supervisory authority, the requesting supervisory authorities shall be competent to take a provisional measure on the territory of its Member State in accordance with Article 51(1) and shall submit the matter to the European Data Protection Board in accordance with the procedure referred to in Article 57. ***Where no definitive measure is yet possible because the assistance is not yet completed, the requesting supervisory authority may take interim measures under Article 53 in the territory of its Member State.*** **[Am. 161]**

9. The supervisory authority shall specify the period of validity of such provisional measure. This period shall not exceed three months. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission ***in accordance with the procedure referred to in Article 57***. **[Am. 162]**

10. The ~~Commission~~ ***European Data Protection Board*** may specify the format and procedures for mutual assistance referred to in this article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in paragraph 6. ~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~ **[Am. 163]**

Article 56

Joint operations of supervisory authorities

1. In order to step up co-operation and mutual assistance, the supervisory authorities shall carry out joint investigative tasks, joint enforcement measures and other joint operations, in which designated members or staff from other Member States' supervisory authorities are involved.

2. In cases ***where the controller or processor has establishments in several Member States or*** where data subjects in several Member States are likely to be affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in the joint investigative tasks or joint operations, as appropriate. The ~~competent supervisory authority~~ ***lead authority as defined in Article 54a*** shall ~~invite~~ ***involve*** the supervisory authority of each of those Member States ~~to take part~~ in the respective joint investigative tasks or joint operations and respond to the request of a supervisory authority to participate in the operations without delay. ***The lead authority shall act as the single contact point for the controller or processor.*** **[Am. 164]**

3. Each supervisory authority may, as a host supervisory authority, in compliance with its own national law, and with the seconding supervisory authority's authorisation, confer executive powers, including investigative tasks on the seconding supervisory authority's members or staff involved in joint operations or, in so far as the host supervisory authority's law permits, allow the seconding supervisory authority's members or staff to exercise their executive powers in accordance with the seconding supervisory authority's law. Such executive powers may be exercised only under the guidance and, as a rule, in the presence of members or staff from the host supervisory authority. The seconding supervisory authority's members or staff shall be subject to the host supervisory authority's national law. The host supervisory authority shall assume responsibility for their actions.

4. Supervisory authorities shall lay down the practical aspects of specific co-operation actions.

5. Where a supervisory authority does not comply within one month with the obligation laid down in paragraph 2, the other supervisory authorities shall be competent to take a provisional measure on the territory of its Member State in accordance with Article 51(1).

6. The supervisory authority shall specify the period of validity of a provisional measure referred to in paragraph 5. This period shall not exceed three months. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission and shall submit the matter in the mechanism referred to in Article 57.

SECTION 2

CONSISTENCY

Article 57

Consistency mechanism

For the purposes set out in Article 46(1), the supervisory authorities shall co-operate with each other and the Commission through the consistency mechanism ~~as set out~~ ***both on matters of general application and in individual cases in accordance with the provisions of*** in this section. **[Am. 165]**

Article 58

~~Opinion by the European Data Protection Board~~***Consistency on matters of general application***

1. Before a supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

2. The obligation set out in paragraph 1 shall apply to a measure intended to produce legal effects and which:

~~(a) relates to processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour; or~~

~~(b) may substantially affect the free movement of personal data within the Union; or~~

~~(c) aims at adopting a list of the processing operations subject to prior consultation pursuant to Article 34(5); or~~

(d) aims to determine standard data protection clauses referred to in point (c) of Article 42(2); or

(e) aims to authorise contractual clauses referred to in point (d) of Article 42(2); or

(f) aims to approve binding corporate rules within the meaning of Article 43.

3. Any supervisory authority or the European Data Protection Board may request that any matter ***of general application*** shall be dealt with in the consistency mechanism, in particular where a supervisory authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

4. In order to ensure correct and consistent application of this Regulation, the Commission may request that any matter ***of general application*** shall be dealt with in the consistency mechanism.

5. Supervisory authorities and the Commission shall ***without undue delay*** electronically communicate any relevant information, including as the case may be a summary of the facts, the draft measure, and the grounds which make the enactment of such measure necessary, using a standardised format.

6. The chair of the European Data Protection Board shall ~~immediately~~ ***without undue delay*** electronically inform the members of the European Data Protection Board and the Commission of any relevant information which has been communicated to it, using a standardised format. The ~~chair~~ ***secretariat*** of the European Data Protection Board shall provide translations of relevant information, where necessary.

6a. The European Data Protection Board shall adopt an opinion on matters referred to it under paragraph 2.

7. The European Data Protection Board ~~shall issue~~ ***may decide by simple majority whether to adopt*** an opinion on ~~the~~ ***any*** matter~~, if the European Data Protection Board so decides by simple majority of its members or any supervisory authority or the Commission so requests within one week after the relevant information has been provided according to paragraph 5. The opinion shall be adopted within one month by simple majority of the members of the European Data Protection Board. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 1 and 3, the Commission and the supervisory authority competent under Article 51 of the opinion and make it public.~~ ***submitted under paragraphs 3 and 4 taking into account:***

(a) whether the matter presents elements of novelty, taking account of legal or factual developments, in particular in information technology and in the light of the state of progress in the information society; and

(b) whether the European Data Protection Board has already issued an opinion on the same matter.

8. ~~The supervisory authority referred to in paragraph 1 and the supervisory authority competent under Article 51 shall take account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format~~***The European Data Protection Board shall adopt opinions pursuant to paragraphs 6a and 7 by a simple majority of its members. These opinions shall be made public.*** **[Am. 166]**

Article 58a

Consistency in individual cases

1. Before taking a measure intended to produce legal effects within the meaning of Article 54a, the lead authority shall share all relevant information and submit the draft measure to all other competent authorities. The lead authority shall not adopt the measure if a competent authority has, within a period of three weeks, indicated it has serious objections to the measure.

2. Where a competent authority has indicated that it has serious objections to a draft measure of the lead authority, or where the lead authority does not submit a draft measure referred to in paragraph 1 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56, the issue shall be considered by the European Data Protection Board.

3. The lead authority and/or other competent authorities involved and the Commission shall without undue delay electronically communicate to the European Data Protection Board using a standardised format any relevant information, including as the case may be a summary of the facts, the draft measure, the grounds which make the enactment of such measure necessary, the objections raised against it and the views of other supervisory authorities concerned.

4. The European Data Protection Board shall consider the issue, taking into account the impact of the draft measure of the lead authority on the fundamental rights and freedoms of data subjects, and shall decide by simple majority of its members whether to issue an opinion on the matter within two weeks after the relevant information has been provided pursuant to paragraph 3.

5. In case the European Data Protection Board decides to issue an opinion, it shall do so within six weeks and make the opinion public.

6. The lead authority shall take utmost account of the opinion of the European Data Protection Board and shall, within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format. Where the lead authority intends not to follow the opinion of the European Data Protection Board, it shall provide a reasoned justification.

7. In case the European Data Protection Board still objects to the measure of the supervisory authority as referred to in paragraph 5, it may within one month adopt by a two thirds majority a measure which shall be binding upon the supervisory authority. **[Am. 167]**

~~Article 59~~

~~Opinion by the Commission~~

~~1. Within ten weeks after a matter has been raised under Article 58, or at the latest within six weeks in the case of Article 61, the Commission may adopt, in order to ensure correct and consistent application of this Regulation, an opinion in relation to matters raised pursuant to Articles 58 or 61.~~

~~2. Where the Commission has adopted an opinion in accordance with paragraph 1, the supervisory authority concerned shall take utmost account of the Commission's opinion and inform the Commission and the European Data Protection Board whether it intends to maintain or amend its draft measure.~~

~~3. During the period referred to in paragraph 1, the draft measure shall not be adopted by the supervisory authority.~~

~~4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification. In this case the draft measure shall not be adopted for one further month.~~ **[Am. 168]**

~~Article 60~~

~~Suspension of a draft measure~~

~~1. Within one month after the communication referred to in Article 59(4), and where the Commission has serious doubts as to whether the draft measure would ensure the correct application of this Regulation or would otherwise result in its inconsistent application, the Commission may adopt a reasoned decision requiring the supervisory authority to suspend the adoption of the draft measure, taking into account the opinion issued by the European Data Protection Board pursuant to Article 58(7) or Article 61(2), where it appears necessary in order to:~~

~~(a) reconcile the diverging positions of the supervisory authority and the European Data Protection Board, if this still appears to be possible; or~~

~~(b) adopt a measure pursuant to point (a) of Article 62(1).~~

~~2. The Commission shall specify the duration of the suspension which shall not exceed 12 months.~~

~~3. During the period referred to in paragraph 2, the supervisory authority may not adopt the draft measure.~~ **[Am. 169]**

Article 60a

Notification of the European Parliament and of the Council

The Commission shall notify the European Parliament and the Council at regular intervals, at least every six months, on the basis of a report from the Chair of the European Data Protection Board, of the matters dealt with under the consistency mechanism, setting out the conclusions drawn by the Commission and the European Data Protection Board with a view to ensuring the consistent implementation and application of this Regulation. **[Am. 170]**

Article 61

Urgency procedure

1. In exceptional circumstances, where a supervisory authority considers that there is an urgent need to act in order to protect the interests of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages or for other reasons, by way of derogation from the procedure referred to in Article ~~58~~***58a***, it may immediately adopt provisional measures with a specified period of validity. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission. **[Am. 171]**

2. Where a supervisory authority has taken a measure pursuant to paragraph 1 and considers that final measures need urgently be adopted, it may request an urgent opinion of the European Data Protection Board, giving reasons for requesting such opinion, including for the urgency of final measures.

3. Any supervisory authority may request an urgent opinion where the competent supervisory authority has not taken an appropriate measure in a situation where there is an urgent need to act, in order to protect the interests of data subjects, giving reasons for requesting such opinion, including for the urgent need to act.

4. ~~By derogation from Article 58(7), a~~An urgent opinion referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the European Data Protection Board. **[Am. 172]**

Article 62

Implementing acts

1. The Commission may adopt implementing acts ***of general application***, ***after requesting an opinion of the European Data Protection Board,*** for:

~~(a) deciding on the correct application of this Regulation in accordance with its objectives and requirements in relation to matters communicated by supervisory authorities pursuant to Article 58 or 61, concerning a matter in relation to which a reasoned decision has been adopted pursuant to Article 60(1), or concerning a matter in relation to which a supervisory authority does not submit a draft measure and that supervisory authority has indicated that it does not intend to follow the opinion of the Commission adopted pursuant to Article 59;~~

(b) deciding~~, within the period referred to in Article 59(1),~~ whether it declares draft standard data protection clauses referred to in point (d) of Article ~~58~~***42***(2), as having general validity;

~~(c) specifying the format and procedures for the application of the consistency mechanism referred to in this section;~~

(d) specifying the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in Article 58(5), (6) and (8).

~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).~~

~~2. On duly justified imperative grounds of urgency relating to the interests of data subjects in the cases referred to in point (a) of paragraph 1, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 87(3). Those acts shall remain in force for a period not exceeding 12 months.~~

3. The absence or adoption of a measure under this Section does not prejudice any other measure by the Commission under the Treaties. **[Am. 173]**

Article 63

Enforcement

1. For the purposes of this Regulation, an enforceable measure of the supervisory authority of one Member State shall be enforced in all Member States concerned.

2. Where a supervisory authority does not submit a draft measure to the consistency mechanism in breach of Article 58 (1) ~~to (5)~~ ***and (2) or adopts a measure despite an indication of serious objection pursuant to Article 58a(1)***, the measure of the supervisory authority shall not be legally valid and enforceable. **[Am. 174]**

SECTION 3

EUROPEAN DATA PROTECTION BOARD

Article 64

European Data Protection Board

1. A European Data Protection Board is hereby set up.

2. The European Data Protection Board shall be composed of the head of one supervisory authority of each Member State and of the European Data Protection Supervisor.

3. Where in a Member State more than one supervisory authority is responsible for monitoring the application of the provisions pursuant to this Regulation, they shall nominate the head of one of those supervisory authorities as joint representative.

4. The Commission shall have the right to participate in the activities and meetings of the European Data Protection Board and shall designate a representative. The chair of the European Data Protection Board shall, without delay, inform the Commission on all activities of the European Data Protection Board.

Article 65

Independence

1. The European Data Protection Board shall act independently when exercising its tasks pursuant to Articles 66 and 67.

2. Without prejudice to requests by the Commission referred to in point (b) of paragraph 1 and in paragraph 2 of Article 66, the European Data Protection Board shall, in the performance of its tasks, neither seek nor take instructions from anybody.

Article 66

Tasks of the European Data Protection Board

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative or at the request of the ***European Parliament, the Council or the*** Commission, in particular:

(a) advise the ~~Commission~~ ***European institutions*** on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;

(b) examine, on its own initiative or on request of one of its members or on request of the ***European Parliament, the Council or the*** Commission, any question covering the application of this Regulation and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of this Regulation***, including on the use of enforcement powers***;

(c) review the practical application of the guidelines, recommendations and best practices referred to in point (b) and report regularly to the Commission on these;

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 57;

(da) provide an opinion on which authority should be the lead authority pursuant to Article 54a(3);

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities***, including the coordination of joint operations and other joint activities, where it so decides at the request of one or several supervisory authorities***;

(f) promote common training programmes and facilitate personnel exchanges between the supervisory authorities, as well as, where appropriate, with the supervisory authorities of third countries or of international organisations;

(g) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide;

(ga) give its opinion to the Commission in the preparation of delegated and implementing acts based on this Regulation;

(gb) give its opinion on codes of conduct drawn up at Union level pursuant to Article 38(4);

(gc) give its opinion on criteria and requirements for the data protection certification mechanisms pursuant to Article 39(2);

(gd) maintain a public electronic register on valid and invalid certificates pursuant to Article 39(1h);

(ge) provide assistance to national supervisory authorities, at their request;

(gf) establish and make public a list of the processing operations which are subject to prior consultation pursuant to Article 34;

(gg) maintain a register of sanctions imposed on controllers or processors by the competent supervisory authorities.

2. Where the ***European Parliament, the Council or the*** Commission requests advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall provide such advice, taking into account the urgency of the matter.

3. The European Data Protection Board shall forward its opinions, guidelines, recommendations, and best practices to the ***European Parliament, the Council and the*** Commission and to the committee referred to in Article 87 and make them public.

4. The Commission shall inform the European Data Protection Board of the action it has taken following the opinions, guidelines, recommendations and best practices issued by the European Data Protection Board.

4a. The European Data Protection Board shall, where appropriate, consult interested parties and give them the opportunity to comment within a reasonable period. The European Data Protection Board shall, without prejudice to Article 72, make the results of the consultation procedure publicly available.

4b. The European Data Protection Board shall be entrusted with the task of issuing guidelines, recommendations and best practices in accordance with point (b) of paragraph 1 for establishing common procedures for receiving and investigating information concerning allegations of unlawful processing and for safeguarding confidentiality and sources of information received. **[Am. 175]**

Article 67

Reports

1. The European Data Protection Board shall regularly and timely inform the ***European Parliament, the Council and the*** Commission about the outcome of its activities. It shall draw up ~~an annual~~ ***a*** report ***at least every two years*** on the situation regarding the protection of natural persons with regard to the processing of personal data in the Union and in third countries.

The report shall include the review of the practical application of the guidelines, recommendations and best practices referred to in point (c) of Article 66(1). **[Am. 176]**

2. The report shall be made public and transmitted to the European Parliament, the Council and the Commission.

Article 68

Procedure

1. The European Data Protection Board shall take decisions by a simple majority of its members***, unless otherwise provided in its rules of procedure***. **[Am. 177]**

2. The European Data Protection Board shall adopt its own rules of procedure and organise its own operational arrangements. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of subgroups for specific issues or sectors and for its procedures in relation to the consistency mechanism referred to in Article 57.

Article 69

Chair

1. The European Data Protection Board shall elect a chair and ***at least*** two deputy chairpersons from amongst its members. ~~One deputy chairperson shall be the European Data Protection Supervisor, unless he or she has been elected chair.~~ **[Am. 178]**

2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable.

2a. The position of the chair shall be a full-time position. **[Am. 179]**

Article 70

Tasks of the chair

1. The chair shall have the following tasks:

(a) to convene the meetings of the European Data Protection Board and prepare its agenda;

(b) to ensure the timely fulfilment of the tasks of the European Data Protection Board, in particular in relation to the consistency mechanism referred to in Article 57.

2. The European Data Protection Board shall lay down the attribution of tasks between the chair and the deputy chairpersons in its rules of procedure.

Article 71

Secretariat

1. The European Data Protection Board shall have a secretariat. The European Data Protection Supervisor shall provide that secretariat.

2. The secretariat shall provide analytical, ***legal,*** administrative and logistical support to the European Data Protection Board under the direction of the chair. **[Am. 180]**

3. The secretariat shall be responsible in particular for:

(a) the day-to-day business of the European Data Protection Board;

(b) the communication between the members of the European Data Protection Board, its chair and the Commission and for communication with other institutions and the public;

(c) the use of electronic means for the internal and external communication;

(d) the translation of relevant information;

(e) the preparation and follow-up of the meetings of the European Data Protection Board;

(f) the preparation, drafting and publication of opinions and other texts adopted by the European Data Protection Board.

Article 72

Confidentiality

1. The discussions of the European Data Protection Board ~~shall~~ ***may*** be confidential ***where necessary, unless otherwise provided in its rules of procedure. The agendas of the meetings of the European Protection Board shall be made public.*** **[Am. 181]**

2. Documents submitted to members of the European Data Protection Board, experts and representatives of third parties shall be confidential, unless access is granted to those documents in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council [1] or the European Data Protection Board otherwise makes them public.

3. The members of the European Data Protection Board, as well as experts and representatives of third parties, shall be required to respect the confidentiality obligations set out in this Article. The chair shall ensure that experts and representatives of third parties are made aware of the confidentiality requirements imposed upon them.

CHAPTER VIII

REMEDIES, LIABILITY AND SANCTIONS

Article 73

Right to lodge a complaint with a supervisory authority

1. Without prejudice to any other administrative or judicial remedy ***and the consistency mechanism***, every data subject shall have the right to lodge a complaint with a supervisory authority in any Member State if they consider that the processing of personal data relating to them does not comply with this Regulation.

2. Any body, organisation or association which ~~aims to protect data subjects' rights and interests concerning the protection of their personal data~~ ***acts in the public interest*** and has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data.

3. Independently of a data subject's complaint, any body, organisation or association referred to in paragraph 2 shall have the right to lodge a complaint with a supervisory authority in any Member State, if it considers that ~~a personal data~~ breach ***of this Regulation*** has occurred. **[Am. 182]**

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[1] 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).

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Article 74

Right to a judicial remedy against a supervisory authority

1. ***Without prejudice to any other administrative or non-judicial remedy,*** ~~E~~each natural or legal person shall have the right to a judicial remedy against decisions of a supervisory authority concerning them.

2. ***Without prejudice to any other administrative or non-judicial remedy,*** ~~E~~each data subject shall have the right to a judicial remedy obliging the supervisory authority to act on a complaint in the absence of a decision necessary to protect their rights, or where the supervisory authority does not inform the data subject within three months on the progress or outcome of the complaint pursuant to point (b) of Article 52(1).

3. Proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.

4. ***Without prejudice to the consistency mechanism*** ~~A~~a data subject which is concerned by a decision of a supervisory authority in another Member State than where the data subject has its habitual residence, may request the supervisory authority of the Member State where it has its habitual residence to bring proceedings on its behalf against the competent supervisory authority in the other Member State.

5. The Member States shall enforce final decisions by the courts referred to in this Article. **[Am. 183]**

Article 75

Right to a judicial remedy against a controller or processor

1. Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority as referred to in Article 73, every natural person shall have the right to a judicial remedy if they consider that their rights under this Regulation have been infringed as a result of the processing of their personal data in non-compliance with this Regulation.

2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has its habitual residence, unless the controller is a public authority ***of the Union or a Member State*** acting in the exercise of its public powers. **[Am. 184]**

3. Where proceedings are pending in the consistency mechanism referred to in Article 58, which concern the same measure, decision or practice, a court may suspend the proceedings brought before it, except where the urgency of the matter for the protection of the data subject's rights does not allow to wait for the outcome of the procedure in the consistency mechanism.

4. The Member States shall enforce final decisions by the courts referred to in this Article.

Article 76

Common rules for court proceedings

1. Any body, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 ~~and~~, 75 ~~on behalf of~~ ***and 77 if mandated by*** one or more data subjects. **[Am. 185]**

2. Each supervisory authority shall have the right to engage in legal proceedings and bring an action to court, in order to enforce the provisions of this Regulation or to ensure consistency of the protection of personal data within the Union.

3. Where a competent court of a Member State has reasonable grounds to believe that parallel proceedings are being conducted in another Member State, it shall contact the competent court in the other Member State to confirm the existence of such parallel proceedings.

4. Where such parallel proceedings in another Member State concern the same measure, decision or practice, the court may suspend the proceedings.

5. Member States shall ensure that court actions available under national law allow for the rapid adoption of measures including interim measures, designed to terminate any alleged infringement and to prevent any further impairment of the interests involved.

Article 77

Right to compensation and liability

1. Any person who has suffered damage***, including non-pecuniary damage,*** as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to ~~receive~~ ***claim*** compensation from the controller or the processor for the damage suffered. **[Am. 186]**

2. Where more than one controller or processor is involved in the processing, each ~~controller~~ ***of those controllers*** or ~~processor~~ ***processors*** shall be jointly and severally liable for the entire amount of the damage***, unless they have an appropriate written agreement determining the responsibilities pursuant to Article 24***. **[Am. 187]**

3. The controller or the processor may be exempted from this liability, in whole or in part, if the controller or the processor proves that they are not responsible for the event giving rise to the damage.

Article 78

Penalties

1. Member States shall lay down the rules on penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented, including where the controller did not comply with the obligation to designate a representative. The penalties provided for must be effective, proportionate and dissuasive.

2. Where the controller has established a representative, any penalties shall be applied to the representative, without prejudice to any penalties which could be initiated against the controller.

3. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Article 79

Administrative sanctions

1. Each supervisory authority shall be empowered to impose administrative sanctions in accordance with this Article. ***The supervisory authorities shall co-operate with each other in accordance with Articles 46 and 57 to guarantee a harmonised level of sanctions within the Union.***

2. The administrative sanction shall be in each individual case effective, proportionate and dissuasive. ~~The amount of the administrative fine shall be fixed with due regard to the nature, gravity and duration of the breach, the intentional or negligent character of the infringement, the degree of responsibility of the natural or legal person and of previous breaches by this person, the technical and organisational measures and procedures implemented pursuant to Article 23 and the degree of co-operation with the supervisory authority in order to remedy the breach.~~

2a. To anyone who does not comply with the obligations laid down in this Regulation, the supervisory authority shall impose at least one of the following sanctions:

(a) a warning in writing in cases of first and non-intentional non-compliance;

(b) regular periodic data protection audits;

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(c) a fine up to 100 000 000 EUR or up to 5 % of the annual worldwide turnover in case of an enterprise, whichever is higher.

2b. If the controller or the processor is in possession of a valid 'European Data Protection Seal' pursuant to Article 39, a fine pursuant to point (c) of paragraph 2a shall only be imposed in cases of intentional or negligent non-compliance.

2c. The administrative sanction shall take into account the following factors:

(a) the nature, gravity and duration of the non-compliance,

(b) the intentional or negligent character of the infringement,

(c) the degree of responsibility of the natural or legal person and of previous breaches by this person,

(d) the repetitive nature of the infringement,

(e) the degree of co-operation with the supervisory authority, in order to remedy the infringement and mitigate the possible adverse effects of the infringement,

(f) the specific categories of personal data affected by the infringement,

(g) the level of damage, including non-pecuniary damage, suffered by the data subjects,

(h) the action taken by the controller or processor to mitigate the damage suffered by data subjects,

(i) any financial benefits intended or gained, or losses avoided, directly or indirectly from the infringement,

(j) the degree of technical and organisational measures and procedures implemented pursuant to:

(i) Article 23 — Data protection by design and by default

(ii) Article 30 — Security of processing

(iii) Article 33 — Data protection impact assessment

(iv) Article 33a — Data protection compliance review

(v) Article 35 — Designation of the data protection officer

(k) the refusal to cooperate with or obstruction of inspections, audits and controls carried out by the supervisory authority pursuant to Article 53,

(l) other aggravating or mitigating factors applicable to the circumstance of the case.

~~3. In case of a first and non-intentional non-compliance with this Regulation, a warning in writing may be given and no sanction imposed, where:~~

~~(a) a natural person is processing personal data without a commercial interest; or~~

~~(b) an enterprise or an organisation employing fewer than 250 persons is processing personal data only as an activity ancillary to its main activities.~~

~~4. The supervisory authority shall impose a fine up to 250 000 EUR, or in case of an enterprise up to 0,5 % of its annual worldwide turnover, to anyone who, intentionally or negligently:~~

~~(a) does not provide the mechanisms for requests by data subjects or does not respond promptly or not in the required format to data subjects pursuant to Articles 12(1) and (2);~~

~~(b) charges a fee for the information or for responses to the requests of data subjects in violation of Article 12(4).~~

~~5. The supervisory authority shall impose a fine up to 500 000 EUR, or in case of an enterprise up to 1 % of its annual worldwide turnover, to anyone who, intentionally or negligently:~~

~~(a) does not provide the information, or does provide incomplete information, or does not provide the information in a sufficiently transparent manner, to the data subject pursuant to Article 11, Article 12(3) and Article 14;~~

~~(b) does not provide access for the data subject or does not rectify personal data pursuant to Articles 15 and 16 or does not communicate the relevant information to a recipient pursuant to Article 13;~~

~~(c) does not comply with the right to be forgotten or to erasure, or fails to put mechanisms in place to ensure that the time limits are observed or does not take all necessary steps to inform third parties that a data subjects requests to erase any links to, or copy or replication of the personal data pursuant Article 17;~~

~~(d) does not provide a copy of the personal data in electronic format or hinders the data subject to transmit the personal data to another application in violation of Article 18;~~

~~(e) does not or not sufficiently determine the respective responsibilities with co-controllers pursuant to Article 24;~~

~~(f) does not or not sufficiently maintain the documentation pursuant to Article 28, Article 31(4), and Article 44(3);~~

~~(g) does not comply, in cases where special categories of data are not involved, pursuant to Articles 80, 82 and 83 with rules in relation to freedom of expression or with rules on the processing in the employment context or with the conditions for processing for historical, statistical and scientific research purposes.~~

~~6. The supervisory authority shall impose a fine up to 1 000 000 EUR or, in case of an enterprise up to 2 % of its annual worldwide turnover, to anyone who, intentionally or negligently:~~

~~(a) processes personal data without any or sufficient legal basis for the processing or does not comply with the conditions for consent pursuant to Articles 6, 7 and 8;~~

~~(b) processes special categories of data in violation of Articles 9 and 81;~~

~~(c) does not comply with an objection or the requirement pursuant to Article 19;~~

~~(d) does not comply with the conditions in relation to measures based on profiling pursuant to Article 20;~~

~~(e) does not adopt internal policies or does not implement appropriate measures for ensuring and demonstrating compliance pursuant to Articles 22, 23 and 30;~~

~~(f) does not designate a representative pursuant to Article 25;~~

~~(g) processes or instructs the processing of personal data in violation of the obligations in relation to processing on behalf of a controller pursuant to Articles 26 and 27;~~

~~(h) does not alert on or notify a personal data breach or does not timely or completely notify the data breach to the supervisory authority or to the data subject pursuant to Articles 31 and 32;~~

~~(i) does not carry out a data protection impact assessment pursuant or processes personal data without prior authorisation or prior consultation of the supervisory authority pursuant to Articles 33 and 34;~~

~~(j) does not designate a data protection officer or does not ensure the conditions for fulfilling the tasks pursuant to Articles 35, 36 and 37;~~

~~(k) misuses a data protection seal or mark in the meaning of Article 39;~~

~~(l) carries out or instructs a data transfer to a third country or an international organisation that is not allowed by an adequacy decision or by appropriate safeguards or by a derogation pursuant to Articles 40 to 44;~~

~~(m) does not comply with an order or a temporary or definite ban on processing or the suspension of data flows by the supervisory authority pursuant to Article 53(1);~~

~~(n) does not comply with the obligations to assist or respond or provide relevant information to, or access to premises by, the supervisory authority pursuant to Article 28(3), Article 29, Article 34(6) and Article 53(2);~~

~~(o) does not comply with the rules for safeguarding professional secrecy pursuant to Article 84.~~

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of updating the ***absolute*** amounts of the administrative fines referred to in ~~paragraphs 4, 5 and 6~~***paragraph 2a***, taking into account the criteria ***and factors*** referred to in ~~paragraph~~ ***paragraphs*** 2 ***and 2c***. **[Am. 188]**

CHAPTER IX

PROVISIONS RELATING TO SPECIFIC DATA PROCESSING SITUATIONS

Article 80

Processing of personal data and freedom of expression

1. Member States shall provide for exemptions or derogations from the provisions on the general principles in Chapter II, the rights of the data subject in Chapter III, on controller and processor in Chapter IV, on the transfer of personal data to third countries and international organisations in Chapter V, the independent supervisory authorities in Chapter VI, ~~and~~ on co-operation and consistency in Chapter VII ~~for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression~~ ***and specific data processing situations in this Chapter whenever this is necessary*** in order to reconcile the right to the protection of personal data with the rules governing freedom of expression ***in accordance with the Charter***. **[Am. 189]**

2. Each Member State shall notify to the Commission those provisions of its law which it has adopted pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment law or amendment affecting them.

Article 80a

Access to documents

1. Personal data in documents held by a public authority or a public body may be disclosed by this authority or body in accordance with Union or Member State legislation regarding public access to official documents, which reconciles the right to the protection of personal data with the principle of public access to official documents.

2. Each Member State shall notify to the Commission provisions of its law which it adopts pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them. **[Am. 190]**

Article 81

Processing of personal data concerning health

1. ~~Within the limits of~~ ***In accordance with the rules set out in*** this Regulation ~~and in accordance~~***, in particular*** with point (h) of Article 9(2), processing of personal data concerning health must be on the basis of Union law or Member State law which shall provide for suitable***, consistent,*** and specific measures to safeguard the data subject's ~~legitimate~~ interests, and ~~be~~ ***fundamental rights, to the extent that these are*** necessary ***and proportionate***, ***and of which the effects shall be foreseeable by the data subject,*** for:

(a) the purposes of preventive or occupational medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or another person also subject to an equivalent obligation of confidentiality under Member State law or rules established by national competent bodies; or

(b) reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety, inter alia for medicinal products or medical devices***, and if the processing is carried out by a person bound by a confidentiality obligation***; or

(c) other reasons of public interest in areas such as social protection, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system ***and the provision of health services. Such processing of personal data concerning health for reasons of public interest shall not result in data being processed for other purposes, unless with the consent of the data subject or on the basis of Union or Member State law***.

1a. When the purposes referred to in points (a) to (c) of paragraph 1 can be achieved without the use of personal data, such data shall not be used for those purposes, unless based on the consent of the data subject or Member State law.

1b. Where the data subject's consent is required for the processing of medical data exclusively for public health purposes of scientific research, the consent may be given for one or more specific and similar researches. However, the data subject may withdraw the consent at any time.

1c. For the purpose of consenting to the participation in scientific research activities in clinical trials, the relevant provisions of Directive 2001/20/EC of the European Parliament and of the Council [1] ***shall apply.***

2. Processing of personal data concerning health which is necessary for historical, statistical or scientific research purposes~~, such as patient registries set up for improving diagnoses and differentiating between similar types of diseases and preparing studies for therapies, is~~ ***shall be permitted only with the consent of the data subject, and shall be*** subject to the conditions and safeguards referred to in Article 83.

2a. Member States law may provide for exceptions to the requirement of consent for research, as referred to in paragraph 2, with regard to research that serves a high public interest, if that research cannot possibly be carried out otherwise. The data in question shall be anonymised, or if that is not possible for the research purposes, pseudonymised under the highest technical standards, and all necessary measures shall be taken to prevent unwarranted re-identification of the data subjects. However, the data subject shall have the right to object at any time in accordance with Article 19.

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[1] ***Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practices in the conduct of clinical trials on medicinal products for human use (OJ L 121, 1.5.2001, p. 34).***

3. The Commission shall be empowered to adopt***, after requesting an opinion of the European Data Protection Board,*** delegated acts in accordance with Article 86 for the purpose of further specifying ~~other reasons of~~ public interest in the area of public health as referred to in point (b) of paragraph 1~~, as well as criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1~~ ***and high public interest in the area of research as referred to in paragraph 2a***.

3a. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them. **[Am. 191]**

Article 82

Minimum standards for ~~P~~processing ***data*** in the employment context

1. ~~Within the limits of this Regulation,~~ Member States may***, in accordance with the rules set out in this Regulation, and taking into account the principle of proportionality,*** adopt by ~~law~~ ***legal provisions*** specific rules regulating the processing of employees' personal data in the employment context, in particular ~~for~~ ***but not limited to*** the purposes of the recruitment ***and job applications within the group of undertakings***, the performance of the contract of employment, including discharge of obligations laid down by law ~~or~~ ***and*** by collective agreements, ***in accordance with national law and practice,*** management, planning and organisation of work, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship. ***Member States may allow for collective agreements to further specify the provisions set out in this Article.***

1a. The purpose of processing such data must be linked to the reason it was collected for and stay within the context of employment. Profiling or use for secondary purposes shall not be allowed.

1b. Consent of an employee shall not provide a legal basis for the processing of data by the employer when the consent has not been given freely.

1c. Notwithstanding the other provisions of this Regulation, the legal provisions of Member States referred to in paragraph 1 shall include at least the following minimum standards:

(a) the processing of employee data without the employees' knowledge shall not be permitted. Notwithstanding the first sentence, Member States may, by law, provide for the admissibility of this practice, by setting appropriate deadlines for the deletion of data, providing there exists a suspicion based on factual indications that must be documented that the employee has committed a crime or serious dereliction of duty in the employment context, providing also the collection of data is necessary to clarify the matter and providing finally the nature and extent of this data collection are necessary and proportionate to the purpose for which it is intended. The privacy and private lives of employees shall be protected at all times. The investigation shall be carried out by the competent authority;

(b) the open optical-electronic and/or open acoustic-electronic monitoring of parts of an undertaking which are not accessible to the public and are used primarily by employees for private activities, especially in bathrooms, changing rooms, rest areas, and bedrooms, shall be prohibited. Clandestine surveillance shall be inadmissible under all circumstances;

(c) where undertakings or authorities collect and process personal data in the context of medical examinations and/or aptitude tests, they must explain to the applicant or employee beforehand the purpose for which those data are being used, and ensure that afterwards they are provided with those data together with the results, and that they receive an explanation of their significance on request. Data collection for the purpose of genetic testing and analyses shall be prohibited as a matter of principle;

(d) whether and to what extent the use of telephone, e-mail, internet and other telecommunications services shall also be permitted for private use may be regulated by collective agreement. Where there is no regulation by collective agreement, the employer shall reach an agreement on this matter directly with the employee. In so far as private use is permitted, the processing of accumulated traffic data shall be permitted in particular to ensure data security, to ensure the proper operation of telecommunications networks and telecommunications services and for billing purposes.

Notwithstanding the third sentence, Member States may, by law, provide for the admissibility of this practice, by setting appropriate deadlines for the deletion of data, providing there exists a suspicion based on factual indications that must be documented that the employee has committed a crime or serious dereliction of duty in the employment context, providing also the collection of data is necessary to clarify the matter and providing finally the nature and extent of this data collection are necessary and proportionate to the purpose for which it is intended. The privacy and private lives of employees shall be protected at all times. The investigation shall be carried out by the competent authority;

(e) workers' personal data, especially sensitive data such as political orientation and membership of and activities in trade unions, may under no circumstances be used to put workers on so-called 'blacklists', and to vet or bar them from future employment. The processing, the use in the employment context, the drawing-up and passing-on of blacklists of employees or other forms of discrimination shall be prohibited. Member States shall conduct checks and adopt adequate sanctions in accordance with Article 79(6) to ensure effective implementation of this point.

1d. Transmission and processing of personal employee data between legally independent undertakings within a group of undertakings and with professionals providing legal and tax advice shall be permitted, providing it is relevant to the operation of the business and is used for the conduct of specific operations or administrative procedures and is not contrary to the interests and fundamental rights of the person concerned which are worthy of protection. Where employee data are transmitted to a third country and/or to an international organisation, Chapter V shall apply.

2. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to ~~paragraph~~ ***paragraphs*** 1 ***and 1b***, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

3. The Commission shall be empowered***, after requesting an opinion from the European Data Protection Board,*** to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the safeguards for the processing of personal data for the purposes referred to in paragraph 1. **[Am. 192]**

Article 82a

Processing in the social security context

1. Member States may, in accordance with the rules set out in this Regulation, adopt specific legislative rules particularising the conditions for the processing of personal data by their public institutions and departments in the social security context if carried out in the public interest.

2. Each Member State shall notify to the Commission those provisions which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them. **[Am. 193]**

Article 83

Processing for historical, statistical and scientific research purposes

1. ~~Within the limits of~~***In accordance with the rules set out in*** this Regulation, personal data may be processed for historical, statistical or scientific research purposes only if:

(a) these purposes cannot be otherwise fulfilled by processing data which does not permit or not any longer permit the identification of the data subject;

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other information ~~as long as these purposes can be fulfilled in this manner~~ ***under the highest technical standards, and all necessary measures are taken to prevent unwarranted re-identification of the data subjects***.

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~~2. Bodies conducting historical, statistical or scientific research may publish or otherwise publicly disclose personal data only if:~~

~~(a) the data subject has given consent, subject to the conditions laid down in Article 7;~~

~~(b) the publication of personal data is necessary to present research findings or to facilitate research insofar as the interests or the fundamental rights or freedoms of the data subject do not override these interests; or~~

~~(c) the data subject has made the data public.~~

~~3. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the processing of personal data for the purposes referred to in paragraph 1 and 2 as well as any necessary limitations on the rights of information to and access by the data subject and detailing the conditions and safeguards for the rights of the data subject under these circumstances.~~ **[Am. 194]**

Article 83a

Processing of personal data by archive services

1. Once the initial processing for which they were collected has been completed, personal data may be processed by archive services whose main or mandatory task is to collect, conserve, provide information about, exploit and disseminate archives in the public interest, in particular in order to substantiate individuals' rights or for historical, statistical or scientific research purposes. These tasks shall be carried out in accordance with the rules laid down by Member States concerning access to and the release and dissemination of administrative or archive documents and in accordance with the rules set out in this Regulation, specifically with regard to consent and the right to object.

2. Each Member State shall notify to the Commission provisions of its law which it adopts pursuant to paragraph 1 by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them. **[Am. 195]**

Article 84

Obligations of secrecy

1. ~~Within the limits of~~ ***In accordance with the rules set out in*** this Regulation, Member States ~~may adopt~~ ***shall ensure that*** specific rules ~~to set~~ ***are in place setting*** out the ~~investigative~~ powers by the supervisory authorities laid down in Article 53~~(2)~~ in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy. **[Am. 196]**

2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Article 85

Existing data protection rules of churches and religious associations

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, ~~comprehensive~~ ***adequate*** rules relating to the protection of individuals with regard to the processing of personal data, such rules may continue to apply, provided that they are brought in line with the provisions of this Regulation.

2. Churches and religious associations which apply ~~comprehensive~~ ***adequate*** rules in accordance with paragraph 1 shall ~~provide for the establishment of an independent supervisory authority in accordance with Chapter VI of this Regulation~~ ***obtain a compliance opinion pursuant to Article 38***. **[Am. 197]**

Article 85a

Respect of fundamental rights

This Regulation shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the TEU. **[Am. 198]**

Article 85b

Standard Forms

1. The Commission may, taking into account the specific features and necessities of various sectors and data processing situations, lay down standard forms for:

(a) specific methods to obtain verifiable consent referred to in Article 8(1),

(b) the communication referred to in Article 12(2), including the electronic format,

(c) providing the information referred to in paragraphs 1 to 3 of Article 14,

(d) requesting and granting access to the information referred to in Article 15(1), including for communicating the personal data to the data subject,

(e) documentation referred to in paragraph 1 of Article 28,

(f) breach notifications pursuant to Article 31 to the supervisory authority and the documentation referred to in Article 31(4),

(g) prior consultations referred to in Article 34, and for informing the supervisory authorities pursuant to Article 34 (6).

2. In doing so, the Commission shall take the appropriate measures for micro, small and medium-sized enterprises.

3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87 (2). **[Am. 199]**

CHAPTER X

DELEGATED ACTS AND IMPLEMENTING ACTS

Article 86

Exercise of the delegation

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

2. The ~~delegation of power~~ ***power to adopt delegated acts*** referred to in ~~Article 6(5), Article 8(3), Article 9(3), Article 12 (5), Article 14(7), Article 15(3),~~ ***Article 13a(5),*** Article 17(9), ~~Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 336), Article 34(8), Article 35(11), Article 37(2),~~ ***Article 38 (4),*** Article 39(2), ***Article 41(3), Article 41(5),*** Article 43(3), ~~Article 44(7), Article 79(6)~~***Article 79(7)***, Article 81(3), ***and*** Article 82(3) ~~and Article 83(3)~~ shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation. **[Am. 200]**

3. The delegation of power referred to in ~~Article 6(5), Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3),~~ ***Article 13a(5),*** Article 17(9), ~~Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2),~~ ***Article 38(4),*** Article 39(2), ***Article 41(3), Article 41(5),*** Article 43(3), ~~Article 44(7), Article 79(6)~~***Article 79(7)***, Article 81(3), ***and*** Article 82(3) ~~and Article 83(3)~~ may be revoked at any time by the European Parliament or by the Council. A decision ~~of revocation~~ ***to revoke*** shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force. **[Am. 201]**

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

5. A delegated act adopted pursuant to ~~Article 6(5), Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3),~~ ***Article 13a(5),*** Article 17(9), ~~Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 33(6), Article 34(8), Article 35(11), Article 37(2),~~ ***Article 38(4),*** Article 39(2), ***Article 41(3), Article 41(5),*** Article 43(3), ~~Article 44(7), Article 79(6),~~ ***Article 79(7),*** Article 81(3),***and*** Article 82(3) ~~and Article 83(3)~~ shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ~~two~~***six*** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by ~~two~~ ***six*** months at the initiative of the European Parliament or ***of*** the Council. **[Am. 202]**

Article 87

Committee procedure

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

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

~~3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.~~ **[Am. 203]**

CHAPTER XI

FINAL PROVISIONS

Article 88

Repeal of Directive 95/46/EC

1. Directive 95/46/EC is repealed.

2. References to the repealed Directive shall be construed as references to this Regulation. References to the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC shall be construed as references to the European Data Protection Board established by this Regulation.

Article 89

Relationship to and amendment of Directive 2002/58/EC

1. This Regulation shall not impose additional obligations on natural or legal persons in relation to the processing of personal data in connection with the provision of publicly available electronic communications services in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in Directive 2002/58/EC.

2. ~~Article~~***Articles*** 1(2)***, 4 and 15*** of Directive 2002/58/EC shall be deleted. **[Am. 204]**

2a. The Commission shall present, without delay and by the date referred to in Article 91(2) at the latest, a proposal for the revision of the legal framework for the processing of personal data and the protection of privacy in electronic communications, in order to align the law with this Regulation and ensure consistent and uniform legal provisions on the fundamental right to protection of personal data in the Union. **[Am. 205]**

Article 89a

Relationship to and amendment of Regulation (EC) No 45/2001

1. The rules set out in this Regulation shall apply to the processing of personal data by Union institutions, bodies, offices and agencies in relation to matters for which they are not subject to additional rules set out in Regulation (EC) No 45/2001.

2. The Commission shall present, without delay and by the date specified in Article 91(2) at the latest, a proposal for the revision of the legal framework applicable to the processing of personal data by the Union institutions, bodies, offices and agencies. **[Am. 206]**

Article 90

Evaluation

The Commission shall submit reports on the evaluation and review of this Regulation to the European Parliament and the Council at regular intervals. The first report shall be submitted no later than four years after the entry into force of this Regulation. Subsequent reports shall be submitted every four years thereafter. The Commission shall, if necessary, submit appropriate proposals with a view to amending this Regulation, and aligning other legal instruments, in particular taking account of developments in information technology and in the light of the state of progress in the information society. The reports shall be made public.

Article 91

Entry into force and application

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

2. It shall apply from … (*).

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

Done at …,

For the European Parliament	*For the Council*
The President	*The President*

(*) Two years from the date of entry into force of this Regulation.

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Annex — Presentation of the particulars referred to in Article 13a

1) Having regard to the proportions referred to in point 6, particulars shall be provided as follows:

ICON	ESSENTIAL INFORMATION	FULFILLED
	No personal data are **collected** beyond the minimum necessary for each specific purpose of the processing	
	No personal data are **retained** beyond the minimum necessary for each specific purpose of the processing	
	No personal data are **processed** for purposes other than the purposes for which they were collected	
	No personal data are **disseminated** to commercial third parties	
	No personal data are **sold or rented out**	
	No personal data are retained in **unencrypted** form	
COMPLIANCE WITH ROWS 1-3 IS REQUIRED BY EU LAW		

2) The following words in the rows in the second column of the table in point 1, entitled 'ESSENTIAL INFORMATION', shall be formatted as bold:

a) the word 'collected' in the first row of the second column;

b) the word 'retained' in the second row of the second column;

c) the word 'processed' in the third row of the second column;

d) the word 'disseminated' in the fourth row of the second column;

e) the word 'sold and rented out' in the fifth row of the second column;

f) the word 'unencrypted' in the sixth row of the second column.

3) Having regard to the proportions referred to in point 6, the rows in the third column of the table in point 1, entitled 'FULFILLED', shall be completed with one of the following two graphical forms in accordance with the conditions laid down under point 4:

a)

b)

4) a) If no personal data are collected beyond the minimum necessary for each specific purpose of the processing, the first row of the third column of the table in point 1 shall entail the graphical form referred to in point 3a.

b) If personal data are collected beyond the minimum necessary for each specific purpose of the processing, the first row of the third column of the table in point 1 shall entail the graphical form referred to in point 3b.

c) If no personal data are retained beyond the minimum necessary for each specific purpose of the processing, the second row of the third column of the table in point 1 shall entail the graphical form referred to in point 3a.

d) If personal data are retained beyond the minimum necessary for each specific purpose of the processing, the second row of the third column of the table in point 1 shall entail the graphical form referred to in point 3b.

e) If no personal data are processed for purposes other than the purposes for which they were collected, the third row of the third column of the table in point 1 shall entail the graphical form referred to in point 3a.

f) If personal data are processed for purposes other than the purposes for which they were collected, the third row of the third column of the table in point 1 shall entail the graphical form referred to in point 3b.

g) If no personal data are disseminated to commercial third parties, the fourth row of the third column of the table in point 1 shall entail the graphical form referred to in point 3a.

h) If personal data are disseminated to commercial third parties, the fourth row of the third column of the table in point 1 shall entail the graphical form referred to in point 3b.

i) If no personal data are sold or rented out, the fifth row of the third column of the table in point 1 shall entail the graphical form referred to in point 3a.

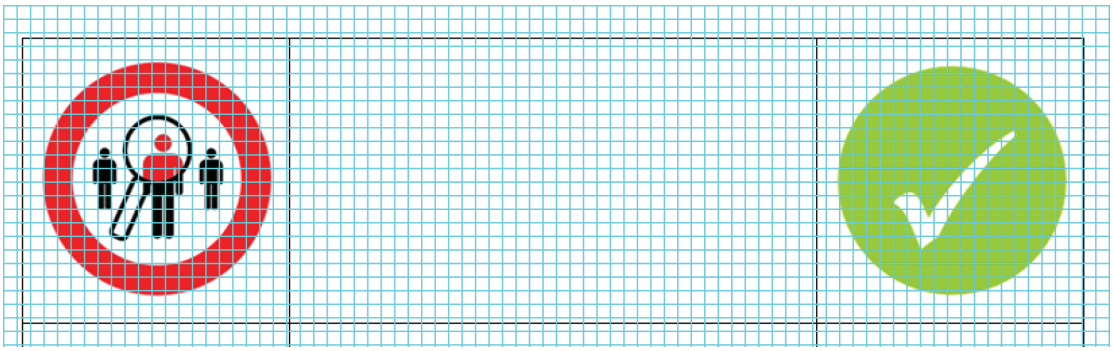
j) If personal data are sold or rented out, the fifth row of the third column of the table in point 1 shall entail the graphical form referred to in point 3b.

k) If no personal data are retained in unencrypted form, the sixth row of the third column of the table in point 1 shall entail the graphical form referred to in point 3a.

l) If personal data are retained in unencrypted form, the sixth row of the third column of the table in point 1 shall entail the graphical form referred to in point 3b.

5) The reference colours of the graphical forms in point 1 in Pantone are Black Pantone No 7547 and Red Pantone No 485. The reference colour of the graphical form in point 3a in Pantone is Green Pantone No 370. The reference colour of the graphical form in point 3b in Pantone is Red Pantone No 485.

6) The proportions given in the following graduated drawing shall be respected, even where the table is reduced or enlarged:



[Am. 207]

Wednesday 12 March 2014

P7_TA(2014)0213

Protection of the euro against counterfeiting (Pericles 2020) ***

European Parliament legislative resolution of 12 March 2014 on the draft Council regulation extending to the non-participating Member States the application of Regulation (EU) No …/2012 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the 'Pericles 2020' programme) (16616/2013 — C7-0463/2013 — 2011/0446(APP))

(Special legislative procedure — consent)

(2017/C 378/56)

The European Parliament,

— having regard to the draft Council regulation (16616/2013),

— having regard to the request for consent submitted by the Council in accordance with Article 352 of the Treaty on the Functioning of the European Union (C7-0463/2013),

— having regard to Rule 81(1), first and third subparagraphs, of its Rules of Procedure,

— having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs (A7-0152/2014),

1. Consents to the draft Council regulation;

2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Wednesday 12 March 2014

P7_TA(2014)0214

EU-Azerbaijan Agreement on the facilitation of the issuance of visas ***

European Parliament legislative resolution of 12 March 2014 on the draft Council decision on the conclusion of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas (17846/2013 — C7-0078/2014 — 2013/0356(NLE))

(Consent)

(2017/C 378/57)

The European Parliament,

— having regard to the draft Council decision (17846/2013),

— having regard to the draft Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas (15554/2013),

— having regard to the request for consent submitted by the Council in accordance with Article 77(2)(a) and Article 218 (6), second subparagraph, point (a), of the Treaty on the Functioning of the European Union (C7-0078/2014),

— having regard to Rule 81(1), first and third subparagraphs, Rule 81(2), and Rule 90(7) of its Rules of Procedure,

— having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Foreign Affairs (A7-0155/2014),

1. Consents to the conclusion of the Agreement;

2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and the Republic of Azerbaijan.

Wednesday 12 March 2014

P7_TA(2014)0215

EU-Azerbaijan Agreement on the readmission of persons residing without authorisation ***

European Parliament legislative resolution of 12 March 2014 on the draft Council decision on the conclusion of the Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation (15596/2013 — C7-0079/2014 — 2013/0358(NLE))

(Consent)

(2017/C 378/58)

The European Parliament,

— having regard to the draft Council decision (15596/2013),

— having regard to the draft Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation (15594/2013),

— having regard to the request for consent submitted by the Council in accordance with Article 79(3) and Article 218(6), second subparagraph, point (a), of the Treaty on the Functioning of the European Union (C7-0079/2014),

— having regard to Rule 81(1), first and third subparagraphs, Rule 81(2), and Rule 90(7) of its Rules of Procedure,

— having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Foreign Affairs (A7-0154/2014),

1. Consents to the conclusion of the Agreement;

2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and of the Republic of Azerbaijan.

Wednesday 12 March 2014

P7_TA(2014)0219

Processing of personal data for the purposes of crime prevention ***I

European Parliament legislative resolution of 12 March 2014 on the proposal for a directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data (COM(2012)0010 — C7-0024/2012 — 2012/0010(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/59)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2012)0010),

— having regard to Article 294(2) and Article 16(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0024/2012),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the German Bundesrat and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,

— having regard to the opinion of the European Data Protection Supervisor of 7 March 2012 ([1]),

— having regard to the opinion of the European Union Agency for Fundamental Rights of 1 October 2012,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A7-0403/2013),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2012)0010

Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Directive 2014/…/EU of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data

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 16(2) thereof,

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([1]) OJ C 192, 30.6.2012, p. 7.

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 Data Protection Supervisor ([1]),

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

Whereas:

(1) The protection of natural persons in relation to the processing of personal data is ***a*** fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union ('Charter') and Article 16(1) of the Treaty of the Functioning of the European Union lay down that everyone has the right to the protection of personal data concerning them. ***Article 8(2) of the Charter lays down that such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law.*** **[Am. 1]**

(2) The processing of personal data is designed to serve man; the principles and rules on the protection of individuals with regard to the processing of their personal data should, whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms, notably their right to the protection of personal data. It should contribute to the accomplishment of an area of freedom, security and justice.

(3) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data collection and sharing has increased spectacularly. Technology allows competent authorities to make use of personal data on an unprecedented scale in order to pursue their activities.

(4) This requires facilitating the free flow of data***, when necessary and proportionate,*** between competent authorities within the Union and the transfer to third countries and international organisations, while ensuring a high level of protection of personal data. These developments require building a strong and more coherent data protection framework in the Union, backed by strong enforcement. **[Am. 2]**

(5) Directive 95/46/EC of the European Parliament and of the Council ([3]) applies to all personal data processing activities in Member States in both the public and the private sectors. However, it does not apply to the processing of personal data in the course of an activity which falls outside the scope of Community law, such as activities in the areas of judicial co-operation in criminal matters and police co-operation.

(6) Council Framework Decision 2008/977/JHA ([4]) applies in the areas of judicial co-operation in criminal matters and police co-operation. The scope of application of this Framework Decision is limited to the processing of personal data transmitted or made available between Member States.

(7) Ensuring a consistent and high level of protection of the personal data of individuals and facilitating the exchange of personal data between competent authorities of Members States is crucial in order to ensure effective judicial co-operation in criminal matters and police cooperation. To that aim, the level of protection of the rights and freedoms of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties must be equivalent in all Member States. ***Consistent and homogenous application of the rules for the protection of the***

([1]) OJ C 192, 30.6.2012, p. 7.
([2]) Position of the European Parliament of 12 March 2014.
([3]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).
([4]) Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (OJ L 350, 30.12.2008, p. 60).

fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union. Effective protection of personal data throughout the Union requires strengthening the rights of data subjects and the obligations of those who process personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data in the Member States. **[Am. 3]**

(8) Article 16(2) of the Treaty on the Functioning of the European Union provides that the European Parliament and the Council should lay down the rules relating to the protection of individuals with regard to the processing of personal data and the rules relating to the free movement of ***their*** personal data. **[Am. 4]**

(9) On that basis, Regulation (EU) No …/2014 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) lays down general rules to protect of individuals in relation to the processing of personal data and to ensure the free movement of personal data within the Union.

(10) In Declaration 21 on the protection of personal data in the fields of judicial co-operation in criminal matters and police co-operation, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the Conference acknowledged that specific rules on the protection of personal data and the free movement of such data in the fields of judicial co-operation in criminal matters and police co-operation based on Article 16 of the Treaty on the Functioning of the European Union may prove necessary because of the specific nature of these fields.

(11) Therefore a ~~distinct~~ ***specific*** Directive should meet the specific nature of these fields and lay down the rules relating to the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. **[Am. 5]**

(12) In order to ensure the same level of protection for individuals through legally enforceable rights throughout the Union and to prevent divergences hampering the exchange of personal data between competent authorities, this Directive should provide harmonised rules for the protection and the free movement of personal data in the areas of judicial co-operation in criminal matters and police co-operation.

(13) This Directive allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Directive.

(14) The protection afforded by this Directive should concern natural persons, whatever their nationality or place of residence, in relation to the processing of personal data.

(15) The protection of individuals should be technological neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means, as well as to manual processing if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Directive. This Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law~~, in particular concerning national security, or to data processed by the Union institutions, bodies, offices and agencies, such as Europol or Eurojust~~. ***Regulation (EC) No 45/2001 of the European Parliament and of the Council*** [1] ***and specific legal instruments applicable to Union agencies, bodies or offices should be brought in line with this Directive and applied in accordance with this Directive.*** **[Am. 6]**

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

(16) The principles of protection should apply to any information concerning an identified or identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify ***or single out*** the individual. The principles of data protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable. ***This Directive should not apply to anonymous data, meaning any data that cannot be related, directly or indirectly, alone or in combination with associated data, to a natural person. Given the importance of the developments under way in the framework of the information society, of the techniques used to capture, transmit, manipulate, record, store or communicate location data relating to natural persons, which may be used for different purposes including surveillance or creating profiles, this Directive should be applicable to processing involving such personal data.*** **[Am. 7]**

(16a) Any processing of personal data must be lawful, fair and transparent in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. The personal data should be adequate, relevant and limited to the minimum necessary for the purposes for which the personal data are processed. This requires in particular limiting the data collected and the period for which the data are stored to a strict minimum. Personal data should only be processed if the purpose of the processing could not be fulfilled by other means. Every reasonable step should be taken to ensure that personal data which are inaccurate should be rectified or deleted. In order to ensure that the data are kept no longer than necessary, time limits should be established by the controller for erasure or periodic review. **[Am. 8]**

(17) Personal data relating to health should include in particular all data pertaining to the health status of a data subject, information about the registration of the individual for the provision of health services; information about payments or eligibility for healthcare with respect to the individual; a number, symbol or particular assigned to an individual to uniquely identify the individual for health purposes; any information about the individual collected in the course of the provision of health services to the individual; information derived from the testing or examination of a body part or bodily substance, including biological samples; identification of a person as provider of healthcare to the individual; or any information on, for example; a disease, disability, disease risk, medical history, clinical treatment, or the actual physiological or biomedical state of the data subject independent of its source, e.g. from a physician or other health professional, a hospital, a medical device, or an in vitro diagnostic test.

~~(18) Any processing of personal data must be fair and lawful in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit.~~**[Am. 9]**

~~(19) For the prevention, investigation and prosecution of criminal offences, it is necessary for competent authorities to retain and process personal data, collected in the context of the prevention, investigation, detection or prosecution of specific criminal offences beyond that context to develop an understanding of criminal phenomena and trends, to gather intelligence about organised criminal networks, and to make links between different offences detected.~~ **[Am. 10]**

~~(20) Personal data should not be processed for purposes incompatible with the purpose for which it was collected. Personal data should be adequate, relevant and not excessive for the purposes for which the personal data are processed. Every reasonable step should be taken to ensure that personal data which are inaccurate should be rectified or erased.~~**[Am. 11]**

(20a) The simple fact that two purposes both relate to the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties does not necessarily mean that they are compatible. However, there are cases in which further processing for incompatible purposes should be possible if necessary to comply with a legal obligation to which the controller is subject, in order to protect the vital interests of the data subject or another person, or for the prevention of an immediate and serious threat to public security. Member States should therefore be able to adopt national laws providing for such derogations to the extent strictly necessary. Such national laws should contain adequate safeguards. **[Am. 12]**

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(21) The principle of accuracy of data should be applied taking account of the nature and purpose of the processing concerned. In particular in judicial proceedings, statements containing personal data are based on the subjective perception of individuals and are in some cases not always verifiable. Consequently, the requirement of accuracy should not appertain to the accuracy of a statement but merely to the fact that a specific statement has been made.

~~(22) In the interpretation and application of the general principles relating to personal data processing by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, account should be taken of the specificities of the sector, including the specific objectives pursued.~~**[Am. 13]**

(23) It is inherent to the processing of personal data in the areas of judicial co-operation in criminal matters and police co-operation that personal data relating to different categories of data subjects are processed. Therefore a clear distinction should as far as possible be made between personal data of different categories of data subjects such as suspects, persons convicted of a criminal offence, victims and third parties, such as witnesses, persons possessing relevant information or contacts and associates of suspects and convicted criminals. ***Specific rules on the consequences of this categorisation should be provided by the Member States, taking into account the different purposes for which data are collected and providing specific safeguards for persons who are not suspected of having committed, or have not been convicted of, a criminal offence.*** **[Am. 14]**

(24) As far as possible personal data should be distinguished according to the degree of their accuracy and reliability. Facts should be distinguished from personal assessments, in order to ensure both the protection of individuals and the quality and reliability of the information processed by the competent authorities.

(25) In order to be lawful, the processing of personal data should be ***only allowed when*** necessary for compliance with a legal obligation to which the controller is subject, for the performance of a task carried out in the public interest by a competent authority based on ***Union or Member State*** law ~~or in order to protect the vital interests of the data subject or of another person, or for the prevention of an immediate and serious threat to public security~~ ***which should contain explicit and detailed provisions at least as to the objectives, the personal data, the specific purposes and means, designate or allow to designate the controller, the procedures to be followed, the use and limitations of the scope of any discretion conferred to the competent authorities in relation to the processing activities.*** **[Am. 15]**

(25a) Personal data should not be processed for purposes incompatible with the purpose for which they were collected. Further processing by competent authorities for a purpose falling within the scope of this Directive which is not compatible with the initial purpose should only be authorised in specific cases where such processing is necessary for compliance with a legal obligation, based on Union or Member State law, to which the controller is subject, or in order to protect the vital interests of the data subject or of another person or for the prevention of an immediate and serious threat to public security. The fact that data are processed for a law enforcement purpose does not necessarily imply that this purpose is compatible with the initial purpose. The concept of compatible use is to be interpreted restrictively. **[Am. 16]**

(25b) Personal data processed in breach of the national provisions adopted pursuant to this Directive should not be further processed. **[Am. 17]**

(26) Personal data which are, by their nature, particularly sensitive ***and vulnerable*** in relation to fundamental rights or privacy~~, including genetic data,~~ deserve specific protection. Such data should not be processed, unless processing is specifically ~~authorised by a~~ ***necessary for the performance of a task carried out in the public interest, on the basis of Union or Member State*** law which provides for suitable measures to safeguard the data subject's ***fundamental rights and*** legitimate interests; or processing is necessary to protect the vital interests of the data subject or of

another person; or the processing relates to data which are manifestly made public by the data subject. ***Sensitive personal data should be processed only if they supplement other personal data already processed for law enforcement purposes. Any derogation to the prohibition of processing of sensitive data should be interpreted restrictively and not lead to frequent, massive or structural processing of sensitive personal data.*** **[Am. 18]**

(26a) The processing of genetic data should only be allowed if there is a genetic link which appears in the course of a criminal investigation or a judicial procedure. Genetic data should only be stored as long as strictly necessary for the purpose of such investigations and procedures, while Member States can provide for longer storage under the conditions set out in this Directive. **[Am. 19]**

(27) Every natural person should have the right not to be subject to a measure which is based ~~solely~~ on ***partially or fully profiling by means of*** automated processing ~~if it~~ ***. Such processing which*** produces ~~an adverse~~ ***a*** legal effect for that person, ***or significantly affects him or her should be prohibited,*** unless authorised by law and subject to suitable measures to safeguard the data subject's ***fundamental rights and*** legitimate interests***, including the right to be provided with meaningful information about the logic used in the profiling. Such processing should in no circumstances contain, generate, or discriminate based on special categories of data.*** **[Am. 20]**

(28) In order to exercise his or her rights, any information to the data subject should be easily accessible and easy to understand, including the use of clear and plain language. ***This information should be adapted to the needs of the data subject in particular when information is addressed specifically to a child.*** **[Am. 21]**

(29) Modalities should be provided for facilitating the data subject's exercise of his or her rights under this Directive, including mechanisms to request, free of charge, in particular access to data, rectification and erasure. The controller should be obliged to respond to requests of the data subject without ~~undue~~ delay ***and within one month of receipt of the request. Where personal data are processed by automated means the controller should provide means for requests to be made electronically.*** **[Am. 22]**

(30) The principle of fair ***and transparent*** processing requires that the data subjects should be informed in particular of the existence of the processing operation and its purposes, ***its legal basis,*** how long the data will be stored, on the existence of the right of access, rectification or erasure and on the right to lodge a complaint. ***Furthermore the data subject should be informed if profiling takes place and its intended consequences.*** Where the data are collected from the data subject, the data subject should also be informed whether he or she is obliged to provide the data and of the consequences, in cases he or she does not provide such data. **[Am. 23]**

(31) The information in relation to the processing of personal data relating to the data subject should be given to him or her at the time of collection, or, where the data are not obtained from the data subject, at the time of the recording or within a reasonable period after the collection having regard to the specific circumstances in which the data are processed.

(32) Any person should have the right of access to data which have been collected concerning them, and to exercise this right easily, in order to be aware of and verify the lawfulness of the processing. Every data subject should therefore have the right to know about, and obtain communication in particular of, the purposes for which the data are processed, ***the legal basis,*** for what period, which recipients receive the data, including in third countries***, the intelligible information about the logic involved in any automated processing and its significant and envisaged consequences if applicable, and the right to lodge a complaint with the supervisory authority and its contact details.*** Data subjects should be allowed to receive a copy of their personal data which are being processed. **[Am. 24]**

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(33) Member States should be allowed to adopt legislative measures delaying ***or*** restricting ~~or omitting~~ the information of data subjects or the access to their personal data to the extent that and as long as such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***fundamental rights and the*** legitimate interests of the person concerned, to avoid obstructing official or legal inquiries, investigations or procedures, to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or for the execution of criminal penalties, to protect public security or national security, or, to protect the data subject or the rights and freedoms of others. ***The controller should assess by way of concrete and individual examination of each case if partial or complete restriction of the right of access should apply.*** **[Am. 25]**

(34) Any refusal or restriction of access should be set out in writing to the data subject including the factual or legal reasons on which the decision is based.

(34a) Any restriction of the data subject's rights must be in compliance with the Charter and with the European Convention on Human Rights, as clarified by the case law of the Court of Justice of the European Union and the European Court of Human Rights, and in particular respect the essence of the rights and freedoms. **[Am. 26]**

(35) Where Member States have adopted legislative measures restricting wholly or partly the right to access, the data subject should have the right to request that the competent national supervisory authority checks the lawfulness of the processing. The data subject should be informed of this right. When access is exercised by the supervisory authority on behalf of the data subject, the data subject should be informed by the supervisory authority at least that all necessary verifications by the supervisory authority have taken place and of the result as regards to the lawfulness of the processing in question. ***The supervisory authority should also inform the data subject of the right to seek a judicial remedy.*** **[Am. 27]**

(36) Any person should have the right to have inaccurate ***or unlawfully processed*** personal data concerning them rectified and the right of erasure where the processing of such data is not in compliance with the ~~main principles~~ ***provisions*** laid down in this Directive. ***Such rectification, completion or erasure should be communicated to recipients to whom the data have been disclosed and to the third parties from which the inaccurate data originated. The controllers should also abstain from further dissemination of such data.*** Where the personal data are processed in the course of a criminal investigation and proceedings, rectification, the rights of information, access, erasure and restriction of processing may be carried out in accordance with national rules on judicial proceedings. **[Am. 28]**

(37) Comprehensive responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should ensure ~~the~~ ***and be obliged to be able to demonstrate*** compliance of ***each*** processing ~~operations~~ ***operation*** with the rules adopted pursuant to this Directive. **[Am. 29]**

(38) The protection of the rights and freedoms of data subjects with regard to the processing of personal data requires that appropriate technical and organisational measures be taken to ensure that the requirements of this Directive are met. In order to ensure compliance with the provisions adopted pursuant to this Directive, the controller should adopt policies and implement appropriate measures, which meet in particular the principles of data protection by design and data protection by default.

(39) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processors requires a clear attribution of the responsibilities under this Directive, including where a controller determines the purposes~~, conditions~~ and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller. ***The data subject should have the right to exercise his or her rights under this Directive in respect of and against each of the joint controllers.*** **[Am. 30]**

(40) Processing activities should be documented by the controller or processor, in order to monitor compliance with this Directive. Each controller and processor should be obliged to co-operate with the supervisory authority and make this documentation available upon request, so that it might serve for monitoring processing operations.

(40a) ***Every processing operation of personal data should be recorded in order to enable the verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security. This record should be made available upon request to the supervisory authority for the purpose of monitoring compliance with the rules laid down in this Directive.*** **[Am. 31]**

(40b) ***A data protection impact assessment should be carried out by the controller or processor, where the processing operations are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, which should include in particular the envisaged measures, safeguards and mechanisms to ensure the protection of personal data and for demonstrating compliance with this Directive. Impact assessments should concern relevant systems and processes of personal data processing operations, but not individual cases.*** **[Am. 32]**

(41) In order to ensure effective protection of the rights and freedoms of data subjects by way of preventive actions, the controller or processor should consult with the supervisory authority in certain cases prior to the processing. ***Moreover, where a data protection impact assessment indicates that processing operations are likely to present a high degree of specific risks to the rights and freedoms of data subjects, the supervisory authority should be in a position to prevent, prior to the start of operations, a risky processing which is not in compliance with this Directive, and to make proposals to remedy such situation. Such consultation may equally take place in the course of the preparation either of a measure of the national parliament or of a measure based on such legislative measure which defines the nature of the processing and lays down appropriate safeguards.*** **[Am. 33]**

(41a) ***In order to maintain security and to prevent processing in breach of this Directive, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks. Those measures should ensure an appropriate level of security, taking into account the state of the art and the costs of their implementation in relation to the risks and the nature of the personal data to be protected. When establishing technical standards and organisational measures to ensure security of processing, technological neutrality should be promoted.*** **[Am. 34]**

(42) A personal data breach may, if not addressed in an adequate and timely manner, result in ***a substantial economic loss and social*** harm, including ~~reputational damage~~ ***identity fraud,*** to the individual concerned. Therefore, as soon as the controller becomes aware that such a breach has occurred, it should notify the breach to the competent national authority. The individuals whose personal data or privacy could be adversely affected by the breach should be notified without ~~undue~~ delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the personal data or privacy of an individual where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation in connection with the processing of personal data. ***The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the subscriber or individual concerned. Notifications to data subjects should be made as soon as feasible and in close cooperation with the supervisory authority and respecting guidance provided by it.*** **[Am. 35]**

(43) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of misuse. Moreover, such rules and procedures should take into account the legitimate interests of competent authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

(44) The controller or the processor should designate a person who would assist the controller or processor to monitor ***and demonstrate*** compliance with the provisions adopted pursuant to this Directive. ~~A data protection officer may be appointed jointly by~~ ***Where*** several ~~entities of the competent authority.~~ ***competent authorities are acting under the supervision of a central authority, at least this central authority should designate such data protection officer.*** The data protection officers must be in a position to perform their duties and tasks independently and effectively***, in particular by establishing rules that avoid conflicts of interests with other tasks performed by the data protection officer.*** **[Am. 36]**

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(45) Member States should ensure that a transfer to a third country only takes place if ~~it~~***that specific transfer*** is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the controller in the third country or international organisation is ~~an~~ ***a public*** authority competent within the meaning of this Directive. A transfer may take place in cases where the Commission has decided that the third country or international organisation in question ensures an adequate level or protection, or when appropriate safeguards have been adduced***, or where appropriate safeguards have been adduced by way of a legally binding instrument. Data transferred to competent public authorities in third countries should not be further processed for purposes other than the one they were transferred for.*** **[Am. 37]**

(45a) Further onward transfers from competent authorities in third countries or international organisations to which personal data have been transferred should only be allowed if the onward transfer is necessary for the same specific purpose as the original transfer and the second recipient is also a competent public authority. Further onward transfers should not be allowed for general law-enforcement purposes. The competent authority that carried out the original transfer should have agreed to the onward transfer. **[Am. 38]**

(46) The Commission may decide with effect for the entire Union that certain third countries, or a territory or a processing sector within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations which are considered to provide such level of protection. In these cases, transfers of personal data to these countries may take place without needing to obtain any further authorisation.

(47) In line with the fundamental values on which the Union is founded, in particular the protection of human rights, the Commission should take into account how the rule of law, access to justice, as well as international human rights norms and standards, in that third country are respected.

(48) The Commission should equally be able to recognise that a third country, or a territory or a processing sector within a third country, or an international organisation, does not offer an adequate level of data protection. Consequently the transfer of personal data to that third country should be prohibited except when they are based on an international agreement, appropriate safeguards or a derogation. Provision should be made for procedures for consultations between the Commission and such third countries or international organisations. However, such a Commission decision shall be without prejudice to the possibility to undertake transfers on the basis of appropriate safeguards ***by means of legally binding instruments*** or on the basis of a derogation laid down in this Directive. **[Am. 39]**

(49) Transfers not based on such an adequacy decision should only be allowed where appropriate safeguards have been adduced in a legally binding instrument, which ensure the protection of the personal data ~~or where the controller or processor has assessed all the circumstances surrounding the data transfer operation or the set of data transfer operations and, based on this assessment, considers that appropriate safeguards with respect to the protection of personal data exist. In cases where no grounds for allowing a transfer exist, derogations should be allowed if necessary in order to protect the vital interests of the data subject or another person, or to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides, or where it is essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country, or in individual cases for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, or in individual cases for the establishment, exercise or defence of legal claims~~. **[Am. 40]**

(49a) In cases where no grounds for allowing a transfer exist, derogations should be allowed if necessary in order to protect the vital interests of the data subject or another person, or to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides, or where it is essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country, or in individual cases for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, or in individual cases for the establishment, exercise or defence of legal claims. Those derogations should be interpreted restrictively and should not allow frequent, massive and structural transfer of personal data and should not allow wholesale transfer of data which should be limited to data strictly necessary. Moreover, the decision for transfer should be made by a duly authorised person and that transfer must be documented and should be made available to the supervisory authority on request in order to monitor the lawfulness of the transfer. **[Am. 41]**

(50) When personal data move across borders it may put at increased risk the ability of individuals to exercise data protection rights to protect themselves from the unlawful use or disclosure of that data. At the same time, supervisory authorities may find that they are unable to pursue complaints or conduct investigations relating to the activities outside their borders. Their efforts to work together in the cross-border context may also be hampered by insufficient preventative or remedial powers, inconsistent legal regimes. Therefore, there is a need to promote closer co-operation among data protection supervisory authorities to help them exchange information with their foreign counterparts.

(51) The establishment of supervisory authorities in Member States, exercising their functions with complete independence, is an essential component of the protection of individuals with regard to the processing of their personal data. The supervisory authorities should monitor the application of the provisions pursuant to this Directive and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data. For that purpose, the supervisory authorities should co-operate with each other ~~and the Commission~~. **[Am. 42]**

(52) Member States may entrust a supervisory authority already established in Member States under Regulation (EU) …/2014 with the responsibility for the tasks to be performed by the national supervisory authorities to be established under this Directive.

(53) Member States should be allowed to establish more than one supervisory authority to reflect their constitutional, organisational and administrative structure. Each supervisory authority should be provided with adequate financial and human resources, premises and infrastructure, ***including technical capabilities, experience and skills,*** which are necessary for the effective performance of their tasks, including for the tasks related to mutual assistance and co-operation with other supervisory authorities throughout the Union. **[Am. 43]**

(54) The general conditions for the members of the supervisory authority should be laid down by law in each Member State and should in particular provide that those members should be either appointed by the parliament or the government***, on the basis of the consultation of the parliament,*** of the Member State, and include rules on the personal qualification of the members and the position of those members. **[Am. 44]**

(55) While this Directive applies also to the activities of national courts, the competence of the supervisory authorities should not cover the processing of personal data when they are acting in their judicial capacity, in order to safeguard the independence of judges in the performance of their judicial tasks. However, this exemption should be limited to genuine judicial activities in court cases and not apply to other activities where judges might be involved in accordance with national law.

(56) In order to ensure consistent monitoring and enforcement of this Directive throughout the Union, the supervisory authorities should have the same duties and effective powers in each Member State, including ***effective*** powers of investigation, ***power to access all personal data and all information necessary for the performance of each supervisory function, power to access any of the premises of the data controller or the processor including data processing equipment, and*** legally binding intervention, decisions and sanctions, particularly in cases of complaints from individuals, and to engage in legal proceedings. **[Am. 45]**

(57) Each supervisory authority should hear complaints lodged by any data subject and should investigate the matter. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject.

(58) The supervisory authorities should assist one another in performing their duties and provide mutual assistance, so as to ensure the consistent application and enforcement of the provisions adopted pursuant to this Directive. ***Each supervisory authority should be ready to participate in joint operations. The requested supervisory authority should be obliged to respond in a defined time period to the request.*** **[Am. 46]**

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(59) The European Data Protection Board established by Regulation (EU) …/~~2012~~ ***2014*** should contribute to the consistent application of this Directive throughout the Union, including advising the ~~Commission and~~ ***Union institutions,*** promoting the co-operation of the supervisory authorities throughout the Union***, and give its opinion to the Commission in the preparation of delegated and implementing acts based on this Directive***. **[Am. 47]**

(60) Every data subject should have the right to lodge a complaint with a supervisory authority in any Member State and have the right to a judicial remedy if they consider that their rights under this Directive are infringed or where the supervisory authority does not act on a complaint or does not act where such action is necessary to protect the rights of the data subject.

(61) Any body, organisation or association ~~which aims to protects the rights and interests of data subjects in relation to the protection of their data~~ ***which acts in the public interest*** and is constituted according to the law of a Member State should have the right to lodge a complaint or exercise the right to a judicial remedy on behalf of data subjects if duly mandated by them, or to lodge, independently of a data subject's complaint, its own complaint where it considers that a personal data breach has occurred. **[Am. 48]**

(62) Each natural or legal person should have the right to a judicial remedy against decisions of a supervisory authority concerning them. Proceedings against a supervisory authority should be brought before the courts of the Member State where the supervisory authority is established.

(63) Member States should ensure that court actions, in order to be effective, allow the rapid adoption of measures to remedy or prevent an infringement of this Directive.

(64) Any damage***, including non pecuniary damage,*** which a person may suffer as a result of unlawful processing should be compensated by the controller or processor, who may be exempted from liability if they prove that they are not responsible for the damage, in particular where they establish fault on the part of the data subject or in case of force majeure. **[Am. 49]**

(65) Penalties should be imposed on any natural or legal person, whether governed by private or public law, that fails to comply with this Directive. Member States should ensure that the penalties are effective, proportionate and dissuasive and must take all measures to implement the penalties.

(65a) Transmission of personal data to other authorities or private parties in the Union is prohibited unless the transmission is in compliance with law, and the recipient is established in a Member State, and no legitimate specific interests of the data subject prevent transmission, and the transmission is necessary in a specific case for the controller transmitting the data for either the performance of a task lawfully assigned to it, or the prevention of an immediate and serious danger to public security, or the prevention of serious harm to the rights of individuals. The controller should inform the recipient of the purpose of the processing and the supervisory authority of the transmission. The recipient should also be informed of processing restrictions and ensure that they are met. **[Am. 50]**

(66) In order to fulfil the objectives of this Directive, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free exchange of personal data by competent authorities within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted ~~in respect of notifications of~~ ***to further specify the criteria and conditions for processing operations requiring a data protection impact assessment; the criteria and requirements of*** a ~~personal~~ data breach ~~to the supervisory authority~~***and as regards the adequate level of protection afforded by a third country, or a territory or a processing sector within that third country, or an international organisation***. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level***, in particular with the European Data Protection Board***. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and ***to the*** Council. **[Am. 51]**

(67) In order to ensure uniform conditions for the implementation of this Directive as regards ~~documentation by controllers and processors,~~ security of processing, notably in relation to encryption standards, ***and*** notification of a personal data breach to the supervisory authority, ~~and the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation,~~ implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ~~of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers~~ ([1]). **[Am. 52]**

(68) The examination procedure should be used for the adoption of measures as regards ~~documentation by controllers and processors,~~ security of processing, ***and*** notification of a personal data breach to the supervisory authority, ~~and the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation,~~ given that those acts are of general scope. **[Am. 53]**

~~(69) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to a third country or a territory or a processing sector within that third country or an international organisation which does not ensure an adequate level of protection, imperative grounds of urgency so require.~~**[Am. 54]**

(70) Since the objectives of this Directive, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of ***their*** personal data and to ensure the free exchange of personal data by competent authorities within the Union, cannot be sufficiently achieved by the Member States ~~and can therefore~~ ***but can rather***, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 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 ~~that objective~~***those objectives. Member States may provide for higher standards than those established in this Directive***. **[Am. 55]**

(71) Framework Decision 2008/977/JHA should be repealed by this Directive.

(72) Specific provisions with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties in acts of the Union which were adopted prior to the date of the adoption of this Directive, regulating the processing of personal data between Member States or the access of designated authorities of Member States to information systems established pursuant to the Treaties, should remain unaffected. ***Since Article 8 of the Charter and Article 16 TFEU imply that the fundamental right to the protection of personal data should be ensured in a consistent and homogeneous manner through the Union,*** ~~The~~***the*** Commission should***, within two years after the entry into force of this Directive,*** evaluate the situation with regard to the relation between this Directive and the acts adopted prior to the date of adoption of this Directive regulating the processing of personal data between Member States or the access of designated authorities of Member States to information systems established pursuant to the Treaties, ~~in order to assess the need for alignment of these specific provisions with~~ ***and should present appropriate proposals with a view to ensuring consistent and homogeneous legal rules relating to the processing of personal data by competent authorities or the access of designated authorities of Member States to information systems established pursuant to the Treaties as well as the processing of personal data by Union institutions, bodies, offices and agencies for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties within the scope of*** this Directive. **[Am. 56]**

(73) In order to ensure a comprehensive and coherent protection of personal data in the Union, international agreements concluded by ***the Union or by the*** Member States prior to the entry force of this Directive should be amended in line with this Directive. **[Am. 57]**

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

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(74) This Directive is without prejudice to the rules on combating the sexual abuse and sexual exploitation of children and child pornography as laid down in Directive 2011/93/EU of the European Parliament and of the Council ([1]).

(75) In accordance with Article 6a of the Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland shall not be bound by the rules laid down in this Directive where the United Kingdom and Ireland are not bound by the rules governing the forms of judicial co-operation in criminal matters or police co-operation which require compliance with the provisions laid down on the basis of Article 16 of the Treaty on the Functioning of the European Union.

(76) In accordance with Articles 2 and 2a of the Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not bound by this Directive or subject to its application. ~~Given that this Directive builds upon the Schengen acquis, under Title V of Part Three of the Treaty on the Functioning of the European Union, Denmark shall, in accordance with Article 4 of that Protocol, decide within six months after adoption of this Directive whether it will implement it in its national law.~~**[Am. 58]**

(77) As regards Iceland and Norway, this Directive constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis* ([2]).

(78) As regards Switzerland, this Directive constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ([3]).

(79) As regards Liechtenstein, this Directive constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ([4]).

(80) This Directive respects the fundamental rights and observes the principles recognised in the Charter as enshrined in the Treaty, notably the right to respect for private and family life, the right to the protection of personal data, the right to an effective remedy and to a fair trial. Limitations placed on these rights are in accordance with Article 52(1) of the Charter as they are necessary to meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

(81) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ([5]), 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.

(82) This Directive should not preclude Member States from implementing the exercise of the rights of data subjects on information, access, rectification, erasure and restriction of their personal data processed in the course of criminal proceedings, and their possible restrictions thereto, in national rules on criminal procedure,

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([1]) Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).
([2]) OJ L 176, 10.7.1999, p. 36.
([3]) OJ L 53, 27.2.2008, p. 52.
([4]) OJ L 160, 18.6.2011, p. 21.
([5]) OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and objectives

1. This Directive lays down the rules relating to the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences ~~or~~ ***and*** the execution of criminal penalties ***and conditions for the free movement of such personal data***.

2. In accordance with this Directive, Member States shall:

(a) protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of ***their*** personal data ***and privacy***; and

(b) ensure that the exchange of personal data by competent authorities within the Union is neither restricted nor prohibited for reasons connected with the protection of individuals with regard to the processing of personal data.

2a. This Directive shall not preclude Member States from providing higher safeguards than those established in this Directive. **[Am. 59]**

Article 2

Scope

1. This Directive applies to the processing of personal data by competent authorities for the purposes referred to in Article 1(1).

2. This Directive applies to the processing of personal data wholly or partly by automated means, and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

3. This Directive shall not apply to the processing of personal data:

(a) in the course of an activity which falls outside the scope of Union law~~, in particular concerning national security;~~

~~(b) by the Union institutions, bodies, offices and agencies.~~**[Am. 60]**

Article 3

Definitions

For the purposes of this Directive:

~~(1) 'data subject' means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online identifiers or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;~~

(2) 'personal data' means any information relating to ~~a~~***an identified or identifiable natural person*** (**'**data subject'); ***an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, unique identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or gender identity of that person;***

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(2a) 'pseudonymous data' means personal data that cannot be attributed to a specific data subject without the use of additional information, as long as such additional information is kept separately and subject to technical and organisational measures to ensure non-attribution;

(3) 'processing' means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

(3a) 'profiling' means any form of automated processing of personal data intended to evaluate certain personal aspects relating to a natural person or to analyse or predict in particular that natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour;

(4) 'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future;

(5) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;

(6) 'controller' means the competent public authority which alone or jointly with others determines the purposes~~, conditions~~ and means of the processing of personal data; where the purposes~~, conditions~~ and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

(7) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(8) 'recipient' means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed;

(9) 'personal data breach' means ~~a breach of security leading to~~ the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

(10) 'genetic data' means all data, of whatever type, concerning the characteristics of an individual which are inherited or acquired during early prenatal development;

(11) 'biometric data' means any ***personal*** data relating to the physical, physiological or behavioural characteristics of an individual which allow his or her unique identification, such as facial images, or dactyloscopic data;

(12) 'data concerning health' means any ~~information~~***personal data*** which relate to the physical or mental health of an individual, or to the provision of health services to the individual;

(13) 'child' means any person below the age of 18 years;

(14) 'competent authorities' means any public authority competent for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;

(15) 'supervisory authority' means a public authority which is established by a Member State in accordance with Article 39. **[Am. 61]**

CHAPTER II

PRINCIPLES

Article 4

Principles relating to personal data processing

Member States shall provide that personal data must be:

(a) processed ~~fairly and~~ lawfully***, fairly and in a transparent and verifiable manner in relation to the data subject***;

(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes;

(c) adequate, relevant, and ~~not excessive~~ ***limited to the minimum necessary*** in relation to the purposes for which they are processed; ***they shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not involve personal data;***

(d) accurate and~~, where necessary,~~ kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;

(e) kept in a form which permits identification of data subjects for no longer than it is necessary for the purposes for which the personal data are processed;

(f) processed under the responsibility and liability of the controller, who shall ensure ***and be able to demonstrate*** compliance with the provisions adopted pursuant to this Directive;

(fa) processed in a way that effectively allows the data subject to exercise his or her rights as described in Articles 10 to 17;

(fb) processed in a way that protects against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures;

(fc) processed by only those duly authorised staff of the competent authorities who need them for the performance of their tasks.**[Am. 62]**

Article 4a

Access to data initially processed for purposes other than those referred to in Article 1(1)

1. Member States shall provide that competent authorities may only have access to personal data initially processed for purposes other than those referred to in Article 1(1) if they are specifically authorised by Union or Member State law which must meet the requirements set out in Article 7(1a) and must provide that:

(a) access is allowed only to duly authorised staff of the competent authorities in the performance of their tasks where, in a specific case, reasonable grounds give reason to believe that the processing of the personal data will substantially contribute to the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;

(b) requests for access must be in writing and refer to the legal ground for the request;

(c) the written request must be documented; and

(d) appropriate safeguards are implemented to ensure the protection of fundamental rights and freedoms in relation to the processing of personal data. Those safeguards shall be without prejudice to and complementary to specific conditions of access to personal data such as judicial authorisation in accordance with Member State law.

2. Personal data held by private parties or other public authorities shall only be accessed to investigate or prosecute criminal offences in accordance with necessity and proportionality requirements to be defined by Union law or Member State law, in full compliance with Article 7a. **[Am. 63]**

Article 4b

Time limits of storage and review

1. Member States shall provide that personal data processed pursuant to this Directive shall be deleted by the competent authorities where they are no longer necessary for the purposes for which they were processed.

2. Member States shall provide that the competent authorities put mechanisms in place to ensure that time-limits, pursuant to Article 4, are established for the erasure of personal data and for a periodic review of the need for the storage of the data, including fixing storage periods for the different categories of personal data. Procedural measures shall be established to ensure that those time-limits or the periodic review intervals are observed. **[Am. 64]**

Article 5

~~Distinction between different~~***Different*** categories of data subjects

1. Member States shall provide that~~, as far as possible, the controller makes~~ ***the competent authorities, for the purposes referred to in Article 1(1), may process personal data of the following different categories of data subjects, and the controller shall make*** a clear distinction between ~~personal data of different categories of data subjects, such as~~***such categories***:

(a) persons with regard to whom there are ~~serious~~***reasonable*** grounds for believing that they have committed or are about to commit a criminal offence;

(b) persons convicted of a ~~criminal offence~~***crime***;

(c) victims of a criminal offence, or persons with regard to whom certain facts give reasons for believing that he or she could be the victim of a criminal offence; ***and***

(d) third parties to the criminal offence, such as persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, or a person who can provide information on criminal offences, or a contact or associate to one of the persons mentioned in (a) and (b)~~; and~~.

~~(e) persons who do not fall within any of the categories referred to above.~~

2. Personal data of data subjects other than those referred to under paragraph 1 may only be processed:

(a) as long as necessary for the investigation or prosecution of a specific criminal offence in order to assess the relevance of the data for one of the categories indicated in paragraph 1; or

(b) when such processing is indispensable for targeted, preventive purposes or for the purposes of criminal analysis, if and as long as this purpose is legitimate, well-defined and specific and the processing is strictly limited to assess the relevance of the data for one of the categories indicated in paragraph 1. This is subject to regular review at least every six months. Any further use is prohibited.

3. Member States shall provide that additional limitations and safeguards, according to Member State law, apply to the further processing of personal data relating to data subjects referred to in points (c) and (d) of paragraph 1. **[Am. 65]**

Article 6

Different degrees of accuracy and reliability of personal data

1. Member States shall ~~ensure~~ ***provide*** that~~, as far as possible, the different categories~~ ***accuracy and reliability*** of personal data undergoing processing are ~~distinguished in accordance with their degree of accuracy and reliability~~ ***ensured***.

2. Member States shall ensure that~~, as far as possible,~~ personal data based on facts are distinguished from personal data based on personal assessments***, in accordance with their degree of accuracy and reliability***.

2a. Member States shall ensure that personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available. To this end, the competent authorities shall assess the quality of personal data before they are transmitted or made available. As far as possible, in all transmissions of data, available information shall be added which enables the receiving Member State to assess the degree of accuracy, completeness, and reliability of the data, and the extent to which they are up-to-date. Personal data shall not be transmitted without request from a competent authority, in particular data originally held by private parties.

2b. If it emerges that incorrect data have been transmitted or data have been transmitted unlawfully, the recipient must be notified without delay. The recipient shall be obliged to rectify the data without delay in accordance with paragraph 1 and Article 15 or to erase them in accordance with Article 16. **[Am. 66]**

Article 7

Lawfulness of processing

1. Member States shall provide that the processing of personal data is lawful only if and to the extent that processing ***is based on Union or Member State law for the purposes set out in Article 1(1) and it*** is necessary:

(a) for the performance of a task carried out by a competent authority~~, based on law for the purposes set out in Article 1 (1)~~; or

~~(b) for compliance with a legal obligation to which the controller is subject; or~~

(c) in order to protect the vital interests of the data subject or of another person; or

(d) for the prevention of an immediate and serious threat to public security.

1a. Member State law regulating the processing of personal data within the scope of this Directive shall contain explicit and detailed provisions specifying at least:

(a) the objectives of the processing;

(b) the personal data to be processed;

(c) the specific purposes and means of processing;

(d) the appointment of the controller, or of the specific criteria for the appointment of the controller;

(e) the categories of duly authorised staff of the competent authorities for the processing of personal data;

(f) the procedure to be followed for the processing;

(g) the use that may be made of the personal data obtained;

(h) limitations on the scope of any discretion conferred on the competent authorities in relation to the processing activities. **[Am. 67]**

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Article 7a

Further processing for incompatible purposes

1. Member States shall provide that personal data may only be further processed for another purpose set out in Article 1(1) which is not compatible with the purposes for which the data were initially collected if and to the extent that:

(a) the purpose is strictly necessary and proportionate in a democratic society and required by Union or Member State law for a legitimate, well-defined and specific purpose;

(b) the processing is strictly limited to a period not exceeding the time needed for the specific data processing operation;

(c) any further use for other purposes is prohibited.

Prior to any processing, the Member State shall consult the competent national supervisory authority and conduct a data protection impact assessment.

2. In addition to the requirements set out in Article 7(1a), Member State law authorising further processing as referred to in paragraph 1 shall contain explicit and detailed provisions specifying at least:

(a) the specific purposes and means of that particular processing;

(b) that access is allowed only by the duly authorised staff of the competent authorities in the performance of their tasks where in a specific case there are reasonable grounds for believing that the processing of the personal data will contribute substantially to the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; and

(c) that appropriate safeguards are established to ensure the protection of fundamental rights and freedoms in relation to the processing of personal data.

Member States may require that access to the personal data is subject to additional conditions such as judicial authorisation, in accordance with their national law.

3. Member States may also allow further processing of personal data for historical, statistical or scientific purposes provided that they establish appropriate safeguards, such as making the data anonymous. **[Am. 68]**

Article 8

Processing of special categories of personal data

1. Member States shall prohibit the processing of personal data revealing race or ethnic origin, political opinions, religion or ***philosophical*** beliefs, ***sexual orientation or gender identity,*** trade-union membership~~, of genetic~~ ***and activities, and the processing of biometric*** data or of data concerning health or sex life.

2. Paragraph 1 shall not apply where:

(a) the processing is ~~authorised by a law providing appropriate safeguards~~***strictly necessary and proportionate for the performance of a task carried out by the competent authorities for the purposes set out in Article 1(1), on the basis of Union or Member State law which shall provide for specific and suitable measures to safeguard the data subject's legitimate interests, including specific authorisation from a judicial authority, if required by national law***; or

(b) the processing is necessary to protect the vital interests of the data subject or of another person; or

(c) the processing relates to data which are manifestly made public by the data subject***, provided that they are relevant and strictly necessary for the purpose pursued in a specific case***. **[Am. 69]**

Article 8a

Processing of genetic data for the purpose of a criminal investigation or a judicial procedure

1. Member States shall ensure that genetic data may only be used to establish a genetic link within the framework of adducing evidence, preventing a threat to public security or preventing the commission of a specific criminal offence. Genetic data may not be used to determine other characteristics which may be linked genetically.

2. Member States shall provide that genetic data or information derived from their analysis may only be retained as long as necessary for the purposes for which data are processed and where the individual concerned has been convicted of serious offences against the life, integrity or security of persons, subject to strict storage periods to be determined by Member State law.

3. Member States shall ensure that genetic data or information derived from their analysis is only stored for longer periods when the genetic data cannot be attributed to an individual, in particular when it is found at the scene of a crime. **[Am. 70]**

Article 9

Measures based on profiling and automated processing

1. Member States shall provide that measures which produce ~~an adverse~~ ***a*** legal effect for the data subject or significantly affect him or her and which are ***partially or fully*** based ~~solely~~ on automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall be prohibited unless authorised by a law which also lays down measures to safeguard the data subject's legitimate interests.

2. Automated processing of personal data intended to evaluate certain personal aspects relating to the data subject shall not be based ~~solely~~ on special categories of personal data referred to in Article 8.

2a. Automated processing of personal data intended to single out a data subject without an initial suspicion that the data subject might have committed or will be committing a criminal offence shall only be lawful if and to the extent that it is strictly necessary for the investigation of a serious criminal offence or the prevention of a clear and imminent danger, established on factual indications, to public security, the existence of the State, or the life of persons.

2b. Profiling that, whether intentionally or otherwise, has the effect of discriminating against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, gender or sexual orientation, or that, whether intentionally or otherwise, results in measures which have such effect, shall be prohibited in all cases. **[Am. 71]**

Article 9a

General principles for the rights of the data subject

1. Member States shall ensure that the basis of data protection is clear and with unambiguous rights for the data subject which shall be respected by the data controller. The provisions of this Directive aim to strengthen, clarify, guarantee and where appropriate, codify those rights.

2. Member States shall ensure that such rights include, inter alia, the provision of clear and easily understandable information regarding the processing of the data subject's personal data, the right of access, rectification and erasure of his or her data, the right to obtain data, the right to lodge a complaint with the competent data protection authority and to bring legal proceedings as well as the right to compensation and damages resulting from an unlawful processing operation. Such rights shall in general be exercised free of charge. The data controller shall respond to requests from the data subject within a reasonable period of time. **[Am. 72]**

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CHAPTER III

RIGHTS OF THE DATA SUBJECT

Article 10

Modalities for exercising the rights of the data subject

1. Member States shall provide that the controller ~~takes all reasonable steps to have~~ ***has concise,*** transparent***, clear*** and easily accessible policies with regard to the processing of personal data and for the exercise of the data ~~subjects'~~***subject's*** rights.

2. Member States shall provide that any information and any communication relating to the processing of personal data are to be provided by the controller to the data subject in an intelligible form, using clear and plain language***, in particular where that information is addressed specifically to a child***.

3. Member States shall provide that the controller ~~takes all reasonable steps to establish~~ ***establishes*** procedures for providing the information referred to in Article 11 and for the exercise of the rights of ***the*** data ~~subjects~~ ***subject*** referred to in Articles 12 to 17. ***Where personal data are processed by automated means, the controller shall provide means for requests to be made electronically.***

4. Member States shall provide that the controller informs the data subject about the follow-up given to ~~their~~ ***his or her*** request without ~~undue~~ delay***, and in any event at the latest within one month of receipt of the request***. ***The information shall be given in writing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form***.

5. Member States shall provide that the information and any action taken by the controller following a request referred to in paragraphs 3 and 4 are free of charge. Where requests are ~~vexatious~~***manifestly excessive***, in particular because of their repetitive character, ~~or the size or volume of the request,~~ the controller may charge a ***reasonable*** fee***, taking into account the administrative costs,*** for providing the information or taking the action requested~~, or the controller may not take the action requested~~. In that case, the controller shall bear the burden of proving the ~~vexatious~~ ***manifestly excessive*** character of the request.

5a. Member States may provide that the data subject may assert his or her rights directly against the controller or through the intermediary of the competent national supervisory authority. Where the supervisory authority has acted at the request of the data subject, the supervisory authority shall inform the data subject of the verifications carried out. **[Am. 73]**

Article 11

Information to the data subject

1. Where personal data relating to a data subject are collected, Member States shall ensure that the controller ~~takes all appropriate measures to provide~~ ***provides*** the data subject with at least the following information:

(a) the identity and the contact details of the controller and of the data protection officer;

(b) ***the legal basis and*** the purposes of the processing for which the personal data are intended;

(c) the period for which the personal data will be stored;

(d) the existence of the right to request from the controller access to and rectification, erasure or restriction of processing of the personal data concerning the data subject;

(e) the right to lodge a complaint with the supervisory authority referred to in Article 39 and its contact details;

(f) the recipients ~~or categories of recipients~~ of the personal data, including in third countries or international organisations, ***and who is authorised to access this data under the laws of that third country or the rules of that international organisation, the existence or absence of an adequacy decision by the Commission or in case of transfers referred to in Article 35 or 36, the means to obtain a copy of the appropriate safeguards used for the transfer***;

(fa) where the controller processes personal data as described in Article 9(1), information about the existence of processing for a measure of the kind referred to in Article 9(1) and the intended effects of such processing on the data subject, information about the logic used in the profiling and the right to obtain human assessment;

(fb) information regarding security measures taken to protect personal data;

(g) any further information in so far as such further information is necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are processed.

2. Where the personal data are collected from the data subject, the controller shall inform the data subject, in addition to the information referred to in paragraph 1, whether the provision of personal data is mandatory or optional, as well as the possible consequences of failure to provide such data.

3. The controller shall provide the information referred to in paragraph 1:

(a) at the time when the personal data are obtained from the data subject, or

(b) where the personal data are not collected from the data subject, at the time of the recording or within a reasonable period after the collection having regard to the specific circumstances in which the data are processed.

4. Member States may adopt legislative measures delaying, ***or*** restricting ~~or omitting~~ the provision of the information to the data subject***, in a specific case,*** to the extent that, and as long as, such partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the ***fundamental rights and the*** legitimate interests of the person concerned:

(a) to avoid obstructing official or legal inquiries, investigations or procedures;

(b) to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or for the execution of criminal penalties;

(c) to protect public security;

(d) to protect national security;

(e) to protect the rights and freedoms of others.

5. ***Member States shall provide that the controller shall assess, in each specific case, by means of a concrete and individual examination, whether a partial or complete restriction for one of the reasons referred to in paragraph 4 applies.*** Member States may ***by law also*** determine categories of data processing which may wholly or partly fall under the exemptions ***under points (a), (b), (c) and (d)*** of paragraph 4. **[Am. 74]**

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Article 12

Right of access for the data subject

1. Member States shall provide for the right of the data subject to obtain from the controller confirmation as to whether or not personal data relating to ~~them~~ ***him or her*** are being processed. Where such personal data are being processed, the controller shall provide the following information***, if it has not already been provided***:

(- a) communication of the personal data undergoing processing and of any available information as to their source, and if applicable, intelligible information about the logic involved in any automated processing;

(- aa) the significance and envisaged consequences of such processing, at least in the case of the measures referred to in Article 9;

(a) the purposes of the processing ***as well as the legal basis for the processing***;

(b) the categories of personal data concerned;

(c) the recipients ~~or categories of recipients~~ to whom the personal data have been disclosed, in particular the recipients in third countries;

(d) the period for which the personal data will be stored;

(e) the existence of the right to request from the controller rectification, erasure or restriction of processing of personal data concerning the data subject;

(f) the right to lodge a complaint with the supervisory authority and the contact details of the supervisory authority;

~~(g) communication of the personal data undergoing processing and of any available information as to their source.~~

2. Member States shall provide for the right of the data subject to obtain from the controller a copy of the personal data undergoing processing. ***Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.*** **[Am. 75]**

Article 13

Limitations to the right of access

1. Member States may adopt legislative measures restricting, wholly or partly, ***depending on the specific case,*** the data subject's right of access to the extent ***and for the period*** that such partial or complete restriction constitutes a ***strictly*** necessary and proportionate measure in a democratic society with due regard for the ***fundamental rights and the*** legitimate interests of the person concerned:

(a) to avoid obstructing official or legal inquiries, investigations or procedures;

(b) to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or the execution of criminal penalties;

(c) to protect public security;

(d) to protect national security;

(e) to protect the rights and freedoms of others.

2. ***Member States shall provide that the controller assesses, in each specific case by means of a concrete and individual examination whether a partial or complete restriction for one of the reasons referred to in paragraph 1 applies.*** Member States may ***also*** determine by law categories of data processing which may wholly or partly fall under the exemptions ***under points (a) to (d)*** of paragraph 1.

3. In cases referred to in paragraphs 1 and 2, Member States shall provide that the controller informs the data subject***, without undue delay,*** in writing on any refusal or restriction of access, on the ~~reasons~~ ***reasoned justification*** for the refusal and on the possibilities of lodging a complaint with the supervisory authority and seeking a judicial remedy. The information on factual or legal reasons on which the decision is based may be omitted where the provision of such information would undermine a purpose under paragraph 1.

4. Member States shall ensure that the controller documents ***the assessment referred to in paragraph 2 as well as*** the grounds for ~~omitting~~ ***restricting*** the communication of the factual or legal reasons on which the decision is based. ***That information shall be made available to the national supervisory authorities.*** **[Am. 76]**

Article 14

Modalities for exercising the right of access

1. Member States shall provide for the right of the data subject to request, ***at all times,*** in particular in cases referred to in ~~Article 13~~***Articles 12 and 13***, that the supervisory authority checks the lawfulness of the processing.

2. Member ~~State~~ ***States*** shall provide that the controller informs the data subject of the right to request the intervention of the supervisory authority pursuant to paragraph 1.

3. When the right referred to in paragraph 1 is exercised, the supervisory authority shall inform the data subject at least that all necessary verifications by the supervisory authority have taken place, and of the result as regards the lawfulness of the processing in question. ***The supervisory authority shall also inform the data subject of his or her right to seek a judicial remedy.***

3a. Member States may provide that the data subject may assert this right directly against the controller or through the intermediary of the competent national supervisory authority.

3b. Member States shall ensure that there are reasonable time limits for the controller to respond to requests of the data subject regarding the exercise of his or her right of access. **[Am. 77]**

Article 15

Right to rectification ***and completion***

1. Member States shall provide for the right of the data subject to obtain from the controller the rectification ***or the completion*** of personal data relating to ~~them~~ ***him or her*** which are inaccurate~~. The data subject shall have the right to obtain completion of incomplete personal data~~ ***or incomplete***, in particular by way of a ***completing or*** corrective statement.

2. Member States shall provide that the controller informs the data subject in writing, ~~on~~***, with a reasoned justification, of*** any refusal of rectification ***or completion***, on the reasons for the refusal and on the possibilities of lodging a complaint with the supervisory authority and seeking a judicial remedy.

2a. Member States shall provide that the controller shall communicate any rectification carried out to each recipient to whom the data have been disclosed, unless to do so proves impossible or involves a disproportionate effort.

2b. Member States shall provide that the controller communicates the rectification of inaccurate personal data to the third party from which the inaccurate personal data originate.

2c. Member States shall provide that the data subject may assert this right also through the intermediary of the competent national supervisory authority. **[Am. 78]**

Article 16

Right to erasure

1. Member States shall provide for the right of the data subject to obtain from the controller the erasure of personal data relating to ~~them~~ ***him or her*** where the processing does not comply with the provisions adopted pursuant to Articles 4 ~~(a) to (c)~~, ~~7 and 8~~***, 6 and 7 to 8*** of this Directive.

2. The controller shall carry out the erasure without delay. ***The controller shall also abstain from further dissemination of such data.***

3. Instead of erasure, the controller shall ~~mark~~ ***restrict the processing of*** the personal data where:

(a) their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy of the data;

(b) the personal data have to be maintained for purposes of proof; ***or for the protection of vital interests of the data subject or another person.***

~~(c) the data subject opposes their erasure and requests the restriction of their use instead.~~

3a. Where processing of personal data is restricted pursuant to paragraph 3, the controller shall inform the data subject before lifting the restriction on processing.

4. Member States shall provide that the controller informs the data subject in writing, ***with a reasoned justification,*** of any refusal of erasure or ~~marking~~ ***restriction*** of the processing, ~~the~~ ***on*** reasons for the refusal and ***on*** the possibilities of lodging a complaint with the supervisory authority and seeking a judicial remedy.

4a. Member States shall provide that the controller notifies recipients to whom those data have been sent of any erasure or restriction made pursuant to paragraph 1, unless to do so proves impossible or involves a disproportionate effort. The controller shall inform the data subject about those third parties.

4b. Member States may provide that the data subject may assert this right directly against the controller or through the intermediary of the competent national supervisory authority. **[Am. 79]**

Article 17

Rights of the data subject in criminal investigations and proceedings

Member States may provide that the rights of information, access, rectification, erasure and restriction of processing referred to in Articles 11 to 16 are carried out in accordance with national rules on judicial proceedings where the personal data are contained in a judicial decision or record processed in the course of criminal investigations and proceedings.

Wednesday 12 March 2014

CHAPTER IV

CONTROLLER AND PROCESSOR

SECTION 1

GENERAL OBLIGATIONS

Article 18

Responsibility of the controller

1. Member States shall provide that the controller adopts policies and implements appropriate measures to ensure ***and be able to demonstrate, in a transparent manner, for each processing operation,*** that the processing of personal data is performed in compliance with the provisions adopted pursuant to this Directive***, both at the time of the determination of the means for processing and at the time of the processing itself***.

2. The measures referred to in paragraph 1 shall in particular include:

(a) keeping the documentation referred to in Article 23;

(aa) performing a data protection impact assessment pursuant to Article 25a;

(b) complying with the requirements for prior consultation pursuant to Article 26;

(c) implementing the data security requirements laid down in Article 27;

(d) designating a data protection officer pursuant to Article 30.;

(da) drawing up and implementing specific safeguards in respect of the treatment of personal data relating to children, where appropriate.

3. The controller shall implement mechanisms to ensure the verification of the ***adequacy and*** effectiveness of the measures referred to in paragraph 1 of this Article. If proportionate, this verification shall be carried out by independent internal or external auditors. **[Am. 80]**

Article 19

Data protection by design and by default

1. Member States shall provide that, having regard to the state of the art ~~and the cost of implementation~~, ***current technical knowledge, international best practices and the risks represented by the data processing,*** the controller ***and the processor if any*** shall***, both at the time of the determination of the purposes and means for processing and at the time of the processing itself,*** implement appropriate ***and proportionate*** technical and organisational measures and procedures in such a way that the processing will meet the requirements of provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject***, in particular with regard to the principles laid down in Article 4. Data protection by design shall have particular regard to the entire lifecycle management of personal data from collection to processing to deletion, systematically focusing on comprehensive procedural safeguards regarding the accuracy, confidentiality, integrity, physical security and deletion of personal data. Where the controller has carried out a data protection impact assessment pursuant to Article 25a, the results shall be taken into account when developing those measures and procedures***.

2. The controller shall ~~implement mechanisms for ensuring~~ ***ensure*** that, by default, only those personal data which are necessary ~~for the purposes of the processing are processed~~***for each specific purpose of the processing and are especially not collected, retained or disseminated beyond the minimum necessary for those purposes, both in terms of the amount of the data and the time of their storage. In particular, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals and that data subjects are able to control the distribution of their personal data***. **[Am. 81]**

Article 20

Joint controllers

1. Member States shall provide that where a controller determines the purposes~~, conditions~~ and means of the processing of personal data jointly with others, the joint controllers shall determine the respective responsibilities for compliance with the provisions adopted pursuant to this Directive, in particular as regards the procedures and mechanisms for exercising the rights of the data subject, by means of ~~an~~ ***a legally binding*** arrangement between them.

2. Unless the data subject has been informed which of the joint controllers is responsible pursuant to paragraph 1, the data subject may exercise his or her rights under this Directive in respect of and against each of any two or more joint controllers. **[Am. 82]**

Article 21

Processor

1. Member States shall provide that where a processing is carried out on behalf of a controller, the controller ~~must~~***shall*** choose a processor providing sufficient guarantees to implement appropriate technical and organisational measures and procedures in such a way that the processing will meet the requirements of the provisions adopted pursuant to this Directive and ensure the protection of the rights of the data subject***, in particular in respect of the technical security measures and organisational measures governing the processing to be carried out and to ensure compliance with those measures***.

2. Member States shall provide that the carrying out of processing by ***means of*** a processor must be governed by a ***contract or*** legal act binding the processor to the controller and stipulating in particular that the processor shall ~~act only on instructions from the controller, in particular, where the transfer of the personal data used is prohibited.~~:

(a) act only on instructions from the controller;

(b) employ only staff who have agreed to be bound by an obligation of confidentiality or are under a statutory obligation of confidentiality;

(c) take all required measures pursuant to Article 27;

(d) engage another processor only with the permission of the controller and therefore inform the controller of the intention to engage another processor in such a timely fashion that the controller has the possibility to object;

(e) insofar as it is possible given the nature of the processing, adopt in agreement with controller the necessary technical and organisational requirements for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;

(f) assist the controller in ensuring compliance with the obligations pursuant to Articles 25a to 29;

(g) return all results to the controller after the end of the processing and not otherwise process the personal data and delete existing copies unless Union or Member State law requires its storage;

(h) make available to the controller and the supervisory authority all the information necessary to verify compliance with the obligations laid down in this Article;

(i) take into account the principle of data protection by design and default.

2a. The controller and the processor shall document in writing the controller's instructions and the processor's obligation referred to in paragraph 2.

3. If a processor processes personal data other than as instructed by the controller, the processor shall be considered to be a controller in respect of that processing and shall be subject to the rules on joint controllers laid down in Article 20. **[Am. 83]**

Article 22

Processing under the authority of the controller and processor

1. Member States shall provide that the processor and any person acting under the authority of the controller or of the processor, who has access to personal data, may only process them on instructions from the controller or where required by Union or Member State law.

1a. Where the processor is or becomes the determining party in relation to the purposes, means, or methods of data processing or does not act exclusively on the instructions of the controller, it shall be considered a joint controller pursuant to Article 20. **[Am. 84]**

Article 23

Documentation

1. Member States shall provide that each controller and processor maintains documentation of all processing systems and procedures under their responsibility.

2. The documentation shall contain at least the following information:

(a) the name and contact details of the controller, or any joint controller or processor;

(aa) a legally binding agreement, where there are joint controllers; a list of processors and activities carried out by processors;

(b) the purposes of the processing;

(ba) an indication of the parts of the controller's or processor's organisation entrusted with the processing of personal data for a particular purpose;

(bb) a description of the category or categories of data subjects and of the data or categories of data relating to them;

(c) the recipients or categories of recipients of the personal data;

(ca) where applicable, information about the existence of profiling, of measures based on profiling, and of mechanisms to object to profiling;

(cb) intelligible information about the logic involved in any automated processing;

(d) transfers of data to a third country or an international organisation, including the identification of that third country or international organisation ***and the legal grounds on which the data are transferred; a substantive explanation shall be given when a transfer is based on Articles 35 or 36 of this Directive;***

(da) the time limits for erasure of the different categories of data;

(db) the results of the verifications of the measures referred to in Article 18(1);

(dc) an indication of the legal basis of the processing operation for which the data are intended.

3. The controller and the processor shall make ~~the~~***all*** documentation available, on request, to the supervisory authority. **[Am. 85]**

Article 24

Keeping of records

1. Member States shall ensure that records are kept of at least the following processing operations: collection, alteration, consultation, disclosure, combination or erasure. The records of consultation and disclosure shall show in particular the purpose, date and time of such operations and as far as possible the identification of the person who consulted or disclosed personal data***, and the identity of the recipients of such data***.

2. The records shall be used solely for the purposes of verification of the lawfulness of the data processing, self-monitoring and for ensuring data integrity and data security***, or for purposes of auditing, either by the data protection officer or by the data protection authority***.

2a. The controller and the processor shall make the records available, on request, to the supervisory authority. **[Am. 86]**

Article 25

Cooperation with the supervisory authority

1. Member States shall provide that the controller and the processor shall co-operate, on request, with the supervisory authority in the performance of its duties, in particular by providing ~~all~~ ***the*** information ~~necessary for the supervisory authority to perform its duties~~***referred to in point (a) of Article 46(2) and by granting access as provided in point (b) of Article 46(2)***.

2. In response to the supervisory authority's exercise of its powers under points (a) and (b) of Article 46***(1)***, the controller and the processor shall reply to the supervisory authority within a reasonable period ***to be specified by the supervisory authority***. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority. **[Am. 87]**

Article 25a

Data Protection impact assessment

1. Member States shall provide that the controller or the processor, acting on the controller's behalf, shall carry out an assessment of the impact of the envisaged processing systems and procedures on the protection of personal data, where the processing operations are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, prior to new processing operations or the earliest as possible in case of existing processing operations.

2. In particular the following processing operations are likely to present such specific risks as referred to in paragraph 1:

(a) processing of personal data in large scale filing systems for the purposes of the prevention, detection, investigation or prosecution of criminal offences and the execution of criminal penalties;

(b) processing of special categories of personal data as referred to in Article 8, of personal data related to children and of biometric and location data for the purposes of the prevention, detection, investigation or prosecution of criminal offences and the execution of criminal penalties;

(c) an evaluation of personal aspects relating to a natural person or for analysing or predicting in particular the natural person's behaviour, which is based on automated processing and likely to result in measures that produces legal effects concerning the individual or significantly affects the individual;

(d) monitoring publicly accessible areas, especially when using optic-electronic devices (video surveillance); or

(e) other processing operations for which the consultation of the supervisory authority is required pursuant to Article 26(1).

3. The assessment shall contain at least:

(a) a systematic description of the envisaged processing operations,

(b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;

(c) an assessment of the risks to the rights and freedoms of data subjects and the measures envisaged to address those risks and minimise the volume of personal data which is processed;

(d) security measures and mechanisms to ensure the protection of personal data and to demonstrate the compliance with the provisions adopted pursuant to this Directive, taking into account the rights and legitimate interests of the data subjects and other persons concerned;

(e) a general indication of the time limits for erasure of the different categories of data;

(f) where applicable, a list of the intended transfers of data to a third country or an international organisation, including the identification of that third country or international organisation and, in case of transfers referred to in Article 36(2), the documentation of appropriate safeguards.

4. If the controller or the processor has designated a data protection officer, he or she shall be involved in the impact assessment proceeding.

5. Member States shall provide that the controller consults the public on the intended processing, without prejudice to the protection of the public interest or the security of the processing operations.

6. Without prejudice to the protection of the public interest or the security of the processing operations, the assessment shall be made easily accessible to the public.

7. The Commission shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 56 for the purpose of specifying further the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment referred to in paragraph 3, including conditions for scalability, verification and auditability. **[Am. 88]**

Article 26

Prior consultation of the supervisory authority

1. Member States shall ensure that the controller or the processor consults the supervisory authority prior to the processing of personal data ~~which will form part of a new filing system to be created~~***in order to ensure the compliance of the intended processing with the provisions adopted pursuant to this Directive and in particular to mitigate the risks involved for the data subjects*** where:

(a) ~~special categories of data referred to in Article 8 are to be processed~~***a data protection impact assessment as provided for in Article 25a indicates that processing operations by virtue of their nature, their scope and/or their purposes, are likely to present a high degree of specific risks; or***

(b) ~~the type of processing, in particular using new technologies, mechanisms or procedures, holds otherwise specific risks for the fundamental rights and freedoms, and in particular the protection of personal data, of data subjects~~***the supervisory authority deems it necessary to carry out a prior consultation on specified processing operations which are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes***.

1a. Where the supervisory authority determines in accordance with its power that the intended processing does not comply with the provisions adopted pursuant to this Directive, in particular where risks are insufficiently identified or mitigated, it shall prohibit the intended processing and make appropriate proposals to remedy such non-compliance.

2. Member States ~~may~~***shall*** provide that the supervisory authority ~~establishes,~~ ***after consulting the European Data Protection Board, shall establish*** a list of the processing operations which are subject to prior consultation pursuant to ***point (b) of*** paragraph 1.

2a. Member States shall provide that the controller or processor shall provide the supervisory authority with the data protection impact assessment pursuant to Article 25a and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

2b. If the supervisory authority is of the opinion that the intended processing does not comply with the provisions adopted pursuant to this Directive or that the risks are insufficiently identified or mitigated, it shall make appropriate proposals to remedy such non-compliance.

2c. Member States may consult the supervisory authority in the preparation of a legislative measure to be adopted by the national parliament or of a measure based on such a legislative measure, which defines the nature of the processing, in order to ensure the compliance of the intended processing under this Directive, and in particular to mitigate the risks involved for the data subjects. **[Am. 89]**

SECTION 2

~~DATA~~ DATA SECURITY

Article 27

Security of processing

1. Member States shall provide that the controller and the processor ~~implements~~***implement*** appropriate technical and organisational measures ***and procedures*** to ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art and the cost of their implementation.

2. In respect of automated data processing, each Member State shall provide that the controller or processor, following an evaluation of the risks, implements measures designed to:

(a) deny unauthorised persons access to data-processing equipment used for processing personal data (equipment access control);

(b) prevent the unauthorised reading, copying, modification or removal of data media (data media control);

(c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);

(d) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);

(e) ensure that persons authorised to use an automated data-processing system only have access to the data covered by their access authorisation (data access control);

(f) ensure that it is possible to verify and establish to which bodies personal data have been or may be transmitted or made available using data communication equipment (communication control);

(g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems and when and by whom the data were input (input control);

(h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);

(i) ensure that installed systems may, in case of interruption, be restored (recovery);

(j) ensure that the functions of the system perform, that the appearance of faults in the functions is reported (reliability) and that stored personal data cannot be corrupted by means of a malfunctioning of the system (integrity).

(ja) ensure that in case of sensitive personal data processing according to Article 8, additional security measures have to be in place, in order to guarantee situation awareness of risks and the ability to take preventive, corrective and mitigating action in near real time against vulnerabilities or incidents detected that could pose a risk to the data.

2a. Member States shall provide that processors may be appointed only if they guarantee that they observe the requisite technical and organisational measures under paragraph 1 and comply with the instructions under point (a) of Article 21(2). The competent authority shall monitor the processor in those respects.

3. The Commission may adopt, where necessary, implementing acts for specifying the requirements laid down in paragraphs 1 and 2 to various situations, notably encryption standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2). **[Am. 90]**

Article 28

Notification of a personal data breach to the supervisory authority

1. Member States shall provide that in the case of a personal data breach, the controller notifies, without undue delay and, where feasible, not later than 24 hours ~~after having become aware of it~~, the personal data breach to the supervisory authority. The controller shall provide, on request, to the supervisory authority a reasoned justification in cases ~~where the notification is not made within 24 hours~~***of any delay***.

2. The processor shall alert and inform the controller ~~immediately~~ ***without undue delay*** after ~~having become aware~~ ***the establishment*** of a personal data breach.

3. The notification referred to in paragraph 1 shall at least:

(a) describe the nature of the personal data breach including the categories and number of data subjects concerned and the categories and number of data records concerned;

(b) communicate the identity and contact details of the data protection officer referred to in Article 30 or other contact point where more information can be obtained;

(c) recommend measures to mitigate the possible adverse effects of the personal data breach;

(d) describe the possible consequences of the personal data breach;

(e) describe the measures proposed or taken by the controller to address the personal data breach ***and mitigate its effects***.

In case all information cannot be provided without undue delay, the controller can complete the notification in a second phase.

4. Member States shall provide that the controller documents any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This documentation must ***be sufficient to*** enable the supervisory authority to verify compliance with this Article. The documentation shall only include the information necessary for that purpose.

4a. The supervisory authority shall keep a public register of the types of breaches notified.

5. The Commission shall be empowered to adopt***, after requesting an opinion of the European Data Protection Board,*** delegated acts in accordance with Article 56 for the purpose of specifying further the criteria and requirements for establishing the data breach referred to in paragraphs 1 and 2 and for the particular circumstances in which a controller and a processor ~~is~~ ***are*** required to notify the personal data breach.

6. The Commission may lay down the standard format of such notification to the supervisory authority, the procedures applicable to the notification requirement and the form and the modalities for the documentation referred to in paragraph 4, including the time limits for erasure of the information contained therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2). **[Am. 91]**

Article 29

Communication of a personal data breach to the data subject

1. Member States shall provide that when the personal data breach is likely to adversely affect the protection of the personal data ~~or~~ ***, the*** privacy***, the rights or the legitimate interests*** of the data subject, the controller shall, after the notification referred to in Article 28, communicate the personal data breach to the data subject without undue delay.

2. The communication to the data subject referred to in paragraph 1 shall ***be comprehensive and use clear and plain language. It shall*** describe the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b), ~~and~~ (c) ***and (d)*** of Article 28(3) ***and information about the rights of the data subject, including redress***.

3. The communication of a personal data breach to the data subject shall not be required if the controller demonstrates to the satisfaction of the supervisory authority that it has implemented appropriate technological protection measures, and that those measures were applied to the personal data concerned by the personal data breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

3a. Without prejudice to the controller's obligation to notify the personal data breach to the data subject, if the controller has not already communicated the personal data breach to the data subject, the supervisory authority, having considered the likely adverse effects of the breach, may require it to do so.

4. The communication to the data subject may be delayed, ***or*** restricted ~~or omitted~~ on the grounds referred to in Article 11(4). **[Am. 92]**

SECTION 3

DATA PROTECTION OFFICER

Article 30

Designation of the data protection officer

1. Member States shall provide that the controller or the processor designates a data protection officer.

2. The data protection officer shall be designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 32. ***The necessary level of expert knowledge shall be determined, in particular, according to the data processing carried out and the protection required for the personal data processed by the controller or the processor.***

2a. Member States shall provide that the controller or the processor ensures that any other professional duties of the data protection officer are compatible with that person's tasks and duties as data protection officer and do not result in a conflict of interests.

2b. The data protection officer shall be appointed for a period of at least four years. The data protection officer may be reappointed for further terms. During the term of office, the data protection officer may only be dismissed from that function, if he or she no longer fulfils the conditions required for the performance of his or her duties.

2c. Member States shall provide the data subject with the right to contact the data protection officer on all issues related to the processing of his or her personal data.

3. The data protection officer may be designated for several entities, taking account of the organisational structure of the competent authority.

3a. Member States shall provide that the controller or the processor shall communicate the name and contact details of the data protection officer to the supervisory authority and to the public. **[Am. 93]**

Article 31

Position of the data protection officer

1. Member States shall provide that the controller or the processor ensures that the data protection officer is properly and in a timely manner involved in all issues which relate to the protection of personal data.

2. The controller or processor shall ensure that the data protection officer is provided with the means to perform duties and tasks referred to under Article 32 effectively and independently, and does not receive any instructions as regards the exercise of the function.

2a. The controller or the processor shall support the data protection officer in performing his or her tasks and shall provide all the means, including staff, premises, equipment, continuous professional training and any other resources necessary to carry out the duties and tasks referred to in Article 32, and to maintain his or her professional knowledge. **[Am. 94]**

Article 32

Tasks of the data protection officer

Member States shall provide that the controller or the processor entrusts the data protection officer at least with the following tasks:

(a) ***to raise awareness,*** to inform and advise the controller or the processor of their obligations in accordance with the provisions adopted pursuant to this Directive***, in particular with regard to technical and organisational measures and procedures,*** and to document this activity and the responses received;

(b) to monitor the implementation and application of the policies in relation to the protection of personal data, including the assignment of responsibilities, the training of staff involved in the processing operations and the related audits;

(c) to monitor the implementation and application of the provisions adopted pursuant to this Directive, in particular as to the requirements related to data protection by design, data protection by default and data security and to the information of data subjects and their requests in exercising their rights under the provisions adopted pursuant to this Directive;

(d) to ensure that the documentation referred to in Article 23 is maintained;

(e) to monitor the documentation, notification and communication of personal data breaches pursuant to Articles 28 and 29;

(f) to monitor ***the application of the data protection impact assessment by the controller or processor and*** the application for prior consultation to the supervisory authority, if required pursuant to Article 26***(1)***;

(g) to monitor the response to requests from the supervisory authority, and, within the sphere of the data protection officer's competence, co-operating with the supervisory authority at the latter's request or on his own initiative;

(h) to act as the contact point for the supervisory authority on issues related to the processing and consult with the supervisory authority, if appropriate, on the data protection officer's own initiative. **[Am. 95]**

CHAPTER V

TRANSFER OF PERSONAL DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

Article 33

General principles for transfers of personal data

Member States shall provide that any transfer of personal data by competent authorities that are undergoing processing or are intended for processing after transfer to a third country, or to an international organisation, including further onward transfer to another third country or international organisation, may take place only if:

(a) the ***specific*** transfer is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; and

(aa) the data are transferred to a controller in a third country or international organisation that is a public authority competent for the purposes referred to in Article 1(1); and

(ab) the conditions laid down in this Chapter are complied with by the controller and the processor, including for onward transfers of personal data from a third country or an international organisation to another third country or to another international organisation; and

(b) the ~~conditions laid down in this Chapter~~ ***other provisions adopted pursuant to this Directive*** are complied with by the controller and processor.***; and***

(ba) the level of protection of the personal data individuals guaranteed in the Union by this Directive is not undermined; and

(bb) the Commission has decided under the conditions and procedure referred to in Article 34 that the third country or international organisation in question ensures an adequate level of protection; or

(bc) appropriate safeguards with respect to the protection of personal data have been adduced in a legally binding instrument as referred to in Article 35.

Member States shall provide that further onward transfers referred to in paragraph 1 of this Article may only take place if, in addition to the conditions laid down in that paragraph:

(a) the onward transfer is necessary for the same specific purpose as the original transfer; and

(b) the competent authority that carried out the original transfer authorises the onward transfer. **[Am. 96]**

Article 34

Transfers with an adequacy decision

1. Member States shall provide that a transfer of personal data to a third country or an international organisation may take place where the Commission has decided ~~in accordance with Article 41 of Regulation (EU) …./2012 or~~ in accordance with paragraph 3 of this Article that the third country or a territory or a processing sector within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any ~~further~~ ***specific*** authorisation.

2. ~~Where no decision adopted in accordance with Article 41 of Regulation (EU) …./2012 exists~~***When assessing the adequacy of the level of protection***, the Commission shall ~~assess the adequacy of the level of protection, giving~~ ***give*** consideration to the following elements:

(a) the rule of law, relevant legislation in force~~, both general and sectoral,~~ including concerning public security, defence, national security and criminal law as well as the ***implementation of this legislation and the*** security measures which are complied with in that country or by that international organisation; ***jurisprudential precedents*** as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or international organisation in question responsible for ensuring compliance with the data protection rules, ***including sufficient sanctioning powers,*** for assisting and advising the data subject in exercising his or her rights and for co-operation with the supervisory authorities of the Union and of Member States; and

(c) the international commitments the third country or international organisation in question has entered into***, in particular any legally binding conventions or instruments with respect to the protection of personal data***.

3. The Commission ~~may~~ ***shall be empowered to adopt, after requesting an opinion of the European Data Protection Board, delegated acts in accordance with Article 56 to*** decide, within the scope of this Directive, that a third country or a territory or a processing sector within that third country or an international organisation ensures an adequate level of protection within the meaning of paragraph 2. ~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).~~

4. The ~~implementing~~***delegated*** act shall specify its geographical and sectoral application, and~~, where applicable,~~ identify the supervisory authority mentioned in point (b) of paragraph 2.

4a. The Commission shall, on an on-going basis, monitor developments that could affect the fulfilment of the elements listed in paragraph 2 in third countries and international organisations in relation to which a delegated act pursuant to paragraph 3 has been adopted.

5. The Commission ~~may~~***shall be empowered to adopt delegated acts in accordance with Article 56 to*** decide within the scope of this Directive that a third country or a territory or a processing sector within that third country or an international organisation does not ensure an adequate level of protection within the meaning of paragraph 2, in particular in cases where the relevant legislation~~, both general and sectoral,~~ in force in the third country or international organisation, does not guarantee effective and enforceable rights, including effective administrative and judicial redress for data subjects, in particular for those data subjects whose personal data are being transferred. ~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2), or, in cases of extreme urgency for individuals with respect to their right to personal data protection, in accordance with the procedure referred to in Article 57(3).~~

6. Member States shall ensure that where the Commission decides pursuant to paragraph 5, ~~that~~ any transfer of personal data to the third country or a territory or a processing sector within that third country, or the international organisation in question shall be prohibited~~, this decision shall be without prejudice to transfers under Article 35(1) or in accordance with Article 36~~. At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the Decision made pursuant to paragraph 5 of this Article.

7. The Commission shall publish in the *Official Journal of the European Union* a list of those third countries, territories and processing sectors within a third country or an international organisation where it has decided that an adequate level of protection is or is not ensured.

8. The Commission shall monitor the application of the ~~implementing~~ ***delegated*** acts referred to in paragraphs 3 and 5. **[Am. 97]**

Article 35

Transfers by way of appropriate safeguards

1. Where the Commission has taken no decision pursuant to Article 34, ~~Member States shall provide that a~~ ***or decides that a third country, or a territory within that third country, or an international organisation does not ensure an adequate level of protection in accordance with Article 34(5), a controller or processor may not*** transfer ~~of~~ personal data to ~~a recipient in~~ a third country***, or a territory within that third country,*** or an international organisation ~~may take place where:~~***unless the controller or processor has adduced appropriate safeguards with respect to the protection of personal data in a legally binding instrument.***

~~(a) appropriate safeguards with respect to the protection of personal data have been adduced in a legally binding instrument; or~~

~~(b) the controller or processor has assessed all the circumstances surrounding the transfer of personal data and concludes that appropriate safeguards exist with respect to the protection of personal data.~~

2. ~~The decision for transfers under paragraph 1 (b) must be made by duly authorised staff.~~ Those transfers must be ~~documented and the documentation must be made available to the supervisory authority on request~~***authorised by the supervisory authority prior to the transfer***. **[Am. 98]**

Article 36

Derogations

1. Where the Commission decides pursuant to Article 34(5) that an adequate level of protection does not exist, personal data may not be transferred to the third country or to the international organisation in question if, in the case in question, the legitimate interests of the data subject in preventing any such transfer outweigh the public interest in transferring such data.

2. By way of derogation from Articles 34 and 35, Member States shall provide that a transfer of personal data to a third country or an international organisation may take place only on condition that:

(a) the transfer is necessary in order to protect the vital interests of the data subject or another person; or

(b) the transfer is necessary to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides; or

(c) the transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member State or a third country; or

(d) the transfer is necessary in individual cases for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties; or

(e) the transfer is necessary in individual cases for the establishment, exercise or defence of legal claims relating to the prevention, investigation, detection or prosecution of a specific criminal offence or the execution of a specific criminal penalty.

2a. Processing based on paragraph 2 must have a legal basis in Union law, or the law of the Member State to which the controller is subject; that law must meet public interest objective or the need to protect the rights and freedoms of others, respects the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued.

2b. All transfers of personal data decided on the basis of derogations shall be duly justified and shall be limited to what is strictly necessary, and frequent massive transfers of data shall not be allowed.

2c. The decision for transfers under paragraph 2 must be made by duly authorised staff. Those transfers must be documented and the documentation must be made available to the supervisory authority on request, including the date and time of the transfer, information about the recipient authority, the justification for the transfer and the data transferred. **[Am. 99]**

Article 37

Specific conditions for the transfer of personal data

Member States shall provide that the controller informs the recipient of the personal data of any processing restrictions and takes all reasonable steps to ensure that these restrictions are met. ***The controller shall also notify the recipient of the personal data of any update, rectification or erasure of data, and the recipient shall in turn make the corresponding notification in the event that the data have subsequently been transferred.*** **[Am. 100]**

Article 38

International co-operation for the protection of personal data

1. In relation to third countries and international organisations, the Commission and Member States shall take appropriate steps to:

(a) develop effective international co-operation mechanisms to ~~facilitate~~***ensure*** the enforcement of legislation for the protection of personal data; **[Am. 101]**

(b) provide international mutual assistance in the enforcement of legislation for the protection of personal data, including through notification, complaint referral, investigative assistance and information exchange, subject to appropriate safeguards for the protection of personal data and other fundamental rights and freedoms;

(c) engage relevant stakeholders in discussion and activities aimed at furthering international co-operation in the enforcement of legislation for the protection of personal data;

(d) promote the exchange and documentation of personal data protection legislation and practice.;

(da) clarify and consult on jurisdictional conflicts with third countries. **[Am. 102]**

2. For the purposes of paragraph 1, the Commission shall take appropriate steps to advance the relationship with third countries or with international organisations, and in particular their supervisory authorities, where the Commission has decided that they ensure an adequate level of protection within the meaning of Article 34(3).

Article 38a

Report by the Commission

The Commission shall submit a report on the application of Articles 33 to 38 to the European Parliament and to the Council at regular intervals. The first report shall be submitted not later than four years after the entry into force of this Directive. For that purpose, the Commission may request information from the Member States and supervisory authorities, which shall supply that information without undue delay. The report shall be made public. **[Am. 103]**

CHAPTER VI

INDEPENDENT SUPERVISORY AUTHORITIES

SECTION 1

INDEPENDENT STATUS

Article 39

Supervisory authority

1. Each Member State shall provide that one or more public authorities are responsible for monitoring the application of the provisions adopted pursuant to this Directive and for contributing to its consistent application throughout the Union, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union. For this purpose, the supervisory authorities shall co-operate with each other and the Commission.

2. Member States may provide that the supervisory authority established in Member States pursuant to Regulation (EU) …./2014 assumes responsibility for the tasks of the supervisory authority to be established pursuant to paragraph 1 of this Article.

3. Where more than one supervisory authority is established in a Member State, that Member State shall designate the supervisory authority which functions as a single contact point for the effective participation of those authorities in the European Data Protection Board.

Article 40

Independence

1. Member States shall ensure that the supervisory authority acts with complete independence in exercising the duties and powers entrusted to it***, notwithstanding co-operation arrangements pursuant to Chapter VII of this Directive***. **[Am. 104]**

2. Each Member State shall provide that the members of the supervisory authority, in the performance of their duties, neither seek nor take instructions from anybody***, and maintain complete independence and impartiality***. **[Am. 105]**

3. Members of the supervisory authority shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.

4. Members of the supervisory authority shall behave, after their term of office, with integrity and discretion as regards the acceptance of appointments and benefits.

5. Each Member State shall ensure that the supervisory authority is provided with the adequate human, technical and financial resources, premises and infrastructure necessary for the effective performance of its duties and powers including those to be carried out in the context of mutual assistance, co-operation and active participation in the European Data Protection Board.

6. Each Member State shall ensure that the supervisory authority must have its own staff which shall be appointed by and subject to the direction of the head of the supervisory authority.

7. Member States shall ensure that the supervisory authority is subject to financial control which shall not affect its independence. Member States shall ensure that the supervisory authority has separate annual budgets. The budgets shall be made public.

Article 41

General conditions for the members of the supervisory authority

1. Member States shall provide that the members of the supervisory authority must be appointed either by the parliament or the government of the Member State concerned.

2. The members shall be chosen from persons whose independence is beyond doubt and whose experience and skills required to perform their duties are demonstrated.

3. The duties of a member shall end in the event of the expiry of the term of office, resignation or compulsory retirement in accordance with paragraph 5.

4. A member may be dismissed or deprived of the right to a pension or other benefits in its stead by the competent national court, if the member no longer fulfils the conditions required for the performance of the duties or is guilty of serious misconduct.

5. Where the term of office expires or the member resigns, the member shall continue to exercise his or her duties until a new member is appointed.

Article 42

Rules on the establishment of the supervisory authority

Each Member State shall provide by law:

(a) the establishment and status of the supervisory authority in accordance with Articles 39 and 40;

(b) the qualifications, experience and skills required to perform the duties of the members of the supervisory authority;

(c) the rules and procedures for the appointment of the members of the supervisory authority, as well as the rules on actions or occupations incompatible with the duties of the office;

(d) the duration of the term of the members of the supervisory authority, which shall be no less than four years, except for the first appointment after entry into force of this Directive, part of which may take place for a shorter period;

(e) whether the members of the supervisory authority shall be eligible for reappointment;

(f) the regulations and common conditions governing the duties of the members and staff of the supervisory authority;

(g) the rules and procedures on the termination of the duties of the members of the supervisory authority, including where they no longer fulfil the conditions required for the performance of their duties or if they are guilty of serious misconduct.

Article 43

Professional secrecy

Member States shall provide that the members and the staff of the supervisory authority are subject, both during and after their term of office ***and in conformity with national legislation and practice***, to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties***, whilst conducting their duties with independence and transparency as set out in this Directive***. **[Am. 106]**

SECTION 2

DUTIES AND POWERS

Article 44

Competence

1. Member States shall provide that each supervisory authority ~~exercises~~***is competent to perform the duties and to exercise***, on the territory of its own Member State, the powers conferred on it in accordance with this Directive. **[Am. 107]**

2. Member States shall provide that the supervisory authority is not competent to supervise processing operations of courts when acting in their judicial capacity.

Article 45

Duties

1. Member States shall provide that the supervisory authority:

(a) monitors and ensures the application of the provisions adopted pursuant to this Directive and its implementing measures;

(b) hears complaints lodged by any data subject, or by an association ~~representing and duly mandated by that data subject~~ in accordance with Article 50, investigates, to the extent appropriate, the matter and informs the data subject ***or*** the association of the progress and the outcome of the complaint within a reasonable period, in particular where further investigation or coordination with another supervisory authority is necessary;

(c) checks the lawfulness of data processing pursuant to Article 14, and informs the data subject within a reasonable period on the outcome of the check or on the reasons why the check has not been carried out;

(d) provides mutual assistance to other supervisory authorities and ensures the consistency of application and enforcement of the provisions adopted pursuant to this Directive;

(e) conducts investigations***, inspections and audits,*** either on its own initiative or on the basis of a complaint, or at the request of another supervisory authority, and informs the data subject concerned, if the data subject has addressed a complaint, of the outcome of the investigations within a reasonable period;

(f) monitors relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies;

(g) is consulted by Member State institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data;

(h) is consulted on processing operations pursuant to Article 26;

(i) participates in the activities of the European Data Protection Board.

2. Each supervisory authority shall promote the awareness of the public on risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention.

3. The supervisory authority shall, upon request, advise any data subject in exercising the rights laid down in provisions adopted pursuant to this Directive, and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.

4. For complaints referred to in point (b) of paragraph 1, the supervisory authority shall provide a complaint submission form, which can be completed electronically, without excluding other means of communication.

5. Member States shall provide that the performance of the duties of the supervisory authority shall be free of charge for the data subject.

6. Where requests are ~~vexatious~~ ***manifestly excessive***, in particular due to their repetitive character, the supervisory authority may charge a ***reasonable*** fee ~~or not take the action required by the data subject~~. ***Such a fee shall not exceed the costs of taking the action requested.*** The supervisory authority shall bear the burden of proving the ~~vexatious~~ ***manifestly excessive*** character of the request. **[Am. 108]**

Article 46

Powers

1. Member States shall provide that each supervisory authority ~~must in particular be endowed with~~***has the power***:

(a) ~~investigative powers, such as powers of access to data forming the subject matter of processing operations and powers to collect all the information necessary for the performance of its supervisory duties~~***to notify the controller or the processor of an alleged breach of the provisions governing the processing of personal data and, where appropriate, order the controller or the processor to remedy that breach, in a specific manner, in order to improve the protection of the data subject;***;

(b) ~~effective powers of intervention, such as the delivering of opinions before processing is carried out, and ensuring appropriate publication of such opinions, ordering the restriction, erasure or destruction of data, imposing a temporary or definitive ban on processing, warning or admonishing the controller, or referring the matter to national parliaments or other political institutions~~ ***to order the controller to comply with the data subject's requests to exercise his or her rights under this Directive, including those provided by Articles 12 to 17 where such requests have been refused in breach of those provisions;***

(c) ~~the power to engage in legal proceedings where the provisions adopted pursuant to this Directive have been infringed or to bring this infringement to the attention of the judicial authorities.~~***to order the controller or the processor to provide information pursuant to Article 10(1) and (2) and Articles 11, 28 and 29;***

(d) to ensure compliance with opinions on prior consultations referred to in Article 26;

(e) to warn or admonish the controller or the processor;

(f) to order the rectification, erasure or destruction of all data when they have been processed in breach of the provisions adopted pursuant to this Directive and the notification of such actions to third parties to whom the data have been disclosed;

(g) to impose a temporary or definitive ban on processing;

(h) to suspend data flows to a recipient in a third country or to an international organisation;

(i) to inform national parliaments, the government or other public institutions as well as the public on the matter.

2. Each supervisory authority shall have the investigative power to obtain from the controller or the processor:

(a) access to all personal data and to all information necessary for the performance of its supervisory duties,

(b) access to any of its premises, including to any data processing equipment and means, in accordance with national law, where there are reasonable grounds for presuming that an activity in violation of the provisions adopted pursuant to this Directive is being carried out there, without prejudice to a judicial authorisation if required by national law.

3. Without prejudice to Article 43, Member States shall provide that no additional secrecy requirements shall be issued at the request of supervisory authorities.

4. Member States may provide that additional security screening in line with national law is required for access to information classified at a level similar to EU CONFIDENTIAL or higher. If no additional security screening is required under the law of the Member State of the relevant supervisory authority, this must be recognised by all other Member States.

5. Each supervisory authority shall have the power to bring breaches of the provisions adopted pursuant to this Directive to the attention of the judicial authorities and to engage in legal proceedings and bring an action to the competent court pursuant to Article 53(2).

6. Each supervisory authority shall have the power to impose penalties in respect of administrative offences. **[Am. 109]**

Article 46a

Reporting of breaches

1. Member States shall provide that the supervisory authorities take into account guidance issued by the European Data Protection Board pursuant to Article 66(4b) of Regulation (EU) …/2014 and shall put in place effective mechanisms to encourage confidential reporting of breaches of this Directive.

2. Member States shall provide that the competent authorities shall put in place effective mechanisms to encourage confidential reporting of breaches of this Directive. **[Am. 110]**

Article 47

Activities report

Member States shall provide that each supervisory authority draws up ~~an annual~~ ***a*** report on its activities***, at least every two years***. The report shall be made available to ***the public, the respective Parliament,*** the Commission and the European Data Protection Board. ***It shall include information on the extent to which competent authorities in their jurisdiction have accessed data held by private parties to investigate or prosecute criminal offences***. **[Am. 111]**

CHAPTER VII

CO-OPERATION

Article 48

Mutual assistance

1. Member States shall provide that supervisory authorities provide each other with mutual assistance in order to implement and apply the provisions pursuant to this Directive in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior consultations, inspections and investigations.

2. Member States shall provide that a supervisory authority takes all appropriate measures required to reply to the request of another supervisory authority. ***Such measures may include, in particular, the transmission of relevant information or enforcement measures to bring about the cessation or prohibition of processing operations contrary to this Directive without delay and not later than one month after having received the request.***

2a. The request for assistance shall contain all the necessary information, including the purpose of the request, and reasons for the request. Information exchanged shall be used only in respect of the matter for which it was requested.

2b. A supervisory authority to which a request for assistance is addressed may not refuse to comply with it unless:

(a) it is not competent to deal with the request; or

(b) compliance with the request would be incompatible with the provisions adopted pursuant to this Directive.

3. The requested supervisory authority shall inform the requesting supervisory authority of the results or, as the case may be, of the progress or the measures taken in order to meet the request by the requesting supervisory authority.

3a. Supervisory authorities shall supply the information requested by other supervisory authorities by electronic means and within the shortest possible period of time, using a standardised format.

3b. No fee shall be charged for any action taken following a request for mutual assistance. **[Am. 112]**

Article 48a

Joint operations

1. Member States shall provide that, in order to step up cooperation and mutual assistance, the supervisory authorities may carry out joint enforcement measures and other joint operations in which designated members or staff from supervisory authorities of other Member States participate in operations within a Member State's territory.

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2. Member States shall provide that in cases where data subjects in another Member State or other Member States are likely to be affected by processing operations, the competent supervisory authority may be invited to participate in the joint operations. The competent supervisory authority may invite the supervisory authority of each of those Member States to take part in the respective operation and in case where it is invited, respond to the request of a supervisory authority to participate in the operations without delay.

3. Member States shall lay down the practical aspects of specific co-operation actions. **[Am. 113]**

Article 49

Tasks of the European Data Protection Board

1. The European Data Protection Board established by Regulation (EU)…./~~2012~~***2014*** shall exercise the following tasks in relation to processing within the scope of this Directive:

(a) advise the ~~Commission~~***Union institutions*** on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Directive;

(b) examine, ~~on~~***at the*** request of the Commission***, the European Parliament or the Council*** or on its own initiative or of one of its members, any question covering the application of the provisions adopted pursuant to this Directive and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of those provisions***, including on the use of enforcement powers***;

(c) review the practical application of guidelines, recommendations and best practices referred to in point (b) and report regularly to the Commission on these;

(d) give the Commission an opinion on the level of protection in third countries or international organisations;

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities***, including the coordination of joint operations and other joint activities where it so decides at the request of one or more supervisory authorities***;

(f) promote common training programmes and facilitate personnel exchanges between the supervisory authorities, as well as, where appropriate, with the supervisory authorities of third countries or of international organisations;

(g) promote the exchange of knowledge and documentation with data protection supervisory authorities worldwide, including data protection legislation and practice.;

(ga) give its opinion to the Commission in the preparation of delegated and implementing acts under this Directive.

2. Where ***the European Parliament, the Council or*** the Commission requests advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall provide such advice, taking into account the urgency of the matter.

3. The European Data Protection Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and to the committee referred to in Article 57(1) and make them public.

4. The Commission shall inform the European Data Protection Board of the action it has taken following opinions, guidelines, recommendations and best practices issued by the European Data Protection Board. **[Am. 114]**

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CHAPTER VIII

REMEDIES, LIABILITY AND SANCTIONS

Article 50

Right to lodge a complaint with a supervisory authority

1. Without prejudice to any other administrative or judicial remedy, Member States shall provide for the right of every data subject to lodge a complaint with a supervisory authority in any Member State, if they consider that the processing of personal data relating to them does not comply with provisions adopted pursuant to this Directive.

2. Member States shall provide for the right of any body, organisation or association ***acting in the public interest*** which ~~aims to protect data subjects' rights and interests concerning the protection of their personal data and is being which~~ ***has been*** properly constituted according to the law of a Member State to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects, if it considers that a data subject's rights under this Directive have been infringed as a result of the processing of personal data. ~~The organisation or association must be duly mandated by the data subject(s).~~ **[Am. 115]**

3. Member States shall provide for the right of any body, organisation or association referred to in paragraph 2, independently of a data subject's complaint, to lodge a complaint with a supervisory authority in any Member State, if it considers that a personal data breach has occurred.

Article 51

Right to a judicial remedy against a supervisory authority

1. Member States shall provide for the right ***for each natural or legal person*** to a judicial remedy against decisions of a supervisory authority ***concerning them***.

2. ***Member States shall provide that*** ~~Each~~***each*** data subject shall have the right to a judicial remedy for obliging the supervisory authority to act on a complaint, in the absence of a decision which is necessary to protect their rights, or where the supervisory authority does not inform the data subject within three months on the progress or outcome of the complaint pursuant to point (b) of Article 45(1).

3. Member States shall provide that proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.

3a. Member States shall ensure that final decisions by the court referred to in this Article will be enforced. **[Am. 116]**

Article 52

Right to a judicial remedy against a controller or processor

1. Without prejudice to any available administrative remedy, including the right to lodge a complaint with a supervisory authority, Member States shall provide for the right of every natural person to a judicial remedy if they consider that that their rights laid down in provisions adopted pursuant to this Directive have been infringed as a result of the processing of their personal data in non-compliance with these provisions.

1a. Member States shall ensure that final decisions by the court referred to in this Article will be enforced. **[Am. 117]**

Article 53

Common rules for court proceedings

1. Member States shall provide for the right of any body, organisation or association referred to in Article 50(2) to exercise the rights referred to in Articles 51, ~~and~~ 52 ~~on behalf of~~ ***and 54 when mandated by*** one or more data subjects. **[Am. 118]**

2. ***Member States shall provide that*** ~~Each~~ ***each*** supervisory authority shall have the right to engage in legal proceedings and bring an action to court, in order to enforce the provisions adopted pursuant to this Directive or to ensure consistency of the protection of personal data within the Union. **[Am. 119]**

3. Member States shall ensure that court actions available under national law allow for the rapid adoption of measures including interim measures, designed to terminate any alleged infringement and to prevent any further impairment of the interests involved.

Article 54

Liability and the right to compensation

1. Member States shall provide that any person who has suffered damage***, including non pecuniary damage,*** as a result of an unlawful processing operation or of an action incompatible with the provisions adopted pursuant to this Directive shall have the right to ~~receive~~ ***claim*** compensation from the controller or the processor for the damage suffered. **[Am. 120]**

2. Where more than one controller or processor is involved in the processing, each controller or processor shall be jointly and severally liable for the entire amount of the damage.

3. The controller or the processor may be exempted from this liability, in whole or in part, if the controller or processor proves that he or she is not responsible for the event giving rise to the damage.

Article 55

Penalties

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

Chapter VIIIa

Transmission of personal data to other parties

Article 55a

Transmission of personal data to other authorities or private parties in the Union

1. Member States shall ensure that the controller does not transmit or instruct the processor to transmit personal data to a natural or legal person not subject to the provisions adopted pursuant to this Directive, unless:

(a) the transmission complies with Union or Member State law; and

(b) the recipient is established in a Member State of the European Union; and

(c) no legitimate specific interests of the data subject prevent transmission; and

(d) the transmission is necessary in a specific case for the controller transmitting the personal data for:

(i) the performance of a task lawfully assigned to it; or

(ii) the prevention of an immediate and serious danger to public security; or

(iii) the prevention of serious harm to the rights of individuals.

2. The controller shall inform the recipient of the purpose for which the personal data may exclusively be processed.

3. The controller shall inform the supervisory authority of such transmissions.

4. The controller shall inform the recipient of processing restrictions and ensure that those restrictions are met. **[Am. 121]**

CHAPTER IX

DELEGATED ACTS AND IMPLEMENTING ACTS

Article 56

Exercise of the delegation

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

2. The ~~delegation of power~~***power to adopt delegated acts*** referred to in ***Article 25a(7),*** Article 28(5)***, Article 34(3) and Article 34(5)*** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

3. The delegation of power referred to in ***Article 25a(7),*** Article 28(5)***, Article 34(3) and Article 34(5)*** may be revoked at any time by the European Parliament or by the Council. A decision ~~of revocation~~ ***to revoke*** shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to ***Article 25a(7),*** Article 28(5)***, Article 34(3) and Article 34(5)*** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ~~2~~***six*** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by ~~2~~***six*** months at the initiative of the European Parliament or ***of*** the Council. **[Am. 122]**

Article 56a

Deadline for the adoption of delegated acts

The Commission shall adopt the delegated acts under Article 25a(7) and Article 28(5) by [six months before the date referred to in Article 62(1)]. The Commission may extend the deadline referred to in this paragraph by six months. **[Am. 123]**

Article 57

Committee procedure

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

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

~~3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.~~**[Am. 124]**

CHAPTER X

FINAL PROVISIONS

Article 58

Repeals

1. Framework Decision 2008/977/JHA is repealed.

2. References to the repealed Framework Decision referred to in paragraph 1 shall be construed as references to this Directive.

Article 59

Relation with previously adopted acts of the Union for judicial co-operation in criminal matters and police co-operation

The specific provisions for the protection of personal data with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties in acts of the Union adopted prior to the date of adoption of this Directive regulating the processing of personal data between Member States and the access of designated authorities of Member States to information systems established pursuant to the Treaties within the scope of this Directive remain unaffected.

Article 60

Relationship with previously concluded international agreements in the field of judicial co-operation in criminal matters and police co-operation

International agreements concluded by Member States prior to the entry force of this Directive shall be amended, where necessary, within five years after the entry into force of this Directive.

Article 61

Evaluation

1. The Commission shall***, after requesting an opinion of the European Data Protection Board,*** evaluate the application ***and implementation*** of this Directive. ***. It shall coordinate in close cooperation with the Member States and shall include announced and unannounced visits. The European Parliament and the Council shall be kept informed throughout the process and shall have access to the relevant documents.***

2. The Commission shall review within ~~three~~ ***two*** years after the entry into force of this Directive other acts adopted by the European Union which regulate the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, in particular those acts adopted by the Union referred to in Article 59, ~~in order to assess the need to align them with this Directive and make, where appropriate, the necessary proposals to amend these acts to ensure a consistent approach on the protection of personal data~~ ***and shall make appropriate proposals with a view to ensuring consistent and homogeneous legal rules relating to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties*** within the scope of this Directive.

2a. The Commission shall present within two years of the entry into force of this Directive appropriate proposals for the revision of the legal framework applicable to the processing of personal data by Union institutions, bodies, offices and agencies, for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties with a view to ensuring consistent and homogeneous legal rules relating to the fundamental right to the protection of personal data in the Union.

3. The Commission shall submit reports on the evaluation and review of this Directive pursuant to paragraph 1 to the European Parliament and ***to*** the Council at regular intervals. The first reports shall be submitted not later than four years after the entry into force of this Directive. Subsequent reports shall be submitted every four years thereafter. The Commission shall submit, if necessary, appropriate proposals with a view to amending this Directive and aligning other legal instruments. The report shall be made public. **[Am. 125]**

Article 62

Implementation

1. Member States shall adopt and publish, by … (*) at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith notify to the Commission the text of those provisions.

They shall apply those provisions from … (*).

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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 63

Entry into force and application

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

Article 64

Addressees

This Directive is addressed to the Member States.

Done at …,

For the European Parliament	*For the Council*
The President	*The President*

(*) Two years after the date of entry into force of this Directive.

Wednesday 12 March 2014

P7_TA(2014)0220

Implementation of the Single European Sky ***I

European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the implementation of the Single European Sky (recast) (COM(2013)0410 — C7-0171/2013 — 2013/0186(COD))

(Ordinary legislative procedure — recast)

(2017/C 378/60)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0410),

— having regard to Article 294(2) and Article 100(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0171/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Maltese House of Representatives, asserting that the draft legislative act does not comply with the principle of subsidiarity,

— having regard to the opinion of the European Economic and Social Committee of 11 December 2013 ([1]),

— after consulting the Committee of the Regions,

— having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts ([2]),

— having regard to the letter of 28 November 2013 from the Committee on Legal Affairs to the Committee on Transport and Tourism in accordance with Rule 87(3) of its Rules of Procedure,

— having regard to Rules 87 and 55 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism (A7-0095/2014),

A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;

1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

([1]) Not yet published in the Official Journal.
([2]) OJ C 77, 28.3.2002, p. 1.

Wednesday 12 March 2014

P7_TC1-COD(2013)0186

Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council on the implementation of the Single European Sky (recast)

(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 100(2) thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

(1) Regulation (EC) No 549/2004 of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) ([3]), Regulation (EC) No 550/2004 of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) ([4]), Regulation (EC) No 551/2004 of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) ([5]) and Regulation (EC) No 552/2004 of 10 March 2004 on the interoperability of the European air traffic management network (the interoperability Regulation) ([6]) have been substantially amended. Since further amendments are to be made, they should be recast in the interests of clarity.

~~(2) Implementation of the common transport policy requires an efficient air transport system allowing safe and regular operation of air transport services, thus facilitating the free movement of goods, persons and services.~~ **[Am. 1]**

(3) The adoption by the European Parliament and the Council of the first package of the single European sky legislation, namely, Regulation (EC) No 549/2004, Regulation (EC) No 550/2004, Regulation (EC) No 551/2004, and Regulation (EC) No 552/2004, laid down a firm legal basis for a seamless, interoperable and safe air traffic management (ATM) system. The adoption of the second package, namely, Regulation (EC) No 1070/2009, further strengthened the Single European Sky initiative by introducing the performance scheme and the Network Manager concepts to further improve the performance of the European Air Traffic Management system

(4) In Article 1 of the 1944 Chicago Convention on Civil Aviation, the Contracting States recognise that 'every State has complete and exclusive sovereignty over the airspace above its territory'. It is within the framework of such sovereignty that the Member States of the Union, subject to applicable international conventions, exercise the powers of a public authority when controlling air traffic.

([1]) Not yet published in the Official Journal.
([2]) Position of the European Parliament of 12 March 2014.
([3]) OJ L 96, 31.3.2004, p. 1.
([4]) OJ L 96, 31.3.2004, p. 10.
([5]) OJ L 96, 31.3.2004, p. 20.
([6]) OJ L 96, 31.3.2004, p. 26.

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(5) Implementation of the common transport policy requires an efficient air transport system allowing the safe, regular and sustainable operation of air transport services, optimising capacity and facilitating the free movement of goods, persons and services.

(5a) In order to ensure that the expected increase in air traffic does not cause or exacerbate congestion in European airspace, with all the economic, environmental and security costs that that would entail, fragmentation of that airspace should be remedied and this Regulation should be implemented as swiftly as possible. **[Am. 2]**

(5b) The implementation of the Single European Sky should have a positive impact in terms of growth, employment and competitiveness in Europe, in particular by increasing demand for jobs requiring advanced qualifications. **[Am. 3]**

(6) The simultaneous pursuit of the goals of augmentation of air traffic safety standards and improvement of the overall performance of ATM and ANS for general air traffic in Europe require that the human factor be taken into account. Therefore ~~the Member States should consider~~***, in addition to*** the introduction of 'just culture' principles***, relevant performance indicators should be built into the performance scheme of the Single European Sky***. **[Am. 4]**

(7) The Member States have adopted a general statement on military issues related to the Single European Sky ([1]). According to this statement, Member States should, in particular, enhance civil-military cooperation and, if and to the extent deemed necessary by all Member States concerned, facilitate cooperation between their armed forces in all matters of air traffic management ***in order to facilitate flexible use of airspace***. **[Am. 5]**

(8) Decisions relating to the content, scope or carrying out of military operations and training do not fall within the sphere of competence of the Union under Article 100(2) of the Treaty on the Functioning of the European Union.

(9) Member States have restructured, to varying degrees, their national air navigation service providers by increasing their level of autonomy and freedom to provide services. It is necessary to ensure that a well-functioning common market exists for those services that can be provided under market conditions and minimum public-interest requirements are satisfied for those services that are considered natural monopolies under current technological conditions.

(10) To ensure the consistent ~~and~~, sound ***and independent*** oversight of service provision across Europe, the national ~~supervisory~~ ***aviation*** authorities should be guaranteed sufficient ~~independence~~ ***financial*** and ***human*** resources. This independence should not prevent those authorities from exercising their tasks within an administrative framework. **[Am. 6]**

(11) National ~~supervisory~~ ***aviation*** authorities have a key role to play in the implementation of the Single European Sky***. The Commission*** and the ~~Commission~~ ***European Agency for Aviation (EAA)*** should therefore facilitate cooperation among them in order to enable the exchange of best practices and to develop a common approach, including through enhanced cooperation at regional level***, by providing a platform for such exchanges***. This cooperation should take place on a regular basis. **[Am. 7**

(12) ***For the implementation of the Single European Sky,*** the social partners should be ~~better~~ informed and consulted on all measures having significant social implications. At Union level, the Sectoral Dialogue Committee set up under Commission Decision 98/500/EC ([2]) should also be consulted. **[Am. 8]**

(13) The provision of communication, navigation and surveillance services, as well as meteorological***, airspace design*** and aeronautical information services, ~~should~~ ***together with services formatting and delivering data to general air traffic, could*** be organised under market conditions whilst taking into account the special features of such services ~~and maintaining~~***,ensuring*** a high level of safety ***and reducing climate impact***. **[Am. 9]**

([1]) OJ L 96, 31.3.2004, p. 9.
([2]) OJ L 225, 12.8.1998, p. 27.

(14) There should be no discrimination between airspace users as to the provision of equivalent air navigation services.

(15) The concept of common projects, aimed at assisting airspace users and/or air navigation service providers to improve collective air navigation infrastructure, the provision of air navigation services and the use of airspace, in particular those that may be required for the implementation of the ATM Master Plan as endorsed by Council Decision 2009/320/EC ([1]), in accordance with Article 1(2) of Council Regulation (EC) No 219/2007, should not prejudice pre-existing projects decided by one or several Member States with similar objectives. The provisions on financing of the deployment of common projects should not prejudge the manner in which these common projects are set up. The Commission may propose that funding, such as ~~Trans-European Network~~ ***Connecting Europe Facility, Horizon 2020*** or European Investment Bank funding, may be used in support of common projects, in particular to speed up the deployment of the SESAR programme, within the multiannual financial framework. Without prejudice to access to that funding, Member States should be free to decide how revenues generated by the auctioning of aviation sector allowances under the Emissions Trading Scheme are to be used and to consider in this context whether a share of such revenues might be used to finance common projects at the level of functional airspace blocks. ***Where applicable, common projects should aim to enable a set of basic interoperable capabilities to exist in all Member States.*** **[Am. 10]**

(15a) Unless specific mechanisms are put in place, air-based and ground-based investment projects relating to the ATM Master Plan may take place in an uncoordinated manner, which could delay the effective deployment of SESAR technologies. **[Am. 11]**

(16) The concept of a Network Manager entity is central to improving the performance of Air Traffic Management at network level, by centralising the provision of certain services, which are best performed at network level. In order to facilitate dealing with an aviation crisis, a coordination of ***the measures to be adopted to prevent and respond to*** such a crisis should be ensured by the Network Manager. ***In this context, the Commission should be responsible for ensuring that no conflict of interest arises between the provision of centralised services and the role of the performance review body.*** **[Am. 12]**

(17) ***The*** Commission is convinced that the safe and efficient use of airspace can only be achieved through close cooperation between civil and military users of airspace, mainly based on the concept of flexible use of airspace and effective civil-military coordination as established by ICAO, it stresses the importance of enhancing civil military cooperation between civil and military users of airspace ***with a view to facilitating flexible use of airspace***. **[Am. 13]**

(18) Accuracy of information on airspace status and on specific air traffic situations and timely distribution of this information to civil and military controllers has a direct impact on the safety and efficiency of operations ***and should improve their predictability***. Timely access to up-to-date information on airspace status is essential for all parties wishing to take advantage of airspace structures made available when filing or re-filing their flight plans. **[Am. 14]**

(19) The provision of modern, complete, high-quality and timely aeronautical information has a significant impact on safety and on facilitating access to Union airspace and freedom of movement within it. Taking account of the ATM Master Plan, the Union should take the initiative to modernise this sector in cooperation with the Network Manager and ensure that users are able to access those data through a single public point of access, providing a modern, user-friendly and validated integrated briefing.

([1]) OJ L 95, 9.4.2009, p. 41.

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(20) In order to take into account the changes introduced in Regulations (EC) No 1108/2009 and (EC) No 1070/2009, it is necessary, in accordance with Article 65a of Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency ([1]), to align the content of this Regulation with that of Regulation (EC) No 216/2008.

(21) Furthermore, the technical details of Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004, agreed in 2004 and 2009, should be brought up-to date as well as technical corrections made to take account of progress.

~~(22) The geographical scope of this Regulation over the ICAO NAT region should be amended to take account of the existing and planned service provision arrangements and the need to ensure consistency in application of rules to the air navigation service providers and airspace users operating in that area.~~ **[Am. 15]**

(23) In line with its roles as an operational organisation and the continuing reform of Eurocontrol, the function of the Network Manager should be further developed towards an industry-led partnership.

(24) The concept of functional airspace blocks designed to improve the cooperation between air traffic service providers, is an important tool for improving the performance of the European ATM system. To ~~further enhance~~ ***complement*** this tool, ~~the functional airspace blocks should be made more performance focused, based on~~ ***air navigation service providers should be freely able to enter into performance-based*** industrial partnerships ~~and industry should be given more freedom to modify them in order to reach and, where possible exceed, the performance targets~~ ***that may overlap with the established functional airspace blocks***. **[Am. 16]**

(25) The functional airspace blocks should operate in a flexible manner, bringing together service providers across Europe to capitalise on each other's strengths. This flexibility should allow for seeking synergies between providers regardless of their geographical location or nationality and allow for variable formats of service provision to emerge in the search for performance improvements.

(26) To enhance the customer-focus of air navigation service providers and to increase the possibility of airspace users to influence decisions, which affect them, the consultation ~~and participation~~ of stakeholders in major operational decisions of the air navigation service providers should be made more effective. **[Am. 17]**

(27) The performance scheme is a central tool for economic regulation of ATM and the quality and independence of its decisions should be maintained and where possible improved.

(28) In order to take into account technical or operational developments, in particular by amending annexes, or by supplementing the provisions on network management ~~and performance scheme~~***, performance scheme, selecting the entity responsible for implementation of the ATM Master Plan (deployment manager) and defining the responsibilities thereof***, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. The content and scope of each delegation is set out in detail in the relevant Articles. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council. **[Am. 18]**

(29) When adding to the list of network management services, the Commission should conduct a proper consultation of industry stakeholders ***and social partners***. **[Am. 19]**

(30) In order to ensure uniform conditions for the implementation of this Regulation, in particular with regard to the exercise of their powers by national ~~supervisory~~ ***aviation*** authorities, provision of support services on an exclusive basis by a service provider or groupings thereof, corrective measures to ensure compliance with the Union-wide and

([1]) OJ L 79, 19.3.2008, p. 1.

associated local performance targets, review of compliance in relation to the charging scheme, governance and adoption of common projects for network related functions, functional airspace blocks, modalities of participation of stakeholders in major operational decisions of the air navigation service providers, access to and protection of data, electronic aeronautical information and technological development and interoperability of air traffic management, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ([1]). **[Am. 20]**

(31) In accordance with Regulation (EU) No 182/2011, for the implementing acts adopted under this Regulation, the examination procedure should be used for the adoption of implementing acts of general.

(32) The advisory procedure should be used for the adoption of implementing acts of individual scope.

(33) The penalties provided for with respect to infringements of this Regulation should be effective, proportional and dissuasive, without reducing safety.

(34) ***Where relevant,*** the procurement of support services should be carried out, as applicable, in accordance with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([2]) and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ([3]). Account should also be taken of the guidelines set out in the Commission interpretative communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives ([4]), as appropriate. **[Am. 21]**

(35) ~~The Ministerial Statement on Gibraltar Airport, agreed in Córdoba on 18 September 2006 (the Ministerial Statement), during the first Ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the~~ ***Arrangements for closer cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a*** joint declaration ~~on the Airport made in London on 2 December 1987, and the full compliance with that Statement will be deemed to constitute compliance with the 1987 Declaration~~ ***by the Ministers of Foreign Affairs of those two countries. The arrangements have not yet been applied***. **[Am. 22]**

~~(36) This Regulation applies in full to Gibraltar Airport in the context and by virtue of the Ministerial Statement. Without prejudice to the Ministerial Statement, the application to Gibraltar Airport and all the measures related to its implementation shall conform fully with that Statement and all the arrangements contained therein.~~ **[Am. 23]**

(37) Since the objective of this Regulation, namely the implementation of the Single European Sky, cannot be sufficiently achieved by the Member States, by reason of the transnational scale of the action, and can therefore be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective,

([1]) OJ L 55, 28.2.2011, p. 13.
([2]) OJ L 134, 30.4.2004, p. 114.
([3]) OJ L 134, 30.4.2004, p. 1
([4]) OJ C 179, 1.8.2006, p. 2.

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HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down rules for the creation and proper functioning of the Single European Sky in order to ensure current air traffic safety standards, to contribute to the sustainable development of the air transport system***, such as reducing climate impact,*** and to improve the overall performance of air traffic management (ATM) and air navigation services (ANS) for general air traffic in Europe, with a view to meeting the requirements of all airspace users. The Single European Sky shall comprise a coherent pan-European ***and, subject to specific arrangements with the neighbouring countries, third-country*** network of routes, an integrated operating airspace, network management and air traffic management ~~systems~~ based only on safety, efficiency and interoperability, for the benefit of all airspace users. **[Am. 24]**

2. The application of this Regulation shall be without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States relating to public order, public security and defence matters, as set out in Article 38. This Regulation does not cover military operations and training.

3. The application of this Regulation shall be without prejudice to the rights and duties of Member States under the 1944 Chicago Convention on International Civil Aviation (the Chicago Convention). In this context, this Regulation seeks to assist, in the fields it covers, Member States in fulfilling their obligations under the Chicago Convention, by providing a basis for a common interpretation and uniform implementation of its provisions, and by ensuring that these provisions are duly taken into account in this Regulation and in the rules drawn up for its implementation.

4. This Regulation shall apply to the airspace within the ICAO EUR and AFI ~~and NAT~~ regions where Member States are responsible for the provision of air traffic services in accordance with ~~the~~ this Regulation. Member States may also apply this Regulation to airspace under their responsibility within other ICAO regions, on condition that they inform the Commission and the other Member States thereof. **[Am. 25]**

5. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom ~~of Great Britain and Northern Ireland~~ with regard to the ~~dispute~~ ***controversy*** over sovereignty over the territory in which the airport is situated. **[Am. 26]**

5a. The application of this Regulation to Gibraltar airport shall be suspended until the arrangements set out in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 are applied. The Governments of Spain and the United Kingdom shall inform the Council of the date from which they will apply. **[Am. 27]**

Article 2

Definitions

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

1. 'air traffic control (ATC) service' means a service provided for the purpose of:

(a) preventing collisions;

— between aircraft, and

— in the manoeuvring area between aircraft and obstructions; and

(b) expediting and maintaining an orderly flow of air traffic;

2. 'aerodrome control service' means an ATC service for aerodrome traffic;

3. 'aeronautical information service' means a service established within the defined area of coverage responsible for the provision of aeronautical information and data necessary for the safety, regularity, and efficiency of air navigation;

4. 'air navigation services' means air traffic services; communication, navigation and surveillance services; meteorological services for air navigation; and aeronautical information services;

5. 'air navigation service providers' means any public or private entity providing air navigation services for general air traffic;

6. 'airspace block' means an airspace of defined dimensions, in space and time, within which air navigation services are provided;

7. 'airspace management' means a planning service with the primary objective of maximising the utilisation of available airspace by dynamic time-sharing and, at times, the segregation of airspace among various categories of airspace users on the basis of short-term needs ***and a strategic function associated with airspace design***; **[Am. 28]**

8. 'airspace users' means operators of aircraft operated as general air traffic;

9. 'air traffic flow management' means a service established with the objective of contributing to a safe, orderly and expeditious flow of air traffic by ensuring that ATC capacity is utilised to the maximum extent possible, and that the traffic volume is compatible with the capacities declared by the appropriate air traffic service providers;

10. 'air traffic management (ATM)' means the aggregation of the airborne and ground-based services (air traffic services, airspace management and air traffic flow management) required to ensure the safe and efficient movement of aircraft during all phases of operations;

11. 'air traffic services' means the various flight information services, alerting services, air traffic advisory services and ATC services (area, approach and aerodrome control services);

12. 'area control service' means an ATC service for controlled flights in a ~~block of airspace~~ ***control area***; **[Am. 29]**

13. 'approach control service' means an ATC service for arriving or departing controlled flights;

14. 'ATM Master Plan' means the plan endorsed by Council Decision 2009/320/EC ([1]), in accordance with Article 1(2) of Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) ([2]);

([1]) OJ L 95, 9.4.2009, p. 41.
([2]) OJ L 64, 2.3.2007, p. 1.

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15. 'aviation crisis' means circumstances under which airspace capacity is abnormally reduced as a result of major adverse weather circumstances or the unavailability of large airspace parts ~~either through~~ ***on account of*** natural***, medical, security, military*** or political reasons; **[Am. 30]**

16. 'bundle of services' means two or more ~~air navigation~~ services ***provided by the same entity***; **[Am. 31]**

17. 'certificate' means a document issued by ***the European Agency for Aviation (EAA) or by*** a national ~~supervisory~~ ***aviation*** authority in any form complying with ~~national~~ ***relevant*** law, which confirms that an air navigation service provider meets the requirements for providing a specific ~~service~~ ***activity***; **[Am. 32]**

18. 'communication services' means aeronautical fixed and mobile services to enable ground-to-ground, air-to-ground and air-to-air communications for ATC purposes;

18a. 'European air traffic management network' (EATMN) means a pan-European network of systems and constituents, as well as the roadmaps for the essential operational and technological changes described in the ATM Master Plan, making it possible to provide fully interoperable air navigation services in the Union, including the interfaces at the borders with third countries, with a view to attaining the performance objectives set by this Regulation; **[Am. 33]**

19. 'constituents' means tangible objects such as hardware and intangible objects such as software upon which the interoperability of the ~~European Air Traffic management Network~~ (EATMN) depends; **[Am. 34]**

19a. 'Deployment Manager' means a group of operational stakeholders selected by the Commission, through a call for proposals responsible for the management level of ATM Master Plan deployment governance; **[Am. 35]**

20. 'declaration' means for purposes of ATM/ANS, any written statement:

— on the conformity or suitability for use of systems and constituents issued by an organisation engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents,

— on the compliance with applicable requirements of a service or a system to be put into operation issued by a service provider,

— on the capability and means of discharging the responsibilities associated with certain flight information services;

21. 'flexible use of airspace' means an airspace management concept applied in the European Civil Aviation Conference area on the basis of the 'Airspace management handbook for the application of the concept of the flexible use of airspace' issued by the European Organisation for the Safety of Air Navigation (Eurocontrol) ([1]);

22. 'flight information service' means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights;

23. 'alerting service' means a service provided to notify relevant organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required;

([1]) Eurocontrol has been set up by the International Convention of 13 December 1960 relating to Cooperation for the Safety of Air Navigation, as modified by the protocol of 12 February 1981 and revised by the protocol of 27 June 1997.

24. 'functional airspace block' means an airspace block ~~based on operational requirements and~~ established regardless of State boundaries, where the provision of air navigation services and related functions are performance-driven and optimised ~~with a view to introducing, in each functional airspace block,~~ ***through*** enhanced cooperation among air navigation service providers or, where appropriate, an integrated provider; **[Am. 36]**

25. 'general air traffic' means all movements of civil aircraft, as well as all movements of State aircraft (including military, customs and police aircraft) when these movements are carried out in conformity with the procedures of the International Civil Aviation Organisation (ICAO), as established by the 1944 Chicago Convention on International Civil Aviation;

25a. 'human factor' means the social, cultural and staffing conditions in the ATM sector; **[Am. 37]**

26. 'interoperability' means a set of functional, technical and operational properties required of the systems and constituents of the EATMN and of the procedures for its operation, in order to enable its safe, seamless and efficient operation. Interoperability is achieved by making the systems and constituents compliant with the essential requirements;

27. 'meteorological services' means those facilities and services that provide aircraft with meteorological forecasts, briefs and observations as well as any other meteorological information and data provided by States for aeronautical use;

28. 'navigation services' means those facilities and services that provide aircraft with positioning and timing information;

29. operational data' means information concerning all phases of flight that are required to take operational decisions by air navigation service providers, airspace users, airport operators and other actors involved;

30. 'putting into service' means the first operational use after the initial installation or an upgrade of a system;

31. 'route network' means a network of specified routes for channelling the flow of general air traffic as necessary for the ***most efficient*** provision of ATC services; **[Am. 38]**

32. surveillance services' means those facilities and services used to determine the respective positions of aircraft to allow safe separation;

33. 'system' means the aggregation of airborne and***/or*** ground-based constituents~~, as well as~~ ***and/or*** space-based equipment, that provides support for air navigation services for all phases of flight; **[Am. 39]**

34. 'upgrade' means any modification that changes the operational characteristics of a system;

35. 'cross-border services' means any situation where air navigation services are provided in one Member State by a service provider certified in another Member State;

36. "national ~~supervisory~~ ***aviation*** authority" means ~~the~~ ***a*** national body ~~or bodies~~ entrusted by a Member State ~~with the tasks of supervision in accordance with this Regulation and the national competent authorities entrusted~~ ***and accredited by the EAA*** with the tasks provided for in ~~Article 8b of~~ ***this Regulation and in*** Regulation (EC) No 216/2008; **[Am. 40]**

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37. "support services" means ~~air~~ ***CNS (communication,*** navigation ~~services other than air traffic~~ ***and surveillance), MET (meteorological) and AIS (aeronautical information)*** services as well as other services and activities, which are linked to, and support the provision of air navigation services; **[Am. 41]**

38. 'local performance targets' means performance targets set by the Member States at local level, namely functional airspace block, national, charging zone or airport level;

38a. 'industrial partnership' means cooperative arrangements under a contract set up for the purpose of improving air traffic management between various air navigation service providers, including the Network Manager, airspace users, airports or other comparable economic actors; **[Am. 42]**

38b.' integrated operational airspace' means the controlled airspace with defined dimensions encompassing the European and, subject to appropriate arrangements, neighbouring third countries' airspace where dynamic allocation structure and time-sharing, performance-enhanced controller resources, fully interoperable air navigation services and combined solutions are employed in order to address the optimal, predictable and safe use of the airspace for the accomplishment of the Single European Sky; **[Am. 43]**

38c. 'local performance plans' means plans set by one or more national aviation authorities at local level, namely at the functional airspace block, regional or national level; **[Am. 44]**

38d.' qualified entity' means a body which may be assigned specific certification or oversight tasks by, and under the control and responsibility of, the Agency or a national aviation authority. **[Am. 45]**

CHAPTER II

NATIONAL AUTHORITIES

Article 3

National ~~supervisory~~ ***aviation*** authorities **[Am. 46]**

1. Member States shall, jointly or individually, either nominate or establish a body ~~or bodies~~ as their national ~~supervisory~~ ***aviation*** authority in order to assume the tasks assigned to such authority under this Regulation ***and Regulation (EC) No 216/2008***. **[Am. 47]**

2. The national ~~supervisory~~ ***aviation*** authorities shall be legally distinct and independent in particular in organisational, hierarchical and decision-making terms, ***including separate annual budget allocation,*** from any ~~air navigation service providers or any private or public entity~~ ***company, organisation, public or private entity or personnel falling within the scope of authority activity as provided for in this Regulation and in Article 1 of Regulation (EC) No 216/2008 or*** having an interest in the activities of such ~~providers~~ ***entitites***. **[Am. 48]**

3. Without prejudice to paragraph 2, the national ~~supervisory~~ ***aviation*** authorities may be joined in organisational terms with other regulatory bodies and/or safety authorities. **[Am. 49]**

4. The national ~~supervisory~~ ***aviation*** authorities ~~that are not legally distinct from any air navigation service providers or any private or public entity having an interest in the activities of such providers, as provided for in paragraph 2,~~ ***shall ensure compliance with the provisions laid down in this Article*** on the date of entry into force of this Regulation ~~shall meet this requirement by 1 January 2020~~ ***or*** at the latest ***by 1 January 2017***. **[Am. 50]**

5. The national ~~supervisory~~ ***aviation*** authorities shall exercise their powers impartially, independently and transparently. In particular, they shall be organised, staffed, managed and financed so as to allow them to exercise their powers in that manner. **[Am. 51]**

6. Staff of the national ~~supervisory~~ ***aviation*** authorities shall: **[Am. 52]**

(a) be recruited under clear and transparent rules ***and criteria*** which guarantee their independence ~~and as regards persons in charge of strategic decisions, be appointed by the national cabinet or council of ministers or another public authority which does not directly control, or benefit from the air navigation service providers~~; **[Am. 53]**

(b) be selected in a transparent procedure on the basis of their specific qualifications, including appropriate ~~competence~~ ***competencies*** and relevant experience ~~inter alia in the field of auditing, air navigation services and systems~~; **[Am. 54]**

(ba) not be seconded from air navigation service providers (ANSPs) or companies under the control of ANSPs; *[Am. 55]*

(c) act independently ~~in particular from any interest related to air navigation service providers~~ and ~~shall~~ not seek or take instructions from any government or other public or private entity when carrying out the functions of the national ~~supervisory~~ ***aviation*** authority***, without prejudice to close cooperation with other relevant national authorities***; **[Am. 56]**

(d) as regards persons in charge of strategic decisions, make an annual declaration of commitment and declaration of interests indicating any direct or indirect interests that may be considered prejudicial to their independence and which may influence the performance of their functions; and

(e) as regards persons ***who have been*** in charge of strategic decisions, audits or other functions directly linked to oversight or performance targets of air navigation service providers ***for more than six months***, have no professional position or responsibility with any of the air navigation service providers after their term in the national ~~supervisory~~ ***aviation*** authority, for a period of ~~at least one year~~. **[Am. 57]**

(i) at least 12 months for staff in managerial positions; *[Am. 58]*

(ii) at least six months for staff in non-managerial positions. *[Am. 59]*

(ea) the authority's top management shall be appointed for a fixed term of between three and seven years, renewable once, and may be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law. *[Am. 60]*

7. Member States shall ensure that national ~~supervisory~~ ***aviation*** authorities have the necessary resources and capabilities to carry out the tasks assigned to them under this Regulation in an efficient and timely manner. The national ~~supervisory~~ ***aviation*** authorities shall have full authority over the recruitment and management of their staff based on their own appropriations stemming from inter alia route charges to be set in proportion to the tasks to be fulfilled by the authority in accordance with Article 4. **[Am. 61]**

8. Member States shall notify the Commission of the names and addresses of the national ~~supervisory~~ ***aviation*** authorities, as well as changes thereto, and of the measures taken to ensure compliance with this Article. **[Am. 62]**

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9. The Commission shall establish detailed rules laying down the modalities of the recruitment and selection procedures for the application of paragraphs 6(a) and (b). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3)***, and shall specify:*** **[Am. 63]**

(a) the level of separation required by the appointing authority from any company, organisation, public or private entity or staff falling within the scope of authority activity as provided for in Article 1 of Regulation (EC) No 216/2008 or having an interest in the activities of such entities, with a view to maintaining a balance between avoiding conflicts of interest and administrative efficiency; *[Am. 64]*

(b) relevant technical qualifications required of staff involved in audits. *[Am. 65]*

Article 4

Tasks of the national ~~supervisory~~ ***aviation*** authorities **[Am. 66]**

1. The national ~~supervisory~~ ***aviation*** authorities ~~referred to in Article 3~~ shall be entrusted in particular with the following tasks: **[Am. 67]**

(a) ensuring the supervision of the application of this Regulation ***and of Regulation (EC) No 216/2008***, in particular with regard to the safe and efficient operation of air navigation service providers which provide services relating to the airspace falling under the responsibility of the Member State which nominated or established the relevant authority; **[Am. 68]**

(b) ~~granting of certificates to air navigation services providers in accordance with Article 8b~~ ***the performance or delegation, wholly or in part, of the tasks listed in Articles 8b, 8c and 10*** of Regulation (EC) No 216/2008 and ~~overseeing~~ ***performance of the task of ensuring supervision of*** the application of ~~the conditions under which they have been granted~~ ***this Regulation, in particular with regard to the safe and efficient operation of providers of air navigation services relating to the airspace falling within the responsibility of the Member States***; **[Am. 69]**

~~(c) issuing licenses, ratings, endorsements and certificates for air traffic controllers in accordance with Article 8c of Regulation (EC) No 216/2008 and overseeing the application of the conditions under which they have been issued;~~ **[Am. 70]**

(d) drawing up performance plans and monitoring their implementation in accordance with Article 11;

(e) monitoring the implementation of the charging scheme in accordance with Articles 12 and 13***, including the provisions on cross-subsidisation referred to in Article 13(7)***; **[Am. 71]**

(f) approving the conditions of access to operational data in accordance with Article 22; and

(g) supervising declarations and the putting into service of systems;

(ga) reporting annually on its activity and the fulfilment of its tasks to the relevant authorities of the Member State, the EAA and the Commission. Such reports shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article. *[Am. 72]*

2. Each national ~~supervisory~~ ***aviation*** authority shall organise proper inspections and surveys to verify compliance with the requirements of this Regulation. The air navigation service provider concerned shall facilitate such work ***and the relevant Member State shall offer all necessary assistance to ensure the effectiveness of compliance monitoring***. **[Am. 73]**

Article 5

~~Co-operation~~ ***Cooperation*** between national ~~supervisory~~ ***aviation*** authorities **[Am. 74]**

1. The national ~~supervisory~~ ***aviation*** authorities shall exchange information about their work and decision-making principles, practices and procedures as well as implementation of Union law. They shall cooperate for the purpose of coordinating their decision-making across the Union. The national ~~supervisory~~ ***aviation*** authorities shall participate and work together in a network that convenes at regular intervals ***and at least once a year***. ~~The Commission and the European Union Agency for Aviation (hereafter 'EAA') shall be members, coordinate and support the work of the network and make recommendations to the network, as appropriate.~~ The Commission and ***the*** EAA shall facilitate active cooperation of the national ~~supervisory~~ ***aviation*** authorities and exchanges and use of staff between the national ~~supervisory~~ ***aviation*** authorities ~~based on a pool of experts to be set up by EAA in accordance with Article 17(2)(f) of Regulation (EC) No 216/2008~~.

That network may, inter alia:

(a) produce and disseminate streamlined methodologies and guidelines for implementation of the authority tasks listed in Article 4;

(b) provide assistance to individual national aviation authorities on regulatory issues;

(c) provide opinions to the Commission and the EAA on rule-making and certification;

(d) provide opinions, guidelines and recommendations designed to facilitate the provision of cross-border services;

(e) develop common solutions to be implemented across two or more States to meet the aims of the ATM Master Plan or the Chicago Convention. *[Am. 75]*

Subject to the rules on data protection provided for in Article 22 of this Regulation and in Regulation (EC) No 45/2001, the Commission shall ~~support~~ ***provide a platform for*** the exchange of ~~the~~ information ~~referred to in the first and second subparagraph of this paragraph~~ among the members of the network, possibly through electronic tools, respecting the confidentiality of business secrets of ~~air navigation service providers~~ ***companies, organisations or entities involved***. **[Am. 76]**

2. The national ~~supervisory~~ ***aviation*** authorities shall cooperate closely, including through working arrangements, for the purposes of mutual assistance in their monitoring tasks and handling of investigations and surveys. **[Am. 77]**

3. In respect of functional airspace blocks ~~that extend across the airspace falling under the responsibility of more than one Member State~~, the Member States concerned shall conclude an agreement on the supervision provided for in ~~this Article~~ ***Article 4*** with regard to the air navigation service providers providing services relating to those blocks. The national ~~supervisory~~ ***aviation*** authorities concerned shall establish a plan specifying the modalities of their ~~co-operation~~ ***cooperation*** with a view to giving effect to that agreement. **[Am. 78]**

4. National ~~supervisory~~ ***aviation*** authorities shall cooperate closely to ensure adequate supervision of air navigation service providers holding a valid certificate from one Member State that also provide services relating to the airspace falling under the responsibility of another Member State. Such cooperation shall include arrangements for the handling of cases involving non-compliance with this Regulation and with the applicable common requirements adopted in accordance with Article 8b(1) of Regulation (EC) No 216/2008. **[Am. 79]**

5. In the case of provision of air navigation services in an airspace falling under the responsibility of another Member State, the arrangements referred to in paragraphs 2***, 3*** and 4 shall include an agreement on the mutual recognition of the supervisory tasks set out in Article 4(1) and (2) and of the results of these tasks. This mutual recognition shall apply also where arrangements for recognition between national supervisory authorities are made for the certification process of service providers. **[Am. 80]**

6. If permitted by national law and with a view to regional cooperation, national ~~supervisory~~ ***aviation*** authorities may also conclude agreements regarding the division of responsibilities regarding supervisory tasks. **[Am. 81]**

Article 6

Qualified entities

1. ***The EEA and*** national ***aviation*** authorities may decide to delegate ~~in full~~***, wholly*** or in part, the inspections ~~and surveys referred to in Article 4 (2)~~***, surveys and other tasks provided for by this Regulation*** to qualified entities that fulfil the requirements set out in Annex I. **[Am. 82]**

2. Such a delegation ~~granted by a national supervisory authority~~ shall be valid within the Union for a renewable period of three years. ***The EEA and*** national ~~supervisory~~ ***aviation*** authorities may instruct any of the qualified entities located in the Union to undertake these inspections and surveys. **[Am. 83]**

3. ~~Member States~~ ***The EAA and the national aviation authorities*** shall notify the Commission, ~~EAA and~~ the other Member States ***and, if applicable, the EAA,*** of the qualified entities to which they have delegated tasks in accordance with paragraph 1 indicating each entity's area of responsibility and its identification number and of any changes in this respect. The Commission shall publish in the *Official Journal of the European Union* the list of qualified entities, their identification numbers and ***their*** areas of responsibility, and shall keep the list updated. **[Am. 84]**

4. ~~Member States~~ ***The EAA and the national aviation authorities*** shall withdraw the delegation of a qualified entity which no longer meets the requirements set out in Annex I. It shall forthwith inform the Commission~~, EAA~~ and the other Member States thereof. **[Am. 85]**

5. Bodies nominated before the entry into force of this Regulation as notified bodies in accordance with Article 8 of Regulation (EC) No 552/2004, shall be considered to be qualified entities for the purposes of this Article.

Article 7

Consultation of stakeholders

1. National ~~supervisory~~ ***aviation*** authorities, acting in accordance with their national legislation, shall establish consultation mechanisms for appropriate involvement of stakeholders, including professional staff representative bodies for the exercise of their tasks, in the implementation of the Single European Sky. **[Am. 86]**

2. The stakeholders may include:

— air navigation service providers,

— airport operators,

— relevant airspace users or relevant groups representing airspace users,

— military authorities,

— manufacturing industry,

— professional staff representative bodies.

CHAPTER III

SERVICE PROVISION

Article 8

Certification of air navigation service providers

1. The provision of all air navigation services within the Union shall be subject to certification by or declaration to, national ~~supervisory~~ ***aviation*** authorities or ***the*** EAA in accordance with Article 8b of Regulation (EC) No 216/2008. **[Am. 87]**

2. The certification process shall also ensure that the applicants can demonstrate sufficient financial strength and have obtained liability and insurance cover, where this is not guaranteed by the Member State concerned.

3. The certificate shall provide for non-discriminatory access to services for airspace users, with particular regard to safety. Certification shall be subject to the conditions set out in Annex II.

4. The issue of certificates shall confer on air navigation service providers the possibility of offering their services to ***any*** Member ~~States~~ ***State***, other air navigation service providers, airspace users and airports within the Union~~. With regard to support services this possibility shall be subject to the compliance with Article 10(2).~~ ***and neighbouring third countries, if appropriate, within a functional airspace block, subject to mutual agreement between the relevant parties.*** **[Am. 88]**

Article 9

Designation of air traffic service providers

1. Member States shall ensure the provision of air traffic services on an exclusive basis within specific airspace blocks in respect of the airspace under their responsibility. For this purpose, Member States shall designate an air traffic service provider holding a valid certificate or declaration in the Union.

2. For the provision of cross-border services, Member States shall ensure that compliance with this Article and Article 18 (3) is not prevented by their national legal system requiring that air traffic service providers providing services in the airspace under the responsibility of that Member State fulfil one of the following conditions:

(a) be owned directly or through a majority holding by that Member State or its nationals;

(b) have their principal place of operation or registered office in the territory of that Member State;

(c) use only facilities in that Member State.

3. Member States shall define the rights and obligations to be met by the designated air traffic service providers. The obligations may include conditions for the timely supply of relevant information enabling all aircraft movements in the airspace under their responsibility to be identified.

4. Member States shall have discretionary powers in choosing an air traffic service provider, on condition that the latter is certified or declared in accordance with Regulation (EC) No 216/2008.

5. In respect of functional airspace blocks established in accordance with Article 16 ~~that extend across the airspace under the responsibility of more than one Member State~~, the Member States concerned shall jointly designate, in accordance with paragraph 1 of this Article, one or more air traffic service providers, at least one month before implementation of the airspace block. **[Am. 89]**

6. Member States shall inform the Commission and other Member States immediately of any decision within the framework of this Article regarding the designation of air traffic service providers within specific airspace blocks in respect of the airspace under their responsibility.

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Article 10

Provision of support services

1. Member States shall take all necessary measures to ensure that, in accordance with this Article, ***there are no statutory impediments to*** providers of support services ~~can~~ ***that would prevent their ability to*** compete within the Union on the basis of equitable, non-discriminatory and transparent conditions for the purpose of providing these services.

~~The requirement set out in this Article shall be met at the latest by 1 January 2020.~~

2. Member States shall take all necessary measures to ensure that ~~the provision of air traffic services is separated from the provision of~~ ***air navigation service providers, when drawing up their business plans, call for offers from different*** support services ***providers***. ~~This separation shall include the requirement that air traffic services and support services are~~***, with a view to choosing the financially and qualitatively most beneficial provider. The performance review body*** provided ~~by separate undertakings~~ ***for by Article 11(2) shall monitor compliance with the provisions of this paragraph when evaluating the performance plans***.

3. In ~~choosing~~ the ***choice of an external*** provider of support services, ***the provisions of Directive 2004/18/EC shall be complied with.*** In particular, cost ***and energy*** efficiency, overall service quality***, interoperability*** and safety of services***, as well as transparency of the procurement process,*** shall be ~~taken into account by~~ ***binding selection criteria for*** the entity procuring those services.

4. A provider of support services may only be chosen to provide services in the airspace of a Member State, when:

(a) it is certified in accordance with Article 8b of Regulation (EC) No 216/2008;

(b) its principal place of business is located in the territory of a Member State;

(c) Member States and/or nationals of Member States own more than 50 % of the service provider and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Union is a party; and

(d) the service provider fulfils national security and defence requirements.

5. Support services related to the operations of the EATMN may be provided in a centralised manner by the Network Manager by adding those services to the services referred to in Article 17(2), in accordance with Article 17(3). They may also be provided on an exclusive basis by an air navigation service provider or groupings thereof, in particular those related to the provision of the ATM infrastructures. The Commission shall specify the modalities for the selection of providers or groupings thereof, based on the professional capacity and ability to provide services in an impartial and cost-effective manner, and establish an overall assessment of the estimated costs and benefits of the provision of the support services in a centralised manner. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3). The Commission shall designate providers or groupings thereof in accordance with those implementing acts.

5a. The Commission shall establish detailed rules laying down the modalities for the selection of services covered by this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

5b. The Commission shall conduct a comprehensive study on the operational, economic, safety and social impacts of the introduction of market principles to the provision of support services, and shall submit that study to the European Parliament and the Council by 1 January 2016. The study shall take into account the implementation of the ATM Master Plan and the impact of SESAR technologies on the support services sector. **[Am. 90]**

Article 11

Performance scheme

1. To improve the performance of air navigation services and network services in the Single European Sky, a performance scheme for air navigation services and network services shall be set up. It shall include:

(a) Union -wide and associated local performance targets on the key performance areas of safety, the environment, capacity and cost-efficiency ***in accordance with the high-level goals of the ATM Master Plan fixed for an entire reference period***; **[Am. 91]**

(b) ~~national plans or~~ ***local performance*** plans ~~for functional airspace blocks~~, including performance targets, ensuring compliance with the Union -wide and associated local performance targets; and **[Am. 92]**

(c) periodic review, monitoring and benchmarking of the performance of air navigation services and network services.

2. The Commission shall designate an independent, impartial and competent body to act as a 'performance review body' ***(PRB)***. ***The PRB shall be established as a European economic regulator under the supervision*** of the ***Commission, with effect from 1 July 2015. The role of the*** ~~performance review body~~ ***PRB*** shall be to assist the Commission, in coordination with the national ~~supervisory~~ ***aviation*** authorities, and to assist ***and monitor*** the national ~~supervisory~~ ***aviation*** authorities on request in the implementation of the performance scheme referred to in paragraph 1. ***The PRB shall be functionally and legally separate from any service provider, whether at national or pan-European level.*** Technical assistance to the ~~performance review body~~ ***PRB*** may be provided by ***the*** EAA ~~and~~***, the Network Manager,*** Eurocontrol or another competent entity. **[Am. 93]**

3. The ~~national or functional airspace block~~ ***local performance*** plans referred to in ***point (b) of*** paragraph 1~~(b),~~ shall be drawn up by ***the*** national ~~supervisory~~ ***aviation*** authorities and adopted by the Member State(s). These plans shall include binding local targets and an appropriate incentive scheme as adopted by the Member State(s). Drafting of the plans shall be subject to consultation with ***the Commission, the PRB,*** air navigation service providers, airspace users' representatives, and, where relevant, airport operators and airport coordinators. **[Am. 94]**

4. The compliance of the ~~national or functional airspace block~~ ***local performance*** plans and local targets with the Union -wide performance targets shall be assessed by the Commission in ~~co-operation~~ ***cooperation*** with the ~~performance review body~~ ***PRB***. **[Am. 95]**

In the event that the Commission ~~identifies~~ ***determines*** that the ~~national or functional airspace block~~ ***local performance*** plans or the local targets do not comply with the Union-wide targets, it may require the Member States concerned to take the necessary corrective measures. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 27(2). **[Am. 96]**

5. The reference period for the performance scheme, referred to in paragraph 1, shall cover a minimum of three years and a maximum of five years. During this period, in the event that the local targets are not met, the Member States concerned shall define and apply measures designed to rectify the situation. Where the Commission finds that these measures are not sufficient to rectify the situation, it may decide, that the Member States concerned shall take necessary corrective measures or sanctions. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 27 (2).

6. The Commission ***and the EAA, together with the PRB,*** shall carry out regular assessments of the achievement of the Union-wide and associated local performance targets. **[Am. 97]**

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7. The performance scheme referred to in paragraph 1 shall be based on:

(a) collection, validation, examination, evaluation and dissemination of relevant data related to the performance of air navigation services and network services from all relevant parties, including air navigation service providers, airspace users, airport operators, ***the EAA,*** national ~~supervisory~~ ***aviation*** authorities, Member States and Eurocontrol; **[Am. 98]**

(b) selection of appropriate key performance areas on the basis of ICAO Document No 9854 'Global air traffic management operational concept', and consistent with those identified in the Performance Framework of the ATM Master Plan, including safety, the environment, capacity***, cost-effectiveness and human factor*** and cost-efficiency areas, adapted where necessary in order to take into account the specific needs of the Single European Sky and relevant objectives for these areas and definition of a limited set of key performance indicators for measuring performance***. Special attention shall be paid to the safety performance indicators***; **[Am. 99]**

(c) establishment and revision of Union-wide and associated local performance targets that shall be defined taking into consideration inputs identified at national level or at the level of functional airspace blocks***. Union-wide performance targets shall be set with a view to ensuring that each functional airspace block retains sufficient flexibility to achieve the best results***; **[Am. 100]**

(d) criteria for the setting up by the national ~~supervisory~~ ***aviation*** authorities of the ~~national or functional airspace block~~ ***local*** performance plans, containing the local performance targets and the incentive scheme. The performance plans shall: **[Am. 101]**

(i) be based on the business plans of the air navigation service providers***, which should in turn take into account the implementation of the ATM Master Plan***; **[Am. 102]**

(ii) address all cost components of the national or functional airspace block cost base;

(iii) include binding local performance targets compliant with the Union -wide performance targets;

(e) assessment of the local performance targets on the basis of the ~~national or functional airspace block~~ ***local performance*** plan; **[Am. 103]**

(f) monitoring of the ~~national or functional airspace block~~ ***local*** performance plans, including appropriate alert mechanisms; **[Am. 104]**

(g) criteria to impose sanctions ***and compensation mechanisms*** for non-compliance with the Union -wide and associated local performance targets during the reference period and to support alert mechanisms; **[Am. 105]**

(h) general principles for the setting up by Member States of the incentive scheme;

(i) principles for the application of a transitional mechanism necessary for the adaptation to the functioning of the performance scheme not exceeding 12 months following the adoption of the delegated act referred to in this paragraph;

(j) appropriate reference periods and intervals for the assessment of the achievement of performance targets and the setting of new targets;

(k) the necessary related timetables;

The Commission shall be empowered to adopt delegated acts in accordance with Article 26 in order to ***adopt the Union-wide performance targets and*** lay down detailed rules for the proper functioning of the performance scheme in accordance with the points listed in this paragraph. **[Am. 106]**

8. The establishment of the performance scheme shall take into account that en route services, terminal services and network services are different and should be treated accordingly, if necessary also for performance-measuring purposes.

8a. The Commission shall conduct a study into the impact which the behaviour of non-ANSP actors within the ATM system, for instance airport operators, airport coordinators and air transport operators, may have on the efficient functioning of the European ATM network.

The scope of the study shall cover but shall not be limited in scope to:

(a) identification of non-ANSP actors in the ATM system who are able to influence network performance;

(b) the effect that such actors' behaviour has on ANS performance in relation to the key performance areas (KPAs) of safety, environment and capacity;

(c) the feasibility of developing performance indicators and key performance indicators for those actors;

(d) any benefits to the European ATM network that might accrue from the implementation of additional performance indicators and key performance indicators; and any barriers to achieving optimum performance.

The study should be commenced not later than 12 months following the publication of this Regulation and completed not later than 12 months thereafter; its results shall then be considered by the Commission and the Member States with a view to expanding the scope of the performance scheme to include any additional performance indicators and key performance indicators for future reference periods, in accordance with the provisions of this Article. **[Am. 107]**

Article 12

General provisions for the charging scheme

In accordance with the requirements of Articles 13 and 14, the charging scheme for air navigation services shall contribute to greater transparency in the determination, imposition and enforcement of charges to airspace users and shall contribute to the cost efficiency of providing air navigation services and to efficiency of flights, while maintaining an optimum safety level. The scheme shall also be consistent with Article 15 of the 1944 Chicago Convention on International Civil Aviation and with Eurocontrol's charging system for en-route charges.

Article 13

Principles for the charging scheme

1. The charging scheme shall be based on the account of costs for air navigation services incurred by service providers for the benefit of airspace users. The scheme shall allocate these costs among categories of users.

2. The principles set out in paragraphs 3 to 8 shall be applied when establishing the cost-base for charges.

3. The cost to be shared among airspace users shall be the determined cost of providing air navigation services, including appropriate amounts for interest on capital investment and depreciation of assets, as well as the costs of maintenance, operation, management and administration, including the costs incurred by EAA for relevant authority tasks. Determined costs shall be the costs determined by the Member State at national level or at the level of functional airspace blocks either at the beginning of the reference period for each calendar year of the reference period referred to in Article 11(5), or during the reference period, following appropriate adjustments applying the alert mechanisms set out in Article 11.

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4. The costs to be taken into account in this context shall be those assessed in relation to the facilities and services provided for and implemented under the ICAO Regional Air Navigation Plan, European Region. They shall also include costs incurred by national ~~supervisory~~ ***aviation*** authorities and/or qualified entities, as well as other costs incurred by the relevant Member State and service provider in relation to the provision of air navigation services. They shall not include the costs of penalties imposed by Member States referred to Article 33 ~~nor~~ ***or*** the costs of any corrective measures or sanctions referred to in Article 11 (5). **[Am. 108]**

5. In respect of the functional airspace blocks and as part of their respective framework agreements, Member States shall make reasonable efforts to agree on common principles for charging policy***, with a view to arriving at a single charge, in accordance with their respective performance plans***. **[Am. 109]**

6. The cost of different air navigation services shall be identified separately, as provided for in Article 21(3).

7. Cross-subsidy shall not be allowed between en-route services and terminal services. Costs that pertain to both terminal services and en-route services shall be allocated in a proportional way between en-route services and terminal services on the basis of a transparent methodology. Cross-subsidy shall be allowed between different air traffic services in either one of those two categories only when justified for objective reasons, subject to clear identification. Cross-subsidy shall not be allowed between air traffic services and support services.

8. Transparency of the cost-base for charges shall be guaranteed. Implementing rules for the provision of information by the service providers shall be adopted in order to permit reviews of the provider's forecasts, actual costs and revenues. Information shall be regularly exchanged between the national supervisory authorities, service providers, airspace users, the Commission and Eurocontrol.

9. Member States shall comply with the following principles when setting charges in accordance with paragraphs 3 to 8:

(a) charges shall be set for the availability of air navigation services under non-discriminatory conditions when imposing charges on different airspace users for the use of the same service, no distinction shall be made in relation to the nationality or category of the user;

(b) exemption of certain users, especially light aircraft and State aircraft, may be permitted, provided that the cost of such exemption is not passed on to other users;

(c) charges shall be set per calendar year on the basis of the determined costs;

(d) air navigation services may produce sufficient revenues to provide for a reasonable return on assets to contribute towards necessary capital improvements;

(e) charges shall reflect the cost of air navigation services and facilities made available to airspace users, including costs incurred by EAA for relevant authority tasks, taking into account the relative productive capacities of the different aircraft types concerned;

(f) charges shall encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to achieving a high level of safety and cost-efficiency and meeting the performance targets and ~~they~~ shall stimulate integrated service provision, whilst reducing the environmental impact of aviation. For the purposes of ***this*** point ~~(f)~~ and in relation to ~~the national or functional airspace block~~ ***local*** performance plans, ***the*** national ~~supervisory authorities~~ ***aviation authority*** may set up mechanisms, including incentives consisting of financial advantages and disadvantages, to encourage air navigation service providers and/or airspace users to support improvements in the provision of air navigation services such as increased capacity, reduced delays and sustainable development, while maintaining an optimum safety level. **[Am. 110]**

10. The Commission shall adopt measures setting out the details of the procedure to be followed for the application of paragraphs 1 to 9. ***The Commission may propose financial mechanisms to improve the synchronisation of air-based and ground-based capital expenditure related to the deployment of SESAR technologies.*** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27 (3). **[Am. 111]**

Article 14

Review of compliance with Articles 12 and 13

1. The Commission shall provide for the ongoing review of compliance with the principles and rules referred to in Articles 12 and 13, acting in cooperation with the Member States. The Commission shall endeavour to establish the necessary mechanisms for making use of Eurocontrol expertise and shall share the results of the review with the Member States, Eurocontrol and the airspace users' representatives.

2. At the request of one or more Member States or on its own initiative, the Commission shall examine specific measures adopted by national authorities in relation to the application of Articles 12 and 13, concerning the determination of costs and charges. Without prejudice to Article 32(1), the Commission shall share the results of the investigation with the Member States, Eurocontrol and the airspace users' representatives. Within two months of receipt of a request, after having heard the Member State concerned, the Commission shall decide whether Articles 12 and 13 have been complied with and the measure may thus continue to be applied. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 27(2).

Article 14a

Implementation of the ATM Master Plan

Implementation of the ATM Master Plan shall be coordinated by the Commission. The Network Manager, the PRB and the Deployment Manager shall contribute to the implementation of the ATM Master Plan in accordance with the provisions of this Regulation. **[Am. 112]**

Article 14b

The Commission shall adopt measures establishing the governance of implementation of the ATM Master Plan, including defining and selecting the body responsible at management level (Deployment Manager). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3). **[Am. 113]**

Article 14c

The Deployment Manager shall recommend to the Commission binding deadlines for deployment and appropriate corrective actions concerning delayed implementation. **[Am. 114]**

Article 15

Common projects

1. ***The*** implementation of the ATM Master Plan may be supported by common projects. These projects shall support the objectives of this Regulation to improve the performance of the European aviation system in key areas such as capacity, flight and cost efficiency as well as environmental sustainability, within the overriding safety objectives. The common projects shall aim to deploy ***ATM functionalities*** in a timely, coordinated and synchronised manner ~~ATM functionalities~~***, with a view*** to ~~achieve~~ ***bringing about*** the essential operational changes identified in the ATM Master Plan***, including identification of the most appropriate geographical dimension, performance-driven project architecture and service delivery approach to be applied by the Deployment Manager. Where applicable, the design and execution of common projects shall aim to enable a set of basic interoperable capabilities to exist in all Member States***. **[Am. 115]**

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2. The Commission may adopt measures establishing the governance of common projects and identifying incentives for their deployment. ***The body governing the deployment of the common projects shall be the same body as that which is in charge of the implementation of the ATM Master Plan baseline.*** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3). These measures shall ***complement the*** mechanisms for the deployment of the projects concerning functional airspace blocks as agreed upon by the parties of those blocks. **[Am. 116]**

3. The Commission may adopt common projects for network-related functions which are of particular importance for the improvement of the overall performance of air traffic management and air navigation services in Europe identifying ATM functionalities that are mature for deployment, together with the timetable and geographical scope of the deployment. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3). The common projects may be considered eligible for Union funding within the multiannual financial framework. To this end, and without prejudice to Member States' competence to decide on the use of their financial resources, the Commission shall carry out an independent cost-benefit analysis and appropriate consultations with Member States and with relevant stakeholders in accordance with Article 28, exploring all appropriate means for financing the deployment thereof. The eligible costs of deployment of common projects shall be recovered in accordance with the principles of transparency and non-discrimination.

3a. Common projects shall be the means of implementing the operational improvements developed by the SESAR project in a coordinated and timely manner. They shall thus make a decisive contribution to attainment of the Union-wide targets. **[Am. 117]**

Article 16

Functional airspace blocks

1. Member States shall take all necessary measures in order to ensure the establishment and implementation of ***operational*** functional airspace blocks based on integrated provision of air ~~traffic~~ ***navigation*** services with a view to achieving the required capacity and efficiency of the air traffic management network within the Single European Sky ~~and~~ maintaining a high level of safety and contributing to the overall performance of the air transport system and reduced environmental impact. **[Am. 118]**

~~2. The functional airspace blocks shall, wherever possible, be set-up based on co-operative industrial partnerships between air navigation service providers, in particular relating to the provision of support services in accordance with Article 10. The industrial partnerships may support one or more functional airspace block, or part thereof to maximise performance.~~ **[Am. 119]**

3. Member States, ~~as well as~~ ***national aviation authorities and*** air ~~traffic~~ ***navigation*** service providers shall cooperate to the fullest extent possible with each other in order to ensure compliance with this Article. Where relevant, cooperation may also include ***national aviation authorities and*** air ~~traffic~~ ***navigation*** service providers from third countries taking part in functional airspace blocks. **[Am. 120]**

4. Functional airspace blocks shall, in particular:

(a) be supported by a safety case;

(b) be designed to seek maximum synergies from industrial partnerships in order to meet ~~and where possible exceed~~ the performance targets set in accordance with Article 11; **[Am. 121]**

(c) enable optimum ***and flexible*** use of airspace, taking into account air traffic flows; **[Am. 122]**

(d) ensure consistency with the European route network established in accordance with Article 17;

(e) be justified by their overall added value, including optimal use of technical and human resources, on the basis of cost-benefit analyses;

(f) where applicable, ensure a smooth and flexible transfer of responsibility for air traffic control between air traffic service units;

(g) ensure compatibility between the different airspace configurations;

(h) comply with conditions stemming from regional agreements concluded within the ICAO;

(i) respect regional agreements in existence on the date of entry into force of this Regulation, in particular those involving European third countries;

(ia) consolidate the procurement of ATM instrastructure and aim at increasing the interoperability of existing equipment; *[Am. 123]*

(ib) facilitate consistency with the Union-wide performance targets. *[Am. 124]*

The requirements of paragraphs 4(c), (d) and (g) shall be met in accordance with the optimisation of airspace design carried out by the Network Manager as specified in Article 17.

5. The requirements set out in this Article may be met through participation of air navigation service providers in one or more functional airspace ~~block~~ ***blocks***. **[Am. not concerning all languages]**

6. ***An operational*** functional airspace block ~~that extend across the airspace under the responsibility of more than one Member State~~ shall be established by joint designation between ~~all the~~ Member States, as well as, where appropriate, third countries that have responsibility for any part of the airspace included in the functional airspace block. **[Am. 126]**

The joint designation by which the functional airspace block is established shall contain the necessary provisions concerning the manner in which the block can be modified and the manner in which a Member State or, where appropriate, a third country, can withdraw from the block, including transitional arrangements.

7. Member States shall notify the establishment of functional airspace blocks to the Commission. Before notifying the Commission of the establishment of a functional airspace block, the Member State(s) concerned shall provide the Commission, the other Member States and other interested parties with adequate information and give them an opportunity to submit their observations.

8. Where difficulties arise between two or more Member States with regard to a cross-border functional airspace block that concerns airspace under their responsibility, the Member States concerned may jointly bring the matter to the Single Sky Committee for an opinion. The opinion shall be addressed to the Member States concerned. Without prejudice to paragraph 6, the Member States shall take that opinion into account in order to find a solution.

9. After having received the notifications by Member States referred to in paragraphs 6 and 7 the Commission shall assess the fulfilment by each functional airspace block of the requirements set out in paragraph 4 and present the results to the Member States for discussion. If the Commission finds that one or more functional airspace blocks do not fulfil the requirements it shall engage in a dialogue with the Member States concerned with the aim of reaching a consensus on the measures necessary to rectify the situation.

10. The Commission may adopt detailed measures concerning the joint designation of the air traffic service provider(s) referred to in paragraph 6, specifying the modalities for the selection of the service provider(s), the period of designation, supervision arrangements, the availability of services to be provided and liability arrangements. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

11. The Commission may adopt measures regarding the information to be provided by the Member State(s) referred to in paragraph 6. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 27(3). ***The provisions of this paragraph shall be without prejudice to any FAB arrangements existing on the date of entry into force of this Regulation, in so far as those arrangements meet and, where possible, exceed the performance targets set in accordance with Article 11.*** **[Am. 127]**

Article 16a

Industrial partnerships

1. Air navigation service providers may cooperate to set up industrial partnerships, in particular relating to the provision of support services in accordance with Article 10. The industrial partnerships may support one or more functional airspace blocks, or any part thereof, in order to maximise performance.

2. The Commission and Member States shall make every effort to ensure that any barriers to partnerships between ANSPs are eliminated, taking into account, in particular, liability issues, charging models and interoperability obstacles. *[Am. 128]*

Article 17

Network management and design

1. The air traffic management (ATM) network services shall allow optimum ***and flexible*** use of airspace and ensure that airspace users can operate preferred trajectories, while allowing maximum access to airspace and air navigation services. These network services shall be aimed at supporting initiatives at national level and at the level of functional airspace blocks and shall be executed in a manner which respects the separation of regulatory and operational tasks. **[Am. 129]**

2. In order to achieve the objectives referred to in paragraph 1 and without prejudice to the responsibilities of the Member States with regard to national routes and airspace structures, the Commission shall ensure that the following ***functions and*** services are ~~carried out under the responsibility of~~ ***coordinated by*** a Network Manager: **[Am. 130]**

(a) design of the European route network;

(b) coordination of scarce resources within aviation frequency bands used by general air traffic, in particular radio frequencies as well as coordination of radar transponder codes;

(c) central function for air traffic flow management;

(d) provision of an aeronautical information portal in accordance with Article 23;

(e) optimisation of airspace design***, including airspace sectors and airspace structures in the en-route and terminal areas,*** in cooperation with the air navigation service providers and functional airspace blocks referred to in Article 16; **[Am. 131]**

(f) central function for coordination of aviation crisis.

The ***functions and*** services listed in this paragraph shall not involve the adoption of binding measures of a general scope or the exercise of political discretion. They shall take into account proposals established at national level and at the level of functional airspace blocks. They shall be performed in coordination with military authorities in accordance with agreed procedures concerning the flexible use of airspace. **[Am. 132]**

The Commission may, ~~and~~ in conformity with the implementing rules referred to in paragraph 4, appoint Eurocontrol, or another impartial and competent body, to carry out the tasks of the Network Manager. These tasks shall be executed in an impartial and cost-effective manner and ***shall be*** performed on behalf of ***the Union,*** Member States and stakeholders. They shall be subject to appropriate governance, which recognises the separate accountabilities for service provision and regulation, taking into consideration the needs of the whole ATM network and with the full involvement of the airspace users and air navigation service providers. By 1 January ~~2020~~ ***2016***, the Commission shall designate the Network Manager as a self-standing service provider ~~where possible~~ set up as an industrial partnership. **[Am. 133]**

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 26 to add to the list of the services set out in paragraph 2 in order to adapt it to technical and operational progress with regard to the provision of support services in a centralised manner.

4. The Commission shall adopt detailed rules concerning:

(a) the coordination and harmonisation of processes and procedures to enhance the efficiency of aeronautical frequency management including the development of principles and criteria;

(b) the central function to coordinate the early identification and resolution of frequency needs in the bands allocated to European general air traffic to support the design and operation of European aviation network;

(c) additional network services as defined in the ATM Master Plan;

(d) detailed arrangements for cooperative decision-making between the Member States, the air navigation service providers and the network management function for the tasks referred to in paragraph 2;

(e) detailed arrangements for the governance of the Network Manager involving all operational stakeholders concerned;

(f) arrangements for consultation of the relevant stakeholders in the decision-making process both at national and European levels; and

(g) within the radio spectrum allocated to general air traffic by the International Telecommunication Union, a division of tasks and responsibilities between the network management function and national frequency managers, ensuring that the national frequency management services continue to perform those frequency assignments that have no impact on the network. For those cases which do have an impact on the network, the national frequency managers shall cooperate with those responsible for the network management function to optimise the use of frequencies.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

5. Aspects of airspace design other than those referred to in ~~paragraphs~~ ***paragraph*** 2 and ~~4 (c)~~ ***point (c) of paragraph 4*** shall be dealt with at national level or at the level of functional airspace blocks. This design process shall take into account traffic demands and complexity~~, national or functional airspace block~~ ***and local*** performance plans and shall include full consultation of relevant airspace users or relevant groups representing airspace users and military authorities as appropriate. **[Am. 134]**

Article 18

Relations between service providers

1. Air navigation service providers may avail themselves of the services of other service providers that have been certified or declared in the Union.

2. Air navigation service providers shall formalise their working relationships by means of written agreements or equivalent legal arrangements, setting out the specific duties and functions assumed by each provider and allowing for the exchange of operational data between all service providers in so far as general air traffic is concerned. Those arrangements shall be notified to the national supervisory authority concerned.

3. In cases involving the provision of air traffic services, the approval of the Member States concerned shall be required.

Article 19

Relations with stakeholders

The air navigation service providers shall establish consultation mechanisms to consult the relevant groups of airspace users and aerodrome operators on all major issues related to services provided, ***and strategic investment plans, especially as regards aspects requiring synchronisation between air and ground equipment deployment*** or relevant changes to airspace configurations. ~~The airspace users shall also be involved in the process of approving strategic investment plans.~~ The Commission shall adopt measures detailing the modalities of the consultation and of the involvement of airspace users in ~~approving~~ ***the drafting of strategic*** investment plans ***with a view to ensuring their consistency with the ATM Master Plan and common projects as referred to in Article 15***. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27 (3). **[Am. 135]**

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Without prejudice to the role of the Single Sky Committee, the Commission shall establish a consultative expert group on the human factor, to which European ATM social partners and other experts from professional staff representative bodies shall belong. The role of that group shall be to advise the Commission on the interplay between operations and the human factor in the ATM sector. **[Am. 136]**

Article 20

Relations with military authorities

Member States shall, within the context of the common transport policy, take the necessary steps to ensure that written agreements between the competent civil and military authorities or equivalent legal arrangements are established or renewed in respect of the management of specific airspace blocks.

Article 21

Transparency of accounts

1. Air navigation service providers, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their financial accounts. These accounts shall comply with the international accounting standards adopted by the Union. ~~Where, owing to the legal status of the service provider, full compliance with the international accounting standards is not possible, the provider shall endeavour to achieve such compliance to the maximum possible extent.~~

Member States shall take all necessary measures to ensure that ANSPs comply with this Article by 1 July 2017. **[Am. 137]**

2. In all cases, air navigation service providers shall publish an annual report and regularly undergo an independent audit.

3. When providing a bundle of services, air navigation service providers shall identify and disclose the costs and income deriving from air navigation services, broken down in accordance with the charging scheme for air navigation services referred to in Article 12 and, where appropriate, shall keep consolidated accounts for other, non-air-navigation services, as they would be required to do if the services in question were provided by separate undertakings.

4. Member States shall designate the competent authorities that shall have a right of access to the accounts of service providers that provide services within the airspace under their responsibility.

~~5. Member States may apply the transitional provisions of Article 9 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards [1] to air navigation service providers that fall within the scope of that regulation.~~ **[Am. 138]**

Article 22

Access to and protection of data

1. In so far as general air traffic is concerned, relevant operational data shall be exchanged in real-time between all air navigation service providers, airspace users and airports, to facilitate their operational needs. The data shall be used only for operational purposes.

2. Access to relevant operational data shall be granted to appropriate authorities, certified or declared air navigation service providers, airspace users and airports on a non-discriminatory basis.

3. Certified or declared service providers, airspace users and airports shall establish standard conditions of access to their relevant operational data other than those referred to in paragraph 1. National supervisory authorities shall approve such standard conditions. The Commission may lay down measures concerning the procedures to be followed for data exchange and the type of data concerned in relation to these conditions of access and their approval. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

~~[1] OJ L 243, 11.9.2002, p. 1.~~

CHAPTER IV

AIRSPACE

Article 23

Electronic aeronautical information

1. Without prejudice to the publication by Member States of aeronautical information and in a manner consistent with that publication, the Commission, working in cooperation with the Network Manager, shall ensure the availability of electronic aeronautical information of high quality, presented in a harmonised way and serving the requirements of all relevant users in terms of data quality and timeliness.

2. For the purpose of paragraph 1, the Commission shall ensure the development of a Union -wide aeronautical information infrastructure in the form of an electronic integrated briefing portal with unrestricted access to interested stakeholders. That infrastructure shall integrate access to and provision of required data elements such as, but not limited to aeronautical information, air traffic services reporting office (ARO) information, meteorological information and flow management information.

3. The Commission shall adopt measures for the establishment and implementation of an electronic integrated briefing portal. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27 (3).

Article 24

Technological development and interoperability of air traffic management

1. The Commission shall adopt detailed rules concerning the promotion of the technological development and interoperability of air traffic management related to the development and deployment of the ATM Master Plan. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

2. In respect of the rules referred to in paragraph 1, Article 17(2)(b) of Regulation (EC) No 216/2008 shall apply. Where appropriate, the Commission shall request EAA to include these rules in the annual work programme referred to in Article 56 of that Regulation.

CHAPTER V

FINAL PROVISIONS

Article 25

Adaptation of the Annexes

The Commission shall be empowered to adopt delegated acts in accordance with Article 26 in order to supplement or amend the requirements for qualified entities listed in Annex I and the conditions to be attached to certificates to be awarded to air navigation service providers listed in Annex II in order to take account of experience gained by national supervisory authorities in applying these requirements and conditions or of the evolution of air traffic management system in terms of interoperability and integrated provision of air navigation services.

Article 26

Exercise of the delegation

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

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2. The delegation of power referred to in Article 11(7), Article 17(3) and Article 25 shall be conferred on the Commission for ~~an indeterminate~~ ***a*** period of ~~time~~ ***seven years***.

The Commission shall draw up a report in respect of the delegated power no later than nine months before the end of the seven-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period. **[Am. 139]**

3. The delegation of power referred to in Article 11(7), Article 17(3) and Article 25 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to Article 11(7), Article 17(3) and Article 25shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 27

Committee procedure

1. The Commission shall be assisted by the Single Sky Committee, hereinafter referred to as 'the Committee' The Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

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

Article 28

Consultation of stakeholders by the Commission

1. The Commission shall establish a consultation mechanism at Union level to consult on matters related to the implementation of this Regulation where appropriate. The specific Sectoral Dialogue Committee set up under Commission Decision 98/500/EC shall be involved in the consultation.

2. The stakeholders may include:

— air navigation service providers,

— airport operators,

— relevant airspace users or relevant groups representing airspace users,

— military authorities,

— manufacturing industry, and,

— professional staff representative bodies.

Article 29

Industry consultation body

Without prejudice to the role of the Committee and of Eurocontrol, the Commission shall establish an 'industry consultation body', to which air navigation service providers, associations of airspace users, airport operators, the manufacturing industry and professional staff representative bodies shall belong. The role of this body shall solely be to advise the Commission on the implementation of the Single European Sky.

Article 30

Relations with third countries

The Union and its Member States shall aim at and support the extension of the Single European Sky.to countries which are not members of the European Union. To that end, they shall endeavour, either in the framework of agreements concluded with neighbouring third countries or in the context of joint designations of functional airspace blocks or agreements on network functions, to further the objectives of this Regulation to those countries.

Article 31

Support by outside bodies

The Commission may request support from an outside body for the fulfilment of its tasks under this Regulation.

Article 32

Confidentiality

1. Neither the national ~~supervisory~~ ***aviation*** authorities, acting in accordance with their national legislation, nor the Commission shall disclose information of a confidential nature, in particular information about ~~air navigation service providers~~ ***ANSPs***, their business relations or their cost components. **[Am. 140]**

2. Paragraph 1 shall be without prejudice to the right of disclosure by national ~~supervisory~~ ***aviation*** authorities or the Commission where this is essential for the fulfilment of their duties, in which case such disclosure shall be proportionate and shall have regard to the legitimate interests of ~~air navigation service providers~~ ***ANSPs***, airspace users, airports or other relevant stakeholders in the protection of their business secrets. **[Am. 141]**

3. Information and data provided pursuant to the charging scheme referred to in Article 12 shall be publicly disclosed.

Article 33

Penalties

Member States shall lay down rules on penalties ***and compensation mechanisms*** applicable to infringements of this Regulation, in particular by airspace users and service providers, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. **[Am. 142]**

Article 34

Review and methods of impact assessment

1. The Commission shall periodically review the application of this Regulation shall report to the European Parliament and to the Council at the end of each reference period referred to in Article 11(5)(d). When justified for this purpose, the Commission may request from the Member States information relevant to the application of this Regulation.

2. The reports shall contain an evaluation of the results achieved by the actions taken pursuant to this Regulation including appropriate information about developments in the sector, in particular concerning economic, social, environmental, employment and technological aspects, as well as about quality of service, in the light of the original objectives and with a view to future needs.

Article 35

Safeguards

This Regulation shall not prevent the application of measures by a Member State to the extent that these are needed to safeguard essential security or defence policy interests. Such measures are in particular those which are imperative:

(a) for the surveillance of airspace that is under its responsibility in accordance with ICAO Regional Air Navigation agreements, including the capability to detect, identify and evaluate all aircraft using such airspace, with a view to seeking to safeguard safety of flights and to take action to ensure security and defence needs;

(b) in the event of serious internal disturbances affecting the maintenance of law and order;

(c) in the event of war or serious international tension constituting a threat of war;

(d) for the fulfilment of a Member State's international obligations in relation to the maintenance of peace and international security;

(e) in order to conduct military operations and training, including the necessary possibilities for exercises.

Article 36

European Union Agency for Aviation (EAA)

When implementing this Regulation Member States and the Commission, in accordance with their respective roles as provided for by this Regulation, shall coordinate as appropriate with EAA.

Article 37

Repeal

Regulations (EC) Nos 549/2004, 550/2004, 551/2004 and 552/2004 are repealed.

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

Article 38

Entry into force

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

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

Done at …,

For the European Parliament	*For the Council*
The President	*The President*

Wednesday 12 March 2014

ANNEX I

REQUIREMENTS FOR QUALIFIED ENTITIES

1. The qualified entities must:

— be able to document extensive experience in assessing public and private entities in the air transport sectors, in particular air navigation service providers, and in other similar sectors in one or more of the fields covered by this Regulation,

— have comprehensive rules and regulations for the periodic survey of the abovementioned entities, published and continually upgraded and improved through research and development programmes,

— not be controlled by air navigation service providers, by airport management authorities or by others engaged commercially in the provision of air navigation services or in air transport services,

— be established with significant technical, managerial, support and research staff commensurate with the tasks to be carried out,

— take out liability insurance unless its liability is assumed by the Member State in accordance with national law, or the Member State itself is directly responsible for the inspections.

The qualified entity, its Director and the staff responsible for carrying out the checks may not be involved, either directly or as authorised representatives, in the design, manufacture, marketing or maintenance of the constituents or systems or in their use. This does not exclude the possibility of an exchange of technical information between the manufacturer or constructor.

The qualified entity must carry out the checks with the greatest possible professional integrity and the greatest possible technical competence and must be free of any pressure and incentive, in particular of a financial type, which could affect its judgment or the results of its inspection, in particular from persons or groups of persons affected by the results of the checks.

2. The staff of the qualified entity must have:

— sound technical and vocational training,

— satisfactory knowledge of the requirements of the inspections they carry out and adequate experience of such operations,

— the ability required to draw up the declarations, records and reports to demonstrate that the inspections have been carried out,

— guaranteed impartiality. The staff's remuneration must not depend on the number of inspections carried out or on the results of such inspections.

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ANNEX II

CONDITIONS TO BE ATTACHED TO CERTIFICATES

1. Certificates shall specify:

(a) the national ~~supervisory~~ ***aviation*** authority issuing the certificate; **[Am. 143]**

(b) the applicant (name and address);

(c) the services which are certified;

(d) a statement of the applicant's conformity with the common requirements, as defined in Article 8b of Regulation (EC) No 216/2008;

(e) the date of issue and the period of validity of the certificate.

2. Additional conditions attached to certificates may, as appropriate, be related to:

(a) non-discriminatory access to services for airspace users and the required level of performance of such services, including safety and interoperability levels;

(b) the operational specifications for the particular services;

(c) the time by which the services should be provided;

(d) the various operating equipment to be used within the particular services;

(e) ring-fencing or restriction of operations of services other than those related to the provision of air navigation services;

(f) contracts, agreements or other arrangements between the service provider and a third party and which concern the service(s);

(g) provision of information reasonably required for the verification of compliance of the services with the common requirements, including plans, financial and operational data, and major changes in the type and/or scope of air navigation services provided;

(h) any other legal conditions which are not specific to air navigation services, such as conditions relating to the suspension or revocation of the certificate.

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ANNEX III

CORRELATION TABLE

Regulation (EC) No 549/2004	Regulation (EC) No 550/2004	Regulation (EC) No 551/2004	Regulation (EC) No 552/2004	This Regulation
Article 1(1) to (3)				Article 1(1) to (3)
		Article 1(3)		Article 1(4)
Article 1(4)				Article 1(5)
	Article 1			—
		Article 1(1), (2) and (4)		—
			Article 1	—
Article 2 Nos (1) to (35)				Article 2 Nos (1) to (35)
				Article 2 Nos (36) to (38)
Article 2 Nos 17, 18, 23, 24, 32, 35, 36				—
Article 3				—
Article 4(1) and (2)				Article 3(1) and (2)
				Article 3(3) and (4)
Article 4(3)				Article 3(5)
				Article 3(6)
Article 3(4) to (5)				Article 3(7) and (8)
				Article 3(9)
	Article 2(1)			Article 4(1a)
				Article 4(1b) to (1 g)

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Regulation (EC) No 549/2004	Regulation (EC) No 550/2004	Regulation (EC) No 551/2004	Regulation (EC) No 552/2004	This Regulation
	Article 2(2)			Article 4(2)
				Article 5(1) and (2)
	Article 2(3) to (6)			Article 5(3) to (6)
	Article 3(1) and (2)			Article 6(1) and (2)
			Article 8(1) and (3)	Article 6(3) and (4)
				Article 6(5)
			Article 8(2) and (4)	—
	Article 6			—
Article 10(1)				Article 7(1)
				Article 7(2)
	Article 7(1)			Article 8(1)
				Article 8(2)
	Article 7(4) and (6)			Article 8(3) and (4)
	Article 7(2), (3), (5), (7) to (9)			—
	Article 8			Article 9
				Article 10
	Article 9			—
Article 11				Article 11
	Article 14			Article 12
	Article 15			Article 13
	Article 16			Article 14

Regulation (EC) No 549/2004	Regulation (EC) No 550/2004	Regulation (EC) No 551/2004	Regulation (EC) No 552/2004	This Regulation
	Article 15a			Article 15
	Article 9a(1)			Article 16(1) and (3)
				Article 16(2)
	Article 9a(2) point (i)			—
	Article 9a(2)			Article 16(4)
				Article 16(5)
	Article 9a(3) to (9)			Article 16(6) to (12)
	Article 9b			—
		Article 6(1) to (2b)		Article 17(1) and (2b)
				Article 17(2c) to (2e)
		Article 6(3) –(4d)		Article 17(3) to (4d)
				Article 17(4e)
		Article 6(4e) to (4f)		Article 17(4f) and (4 g)
		Article 6(5) and (7)		Article 17(5) and (6)
		Article 6(8) and (9)		—
	Article 10			Article 18
				Article 19
	Article 11			Article 20
	Article 12			Article 21
	Article 13			Article 22

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Regulation (EC) No 549/2004	Regulation (EC) No 550/2004	Regulation (EC) No 551/2004	Regulation (EC) No 552/2004	This Regulation
		Article 3		—
		Article 3a Article 4 Article 7 Article 8		Article 23 — — —
				Article 24(1) and (2)
			Article 3(3)	—
			Article 2 to 3(2)	—
			Article 3(4) to 7	—
	Article 17(1)			Article 25
				Article 26
Article 5(1) to (3)				Article 27(1) to (3)
Article 5(4) and (5)				—
Article 10(2) and (3)				Article 28(1) and (2)
Article 6				Article 29
Article 7				Article 30
Article 8				Article 31
	Article 4			—
			Article 9	—
	Article 18			Article 32
Article 9				Article 33
Article 12(2) to (4)				Article 34(1) to (3)
Article 12(1)				—

Regulation (EC) No 549/2004	Regulation (EC) No 550/2004	Regulation (EC) No 551/2004	Regulation (EC) No 552/2004	This Regulation
	Article 18a			—
		Article 10		—
Article 13				Article 35
Article 13a				Article 36
			Article 10	—
			Article 11	Article 37
	Article 19(1)			Article 38
	Article 19(2)			—
	Annex I		Annex V	Annex I
			Annex I	—
	Annex II			Annex II
			Annex II	—
				Annex III
			Annex III	—
			Annex IV	—

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P7_TA(2014)0221

Aerodromes, air traffic management and air navigation services ***I

European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services (COM(2013)0409 — C7-0169/2013 — 2013/0187(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/61)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0409),

— having regard to Article 294(2) and Article 100(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0169/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Maltese House of Representatives, asserting that the draft legislative act does not comply with the principle of subsidiarity,

— having regard to the opinion of the European Economic and Social Committee of 11 December 2013 ([1]),

— after consulting the Committee of the Regions,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism (A7-0098/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0187

Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

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([1]) OJ C 170, 5.6.2014, p. 116.

Having regard to the proposal from the European Commission,

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

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

Having regard to the opinion of the Committee of Regions,

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

Whereas:

(1) In order to take into account the changes introduced in Regulation (EC) No 1108/2009 of the European Parliament and of the Council ([3]) and in Regulation (EC) No 1070/2009 of the European Parliament and of the Council ([4]), it is necessary to align the content of Regulation (EC) No 216/2008 of the European Parliament and of the Council ([5]) with Regulation (EC) No 549/2004 of the European Parliament and of the Council ([6]), Regulation (EC) No 550/2004 of the European Parliament and of the Council ([7]), Regulation (EC) No 551/2004 of the European Parliament and of the Council ([8]) and Regulation (EC) No 552/2004 of the European Parliament and of the Council ([9]).

(2) The development and implementation of the ATM master plan requires regulatory actions in a wide variety of aviation subjects. The Agency should, in supporting the Commission for drafting technical rules, adopt a balanced approach***, avoiding conflicts of interest,*** to regulating different activities based on their specificities, acceptable levels of safety***, climate and environmental sustainability,*** and an identified risk hierarchy of users to ensure a comprehensive and co-ordinated development of aviation. **[Am. 1]**

(3) In order to take into account technical, scientific, operational or safety needs, by amending or supplementing the provisions on airworthiness, environmental protection, pilots, air operations, aerodromes, ATM/ANS, air traffic controllers, third-country operators, oversight and enforcement, flexibility provisions, fines and periodic penalty payments and fees and charges, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

([1]) OJ C 170, 5.6.2014, p. 116.
([2]) Position of the European Parliament of 12 March 2014.
([3]) Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services and repealing Directive 2006/23/EC (OJ L 309, 24.11.2009, p. 51).
([4]) Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system (OJ L 300, 14.11.2009, p. 34).
([5]) Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.3.2008, p. 1).
([6]) Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) (OJ L 96, 31.3.2004, p. 1).
([7]) Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) (OJ L 96, 31.3.2004, p. 10).
([8]) Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) (OJ L 96, 31.3.2004, p. 20).
([9]) Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation) (OJ L 96, 31.3.2004, p. 26).

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(3a) ***Before adopting a delegated act, the Commission should consult the Agency and the experts from the voting States represented on the Management Board. It should take into account the opinion expressed by those consultative bodies and refrain from adopting a delegated act in cases where a majority of the experts and the Agency object.*** **[Am. 2]**

(3b) ***In order to facilitate the creation of a risk-based, proportional and sustainable regulatory framework further, the Commission should conduct a further analysis of the need to adapt Regulation (EC) No 216/2008 to new developments.*** **[Am. 3]**

(3c) ***The Agency, as the centrepiece of the Union's aviation system, should also play a leading role within the Union's external aviation strategy. In particular, with a view to attaining one of the objectives set out in Article 2 of Regulation (EC) No 216/2008, the Agency, in close cooperation with the Commission, should make a major contribution to export the Union's aviation standards and to promote the movement of the Union's aeronautical products, professionals and services throughout the world, in order to facilitate their access to new growing markets.*** **[Am. 4]**

(3d) ***The grant of certificates and approvals and the provision of other services play an essential role in the provision of services by the Agency to the industry, and as such should contribute to the competitiveness of the Union's aeronautical sector. The Agency should be in a position to respond to market demand, which may fluctuate. Consequently, the number of staff financed by revenue derived from fees or charges should be adaptable and should not be fixed in the establishment plan.*** **[Am. 5]**

(3e) ***This Regulation aims to fulfil the requirement laid down in Article 65a of Regulation (EC) No 216/2008 by removing the overlaps between Regulation (EC) No 549/2004 and Regulation (EC) No 216/2008, adapting the former to the latter and ensuring a clear allocation of tasks between the Commission, the Agency and Eurocontrol, so that the Commission focuses on economic and technical regulation, the Agency acts as its agent on technical regulation drafting and oversight, and Eurocontrol focuses on operational tasks, in particular those relating to the network manager concept pursuant to Regulation (EC) No 550/2004, in which a common en route charging scheme for air navigation services, including oversight, was established to achieve greater transparency and cost-efficiency for the benefit of airspace users. Within that context, and with the aim of diminishing the overall costs of ATM/ANS oversight activities, it is also necessary to amend the current en route charging scheme in such a way as to cover the Agency's ATM/ANS oversight competences appropriately. Such an amendment will ensure that the Agency has the resources it needs to carry out the safety oversight tasks assigned to it by the Union's total system approach in aviation safety, contribute to a more transparent, cost-efficient and effective provision of air navigation services to the airspace users that finance the system, and stimulate the provision of an integrated service.*** **[Am. 6]**

(4) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([1]).

(5) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to aerodrome exemptions and decisions not to permit application of flexibility provisions, imperative grounds of urgency so require.

(5a) ***In order to ensure the interoperability of technologies used across the world, the Commission and Agency should encourage an internationally coordinated approach concerning the standardisation efforts of the International Civil Aviation Organization.*** **[Am. 7]**

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

(6) ~~Certain principles regarding the governance and operation~~ ***On the basis of a case-by-case analysis, and taking into account the specific nature*** of the Agency***, certain principles regarding its governance and operation*** should be adapted to the Common Approach on EU decentralised agencies endorsed by the European Parliament, the Council and the Commission in July 2012. ***In particular, the composition of the Executive Board should take into account the importance of aviation in the different Member States and ensure an adequate representation of the expertise required.*** **[Am. 8]**

(7) Regulation (EC) No 216/2008 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 216/2008 is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 2 is amended as follows:

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

'(b) aerodromes or part thereof, as well as equipment, personnel and organisations, referred to in paragraph 1(c) and (d), that are controlled and operated by the military, where traffic served is primarily other than general air traffic;'"

(ii) in point (c), the first sentence is replaced by the following:

'(c) ATM/ANS, including systems and constituents, personnel and organisations, referred to in paragraph 1(e) and (f), that are provided or made available by the military, primarily to aircraft movements other than general air traffic.'

(b) paragraph 3 is replaced by the following:

'3. Without prejudice to paragraph 2, Member States shall ensure that military facilities open to general air traffic and services provided by military personnel to general air traffic, which do not fall within the scope of paragraph 1, offer a level of safety that is at least as effective as that required by the essential requirements as defined in Annexes Va and Vb.'

(2) Article 2 is amended as follows:

(a) In paragraph 2, the following points are added:

'(g) to support the development and implementation of the ATM master plan;

(h) to regulate civil aviation in a way that best promotes ~~its~~ ***safety, sustainable*** development, performance, interoperability***, climate protection, environmental friendliness*** and ***energy saving,*** and safety in a manner proportionate to the nature of each particular activity.' **[Am. 9]**

(b) In paragraph 3, point (c) is replaced by the following

'(c) the establishment of an independent European Union Agency for Aviation (hereinafter referred to as the Agency);'

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(3) Article 3 is amended as follows:

(a) point (a) is replaced by the following:

'(a) "continuing oversight" shall mean the tasks to be conducted to verify that the conditions under which a certificate has been granted or which a declaration covers continue to be fulfilled at any time during the period of validity of that certificate or declaration, as well as the taking of any safeguard measure.'

(b) point (da) is replaced by the following:

'(da) "ATM/ANS constituents" shall mean any constituent as defined in Article 2(18) of Regulation (EC) No … (*) on the implementation of the Single European Sky;'

(c) the following point is inserted:

'(ea) "declaration" shall mean for the purposes of ATM/ANS, any written statement:

— on the conformity or suitability for use of systems and constituents issued by an organisation engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents;

— on the compliance with applicable requirements of a service or a system to be put into operation issued by a service provider;

— on the capability and means of discharging the responsibilities associated with certain flight information services.'

(d) point (f) is replaced by the following:

'(f) "qualified entity" shall mean a body which may be allocated specific certification or oversight tasks by, and under the control and the responsibility of the Agency or a national aviation authority;'

(e) points (q) and (r) are replaced by the following:

'(q) "ATM/ANS" shall mean the air traffic management services as defined in Article 2(10) of Regulation (EC) No … (**), air navigation services defined in Article 2(4) of that Regulation, including the network management services referred to in Article 17 of that Regulation, and services consisting in the origination and processing of data and the formatting and delivering of data to general air traffic for the purpose of safety-critical air navigation;

(r) "ATM/ANS system" shall mean any combination of equipment and systems as defined in Article 2(33) of Regulation (EC) No … (**);'

(f) the following points are added:

'(t) "general air traffic" shall mean all movements of civil aircraft, as well as all movements of state aircraft, including military, customs and police aircraft, when these movements are carried out in conformity with the procedures of the ICAO;

(*) No of the recast SES Regulation.
(**) No of the recast SES Regulation,

(u) "ATM Master Plan" shall mean the plan endorsed by Council Decision 2009/320/EC (*), in accordance with Article 1(2) of Council Regulation (EC) No 219/2007 (**)'.

(*) Council Decision 2009/320/EC of 30 March 2009 endorsing the European Air Traffic Management Master Plan of the Single European Sky ATM Research (SESAR) project (OJ L 95, 9.4.2009, p. 41).
(**) Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) (OJ L 64, 2.3.2007, p. 1).

(fa) the following point is inserted:

'***(ua) "accreditation" means the qualification process of a national aviation authority or qualified entity for the provision of tasks in accordance with this Regulation and with Regulation (EU) No …*** (*);' **[Ams. 30 and 32]**

(4) Article 4 is amended as follows:

(a) paragraph 3b is replaced by the following:

'3b. By way of derogation from paragraph 3a, Member States may decide to exempt from the provisions of this Regulation an aerodrome which:

— handles no more than 10 000 passengers per year, and

— handles no more than 850 movements related to cargo operations per year,

on the condition that the exemption complies with the general safety objectives of this Regulation and any other rule of Union law.

The Commission shall assess whether the condition referred to in the first subparagraph has been complied with and, where it considers that this is not the case, adopt a decision to that effect. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2). On duly justified imperative grounds of urgency relating to safety, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 65(4).

The Member State concerned shall revoke the exemption upon notification of the decision referred to in the second subparagraph.'

(b) in paragraph 3c, the first sentence is replaced by the following:

'3c. ATM/ANS provided in the airspace of the territory to which the Treaty applies, as well as in any other airspace where Member States apply Regulation (EC) No … (**) in accordance with Article 1(4) of that Regulation, shall comply with this Regulation.'

(5) Article 5 is amended as follows:

(a) in paragraph 2, point (d), the first sentence is replaced by the following:

'(d) organisations responsible for the maintenance and continuing airworthiness management of products, parts and appliances shall demonstrate their capability and means to discharge the responsibilities associated with their privileges.'

(*) ***Number of the Regulation in procedure COD 2013/0186.***
(**) No of the recast SES Regulation.

(b) paragraph 5 is replaced by the following:

'5. As regards the airworthiness of aircraft referred to in Article 4(1)(a), (b) and (c), the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:

(a) conditions for establishing and notifying to an applicant the type-certification basis applicable to a product;

(b) conditions for establishing and notifying to an applicant the detailed airworthiness specifications applicable to parts and appliances;

(c) conditions for establishing and notifying to an applicant the specific airworthiness specifications applicable to aircraft eligible for a restricted certificate of airworthiness;

(d) conditions for issuing and disseminating mandatory information in order to ensure the continuing airworthiness of products and conditions for approval of alternative means of compliance to this mandatory information;

(e) conditions for issuing, maintaining, amending, suspending or revoking type-certificates, restricted type-certificates, approval of changes to type-certificates, supplemental type certificates, approval of repair designs, individual certificates of airworthiness, restricted certificates of airworthiness, permits to fly and certificates for products, parts or appliances, including:

(i) conditions on the duration of these certificates, and conditions to renew certificates when a limited duration is fixed;

(ii) restrictions applicable to the issue of permits to fly. These restrictions should in particular concern the following:

— purpose of the flight,

— airspace used for the flight,

— qualification of flight crew,

— carriage of persons other than flight crew;

(iii) aircraft eligible for restricted certificates of airworthiness, and associated restrictions;

(iv) the operational suitability data, including:

— the minimum syllabus of maintenance certifying staff type rating training to ensure compliance with paragraph (2)(f);

— the minimum syllabus of pilot type rating and the reference data for associated simulators to ensure compliance with Article 7;

— the master minimum equipment list as appropriate;

— aircraft type data relevant to cabin crew;

— and additional airworthiness specifications for a given type of operation to support the continued airworthiness and safety improvements of aircraft;

(f) conditions to issue, maintain, amend, suspend or revoke organisation approvals required in accordance with paragraph 2(d), (e) and (g) and conditions under which such approvals need not be requested;

(g) conditions to issue, maintain, amend, suspend or revoke personnel certificates required in accordance with paragraph 2(f);

(h) responsibilities of the holders of certificates;

(i) the compliance of aircraft referred to in paragraph 1, which are not covered by paragraphs 2 or 4, as well as of aircraft referred to in Article 4(1)(c), with the essential requirements;

(j) conditions for the maintenance and continuing airworthiness management of products, parts and appliances.

As regards the airworthiness of aircraft referred to in Article 4(1)(a), (b) and (c), the Commission shall be empowered, by means of delegated acts in accordance with Article 65b, to amend ~~or supplement~~ Annex I, where necessary for reasons of technical, operational or scientific developments or safety evidence in the field of airworthiness, in order to, and to the extent needed to, achieve the objectives laid down in Article 2.' **[Am. 33]**

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

'2. The Commission shall be empowered to amend, by means of delegated acts in accordance with Article 65b, the requirements referred to paragraph 1 in order to bring them into line with amendments to the Chicago Convention and its Annexes which enter into force after the entry into force of this Regulation and which become applicable in all Member States.

3. Where necessary in order to ensure a high and uniform level of environmental protection, and based on the content of the Appendices to Annex 16 referred to in paragraph 1 where appropriate, the Commission may lay down, by means of delegated acts in accordance with Article 65b, detailed rules supplementing the requirements referred to in paragraph 1.'

(7) Article 7 is amended as follows:

(a) paragraph 2, fourth subparagraph, is replaced by:

'Notwithstanding the third subparagraph, in the case of a leisure pilot licence a general medical practitioner who has sufficient detailed knowledge of the applicant's medical background may, if so permitted under national law, act as an aero-medical examiner. The Commission shall adopt detailed rules for the use of a general medical practitioner, instead of an aero-medical examiner, in particular ensuring that the level of safety is maintained. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(3).'

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

'The requirements of the second and third subparagraphs may be satisfied by the acceptance of licences and medical certificates issued by or on behalf of a third country as far as pilots involved in the operation of aircraft referred to in Article 4(1)~~(b) or (~~c) are concerned.' **[Am. 41]**

(c) in paragraph 6, the introductory part is replaced by:

'6. As regards pilots involved in the operation of aircraft referred to in Article 4(1)(b) and (c), as well as flight simulation training devices, persons and organisations involved in the training, testing, checking or medical assessment of these pilots, the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to':

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(d) in paragraph 6, point (d) is replaced by the following:

'(d) the conditions for the conversion of existing national pilots' licences and of national flight engineers' licences into pilots' licences as well as the conditions for the conversion of national medical certificates;'

(e) in paragraph 6, point (f) is replaced by the following:

'(f) the compliance of pilots of aircraft referred to in points (a)(ii), (d) and (h) of Annex II, when used for commercial air transportation, with the relevant essential requirements of Annex III.'

(f) at the end of paragraph 6, the following new subparagraph is added:

'As regards pilots involved in the operation of aircraft referred to in Article 4(1)(b) and (c), as well as flight simulation training devices, persons and organisations involved in the training, testing, checking or medical assessment of these pilots, the Commission shall be empowered, by means of delegated acts in accordance with Article 65b, to amend ~~or supplement~~ Annex III, where necessary for reasons of technical, operational or scientific developments or safety evidence related to the pilot licencing, in order to, and to the extent needed to, achieve the objectives laid down in Article 2.' **[Am. 34]**

(fa) The first subparagraph of paragraph 7 shall be replaced by the following:

'7. When adopting the measures referred to in paragraph 6, the Commission shall take specific care that they reflect the state of the art, including best practices and scientific and technical progress in the field of pilot training, an enhanced culture of safety and fatigue management systems.' **[Am. 42]**

(8) Article 8 is amended as follows:

(a) in paragraph 5, the introductory part is replaced by:

'5. As regards the operation of aircraft referred to in Article 4(1)(b) and (c), the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:'

(b) in paragraph 5, point (g) is replaced by the following:

'(g) the compliance of operations of aircraft referred to in point (a)(ii) and points (d) and (h) of Annex II, when used for commercial air transportation, with the relevant essential requirements set out in Annex IV and, if applicable, Annex Vb.'

(c) in paragraph 5, the following points are added:

'(h) conditions and procedures under which specialised operations shall be subject to an authorisation;

(i) conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety in accordance with Article 22(1).'

(d) at the end of paragraph 5, the following new subparagraph is added:

'As regards the operation of aircraft referred to in Article 4(1)(b) and (c), the Commission shall be empowered, by means of delegated acts in accordance with Article 65b, to amend ~~or supplement~~ Annex IV and, if applicable, Annex Vb, where necessary for reasons of technical, operational or scientific developments or safety evidence related to air operations, in order to, and to the extent needed to, achieve the objectives laid down in Article 2.' **[Am. 35]**

(9) Article 8a is amended as follows:

(a) in paragraph 5, the introductory part is replaced by the following:

'5. As regards aerodromes and aerodrome equipment, as well as the operation of aerodromes, the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:'

(b) in paragraph 5, the following points are added after (j):

'(k) the conditions for issuing, maintaining, amending, suspending or revoking certificates of apron management service providers;

(l) the conditions for issuing and disseminating mandatory information in order to ensure the safety of aerodrome operations and aerodrome equipment;

(m) the responsibilities of service providers referred to in paragraph 2(e);

(n) the conditions to issue, maintain, amend, suspend or revoke organisation approvals and conditions for the oversight of organisations engaged in the design, manufacture and maintenance of safety critical aerodrome equipment;

(o) the responsibilities of organisations engaged in the design, manufacture and maintenance of safety critical aerodrome equipment.'

(c) at the end of paragraph 5, the following new subparagraph is added:

'As regards aerodromes and aerodrome equipment, as well as the operation of aerodromes, the Commission shall be empowered, by means of delegated acts in accordance with Article 65b, to amend ~~or supplement~~ Annex Va and, if applicable, Annex Vb, where necessary for reasons of technical, operational or scientific developments or safety evidence related to the aerodromes, in order to, and to the extent needed to, achieve the objectives laid down in Article 2.' **[Am. 36]**

(10) Article 8b is amended as follows:

(a) paragraph 4 and 5 are replaced by the following:

'4. The measures referred to in paragraph 6 may lay down a requirement for certification or declaration in respect of organisations engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents upon which safety or interoperability are dependent. The certificate for those organisations shall be issued when they have demonstrated their capability and means of discharging the responsibilities associated with their privileges. The privileges granted shall be specified in the certificate.

5. The measures referred to in paragraph 6 may lay down a requirement for certification, or alternatively, validation or declaration by the ATM/ANS provider or the organisation engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents, in respect of ATM/ANS systems and constituents, upon which safety or interoperability are dependent. The certificate or declaration for those systems and constituents shall be issued, or validation shall be given, when the applicant has shown that the systems and constituents comply with the detailed specifications established to ensure compliance with the essential requirements referred to in paragraph 1.'

(b) paragraph 6 is amended as follows:

(i) the introductory part is replaced by the following:

'6. As regards the provision of ATM/ANS, the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:'

(ii) point (e) is replaced by the following:

'(e) the conditions and procedures for the declaration by, and for the oversight of service providers and organisations engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents referred to in paragraphs 3 to 5;'

(iii) the following points are added:

'(g) conditions for issuing and disseminating mandatory information in order to ensure the safety in the provision of ATM/ANS;

(h) the conditions for the validation and declaration referred to in paragraph 5 and for the oversight of compliance with these conditions;

(i) operating rules and ATM/ANS constituents required for the use of airspace.'

(iv) at the end of the paragraph, the following new subparagraph is added:

'As regards the provision of ATM/ANS, the Commission shall be empowered, by means of delegated acts in accordance with Article 65b, to amend ~~or supplement~~ Annex Va, where necessary for reasons of technical, operational or scientific developments or safety evidence related to the ATM/ANS, in order to, and to the extent needed to, achieve the objectives laid down in Article 2' **[Am. 37]**

(c) in the paragraph 7, point (a) is replaced by the following:

'(a) reflect the state of the art and the best practices in the field of ATM/ANS in particular in accordance with the ATM Master Plan and in close cooperation with ICAO'.

(11) Article 8c is amended as follows:

(a) in paragraph 10, the introductory part is replaced by the following:

'10. As regards air traffic controllers, as well as persons and organisations involved in the training, testing, checking or medical assessment of air traffic controllers, the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:'

(b) in paragraph 10, the following points are added:

'(e) without prejudice to the provisions of bilateral agreements concluded in accordance with Article 12, the conditions for the acceptance of licences from third countries;

(f) the conditions under which the provision of on-the-job training shall be prohibited, limited or subject to certain conditions in the interest of safety.

(g) conditions for issuing and disseminating mandatory information in order to ensure the safety in the provision of on-the-job training;'

(c) at the end of paragraph 10, the following new subparagraph is added:

'As regards air traffic controllers, as well as persons and organisations involved in the training, testing, checking or medical assessment of air traffic controllers, the Commission shall be empowered, by means of delegated acts in accordance with Article 65b, to amend ~~or supplement~~ Annex Vb, where necessary for reasons of technical, operational or scientific developments or safety evidence related to the training organisations and air traffic controllers, in order to, and to the extent needed to, achieve the objectives laid down in Article 2.' **[Am. 38]**

(12) Article 9 is amended as follows:

(a) in paragraph 4, the introductory part is replaced by the following:

'4. As regards aircraft referred to in Article 4(1)(d), as well as their crew and their operations, the Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules with regard to:'

(b) in paragraph 4, point (a) is replaced by the following:

'(a) the authorisation of aircraft referred to in Article 4(1)(d), or crew, which do not hold a standard ICAO certificate of airworthiness or licence, to operate into, within or out of the Community;'

(c) in paragraph 4, point (e) is replaced by the following:

'(e) conditions for the declaration by, and for the oversight of, operators referred to in paragraph 3;'

(d) in paragraph 4, the following point is added:

'(g) alternative conditions for cases where compliance with the standards and requirements referred to in paragraph 1 is not possible or involves disproportionate effort, ensuring that the objective of the standards and requirements concerned is met.'

(e) in paragraph 5, point (e), the word 'safety' is deleted.

(13) Article 10 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. For the purposes of the implementation of paragraph 1, Member States shall, in addition to their oversight of certificates that they have issued, or declarations that they have received, conduct investigations, including ramp inspections, and shall take any measure, including the grounding of aircraft, to prevent the continuation of an infringement.'

(b) in paragraph 5, the introductory part is replaced by the following:

'5. The Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules setting out the conditions for the cooperation referred to in paragraph 1 and in particular:'

(c) in paragraph 5, the following points are added:

'(d) conditions for the qualifications of inspectors conducting ramp inspections and organisation involved in training of these inspectors

(e) conditions for the administration and application of oversight and enforcement, including safety management systems'

(14) Article 11 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. Member States shall, without further technical requirements or evaluation, recognise certificates issued in accordance with this Regulation and the delegated acts and implementing acts adopted on the basis thereof. When the original recognition is for a particular purpose or purposes, any subsequent recognition shall cover only the same purpose or purposes.

2. The Commission shall, on its own initiative or at the request of a Member State or of the Agency, decide whether a certificate referred to in paragraph 1 complies with this Regulation and the delegated and implementing acts adopted on the basis thereof. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2). On duly justified imperative grounds of urgency relating to safety, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 65(4)'

(15) In Article 12(2) (b), the last subparagraph is replaced by the following:

'it may require the Member State concerned to modify the agreement, to suspend its application or to renounce it, in accordance with Article 351 of the Treaty on the Functioning of the European Union. Those implementing acts shall be adopted in accordance with the procedure laid down in Article 65(2).'

(16) Article 13 is replaced by the following:

'Article 13

Qualified entities

"When allocating a specific certification or oversight task to a qualified entity, the Agency or the national aviation authority concerned shall ensure that such entity comply with the criteria laid down in Annex V.

Qualified entities shall not issue certificates or authorisations, or receive declarations.'

(17) Article 14 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The provisions of this Regulation and of the delegated acts and implementing acts adopted on the basis thereof shall not prevent a Member State from reacting immediately to a safety problem which involves a product, system, person or organisation, on the condition that the immediate action is required to ensure safety and that it is not possible to adequately address the problem in compliance with this Regulation and the delegated acts and implementing acts adopted on the basis thereof.'

(b) paragraph 3 is replaced by the following:

'3. The Commission shall assess whether conditions referred to in paragraph 1 have been complied with and, where it considers that this is not the case, adopt a decision to that effect. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2). On duly justified imperative grounds of urgency relating to safety, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 65(4).

The Member State concerned shall revoke the measure taken pursuant to paragraph 1 upon notification of the decision referred to in the first subparagraph of this paragraph.

Where necessary as a consequence of the identification of an immediate safety problem referred to in paragraph 1, the Commission shall be empowered to adopt delegated acts in accordance with Article 65c in order to ~~amend or supplement this Regulation~~ ***address the identified safety problems***.' **[Am. 39]**

(c) paragraph 4 is replaced by the following:

'4. Member States may grant exemptions from the substantive requirements laid down in this Regulation and its delegated and implementing acts in the event of unforeseen urgent operational circumstances or operational needs of a limited duration, provided the level of safety is not adversely affected. The Agency, the Commission and the other Member States shall be notified of any such exemptions as soon as they become repetitive or where they are granted for periods of more than two months.'

(d) in paragraph 5, the second subparagraph is replaced by the following:

'The Commission shall assess whether the exemption complies with the conditions set out in paragraph 4 and, where it considers that this is not the case, adopt a decision to that effect. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2). On duly justified imperative grounds of urgency relating to safety, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 65(4).

The Member State concerned shall revoke the exemption upon notification of the decision referred to in the second subparagraph.'

(e) paragraph 6, the first subparagraph is replaced by the following:

'6. Where an equivalent level of protection to that attained by the application of the delegated and implementing acts adopted on the basis of this Regulation can be achieved by other means, Member States may, without discrimination on grounds of nationality, grant an approval derogating from those delegated or implementing acts, in conformity with the procedure laid down in the second subparagraph and paragraph 7.'

(f) in paragraph 7, the ~~following~~ ***second*** subparagraph is ~~added at the end~~ ***replaced by the following***: **[Am. 10]**

'Where the Commission finds, taking into account the recommendation referred to in the first subparagraph, that the conditions laid down in paragraph 6 are met, it shall grant the derogation without delay by amending accordingly the relevant delegated or implementing acts adopted on the basis of this Regulation.'

(18) Article 15 is amended as follows:

(a) in paragraph 2, the introductory part is replaced by the following:

'2. Without prejudice to the public's right of access to the Commission's documents as laid down in Regulation (EC) No 1049/2001, the Commission shall adopt detailed rules on the dissemination to interested parties on its own initiative of the information referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(3).These measures shall take account of the need:'

(b) paragraph 3 is replaced by the following:

'3. The national aviation authorities shall, in accordance with ***Union law and t***heir national legislation, take necessary measures to ensure appropriate confidentiality of the information received by them pursuant to paragraph 1.' **[Am. 11]**

(19) The title of Chapter III is replaced by the following:

'THE EUROPEAN UNION AGENCY FOR AVIATION'

(20) Article 17 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'For the purpose of the implementation of this Regulation, a European Union Agency for Aviation shall be established'.

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

'For the purposes of ensuring the proper functioning and development of civil aviation, ***in particular safety,*** the Agency shall:' **[Am. 12]**

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(c) in paragraph 2, the following point is added:

'(f) support the Member States competent authorities in carrying out their tasks by providing a forum for exchanges of information and experts.'

(ca) in paragraph 2, the following points are inserted:

'(g) in accordance with Article 2, to promote Union aviation standards and rules at international level by establishing the appropriate cooperation with third countries and international organisations, and thereby to promote the movement of the Union's aeronautical products, professionals and services with a view to facilitating their access to new growing markets worldwide;'

'(h) perform the accreditation of the national aviation authorities. The Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down detailed rules setting out the conditions to fulfil the provision of this paragraph.' *[Ams. 13, 31 and 40]*

(21) In Article 19(2), the second subparagraph is replaced by the following:

'These documents shall reflect the state of the art and the best practices in the fields concerned and be updated taking into account worldwide aviation experience, ~~and~~ scientific and technical progress ***and the ATM master plan***.' **[Am. 14]**

(22) In Article 21(2)(b), point (i) is replaced by the following:

'(i) flight simulation training devices operated by training organisations certified by the Agency;'

(23) Article 22 is amended as follows:

(a) in paragraph 2, point (c) the words 'one month' are replaced by 'three months'

(b) in paragraph 2, point (e) is replaced by the following:

'(e) should a Member State disagree with the Agency's conclusions concerning an individual scheme, it shall refer the issue to the Commission. The Commission shall decide whether that scheme complies with the safety objectives of this Regulation. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2);'

(24) In Article 22a; the following point is inserted:

'(ca) issue and renew certificates or accept declarations of conformity or suitability for use and of compliance in accordance with Article 8b(4) and (5) of organisations providing pan-European services or systems and where requested by the Member State concerned, also of other service providers as well as organisations engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents;'

(25) In Article 24, paragraph 5 is replaced by the following:

'5. Taking account of the principles laid down in Articles 52 and 53, the Commission shall adopt detailed rules on the working methods of the Agency for conducting the tasks referred to in paragraphs 1, 3 and 4. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2).'

(26) Article 25 is amended as follows:

(a) in paragraph 3, the introductory part is replaced by the following:

'3. On the basis of paragraphs 1 and 2, the Commission shall, by means of delegated acts in accordance with Article 65b, lay down:'

(b) in paragraph 3, point (b) is replaced by the following:

'(b) detailed rules for enquiries, associated measures and reporting, as well as decision-making, including provisions on rights of defence, access to file, legal representation, confidentiality and temporal provisions and the quantification and collection of fines and periodic penalty payments.'

(27) In article 29, paragraph 2 is deleted.

(28) Article 30 is replaced by the following:

'Article 30

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency and its staff.'

(29) Article 33 is amended as follows:

(a) in paragraph 2, point (a) is replaced by the following:

'(a) appoint the Executive Director, and the Deputy Executive Directors, in accordance with Articles 39a and 39b;'

(b) in paragraph 2, point (c) is replaced by the following:

'(c) before 30 November each year, and after receiving the opinion of the Commission, adopt the Agency's annual and multi-annual work programme for the coming year(s); these work programmes shall be adopted without prejudice to the ***Union's*** annual ~~Community~~ budgetary procedure and the ~~Community~~ ***Union's*** legislative programme in relevant areas of aviation safety; the opinion of the Commission shall be attached to the work programmes;' **[Am. 15]**

(c) in paragraph 2, point (h) is replaced by the following:

'(h) exercise disciplinary authority over the Executive Director and over the Deputy Executive Directors in agreement with the Executive Director;'

(d) in paragraph 2, the following points are added:

'(n) in accordance with paragraph 6, exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment (Regulation (EEC, Euratom, ECSC) No 259/68 of the Council (*)) ("the appointing authority powers");

(o) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF);

(p) adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;

(q) adopt rules for the prevention and management of conflicts of interest in respect of its members, as well as members of Board(s) of Appeal'.

(*) Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1);

(e) the following paragraph 6 is added:

'6. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may by way of a decision ***taken by an absolute majority of its members*** temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.' **[Am. 16]**

(30) Article 34 is amended as follows:

(a) in paragraph 1, the words 'one representative of the Commission' are replaced by 'two representatives of the Commission, all with voting rights'.

(b) in paragraph 1, second subparagraph, the words 'its representative and alternate' are replaced by 'its representatives and their alternates'

(c) in paragraph 1, second subparagraph, the word 'five' is replaced by 'four'

(d) in paragraph 1, the following new subparagraph is added at the end:

'Members of the Management Board and their alternates shall be appointed in light of their knowledge in the field of aviation, taking into account relevant managerial, administrative and budgetary skills. All parties represented in the Management Board shall make efforts to limit turnover of their representatives, in order to ensure continuity of the board's work. All parties shall aim to achieve a balanced representation between men and women on the Management Board.'

(31) In Article 37, paragraph 1, the following changes are made:

— the words 'two-thirds majority' are replaced by '~~simple~~ ***absolute*** majority'. **[Am. 17]**

— the following second sentence is inserted:

'However a two-thirds majority of the Management Board members shall be required for decisions relating to adoption of the work programmes, the annual budget, appointment, and the extension of the term of office or removal from office of the Executive Director.'

(32) The following Article is added:

'Article 37a

Executive Board

1. The Management Board shall be assisted by an Executive Board.

2. The Executive Board shall:

(a) prepare decisions to be adopted by the Management Board.

(b) ensure, together with the Management Board, adequate follow-up to the findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF);

(c) without prejudice to the responsibilities of the Executive Director, as set out in Article 38, assist and advise him/her in the implementation of the decisions of the Management Board, with a view to reinforcing supervision of administrative and budgetary management.

3. When necessary, because of urgency, ~~the Executive Board may take certain provisional decisions on behalf of the Management Board, in particular on administrative management matters, including the suspension of the delegation of the appointing authority powers and budgetary matters~~ ***the Executive Board may provisionally take decisions on the suspension of the delegation of the appointing authority powers and on budgetary matters. Those decisions shall be taken by a majority of five out of seven members of the Executive Board. They shall be referred, without delay, to the closest following meeting of the Management Board. The Management Board may revoke them by a vote taken by absolute majority.***

4. The Executive Board shall be composed of the Chairperson of the Management Board, one representative of the Commission to the Management Board ~~and three other members appointed by the Management Board from~~***, and five other members appointed by the Management Board for a term of two years***, among its members with the right to vote. ***The term of the five appointees of the Management Board may be renewed on an unlimited number of occasions.*** The Chairperson of the Management Board shall also be the Chairperson of the Executive Board. The Executive Director shall take part in the meetings of the Executive Board, but shall not have the right to vote.

5. ~~The term of office of members of the Executive Board shall be the same as that of members of the Management Board.~~ ***The term of office of the Chairperson of the Executive Board shall be the same as his/her term of office as the Chairperson of the Management Board. The term of office of the representative of the Commission shall be the same as his/her term of office on the Management Board.*** The term of office of ***the*** members of the Executive Board shall end when their membership of the Management Board ends.

6. The Executive Board shall hold at least one ordinary meeting every three months. In addition, it shall meet on the initiative of its Chairperson or at the request of its members ***or of the Executive Director***.

7. The Management Board shall lay down the rules of procedure of the Executive Board.' **[Am. 18]**

(33) Article 38 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. Without prejudice to the competencies of the Commission the Management Board and the Executive Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.'

(b) in paragraph 3, point (g) is deleted.

(c) in paragraph 3, point (i) is replaced by the following:

'(i) to delegate his/her powers to other members of the Agency's staff. The Commission shall define the modalities of such delegations. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2);'

(d) in paragraph 3, point (k) is replaced by the following:

'(k) to prepare the annual and multi-annual work programmes, and submit them to the Management Board after consulting the Commission;'

(e) in paragraph 3, the following points are added:

'(m) to implement the annual and multi-annual work programmes, and report to the Management Board on their implementation;

(n) to prepare an action plan following up conclusions of internal or external audit reports and evaluations, as well as investigations by the European Anti-Fraud Office (OLAF) and report on progress twice a year to the Commission and regularly to the Executive and Management Boards

(o) to protect the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, to recover amounts wrongly paid and, where appropriate, improve effective, proportionate and dissuasive administrative and financial penalties;

(p) to prepare an anti-fraud strategy for the Agency and present it to the Management Board for approval';

(34) Article 39 is deleted.

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(35) The following Articles are added:

'Article 39a

Appointment of the Executive Director

1. The Executive Director shall be engaged as a temporary agent of the Agency under Article 2(a) of the Conditions of Employment of Other servants.

2. The Executive Director shall be appointed by the Management Board on grounds of merit and of documented competence and experience relevant for civil aviation, from a list of candidates proposed by the Commission, following an open and transparent selection procedure.

For the purpose of concluding the contract with the Executive Director, the Agency shall be represented by the Chairperson of the Management Board.

Before appointment, the candidate selected by the Management Board ~~may be invited to~~ ***shall*** make a statement before the competent committee of the European Parliament and ~~to~~ answer questions put by its members. **[Am.19]**

3. The term of office of the Executive Director shall be five years. ~~By the end of~~ ***Midway through*** that period, the Commission shall ~~undertake an assessment that takes into account an evaluation of~~ ***draw up a report evaluating*** the Executive Director's performance and the Agency's future tasks and challenges. ***The Commission shall present that evaluation report to the competent committee of the European Parliament.*** **[Am. 20]**

4. The Management Board, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once, for no more than five years.

5. The Management Board shall inform the European Parliament if it intends to extend the Executive Director's term of office. Within one month before any such extension, the Executive Director ~~may be invited to~~ ***shall*** make a statement before the competent committee of the Parliament and answer questions put by its members. **[Am. 21]**

6. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.

7. The Executive Director may be removed from office only upon a decision of the Management Board acting on a proposal from the Commission.

8. The Management Board shall reach decisions on appointment, extension of the term of office or removal from office of the Executive Director and/or Deputy Executive Directors on the basis of a two-thirds majority of its members with voting rights.

Article 39b

Appointment of Deputy Executive Directors

1. One ~~or more~~ Deputy Executive Director~~(s) may~~ ***shall*** assist the Executive Director. **[Am. 22]**

2. The Deputy Executive Director or Deputy Executive Directors shall be appointed, extended in their term of office or removed from office as provided for in Article 39a, after consultation of the Executive Director and, where applicable, the Executive Director elect.'

(36) In article 40, paragraph 3 is replaced by the following:

'3. The Board or Boards of Appeal shall be convened as necessary. The Commission shall determine the number of Boards of Appeal and the work allocated to it or them. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(2).'

(37) In Article 41, paragraph 5 is replaced by the following:

'5. The Commission shall determine the qualifications required for the members of each Board of Appeal, the powers of individual members in the preparatory phase of decisions and the voting conditions. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 65(3).'

(38) In Article 52(1), point (b) is replaced by the following:

'(b) whenever necessary, involve experts from relevant interested parties, or draw on expertise from the relevant European standardisation bodies, Eurocontrol or other specialised bodies;'

(39) Article 56 is replaced by the following:

'Article 56

Annual and multi-annual work programme

1. By 30 November each year, in accordance with Article 33(2)(c), the Management Board shall adopt a programming document containing multi-annual and annual programming, based on a draft put forward by the Executive Director, taking into account the opinion of the Commission. It shall forward it to the European Parliament, the Council and the Commission.

The programming document shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.

The annual and multi-annual work programmes shall aim to promote the continuous improvement of European aviation safety and comply with the objectives, mandates and tasks of the Agency, as set out in this Regulation.

2. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multi-annual work programme referred to in paragraph 4. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year.

It shall include the strategy for relations with third countries or international organisations referred to in Article 27 (2) and the actions linked to this strategy.

3. The Management Board shall amend the adopted annual work programme when a new task is given to the Agency.

Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

4. The multi-annual work programme shall set out overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff.

The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 62.'

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(40) In Article 57, first subparagraph is replaced by the following:

'The annual general report shall describe the way in which the Agency has implemented its annual work programme. It shall clearly indicate which of the mandates and tasks of the Agency have been added, changed or deleted in comparison with the previous year.'

(41) In Article 59(1), the following points are added:

'(f) charges ~~paid in accordance with Article 13 of~~ ***under*** Commission Implementing Regulation ~~(EC) No [SES Regulation] for~~ (***EU***) ***No 391/2013*** (*) relevant ***for*** ATM/ANS ~~authority~~ ***oversight*** tasks ***carried out by the Agency***. **[Am. 23]**

(fa) grants. **[Am. 24]**

(*) Commission Implementing Regulation (EU) No 391/2013 of 3 May 2013 laying down a common charging scheme for air navigation services (OJ L 128, 9.5.2013, p. 31).'

(41a) The following Article is inserted:

'Article 61a

Conflicts of interest

1. The Executive Director and officials seconded by Member States and the Commission on a temporary basis shall make a declaration of commitments and a declaration of interests indicating the absence of any direct or indirect interests, which might be considered prejudicial to their independence. Those declarations shall be made in writing on their entry into service and shall be renewed in the event of a change in their personal circumstances. Members of the Management Board, the Executive Board and the Board of Appeal shall also make those declarations which shall be public together with their curricula vitae. The Agency shall publish on its website a list of its the members of the bodies described in Article 42 and external and in-house experts.

2. The Management Board shall implement a policy to manage and avoid conflicts of interest, which shall include at least:

(a) principles for managing and verification of the declarations of interest including rules for making them public taking into consideration Article 77;

(b) compulsory training requirements regarding conflicts of interest for the staff of the Agency and seconded national experts;

(c) rules on gifts and invitations;

(d) detailed rules for incompatibilities for staff and members of the Agency once they have ended their employment relation with the Agency;

(e) rules of transparency on Agency's decisions including the minutes of the Boards of the Agency which shall be made public taking into consideration sensitive, classified and commercial information; and

(f) penalties and other mechanisms by which to safeguard the autonomy and independency of the Agency.

The Agency shall take into consideration the need to maintain balance between the risks and the benefits, in particular as regards the objective of obtaining the best technical advice and expertise, and the management of conflicts of interest. The Executive Director shall include the information related to implementation of that policy when reporting to the European Parliament and the Council in accordance with this Regulation.' **[Am. 25]**

(42) Article 62 is amended as follows:

(a) in paragraph 1, the words 'Management Board' are replaced by 'Commission'

(b) the following paragraph is added:

'4. On the occasion of every second evaluation, there shall also be an assessment of the results achieved by the Agency having regard to its objectives, mandate and tasks. If the Commission considers that the continuation of the Agency is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this Regulation be amended accordingly or repealed.'

(43) Article 64 is amended as follows:

(a) the word 'regulation' in the title is deleted.

(b) paragraph 1 is replaced by the following:

'1. The Commission shall be empowered to adopt delegated acts in accordance with Article 65b in order to lay down, on the basis of paragraphs 3, 4 and 5, detailed rules relating to fees and charges.'

(c) paragraph 3 is replaced by the following:

'3. The rules referred to in paragraph 1 shall determine in particular the matters for which fees and charges pursuant to Article 59(1)(c) and (d) are due, the amount of the fees and charges and the way in which they are to be paid.'

(d) Paragraph 5 is replaced by the following:

'5. The amount of the fees and charges shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient to cover the full cost of the services delivered. All expenditures of the Agency attributed to staff involved in activities referred to in paragraph 3, including the employer's pro-rata contribution to the pension scheme, shall be in particular reflected in this cost. The fees and charges, including those collected in 2007, shall be assigned revenues for the Agency.'

(da) The following paragraph is added:

'6. The number of staff financed from revenue derived from fees and charges shall be allowed to fluctuate in line with market demand for certificates, approvals and other services.' **[Am. 26]**

(44) Article 65 is replaced by the following:

'Article 65

Committee

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

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

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

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

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

(45) Article 65a is deleted.

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(46) The following Articles are added:

'Article 65b

Exercise of the delegation

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

2. The delegation of power referred to in Article 5(5), Article 6(2), Article 6(3), Article 7(6), Article 8(5), Article 8a(5), Article 8b(6), Article 8c(10), Article 9(4), Article 10(5), Article 14(3), Article 14(7), Article 25(3) and Article 64(1) shall be conferred on the Commission for ~~an indeterminate~~ ***a period of five years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year*** period ~~of time~~. ***The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period***. **[Am. 27]**

3. The delegation of power referred to in Article 5(5), Article 6(2), Article 6(3), Article 7(6), Article 8(5), Article 8a(5), Article 8b(6), Article 8c(10), Article 9(4), Article 10(5), Article 14(3), Article 14(7), Article 25(3) and Article 64(1) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to Article 5(5), Article 6(2), Article 6(3), Article 7(6), Article 8(5), Article 8a (5), Article 8b(6), Article 8c(10), Article 9(4), Article 10(5), Article 14(3), Article 14(7), Article 25(3) and Article 64 (1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 65c

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 65b(5). In such a case the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.'

(46a) The following Article is inserted:

'Article 65d

Commission report

***In accordance with the Treaty on the Functioning of the European Union, the Commission shall review the application of this Regulation and report to the European Parliament and to the Council by 31 December 2015 with a view to further developments in regard to constructing a risk-based, proportional and sustainable safety framework.'* [Am. 28]**

(47) The following Article 66a is added:

'Article 66a

Headquarters Agreement and operating conditions

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that Member State together with the specific rules applicable in the host Member State to the Executive Director, members of the Management Board, Agency staff and members of their families shall be laid down in a Headquarters Agreement between the Agency and Member State where the seat is located, concluded after obtaining the approval of the Management Board and no later than 2 years after the entry into force of Regulation (EU) No [].

2. The Agency's host Member State shall provide the best possible conditions to ensure the functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.'

(48) The following Article is added:

'Article 66b

Security rules on the protection of classified and sensitive non-classified information

The Agency shall apply the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in the annex to Decision 2001/844/EC, ECSC, Euratom. Applying the security principles shall cover, inter alia, provisions for the exchange, processing and storage of such information.'

(49) In Annex V, points 2 and 3 are replaced by the following:

'2. The entity and the staff responsible for the certification and oversight tasks must carry out their duties with the greatest possible professional integrity and the greatest possible technical competence and must be free of any pressure and incentive, in particular of a financial type, which could affect ~~their judgment~~ ***their decisions*** or the results of their investigations, in particular from persons or groups of persons affected by the results of the certification or oversight tasks. **[Am. 29]**

3. The entity must employ staff and possess the means required to perform adequately the technical and administrative tasks linked with the certification and oversight process; it should also have access to the equipment needed for exceptional checks.'

(50) Annex Vb is amended as follows:

(a) paragraph 2, point (c) (iv) is replaced by the following:

'Air traffic control services and related processes shall provide for adequate separation between aircraft and, on the aerodrome manoeuvring area, prevent collisions between obstacles and aircraft on that area and, where appropriate and feasible, assist in protection from other airborne hazards and shall ensure prompt and timely coordination with all relevant users and adjacent volumes of airspace.'

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(b) in paragraph 2, point (g), the following words are added at the end of the point:

'Flow management shall be performed with a view to optimising available capacity in the use of airspace and enhancing air traffic flow management processes. It shall be based on transparency and efficiency, ensuring that capacity is provided in a flexible and timely manner, consistent with the recommendations of the ICAO Regional Air Navigation Plan, European Region.

The measures referred to in Article 8b(6), concerning flow management shall support operational decisions by air navigation service providers, airport operators and airspace users and shall cover the following areas:

(a) flight planning;

(b) use of available airspace capacity during all phases of flight, including slot assignment; and

(c) use of routings by general air traffic, including:

— the creation of a single publication for route and traffic orientation,

— options for diversion of general air traffic from congested areas, and

— priority rules regarding access to airspace for general air traffic, particularly during periods of congestion and crisis,

(d) take into account the consistency between flight plans and airport slots and the necessary coordination with adjacent regions.'

(c) in paragraph 2, point (h), the following words are added at the end of the point:

'Taking into account the organisation of military aspects under the responsibility of the Member States, airspace management shall also support the uniform application of the concept of the flexible use of airspace as described by the ICAO and as implemented under Regulation (EC) No 551/2004, in order to facilitate airspace management and air traffic management in the context of the common transport policy.

Member States shall report annually to the Agency on the application, in the context of the common transport policy, of the concept of the flexible use of airspace in respect of the airspace under their responsibility.'

(d) in paragraph 3, point (a), the following words are added at the end of the point:

'The systems shall include in particular:

1. Systems and procedures for airspace management.

2. Systems and procedures for air traffic flow management.

3. Systems and procedures for air traffic services, in particular flight data processing systems, surveillance data processing systems and human-machine interface systems.

4. Communications systems and procedures for ground-to-ground, air-to-ground and air-to-air communications.

5. Navigation systems and procedures.

6. Surveillance systems and procedures.

7. Systems and procedures for aeronautical information services.

8. Systems and procedures for the use of meteorological information.'

(e) In paragraph 3, point (b), the following words are added at the end of the point:

'ATM/ANS systems and their constituents shall be designed, built, maintained and operated using the appropriate and validated procedures, in such a way as to ensure the seamless operation of the European air traffic management network at all times and for all phases of flight. Seamless operation can be expressed, in particular, in terms of information-sharing, including the relevant operational status information, common understanding of information, comparable processing performances and the associated procedures enabling common operational performances agreed for the whole or parts of the European air traffic management network (EATMN).

The EATMN, its systems and their constituents shall support, on a coordinated basis, new agreed and validated concepts of operation that improve the quality, sustainability and effectiveness of air navigation services, in particular in terms of safety and capacity.

The EATMN, its systems and their constituents shall support the progressive implementation of civil/military coordination, to the extent necessary for effective airspace and air traffic flow management, and the safe and efficient use of airspace by all users, through the application of the concept of the flexible use of airspace.

To achieve these objectives, the EATMN, its systems and their constituents shall support the timely sharing of correct and consistent information covering all phases of flight, between civil and military parties.'

Article 2

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

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

Done at …,

For the European Parliament	*For the Council*
The President	*The President*

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P7_TA(2014)0222

Package travel and assisted travel arrangements ***I

European Parliament legislative resolution of 12 March 2014 on the proposal for a directive of the European Parliament and of the Council on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC (COM(2013)0512 — C7-0215/2013 — 2013/0246(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/62)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0512),

— having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0215/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 11 December 2013 ([1]),

— after consulting the Committee of the Regions,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Transport and Tourism and the Committee on Legal Affairs (A7-0124/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0246

Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Directive 2014/…/EU of the European Parliament and of the Council on package travel*, package holidays, package tours* and ~~assisted~~ *linked* travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC [Am. 1]

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,

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([1]) OJ C 170, 5.6.2014, p. 73.

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

(1) Council Directive 90/314/EEC ([3]) lays down a number of important consumer rights in relation to package travel, in particular with regard to information requirements, the liability of traders in relation to the performance of a package and protection against the insolvency of an organiser or a retailer. However, it is necessary to adapt the legislative framework to market developments, in order to make it more suitable for the internal market, remove ambiguities and close legislative gaps.

(2) Tourism plays an important role in the economies of the Union and ***package travel, package holidays and package tours (‘***packages') represent a significant proportion of that market. The travel market has undergone considerable changes since the adoption of Directive 90/314/EEC. In addition to traditional distribution chains, the Internet has become an increasingly important medium to offer travel services. Travel services are not only combined in the form of traditional pre-arranged packages, but are often combined in a customised fashion. Many of these travel products are either in a legal grey zone or are clearly not covered by Directive 90/314/EEC. This Directive aims to adapt the scope of protection to those developments, enhance transparency and increase legal certainty for travellers and traders. **[Am. 2]**

(3) Article 169 of the Treaty on the Functioning of the European Union (TFEU) provides that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU.

(4) Directive 90/314/EEC gives broad discretion to the Member States as regards transposition and, therefore, significant divergences between the laws of the Member States remain. Legal fragmentation leads to higher costs for businesses and obstacles for those wishing to operate cross-border, thus limiting consumers' choice.

(5) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. The harmonisation of ~~certain aspects of~~ ***the rights and obligations arising from*** package contracts and ~~assisted~~ ***linked*** travel arrangements is necessary for the creation of a real consumer internal market in ~~this~~ ***that*** area, striking the right balance between a high level of consumer protection and the competitiveness of businesses. **[Am. 3]**

(6) The cross-border potential of the package travel market in the Union is currently not fully exploited. Disparities in the rules protecting travellers in different Member States are a disincentive for travellers in one Member State from buying packages and ~~assisted~~ ***linked*** travel arrangements in another Member State and, likewise, a disincentive for organisers and retailers in one Member State from selling such services in another Member State. In order to enable consumers and businesses to benefit fully from the internal market, while ensuring a high level of consumer protection across the Union, it is necessary to further approximate the laws of the Member States relating to packages and ~~assisted~~ ***linked*** travel arrangements.

([1]) OJ C 170, 5.6.2014, p. 73.
([2]) Position of the European Parliament of 12 March 2014.
([3]) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).

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(7) The majority of travellers buying packages are consumers in the sense of Union consumer law. At the same time, it is not always easy to distinguish between consumers and representatives of ~~small~~ businesses or professionals who book trips related to their business or profession through the same booking channels as consumers. Such travellers often require a similar level of protection. In contrast, ~~larger~~ companies or organisations often make travel arrangements for their employees***, members and representatives*** on the basis of a framework contract for business travel ~~which specialise in the arrangement of business travel~~. The latter type of travel arrangements do not require the level of protection designed for consumers. Therefore, this Directive should apply to business travellers only insofar as they do not make travel arrangements on the basis of a framework contract. To avoid confusion with the definition of the term 'consumer' ***used*** in other ***Union*** consumer protection ~~directives~~ ***legislation***, persons protected under this Directive should be referred to as 'travellers'. **[Am. 4]**

(8) Since travel services may be combined in many different ways, it is appropriate to consider as packages all combinations of travel services that display features which travellers typically associate with packages, in particular that separate travel services are bundled together into a single travel product for which the organiser assumes responsibility for proper performance. In accordance with the case law of the Court of Justice of the European Union ([1]), it should make no difference whether travel services are combined before any contact with the traveller or at the request of or according to the selection made by the traveller. The same principles should apply irrespective of whether the booking is made through a high street travel agent or online.

(9) For the sake of transparency, packages should be distinguished from ~~assisted~~ ***linked*** travel arrangements, where online or high street agents assist travellers in combining travel services leading the traveller to conclude contracts with different travel service providers, including through linked booking processes ***in a targeted manner***, which do not contain those features and in relation to which it would not be appropriate to apply all obligations applying to packages. **[Am. 5]**

(10) In light of market developments, it is appropriate to further define packages on the basis of alternative objective criteria which predominantly relate to the way in which the travel services are presented or purchased and where travellers may reasonably expect to be protected by the Directive. That is the case, for instance where different travel services are purchased for the same trip or holiday within the same booking process from a single point of sale or where such services are offered or charged at an inclusive or total price. It should be considered that travel services are procured within the same booking process if they are selected before the traveller has agreed to pay.

(11) At the same time, ~~assisted~~ ***linked*** travel arrangements should be distinguished from travel services which travellers book independently, often at different times, even for the purpose of the same trip or holiday. Online ~~assisted~~ ***linked*** travel arrangements should also be distinguished from ***linked websites which do not have the objective of concluding a contract with the traveller and from*** links through which travellers are simply informed about further travel services in a general way ***and not in a targeted manner***, for instance where a hotel or an organiser of an event includes on its website a list of all operators offering transport services to its location independently of any booking or if cookies or ~~meta-data~~ ***metadata*** are used to place advertisements on websites ***related to the travel destination or travel period specified for the first travel service chosen***. **[Am. 6]**

(12) The purchase of an air travel service on a stand-alone basis as a single travel service constitutes neither a package nor ~~an assisted~~ ***a linked*** travel arrangement.

([1]) See Judgment of the Court of Justice of the European Union of 30 April 2012 in Case C-400/00 *Club Tour, Viagens e Turismo SA v. Alberto Carlos Lobo Gonçalves Garrido* and *Club Med Viagens Ld,* 2002 ECR, I-04051.

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(13) Specific rules should be laid down ***in this Directive*** for both high street and on-line retailers which assist travellers, on the occasion of a single visit or contact with their own point of sale, in concluding separate contracts with individual service providers ~~and for~~ ***where the traveller selects and agrees to pay for each travel service separately. Such rules should also apply to*** online retailers which, through linked online booking processes, facilitate the procurement of additional travel services from another trader in a targeted manner, ***where at least the traveller's name or contact details are transferred to the other trader and such additional services are procured*** at the latest ~~when~~ ***24 hours after*** the booking of the first service is confirmed. ~~These rules would apply for example, where, along with the confirmation of the booking of a first travel service such as a flight or a train journey, a consumer receives an invitation to book an additional travel service available at the chosen travel destination, for instance hotel accommodation, with a link to the booking site of another service provider or intermediary.~~ While those arrangements do not constitute packages within the meaning of this Directive as there can be no confusion that a single organiser has assumed the responsibility for the travel services, such ~~assisted~~ ***linked travel*** arrangements constitute an alternative business model that often competes closely with packages. **[Am. 7]**

(14) In order to ensure fair competition and to protect consumers, the obligation to provide sufficient evidence of security for the refund of pre-payments and the repatriation of travellers in the event of insolvency should also apply to ~~assisted~~ ***linked*** travel arrangements.

(14a) Practices have appeared online whereby traders facilitating the procurement of linked travel arrangements have not clearly and unambiguously provided the option of booking only the main service and not choosing any further services. Such practices should be regarded as misleading for travellers. As the existing legal framework has not yet allowed for their elimination and given that they are specific to linked travel arrangements, those practices should be banned under this Directive. **[Am. 8]**

(15) To increase clarity for travellers and enable them to make informed choices as to the different types of travel arrangements on offer, it is appropriate to require traders to state the nature of the arrangement clearly and inform travellers of their rights. A trader's declaration as to the legal nature of the travel product being marketed should correspond to the true legal nature of that product concerned. The enforcement authorities should intervene where traders do not provide accurate information to travellers.

(15a) Before making the payment, travellers should be made aware of whether they are choosing a package travel or a linked travel arrangement, and of the corresponding level of protection. **[Am. 9]**

(15b) Traders facilitating the procurement of a linked travel arrangement should clearly advise a traveller before the traveller is bound by any contract or any corresponding offer for a linked travel arrangement, that, to secure the benefits of the Directive applying to linked travel arrangements, all other contracts which make up the linked travel arrangement must be confirmed within the following 24 hours. Where consumers are not advised of this information or where this information is incorrect, deceptive or omitted, this may constitute an unfair commercial practice. **[Am. 141]**

(16) ~~Only~~ The combination of different travel services, such as accommodation, carriage of passengers by bus, rail, water or air, as well as rental of cars, other vehicles or other means of transport, should be considered for the purposes of identifying a package or ~~an assisted~~ ***a linked*** travel arrangement. ***Hotel nights with added packages, such as tickets for musicals or spa treatments, should be excluded when that package is not specifically marketed to the traveller as a significant proportion of the trip or the ancillary service clearly does not constitute the essential feature of the trip.*** Accommodation for residential purposes~~, including~~ ***which is clearly not for the purpose of tourism, such as*** for long-term language courses, should not be considered as accommodation within the meaning of this Directive. **[Am. 11]**

(16a) Carriage of passengers by bus, rail, water or air which includes accommodation, for example ferry crossings in cabins or railway journeys in sleeper cars, should be considered as single travel services, if the main component of that carriage is clearly transport and such carriage is not combined with another travel service. **[Am. 12]**

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(17) Other tourist services, such as admission to concerts, sport events, excursions or event parks are services that, in combination with either carriage of passengers, accommodation and/or rental of cars, other vehicles or other means of transport, should be considered as capable of constituting a package or ~~an assisted~~ ***a linked*** travel arrangement. However, such packages should only fall within the scope of this Directive if the relevant tourist service accounts for a significant proportion of the package. Generally, the tourist service should be considered as a significant proportion of the package if it ***is specifically marketed to travellers as such***, ***clearly represents the reason for the trip,*** accounts for more than ~~20 %~~ ***25 %*** of the total price or otherwise represents an essential feature of the trip or holiday. Ancillary services, such as***, in particular,*** travel insurance, ***transport between the station and the accommodation, transport at the beginning of the trip and as part of excursions,*** transport of luggage, meals and cleaning ***services*** provided as part of accommodation, should not be considered as tourist services in their own right. **[Am. 13]**

(18) It should also be clarified that contracts by which a trader entitles the traveller after the conclusion of the contract to choose among a selection of different types of travel services, such as in the case of a package travel gift box, should constitute a package. Moreover, a combination of travel services should be considered as a package where the traveller's name ~~or particulars~~ ***and other personal data, such as contact details, credit card details or passport details, which are*** needed to conclude the booking transaction are transferred between the traders at the latest ~~when~~ ***24 hours after*** the booking of the first service is confirmed. ~~Particulars needed to conclude a booking transaction relate to credit card details or other information necessary to obtain a payment.~~ However, the mere transfer of particulars such as the travel destination or travel times should not be sufficient. ***Cruises and multi-day train journeys including accommodation should also be considered as package, as they combine transport, accommodation and catering.*** **[Am. 14]**

(19) Since there is less need to protect travellers in cases of short-term trips, and in order to avoid unnecessary burden for traders, trips lasting less than 24 hours which do not include accommodation ~~as well as occasionally organised packages,~~ should be excluded from the scope of this Directive. ***Packages and linked travel arrangements that are occasionally offered or put together by natural or legal persons, such as non-profit organisations, including charitable organisations, football clubs and schools, where no direct or indirect financial gain is made from the sale of such packages or the facilitation of such linked travel arrangements, should also be excluded from the scope of this Directive.*** **[Am. 15]**

(19a) Member States should remain competent, in accordance with Union law, to apply the provisions of this Directive to areas not falling within its scope. Member States may therefore maintain or introduce national legislation corresponding to all or some of the provisions of this Directive in relation to contracts that fall outside the scope of this Directive. For example, Member States may apply the provisions of this Directive to packages and linked travel arrangements that are occasionally offered or put together by natural or legal persons where no direct or indirect financial gain is made from the sale of those packages or the facilitation of those linked travel arrangements, and to packages and linked travel arrangements covering a period of less than 24 hours and which do not include accommodation. **[Am. 16]**

(20) The main characteristic of package travel is that at least one trader is responsible as an organiser for the proper performance of the package as a whole. Therefore, only in cases where another trader is acting as the organiser of a package should a trader, typically a high-street or on-line travel agent, be able to act as a mere retailer or intermediary and not be liable as an organiser. Whether a trader is acting as an organiser for a given package should depend on its involvement in the creation of a package as defined under this Directive, and not on the denomination under which it carries out its business. Where two or more traders meet a criterion which makes the combination of travel services a package and where those traders have not informed the traveller which of them is the organiser of the package, all relevant traders should be considered as organisers.

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(20a) Directive 90/314/EEC has given discretion to the Member States to define if retailers, organisers or both retailers and organisers should be liable for the proper performance of a package. That flexibility has led to ambiguity in some Member States as to whether traders involved in a package were liable for the performance of the relevant services, in particular in the online booking process. Therefore, it is appropriate to clarify in this Directive that organisers are responsible for the performance of the travel services included in the contract, unless the national legislation also provides expressly for the possibility for the organiser or the retailer to be held liable. **[Am. 17]**

(21) In relation to packages, retailers should be responsible together with the organiser for the provision of pre-contractual information. At the same time it should be clarified that ~~they~~ ***retailers*** are liable for booking errors***, where they make mistakes in the booking process***. To facilitate communication, in particular in cross-border cases, travellers should have the possibility of contacting the organiser also via the retailer through which they bought the package. **[Am. 18]**

(22) The traveller should receive all necessary information before purchasing a package, whether it is sold through means of distance communication, over the counter or through other types of distribution. In providing that information, the trader should take into account the specific needs of travellers who are particularly vulnerable because of their age or physical infirmity, which the trader could reasonably foresee.

(23) Key information, for example on the main characteristics of the travel services or the prices, provided in advertisements, on the organiser's website or in brochures as part of the pre-contractual information, should be binding, unless the organiser reserves the right to make changes to those elements and unless such changes are clearly and prominently communicated to the traveller before the contract is concluded. ~~However, in light of new communication technologies, there is no longer any need to lay down specific rules on brochures, while it is appropriate to ensure that, in certain circumstances, changes impacting the contract performance are communicated between the parties on a durable medium accessible for future reference. It should always be possible to make changes to that information where both parties to the contract expressly agree on that.~~ **[Am. 19]**

(23a) However, in light of new communication technologies which can help to ensure that travellers have access to up-to-date information at the time of booking and the growing trend to book travel packages online, there is no longer any need for specific rules requiring printed brochures. **[Am. 20]**

(23b) Flight times should be a fixed part of the contract and one of the main characteristics of a travel service. They should not differ significantly from the times indicated to travellers in the pre-contractual information. **[Am. 21]**

(24) The information requirements laid down in this Directive are exhaustive, but should be without prejudice to the information requirements provided for in other applicable Union legislation ([1]).

([1]) See, Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1) and Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36), as well as Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (OJ L 344, 27.12.2005, p. 15), Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1), Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14), Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3), Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1) and Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

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(25) Taking into account the specificities of package travel contracts, rights and obligations of the parties should be laid down, for the time before and after the start of the package, in particular if the package is not properly performed or if particular circumstances change.

(26) Since packages are often purchased a long time before their performance, unforeseen events may occur. Therefore the traveller should, under certain conditions, be entitled to transfer a package to another traveller. In such situations, the organiser should be able to recover his expenses, for instance if a sub-contractor requires a fee for changing the name of the traveller or for cancelling a transport ticket and issuing a new one. Travellers should also have the possibility of cancelling the contract at any time before the start of the package against paying appropriate compensation, as well as the right to terminate the contract without paying compensation where unavoidable and extraordinary circumstances like warfare***, including terrorism,*** or a natural disaster ***including hurricanes and earthquakes, or political instability, which puts travellers' safety at risk*** will significantly affect the package***, when those events have occurred after the conclusion of the travel contract***. Unavoidable and extraordinary circumstances should in particular be deemed to exist where reliable and publicly available reports, such as recommendations issued by Member State authorities, advise against travelling to the place of destination. **[Am. 22]**

(27) In specific situations, ~~also~~ the organiser should ***also*** be entitled to terminate the contract before the start of the package without paying compensation, for instance if the minimum number of participants is not reached and where that possibility has been reserved in the contract. ***In such a situation, the organiser should adequately inform travellers who may be impacted by that contract clause.*** **[Am. 23]**

(28) In certain cases organisers should be allowed to make unilateral changes to the package travel contract. However, travellers should have the right to terminate the contract if the proposed alterations significantly change any of the main characteristics of the travel services. Price increases should be possible only if there has been a change in the price of passenger transport services resulting from the cost of fuel for the carriage of passengers, in taxes or fees imposed by a third party not directly involved in the performance of the included travel services or in the exchange rates relevant to the package and if the power to revise the price both upwards and downwards is expressly reserved in the contract. ~~Price~~ ***Travellers should have the right to terminate the contract without any obligation to pay compensation or to accept an alternative equivalent travel package offered by the organiser if the price*** increase ~~should be limited to 10 %~~ ***exceeds 8 %*** of the ***original*** price of the package. **[Am. 24]**

(28a) Price increases should always be justified on a durable medium. If the price is increased by more than 8 %, the traveller should be offered on a durable medium the possibility of terminating the contract or accepting an alternative travel package equivalent in price to that booked. If the traveller does not take advantage of that possibility, the travel package at the higher price should be considered as accepted. The burden of proof regarding receipt of the notification on a durable medium should remain with the organiser. **[Am. 25]**

(29) It is appropriate to set out specific rules on remedies as regards the lack of conformity in the performance of the package travel contract. The traveller should be entitled to have problems resolved and, where a significant proportion of the services contracted for cannot be provided, the traveller should be offered alternative arrangements. Travellers should also be entitled to a price reduction and/or compensation for damages. Compensation should also cover any immaterial damage, in particular in case of a spoilt holiday, and, in justified cases, expenses which the traveller incurred when resolving a problem himself.

(30) In order to ensure consistency, it is appropriate to align the provisions of this Directive with international conventions covering travel services and with the Union legislation on passenger rights. Where the organiser is liable for failure to perform or improper performance of the services included in the package travel contract, the organiser

should be able to invoke the limitations of the liability of service providers set out in such international conventions as the Montreal Convention of 1999 for the Unification of certain Rules for International Carriage by Air ([1]), the Convention of 1980 concerning International Carriage by Rail (COTIF) ([2]) and the Athens Convention of 1974 on the Carriage of Passengers and their Luggage by Sea ([3]). Where it is impossible, because of unavoidable and extraordinary circumstances, to ensure the traveller's return to the place of departure, the organiser's obligation to bear the cost of the travellers' continued stay at the place of destination should be aligned with Regulation (EU) No …/2014 of the European Parliament and of the Council ([4]) (*).

(31) This Directive should not affect the rights of travellers to present claims both under this Directive and under any other relevant Union legislation, so that travellers will continue to have the possibility to address claims to the organiser, the carrier or any other liable party, or, as the case may be, to several parties. It should be clarified that they may not cumulate rights under different legal bases if the rights safeguard the same interest or have the same objective. ~~The organiser's~~ ***However, the need to ensure that travellers receive an appropriate and timely compensation in cases where the contract is not performed fully by one of the parties should not impose an unreasonable and disproportionate burden on organisers and retailers. In addition to their obligation to remedy any lack of conformity or to compensate travellers, organisers and retailers should also have the right to seek redress from any third party which contributed to the event triggering compensation or other obligations. The organiser and retailer's*** liability is ***therefore*** without prejudice to ~~the~~ ***that*** right to seek redress from third parties, including service providers. **[Am. 27]**

(32) If the traveller is in difficulty during the trip or holiday, the organiser should be obliged to give ~~prompt~~ ***appropriate*** assistance ***without undue delay***. Such assistance should consist mainly in providing, where appropriate, information on aspects such as health services, local authorities and consular assistance, as well as practical help, for instance with regard to distance communications and ***the procurement of*** alternative travel arrangements. **[Am. 28]**

(33) In its Communication of 18 March 2013 entitled 'Passenger protection in the event of airline insolvency', the Commission set out measures to improve the protection of travellers in the event of an airline insolvency, including better enforcement of Regulation (EC) No 1008/2008, of Regulation (EC) No 261/2004 of the European Parliament and of the Council ([5]) and engagement with industry stakeholders, failing which a legislative measure could be considered. That Communication concerns the purchase of an individual component, namely air travel services, and therefore is without prejudice to existing rules on packages and does not prevent the legislators to provide for insolvency protection also for buyers of other modern combinations of travel services.

([1]) Council Decision 2001/539/EC of 5 April 2001 on the conclusion by the European Community of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) (OJ L 194, 18.7.2001, p. 38).

([2]) Council Decision 2013/103/EU of 16 June 2011 on the signing and conclusion of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the Accession of the European Union to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (OJ L 51, 23.2.2013, p. 1).

([3]) Council Decision 2012/22/EU of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof (OJ L 8, 12.1.2012, p. 1).

([4]) Regulation (EU) No …/2014 of the European Parliament and of the Council of … amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ L …).

(*) Number of the Regulation (2013/0072(COD)) in the recital and the number, date of adoption and publication reference of the Regulation in footnote 4.

([5]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1).

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(34) Member States should ensure that travellers purchasing a package or ~~an assisted~~ ***a linked*** travel arrangement are fully protected against the insolvency of the organiser, of the retailer having facilitated the ~~assisted~~ ***linked*** travel arrangement or of ~~any of the service providers~~ ***a business involved in the linked travel arrangement***. Member States ~~in which package organisers and retailers facilitating assisted travel arrangements are established~~ should ensure that traders offering such combinations of travel services provide security for the refund of all payments made by travellers and for their repatriation in the event of insolvency. While retaining discretion as to the way in which insolvency protection is granted, Member States should ensure that their ~~national~~ insolvency protection schemes are effective and able to guarantee prompt repatriation and the ***immediate*** refund of all travellers affected by the insolvency. ***Where a traveller would prefer to complete their package or linked travel arrangement rather than obtain a full refund, the insolvency protection may, where appropriate, provide for the fulfilment of existing contracts, in order to enable the package or linked travel arrangement to continue at no additional cost to the traveller.*** The required insolvency protection should take into account the actual financial risk of the activities of the organiser, relevant retailer or ~~service provider~~ ***of a business involved in the linked travel arrangement***, including the type of combination of travel services they sell, foreseeable seasonal fluctuations as well as the extent of pre-payments and the way in which these are secured. In accordance with Directive 2006/123/EC ~~12 December 2006 on services in the internal market~~, in cases where insolvency protection may be provided in the form of a guarantee or an insurance policy, such security may not be limited to attestations issued by financial operators established in a particular Member State. **[Am. 29]**

(35) In order to facilitate the free movement of services, Member States should be obliged to recognise insolvency protection under the law of the Member State of establishment. To facilitate the administrative cooperation and supervision of businesses which are active in different Member States with regard to insolvency protection, Member States should be obliged to designate central contact points.

(36) As regards ~~assisted~~ ***linked*** travel arrangements, beyond the obligation to provide insolvency protection and to inform travellers that individual service providers are solely responsible for their contractual performance, the relevant contracts are subject to general Union consumer protection legislation and sector-specific Union legislation.

(37) It is appropriate to protect travellers in situations where a retailer arranges the booking of a package or ~~an assisted~~ ***a linked*** travel arrangement and where the retailer makes mistakes in the booking process.

(38) It is also appropriate to confirm that consumers may not waive rights stemming from this Directive and organisers or traders facilitating ~~assisted~~ ***linked*** travel arrangements may not escape from their obligations by claiming that they are simply acting as a travel service provider, an intermediary or in any other capacity.

(39) It is necessary that Member States lay down penalties for infringements of national provisions transposing this Directive and ensure that they are enforced. Those penalties should be effective, proportionate and dissuasive.

(40) The adoption of this Directive makes it necessary to adapt certain consumer protection acts. Taking into account that Directive 2011/83/EU of the European Parliament and of the Council ~~of 25 October 2011 on consumer rights~~ ([1]) in its current form does not apply to contracts covered by Directive 90/314/EEC, it is necessary to amend Directive 2011/83/EU to ensure that it ~~applies to assisted~~ ***continues to apply to individual travel services that form part of a linked*** travel ~~arrangements~~ ***arrangement, insofar as those individual services are not otherwise excluded from the scope of Directive 2011/83/EU*** and that certain consumer rights laid down in that Directive also apply to packages. **[Am. 30]**

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

(41) This Directive should be without prejudice to Regulation (EC) No 593/2008 of the European Parliament and of the Council ([1]) and national contract law for those aspects that are not regulated by it. Since the objectives of this Directive, namely to contribute to the proper functioning of the internal market and to the achievement of a high and as uniform as possible level of consumer protection, cannot be sufficiently achieved by the Member States and can therefore 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.

(42) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union (Charter). This Directive, in particular, respects the freedom to conduct a business laid down in Article 16 of the Charter, while ensuring a high level of consumer protection within the Union, in accordance with Article 38 of the Charter.

(43) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ([2]), 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,

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

Subject matter, level of harmonisation, scope and definitions

Article 1

Subject matter

The purpose of this Directive is to contribute to the proper functioning of the internal market and to the achievement of a high ***and as uniform as possible*** level of consumer protection ~~by approximating certain aspects~~ ***in respect*** of the laws, regulations and administrative provisions of the Member States in respect of contracts on package travel and ~~assisted~~ ***linked*** travel arrangements concluded between travellers and traders. **[Am. 31]**

Article 1a

Level of harmonisation

Unless otherwise provided for in this Directive, Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions which would ensure a different level of consumer protection. **[Am. 32]**

([1]) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

([2]) OJ C 369, 17.12.2011, p. 14.

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Article 2

Scope

1. This Directive shall apply to packages offered for sale or sold by traders to travellers, with the exception of Articles 17, 17a and 17b and to ~~assisted~~ ***linked*** travel arrangements with the exception of Articles 4 to 14, Article 18 and Article 21(1).

2. This Directive shall not apply to:

(a) packages and ~~assisted~~ ***linked*** travel arrangements covering a period of less than 24 hours unless overnight accommodation is included;

(aa) packages and linked travel arrangements that are occasionally offered or put together by natural or legal persons where no direct or indirect financial gain is made from the sale of those packages or the facilitation of those linked travel arrangements and where the traveller has been duly informed by the responsible trader that this Directive shall not apply to such package or travel arrangement; **[Am. 33]**

(b) ***ancillary contracts covering travel services provided in addition to the package and booked without the involvement of the organiser or*** ancillary contracts covering financial services; **[Am. 34]**

(c) packages and ~~assisted~~ ***linked*** travel arrangements purchased on the basis of a framework contract ~~between the traveller's employer~~ ***for business travel between a business on whose behalf the traveller is travelling*** and a trader ~~specialising in the arrangement of business travel~~; **[Am. 35]**

(d) packages where not more than one travel service as referred to in points (a), (b), and (c) of point 1 of Article 3 is combined with a travel service as referred to in point (d) of point 1 of Article 3 if ~~this~~ ***the latter*** service does not account for a significant proportion of the package ***or clearly does not represent the reason for the trip or the ancillary service is clearly not marketed as the main element of the trip***; or **[Am. 36]**

(e) stand-alone contracts for a single travel service;

(ea) carriage of passengers by bus, rail, water or air which includes accommodation, if the main component of that carriage is clearly transport and such carriage is not combined with another travel service as referred to in points (b), (c) or (d) of point 1 of Article 3. **[Am. 37]**

Article 3

Definitions

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

(1) 'travel service' means:

(a) carriage of passengers;

(b) accommodation ~~other than~~ for residential ***purposes, provided that such accommodation clearly serves a touristic*** purpose; **[Am. 38]**

(c) ~~car~~ rental ***of cars, other vehicles or other means of transport;*** or **[Am. 39]**

(d) any other tourist service not ancillary to carriage of passengers, accommodation or ~~car~~ rental ***of cars, other vehicles or other means of transport*** **[Am. 40]**

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(2) 'package' means a combination of at least two different types of travel services for the purpose of the same trip or holiday, if:

(a) those services are put together by one trader, including at the request or according to the selection of the traveller, before a contract on all services is concluded; or

(b) irrespective of whether separate contracts are concluded with individual travel service providers, those services are:

(i) purchased from a single point of sale within the same booking process, ***and all of those services have been selected by the traveller before the traveller has agreed to pay; or*** **[Am. 41]**

(ii) offered or charged at an inclusive or total price; ***or*** **[Am. 42]**

(iii) advertised or sold under the term 'package' or under a similar term; ***or*** **[Am. 43]**

(iv) combined after the conclusion of a contract by which a trader entitles the traveller to choose among a selection of different types of travel services; or

(v) purchased from separate traders through linked online booking processes where the traveller's name ~~or particulars~~ ***and other personal data, such as contact details, credit card details or passport details,*** needed to conclude a booking transaction are transferred between the traders at the latest ~~when~~ ***24 hours after*** the booking of the first service is confirmed; **[Am. 44]**

(3) 'package travel contract' means a contract on the package as a whole or, if the package is provided under different contracts, all contracts covering services included in the package;

(4) 'start of the package' means the beginning of the performance of the package;

(5) '~~assisted~~ ***linked*** travel arrangement' means a combination of at least two different types of travel services for the purpose of the same trip or holiday, not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if ***one of the providers involved or*** a retailer facilitates the combination: **[Am. 45. This amendment applies throughout the text]**

(a) ~~on the basis of separate bookings~~ ***where the traveller selects and agrees to pay for each travel service separately*** on the occasion of a single visit or contact with the point of sale; or **[Am. 46]**

(b) through the procurement of additional travel services from another trader in a targeted manner through linked online booking processes ***where at least the traveller's name or contact details are transferred to the other trader and such additional services are procured*** at the latest ~~when~~ ***24 hours after*** the booking of the first service is confirmed; **[Am. 47]**

(6) 'traveller' means any person who is seeking to conclude or is entitled to travel on the basis of a contract concluded within the scope of this Directive, including business travellers insofar as they do not travel on the basis of a framework contract for business travel between a business on whose behalf the traveller is travelling and a trader;

(7) 'trader' means any person, who is acting for purposes relating to his trade, business, craft or profession;

(8) 'organiser' means a trader who combines and sells or offers for sale packages, either directly or through another trader or together with another trader ***or who facilitates the combination and procurement of such packages***. Where more than one trader meets any of the criteria referred to in point (b) of point 2, all of those traders are considered organisers, unless one of them is designated as organiser and the traveller is informed accordingly; **[Am. 48]**

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(9) 'retailer' means a trader other than the organiser who:

(a) sells or offers for sale packages ***put together by the organiser;*** or **[Am. 49]**

(b) facilitates the procurement of travel services which are part of ~~an assisted~~ ***a linked*** travel arrangement by assisting travellers in concluding separate contracts for travel services with individual service providers***, one of whom may be the retailer himself***; **[Am. 50]**

(10) 'durable medium' means any instrument which enables the traveller or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

(11) 'unavoidable and extraordinary circumstances' means ~~a~~ ***an unforeseeable*** situation beyond the control of the trader, the consequences of which could not have been avoided even if all ~~reasonable measures~~ ***due care*** had been ~~taken~~ ***exercised***; **[Am. 51]**

(12) 'lack of conformity' means lack of ~~and~~ ***or*** improper performance of the travel services included in a package; **[Am. 52]**

(12a) 'ancillary services' means a non-stand-alone touristic service in the context of the provision or supplementing of travel services such as, in particular, travel insurance, transport between a station and the accommodation or to the airport of departure and in the context of excursions, transport of luggage, meals and cleaning services provided as part of accommodation. **[Am. 53]**

Chapter II

Information obligations and content of the package travel contract

Article 4

Pre-contractual information

1. Member States shall ensure that, before the traveller is bound by any package travel contract or any corresponding offer, the organiser ~~and, where the package is sold through a retailer, also the retailer~~ shall provide the traveller with the following information where applicable to the package: **[Am. 54]**

(a) the main characteristics of the travel services:

(i) the travel destination(s), itinerary and periods of stay, with dates***, and the number of nights included***; **[Am. 55]**

(ii) the means, characteristics and categories of transport, the points, dates and time of departure and return ~~or, where the exact time is not yet determined, the approximate time of departure and return~~, the duration and places of intermediate stops and transport connections;

Where the exact time is not yet determined, the trader shall inform the traveller of the approximate time of departure and return.

Where no indicative time can be determined, the retailer shall inform the traveller accordingly; **[Am. 56]**

(iii) the location, main features and ~~tourist~~ ***official*** category of the accommodation ***assigned by the competent body in the place in which the accommodation is located***; **[Am. 57]**

(iv) whether meals are provided and, if so, the meal plan;

(v) visits, excursion(s) or other services included in the total price agreed for the package;

(va) whether any of the travel services shall be provided to the traveller as a part of a group and, if that is the case, how many people are expected to participate; **[Am. 58]**

~~(vi) the language(s) in which the activities will be carried out and~~ **[Am. 59]**

(vii) ***upon request from the traveller,*** whether access for persons with ***a certain degree of*** reduced mobility is guaranteed throughout the trip or holiday; **[Am. 60]**

(b) the trading name and geographical address of the organiser and, where applicable, of the retailer, as well as their telephone number and e-mail address;

(c) the total price of the package inclusive of taxes and, where applicable, of all additional fees, charges and other costs or, where those costs cannot reasonably be calculated in advance, the fact that the traveller may have to bear such additional costs ***and the nature of such costs***; ***the total price must be presented in the form of a detailed invoice setting out all the costs of the travel service in a transparent manner***; **[Am. 61]**

(d) the arrangements for payment and, where applicable, the existence and the conditions for deposits or other financial guarantees to be paid or provided by the traveller;

(e) ***where appropriate,*** the minimum number of persons required for the package to take place and ~~a~~ ***the*** time-limit ~~of at least 20 days~~ ***referred to in point (a) of Article 10(3)*** before the start of the package for the possible cancellation if that number is not reached; **[Am. 62]**

(f) general information on passport and visa requirements, including approximate periods for obtaining visas, for nationals of the Member State(s) concerned and information on health formalities;

(fa) information on the optional conclusion of an insurance policy to cover the costs of cancellation by the traveller or the cost of repatriation in the event of accident or illness; **[Am. 63]**

(g) confirmation that the services constitute a package;

(ga) information that, in accordance with Article 10, the traveller or the organiser may terminate the contract at any time before the start of the package and upon the payment of an applicable reasonable standardised termination fee, if any; **[Am. 64]**

(gb) the possibility of transferring the package travel contract to another traveller, and possible limitations on, and consequences of, such transfer. **[Am. 65]**

1a. Where a package is sold through a retailer, the retailer shall provide the traveller without delay with the full information referred to in paragraph 1. **[Am. 66]**

2. The information referred to in paragraph 1 shall be provided in a clear***, comprehensible*** and prominent manner. **[Am. 67]**

2a. Where a travel contract is concluded by electronic means, the organiser shall make the traveller aware in a clear and prominent manner, and directly before the traveller places his order, of the information provided for in points (a)(i), (ii), (iii), (iv), (v), (c), and (d) of paragraph 1 of this Article. The second subparagraph of Article 8(2) of Directive 2011/83/EU shall apply accordingly. **[Am. 68]**

2b. As regards compliance with the information requirements laid down in this Chapter, the burden of proof shall be on the trader. **[Am. 69]**

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Article 5

Binding character of pre-contractual information and conclusion of the contract

1. Member States shall ensure that the organiser may not change the information made known to the traveller pursuant to points (a), (c), (d), (e) ~~and~~ ***, (f),*** (g) ***and (ga)*** of Article 4***(1)***, ***which shall form an integral part of the package travel contract and shall not be altered*** unless the ~~organiser reserves the right to make changes to that information and communicates any~~ ***contracting parties expressly agree otherwise. All*** changes ***to the pre-contractual information shall be communicated*** to the traveller in a clear and prominent manner before the conclusion of the contract. **[Am. 70]**

2. If the information on additional charges, fees or other costs referred to in point (c) of Article 4***(1)*** is not provided prior to the conclusion of the contract, the traveller shall not bear those fees, charges or other costs. **[Am. 71]**

3. At or ~~immediately~~ ***without delay*** after the conclusion of the contract, the organiser shall provide the traveller with a copy of the contract or a confirmation of the contract on a durable medium. **[Am. 72]**

Article 6

Content of the package travel contract and documents to be supplied before the start of the package

1. Member States shall ensure that package travel contracts are in plain and intelligible language and, in so far as they are in writing, legible. **[Am. not concerning all languages]**

2. The ***text of the*** contract or the confirmation of the contract shall ~~include all~~ ***set out the full content of the contract and in particular*** the information ~~referred to in~~ ***pursuant to*** Article 4~~. It~~ ***which has become an integral part of the contract***. ***The text of the contract or confirmation of the contract*** shall include the following additional information: **[Am. 74]**

(a) special requirements of the traveller which the organiser has accepted;

(b) information that the organiser is:

(i) responsible for the proper performance of all travel services included in the contract;

(ii) obliged to provide assistance if the traveller is in difficulty in accordance with Article 14;

(iii) obliged to procure insolvency protection for refund and repatriation in accordance with Article 15, as well as the name of the entity providing the insolvency protection and its contact details, including its geographical address;

~~(c) the details of a contact point where the traveller can complain about any lack of conformity which he perceives on the spot;~~ **[Am. 75]**

~~(d) the name, geographical address, telephone number and e-mail address of the organiser's local representative or contact point whose assistance a traveller in difficulty could request or, where no such representative or contact point exists, an emergency telephone number or the indication of other ways of contacting the organiser;~~ **[Am. 76]**

~~(e) information that the traveller may terminate the contract at any time before the start of the package against payment of an appropriate compensation or a reasonable standardised termination fee if such fees are specified in accordance with Article 10 (1);~~ **[Am. 77]**

(f) where minors travel ***unaccompanied by their parents or guardians*** on a package that includes accommodation, information enabling direct contact with the minor or the person responsible at the minor's place of stay ***by a parent or guardian***; **[Am. 78]**

(g) information on available ***in-house complaint handling procedures and*** alternative ***dispute resolution mechanisms pursuant to Directive 2013/11/EU of the European Parliament and of the Council*** [1] and online dispute resolution mechanisms ***pursuant to Regulation (EU) No 524/2013 of the European Parliament and of the Council*** [2]. **[Am. 79]**

3. The information referred to in paragraph 2 shall be provided in a clear***, comprehensible*** and prominent manner. **[Am. 80]**

4. In good time before the start of the package, the organiser shall provide the traveller with the ~~necessary receipts, vouchers or tickets, including information on the precise times of departure, intermediate stops, transport connections and arrival.~~ ***following information:***

(a) necessary receipts, vouchers or tickets, including information on the precise times of departure, intermediate stops, transport connections and arrival;

(b) all relevant contact details in case the traveller perceives any lack of conformity, and details of how the traveller should proceed;

(c) the name, geographical address, telephone number and e-mail address of the organiser's local representative or contact point whose assistance a traveller in difficulty could request or, where no such representative or contact point exists, an emergency telephone number or the indication of other ways of contacting the organiser. **[Am. 81]**

Chapter III

Changes to the contract before the start of the package

Article 7

Transfer of the contract to another traveller

1. Member States shall ensure that a traveller may, after giving the organiser ~~reasonable~~ ***or the retailer*** notice on a durable medium ***within a maximum of seven days*** before the start of the package, transfer the contract to a person who satisfies all the conditions applicable to that contract. **[Am. 82]**

2. The transferor of the contract and the transferee shall be jointly and severally liable for the payment of the balance due and for any additional fees, charges or other costs***, if any,*** arising from the transfer. ~~Those costs~~ ***The organiser shall inform the transferor and the transferee about the possible costs of such transfer, which in any case*** shall not be unreasonable and ~~in any case~~ shall not exceed the actual cost ~~borne~~ ***incurred*** by the organiser. **[Am. 83]**

The organiser shall be responsible for providing proof of the additional fees, charges or other costs arising from the transfer of the contract. **[Am. 84]**

Article 8

Alteration of the price

1. Member States shall ensure that prices are not subject to revision, unless the contract expressly reserves the possibility of an increase and obliges the organiser to reduce prices to the same extent as a direct consequence of changes:

(a) in the ***price of passenger transport services resulting from the*** cost of fuel for the carriage of passengers; **[Am. 85]**

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[1] ***Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63).***

[2] ***Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1).***

(b) in the level of taxes or fees on the included travel services imposed by third parties not directly involved in the performance of the package, including tourist taxes, landing taxes or embarkation or disembarkation fees at ports and airports; or

(c) in the exchange rates relevant to the package.

1a. A price reduction pursuant to paragraph 1 of 3 % or more shall be passed on to the traveller. A price increase pursuant to paragraph 1 may be passed on to the traveller only if the price changes by 3 % or more. In the event of a price reduction of 3 % or more, the organiser may charge a lump sum of EUR 10 per traveller for administrative expenses. **[Am. 86]**

2. ***If*** the price increase referred to in paragraph 1 ~~shall not exceed 10 %~~ ***exceeds 8 %*** of the price of the package***, Article 9(2) shall apply***. **[Am. 87]**

3. The price increase referred to in paragraph 1 shall be valid only if the organiser***, without undue delay, clearly and comprehensibly*** notifies the traveller of it with a justification and calculation ~~on~~ ***through*** a durable medium at the latest 20 days prior to the start of the package. **[Am. 88]**

Article 9

Alteration of other contract terms

1. Member States shall ensure that, before the start of the package, the organiser may not unilaterally change contract terms other than the price ***in accordance with Article 8***, unless: **[Am. 89]**

(a) the organiser has reserved that right in the contract;

(b) the change is insignificant ***in particular with regard to the elements set out in points (a) and (d) of Article 4(1);*** and **[Am. 90]**

(c) the organiser informs the traveller in a clear and prominent manner on a durable medium.

1a. A change in the terms of a contract shall in particular be considered to be significant within the meaning of paragraph 2 of this Article if the time of departure and return provided in accordance with point (a)(ii) of Article 4(1) diverges by more than three hours from the actual time of departure or return or, if it is not within the part of the day indicated in the pre-contractual information. **[Am. 91]**

2. If, before the start of the package, the organiser is constrained to alter significantly any of the main characteristics of the travel services as defined in point (a) of Article 4***(1)*** or special requirements as referred to in point (a) of Article 6(2) ***or to increase the price of the package by more than 8 % of the contractual price in accordance with Article 8(2)***, the organiser shall without undue delay inform the traveller in a clear and prominent manner on a durable medium of: **[Am. 92]**

(a) the proposed changes ***and their impact on the price of the package;*** **[Am. 93]**

(b) the fact that the traveller may terminate the contract without penalty within a specified reasonable time-limit ~~and that otherwise the proposed alteration will be considered as accepted.~~ ***or accept an alternative equivalent travel package offered by the organiser;*** and **[Am. 94]**

(ba) the fact that the proposed change to the contract shall be deemed to have been accepted if the traveller has not exercised the right of termination or accepted an alternative equivalent travel package offered by the organiser. **[Am. 95]**

3. Where the changes to the contract ***or the alternative equivalent travel package offered as*** referred to in paragraph 2 result in a package of lower quality or cost, the traveller shall be entitled to an appropriate price reduction. **[Am. 96]**

4. If the contract is terminated pursuant to point (b) of paragraph 2 of this Article, the organiser shall refund all payments received from the traveller within ~~fourteen~~ ***14*** days ~~after~~ ***of*** the ***termination of the*** contract ~~is terminated~~***, including payments for ancillary services booked through the organiser, such as travel insurance, cancellation insurance or additional activities on the spot booked in advance***. The traveller shall, where appropriate, be entitled to compensation for damages in accordance with Article 12. **[Am. 97]**

Article 10

Termination of the contract before the start of the package

1. Member States shall ensure that the traveller may terminate the contract before the start of the package against payment of an appropriate compensation to the organiser. The contract may specify reasonable standardised termination fees based on the time of the termination and the customary cost savings and income from alternative deployment of the travel services. In the absence of standardised termination fees, the amount of the compensation shall correspond to the price of the package minus the expenses ***proved to have been*** saved by the organiser ***which cannot be recovered from the travel service providers or through alternative deployment of those services. Fees due for the termination of the contract, including administrative fees, shall not be disproportionate or excessive. The organiser shall provide a justification for the calculation of the amount of the compensation or the standardised termination fees. The burden of proof that the compensation is appropriate shall be on the organiser.*** **[Am. 98]**

2. ***Once the travel contract has been concluded,*** the traveller shall have the right to terminate the contract before the start of the package without compensation in the event of unavoidable and extraordinary circumstances occurring at ***or on the way to*** the place of destination or ***in*** its immediate vicinity and significantly affecting the package ***which mean that the organiser has to make significant alterations to the essential elements of the package travel contract. Such unavoidable and extraordinary circumstances shall be deemed to exist, for example, if the package is significantly affected by warfare or a natural disaster. Unavoidable and extraordinary circumstances shall in particular be deemed to exist where reliable and publicly available reports, such as recommendations issued by Member State authorities, advise against travelling to the place of destination.*** **[Am. 99]**

3. The organiser may terminate the contract without paying compensation to the traveller, ~~if~~ ***only in the following cases***: **[Am. 101]**

(a) the number of persons enrolled for the package is smaller than the minimum number stated in the contract and the organiser notifies the traveller of the termination within the period fixed in the contract ~~and~~ ***but*** not later than: ~~20 days before the start of the package; or~~

(i) 20 days before the start of the package in the case of trips lasting more than six days,

(ii) seven days before the start of the package in the case of trips lasting between two and six days,

(iii) 48 hours before the start of the package in the case of one-day trips, or **[Am. 102]**

(b) the organiser is prevented from performing the contract because of unavoidable and extraordinary circumstances and notifies the traveller of the termination without undue delay before the start of the package.

4. In cases of termination under paragraphs 1, 2 and 3, the organiser shall reimburse any undue payment made by the traveller within 14 days.

Chapter IV

Performance of the package

Article 11

Liability for the performance of the package

1. Member States shall ensure that the organiser is responsible for the performance of the travel services included in the contract, irrespective of whether those services are to be performed by the organiser or by other service providers.

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2. If any of the services are not performed in accordance with the contract, the organiser shall remedy the lack of conformity, ~~unless this is~~ ***where such lack of conformity is reported by the traveller to the organiser or is clear to the organiser and remedying it would not be*** disproportionate***, unless the lack of conformity is attributable to the traveller***. **[Am. 103]**

3. Where a significant proportion of the services cannot be provided as agreed in the contract, the organiser shall make suitable alternative arrangements, at no extra cost to the traveller, for the continuation of the package, ***with service quality at least equivalent to that specified under the contract,*** including where the traveller's return to the place of departure is not provided as agreed. **[Am. 104]**

4. If it is impossible for the organiser to offer suitable alternative arrangements or the traveller does not accept the alternative arrangements proposed because they are not comparable to what was agreed in the contract, the organiser shall, insofar as the package includes the carriage of passengers, provide the traveller at no extra cost with equivalent transport to the place of departure or to another place to which the traveller has agreed and shall, where ~~appropriate~~ ***the services agreed in the contract have not been provided***, compensate the traveller in accordance with Article 12. ***Compensation shall be made within 14 days.*** **[Am. 105]**

4a. Where paragraph 4 applies, the traveller may terminate the contract where the lack of conformity is significant and subsequent performance is not possible or is unsuccessful. **[Am. 106]**

5. As long as it is impossible to ensure the traveller's timely return because of unavoidable and extraordinary circumstances, the organiser shall not bear the cost for the continued stay exceeding ~~EUR 100 per night and three~~ ***five*** nights per traveller. ***The organiser shall arrange accommodation consistent with the category of hotel originally booked. The traveller may book accommodation himself only if the organiser expressly states that he is unwilling or unable to do so. In such cases, the organiser may limit the cost of accommodation to EUR 125 per night per traveller.*** **[Am. 107]**

6. The limitation of costs referred to in paragraph 5 of this Article shall not apply to persons with reduced mobility, as defined in point (a) of Article 2 of Regulation (EC) No 1107/2006 ~~of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air~~, and any person accompanying them, pregnant women and unaccompanied children, as well as persons in need of specific medical assistance, provided the organiser has been notified of their particular needs ***at the time of conclusion of the package travel contract or, if that is not possible,*** at least 48 hours before the start of the package. The organiser may not invoke unavoidable and extraordinary circumstances to limit the costs referred to in paragraph 5 of this Article if the relevant transport provider may not rely on such circumstances under applicable Union legislation. **[Am. 108]**

7. If the alternative arrangements result in a package of lower quality or cost, the traveller shall be entitled to a price reduction and, where appropriate, compensation of damages in accordance with Article 12.

7a. Member States may maintain or introduce provisions which provide that the retailer is also liable for the performance of the package and therefore bound by the obligations arising from this Article and point (b) of Article 6 (2), Article 12, Article 15(1) and Article 16. **[Am. 109]**

7b. Any right to compensation of the traveller under Regulation (EC) No 261/2004 is independent of any right to compensation of the traveller under this Directive. If the traveller is entitled to compensation under both Regulation (EC) No 261/2004 and this Directive, the traveller shall be entitled to present claims under both legal acts, but may not cumulate rights under both legal acts in relation to the same facts if the rights protect the same interest or have the same objective. **[Am. 110]**

Article 12

Price reduction and compensation for damages

1. Member States shall ensure that the traveller is entitled to an appropriate price reduction for:

(a) any period during which there was lack of conformity; or

(b) where the alternative arrangements as referred to in paragraphs 3 and 4 of Article 11 result in a package of lower quality or cost.

2. The traveller shall be entitled to receive compensation from the organiser for any damage, including non-material damage, which the traveller sustains as a result of any lack of conformity.

3. The traveller shall not be entitled to price reduction or compensation for damages if:

(a) the organiser proves that the lack of conformity is:

(i) attributable to the traveller;

(ii) attributable to a third party unconnected with the provision of the services contracted for and is unforeseeable or unavoidable; or

(iii) due to unavoidable and extraordinary circumstances; or

(b) the traveller fails to inform the organiser without undue delay of any lack of conformity which the traveller perceives on the spot if that requirement to inform was clearly and explicitly set out in the contract and is reasonable, taking into account the circumstances of the case.

4. Insofar as international conventions binding the Union limit the extent of or the conditions under which compensation is to be paid by a provider carrying out a service which is part of a package, the same limitations shall apply to the organiser. Insofar as international conventions not binding the Union limit compensation to be paid by a service provider, Member States may limit compensation to be paid by the organiser accordingly. In other cases, the contract may limit compensation to be paid by the organiser as long as that limitation does not apply to personal injury ~~and~~ ***or*** damage caused intentionally or with gross negligence and does not amount to less than three times the total price of the package. **[Am. 111]**

5. Any right to compensation for damages or price reduction under this Directive shall not affect the rights of travellers under Regulation (EC) No 261/2004, Regulation (EC) No 1371/2007, Regulation (EU) No 1177/2010 and Regulation (EU) No 181/2011. Travellers shall be entitled to present claims under this Directive and under those Regulations, ~~but may not, in relation to the same facts, cumulate~~, ***in particular claims for additional compensation.*** Rights under different legal bases ~~if the rights safeguard the same interest or have the same objective~~ ***which relate to the same facts may not be cumulated***. **[Am. 112]**

6. The prescription period for introducing claims under this Article shall not be shorter than ~~one year~~ ***three years***. **[Am. 113]**

Article 13

Possibility to contact the organiser via the retailer

Member States shall ensure that the traveller may address messages, complaints or claims in relation to the performance of the package directly to the retailer through which that package was purchased. The retailer shall forward those messages, complaints or claims to the organiser without undue delay. For the purpose of compliance with time-limits or prescription periods, receipt of the notifications by the retailer shall be considered as receipt by the organiser.

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Article 14

Obligation to provide assistance

Member States shall ensure that the organiser gives ~~prompt~~ ***appropriate*** assistance ***without undue delay*** to the traveller in difficulty, in particular by: **[Am. 114]**

(a) providing appropriate information on health services, local authorities and consular assistance; and

(b) assisting the traveller ~~in making~~ ***to make*** distance communications and ***helping the traveller to source*** alternative travel arrangements. **[Am. 115]**

The organiser shall be able to charge a reasonable fee for such assistance if the situation is caused by the traveller's negligence or intent. ***That fee shall not in any case exceed the actual costs incurred by the organiser.*** **[Am. 116]**

Chapter V

Insolvency protection

Article 15

Effectiveness and scope of insolvency protection

1. Member States shall ensure that organisers ***of packages*** and retailers ***of linked travel arrangements*** facilitating the procurement of ~~assisted~~ ***linked*** travel arrangements established in their territory obtain a security for the effective and ~~prompt~~ ***immediate*** refund of all payments made by travellers and, insofar as carriage of passengers is included, for the travellers' effective and prompt repatriation in the event of insolvency. ***Where that is possible, continuation of the trip shall be offered.*** **[Am. 117]**

2. The insolvency protection referred to in paragraph 1 shall take into account the actual financial risk of the relevant trader's activities. It shall benefit travellers regardless of their place of residence, the place of departure or where the package or ~~assisted~~ ***linked*** travel arrangement is sold.

Article 16

Mutual recognition of insolvency protection and administrative cooperation

1. Member States shall recognise as meeting the requirements of their national rules transposing Article 15 any insolvency protection obtained by an organiser or a retailer facilitating the procurement of ~~assisted~~ ***linked*** travel arrangements under the rules of its Member State of establishment transposing Article 15.

1a. Member States shall allow organisers of packages, retailers facilitating the procurement of linked travel arrangements and passenger carriers established outside of their territory or outside the Union to obtain insolvency protection under their national insolvency protection schemes. **[Am. 118]**

2. Member States shall designate central contact points to facilitate the administrative cooperation and supervision of organisers and retailers facilitating the procurement of ~~assisted~~ ***linked*** travel arrangements operating in different Member States. They shall notify the contact details of those contact points to all other Member States and the Commission.

3. The central contact points shall make available to each other all necessary information on their national insolvency protection schemes and the identity of the body or bodies providing insolvency protection for a particular trader established in their territory. They shall grant each other access to any inventory listing organisers and retailers facilitating the procurement of ~~assisted~~ ***linked*** travel arrangements which are in compliance with their insolvency protection obligations.

4. If a Member State has doubts about the insolvency protection of an organiser or of a retailer facilitating the procurement of ~~assisted~~ ***linked*** travel arrangements which is established in a different Member State ~~and is operating on its territory~~, it shall seek clarification from the Member State of establishment. Member States shall respond to requests from other Member States at the latest within 15 working days of receiving them. **[Am. 119]**

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Chapter VI

~~Assisted~~ ***Linked*** travel arrangements

Article 17

Information requirements for ~~assisted~~ ***linked*** travel arrangements

Member States shall ensure that, before the traveller is bound by any contract or any corresponding offer for ~~assisted~~ ***linked*** travel arrangements, the trader facilitating the procurement of ~~assisted~~ ***linked*** travel arrangements shall state in a clear and prominent manner that:

(a) each service provider will be solely responsible for the proper contractual performance of its service;

(b) the traveller will not benefit from any of the rights granted by this Directive exclusively to package travellers, but will benefit from the right to a refund of pre-payments and, insofar as carriage of passengers is included, to repatriation in case the retailer or any of the service providers becomes insolvent; and

(ba) the traveller will, however, benefit from the rights granted by Directive 2011/83/EU except where that Directive provides otherwise. **[Am. 120]**

Where the trader facilitating the procurement of linked travel arrangements has not complied with the requirements set out in point (b) of paragraph 1, the traveller shall enjoy all the guarantees and the rights granted by this Directive in respect of package. **[Am. 121]**

Article 17a

Informing the retailer of additional travel services booked in the framework of linked travel arrangements through linked online booking processes

Traders providing additional travel services in the framework of linked travel arrangements, shall ensure that the retailer concerned is properly informed of the confirmed booking of additional travel services, which shall, when taken together with the first travel service booked, constitute a linked travel arrangement, thereby triggering the liability and obligations of the retailer incumbent on it under this Directive. **[Am. 122]**

Article 17b

Traders facilitating the procurement of linked travel arrangements online

Traders facilitating the procurement of linked travel arrangements online shall not hide or provide in an unclear, unintelligible or ambiguous manner the option of not booking any further services or ancillary services. Such option shall always be pre-selected by default. **[Am. 123]**

Chapter VII

General provisions

Article 18

Specific obligations of the retailer where the organiser is established outside the EEA

Where the organiser is established outside the EEA, the retailer established in a Member State shall be subject to the obligations laid down for organisers in Chapters IV and V, unless the retailer provides evidence that the organiser complies with Chapters IV and V. ***Where an organiser, which is established outside the EEA, acts as retailer, existing liability for compensation in respect of the breach of other aspects of the contractual duty of care shall apply. Those provisions shall be without prejudice to other national retailer liability rules.*** **[Am. 124]**

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Article 18a

Obligations of organisers or retailers established outside the EEA

Member States shall ensure that an organiser of packages or a retailer facilitating the procurement of linked travel arrangements established outside the EEA and directly selling in a Member State territory shall be subject to the obligations laid down in this Directive. **[Am. 125]**

Article 18b

Formal requirements for contracts

1. Member States shall ensure that all contracts covered by this Directive are in plain and intelligible language and, insofar as they are in writing, legible. The language of the contract shall be the same as that of the pre-contractual information.

2. The contract shall be provided on a durable medium. With respect to off-premises contracts, the contract shall be provided also on paper.

3. If the contract is concluded by telephone, the trader shall confirm the offer to the traveller through a durable medium and the traveller shall only be bound by it when he signs it or sends his written agreement through a durable medium. **[Am. 126]**

Article 19

Liability for booking errors

Member States shall ensure that a retailer who has agreed to arrange the booking of a package or ~~assisted~~ ***linked*** travel arrangements or who facilitates the booking of such services, shall be liable for ~~any~~ ***failure to provide with the information provided by the organiser pursuant to Article 4(1), for providing incomplete information or for making*** errors occurring in the booking process~~, unless~~ ***in case they are actually occurred in the booking process. A retailer shall not be held liable where*** such errors are attributable to the traveller or to unavoidable and extraordinary circumstances. ***In the context of linked travel arrangement based on the procurement of additional travel services from another trader in a targeted manner through linked online booking processes as referred to in point (b) of point 5 of Article 3, the retailer shall not be liable for booking errors resulting from errors committed by that trader. In that case, Member States shall ensure that the trader providing the additional travel services shall be liable for the errors occurring in the booking process of such services.*** **[Am. 127]**

Article 20

Right of redress

1. In cases where an organiser or, in accordance with Article 15 or 18, a retailer pays compensation, grants price reduction or meets the other obligations incumbent on ~~it~~ ***him or her*** under this Directive, ~~no provision of this Directive or of national law may be interpreted as restricting its~~ ***Member States shall ensure that the organiser or retailer has the*** right to seek redress from any third parties which contributed to the event triggering compensation, price reduction or other ~~obligations~~ ***obligation***.

2. The right to seek redress referred to in paragraph 1 of this Article shall also include the right of organisers and retailers to seek redress from travel services providers where an organiser or retailer is obliged to pay a compensation to a traveller under this Directive and the traveller at the same time has a right to compensation under other applicable Union law, including but not restricted to Regulation (EC) No 261/2004 and Regulation (EC) No 1371/2007. That right to seek redress may not be restricted in a contract.

3. Member States shall ensure that any restrictions on the right to seek redress referred to in paragraph 1 are reasonable and proportionate, in accordance with the applicable national law. **[Am. 128]**

Article 21

Imperative nature of the Directive

1. A declaration by an organiser that he or she is acting exclusively as a travel service provider, as an intermediary or in any other capacity, or that a package within the meaning of this Directive does not constitute a package, shall not absolve the organiser from the obligations imposed on organisers under this Directive.

2. Travellers may not waive the rights conferred on them by the national measures transposing this Directive.

3. Any contractual arrangement or any statement by the traveller which directly or indirectly waives or restricts the rights conferred on travellers pursuant to this Directive or aims to circumvent the application of this Directive shall not be binding on the traveller.

Article 22

Enforcement

Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.

Member States shall furthermore ensure that adequate mechanisms are in place to ensure that no misleading practices from traders or organisers are in place, in particular creating an expectation on the part of consumer of rights and guarantees that are not provided for in the relevant contract. **[Am. 129]**

Article 23

Penalties

Member States shall lay down the rules on penalties which enforcement bodies may impose on traders for infringing the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Article 24

Reporting by the Commission and review

By … (*), the Commission shall submit a report on the application of this Directive to the European Parliament and the Council. That report shall be accompanied, where necessary, by legislative proposals to adapt this Directive to developments in the field of traveller rights.

Article 25

Amendment of Regulation (EC) No 2006/2004 and Directive 2011/83/EU

1. Point 5 of the Annex to Regulation (EC) No 2006/2004 of the European Parliament and of the Council ([1]) is replaced by the following:

'5. Directive …/…/EU of the European Parliament and of the Council (*).

(*) Directive …/…/EU of the European Parliament and of the Council of … on package travel, ***package holidays, package tours*** and ~~assisted~~ ***linked*** travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L …) (+).'.

2. Point (g) of Article 3(3) of Directive 2011/83/EU is replaced by the following:

(*) Five years after the entry into force of this Directive.

([1]) Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (OJ L 364, 9.12.2004, p. 1).

(+) Number, date of adoption and publication reference of this Directive.

'(g) on packages as defined in point 2 of Article 3 of Directive …/…/EU of the European Parliament and of the Council (*), with the exception of Article 8(2), Article 19, Article 21 and Article 22.

(*) Directive …/…/EU of the European Parliament and of the Council of …. on package travel, ***package holidays, package tours*** and ~~assisted~~ ***linked*** travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L …) (++).'.

Chapter VIII

Final provisions

Article 26

Repeal

Directive 90/314/EEC is repealed with effect from … (**). **[Am. 130]**

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex to this Directive.

Article 27

Transposition

1. Member States shall adopt and publish, by … (**), the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those ~~provisions~~ ***measures***. **[Am. 131 and Am. not concerning all languages]**

2. They shall apply those ~~provisions~~ ***measures*** from … (***). **[Am. 133]**

3. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

4. 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 28

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*].

(++) Number, date of adoption and publication reference of this Directive.
(**) ***24*** months after the entry into force of this Directive].
(***) ***24*** months after the entry into force of this Directive].

Article 29

Addressees

This Directive is addressed to the Member States.

Done at …,

For the European Parliament	*For the Council*
The President	*The President*

Wednesday 12 March 2014

ANNEX

Correlation table

Directive 90/314/EEC	This Directive
Article 1	Article 1
Article 2(1)	Point 2 of Article 3 and point (a) of Article 2(2)
Article 2(2)	Point 8 of Article 3
Article 2(3)	Point 9 of Article 3
Article 2(4)	Point 6 of Article 3
Article 2(5)	Point 3 of Article 3
Article 3(1)	—
Article 3(2)	Articles 4 and 5
Article 4(1)	Article 4(1), Article 6(2) and 6(4)
Point (b)(iv) of Article 4(1)	—
Point (a) of Article 4(2)	Article 6(2)
Point (b) of Article 4(2)	Article 5(3) and Article 6(1) and (3)
Point (c) of Article 4(2)	—
Article 4(3)	Article 7
Article 4(4)	Article 8
Article 4(5)	Article 9(2)
Article 4(6)	Article 9(3) and (4) and Article 10(3) and (4)
Article 4(7)	Article 11(3), (4) and (7)
Article 5(1)	Article 11(1)
Article 5(2)	Article 12(2), (3) and (4) and Article 14
Article 5(3)	Article 21(3)
Article 5(4)	Point (c) of Article 6(2) and point (b) of Article 12(3)

Directive 90/314/EEC	This Directive
Article 6	Article 11(2)
Article 7	Article 15 and Article 16
Article 8	—
Article 9(1)	Article 27(1), (2) and (3)
Article 9(2)	Article 27(4)
Article 10	Article 29

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P7_TA(2014)0223

Fluorinated greenhouse gases ***I

European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council on fluorinated greenhouse gases (COM(2012)0643 — C7-0370/2012 — 2012/0305(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/63)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2012)0643),

— having regard to Article 294(2) and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0370/2012),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union

— having regard to the opinion of the European Economic and Social Committee of 23 May 2013 ([1]),

— after consulting the Committee of the Regions,

— having regard to the undertaking given by the Council representative by letter of 18 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Transport and Tourism (A7-0240/2013),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2012)0305

Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 517/2014.)

([1]) OJ C 271, 19.9.2013, p. 138..

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P7_TA(2014)0224

Freedom of movement for workers ***I

European Parliament legislative resolution of 12 March 2014 on the proposal for a directive of the European Parliament and of the Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (COM(2013)0236 — C7-0114/2013 — 2013/0124(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/64)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0236),

— having regard to Article 294(2) and Article 46 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0114/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 19 September 2013 ([1]),

— after consulting the Committee of the Regions,

— having regard to the undertaking given by the Council representative by letter of 20 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Women's Rights and Gender Equality (A7-0386/2013),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0124

Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Directive 2014/…/EU of the European Parliament and of the Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Directive 2014/54/EU.)

([1]) OJ C 341, 21.11.2013, p. 54.

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P7_TA(2014)0225

Assessment of the effects of certain public and private projects on the environment ***I

European Parliament legislative resolution of 12 March 2014 on the proposal for a directive of the European Parliament and of the Council amending Directive 2011/92/EU of the assessment of the effects of certain public and private projects on the environment (COM(2012)0628 — C7-0367/2012 — 2012/0297(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/65)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2012)0628),

— having regard to Article 294(2) and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0367/2012),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 13 February 2013 ([1]),

— having regard to the opinion of the Committee of the Regions of 30 May 2013 ([2]),

— having regard to the undertaking given by the Council representative by letter of 20 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinions of the Committee on Transport and Tourism and the Committee on Petitions (A7-0277/2013),

1. Adopts its position at first reading hereinafter set out ([3]);

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2012)0297

Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Directive 2014/…/EU of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Directive 2014/52/EU.)

([1]) *OJ C 133, 9.5.2013, p. 33.*
([2]) OJ C 218, 30.7.2013, p. 42.
([3]) This position replaces the amendments adopted on 9 October 2013 (Texts adopted P7_TA(2013)0413).

Wednesday 12 March 2014

P7_TA(2014)0226

Statistics relating to external trade with non-member countries (delegated and implementing powers) ***I

European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 471/2009 on Community statistics relating to external trade with non-member countries as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures (COM(2013)0579 — C7-0243/2013 — 2013/0279(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/66)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0579),

— having regard to Article 294(2) and Article 338(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0243/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on International Trade (A7-0042/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0279

Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council amending Regulation (EC) No 471/2009 on Community statistics relating to external trade with non-member countries as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 338(1) thereof,

Wednesday 12 March 2014

Having regard to the proposal from the European Commission,

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

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

Whereas:

(1) As a consequence of the entry into force of the Treaty on the Functioning of the European Union (TFEU), the powers conferred upon the Commission should be aligned with Articles 290 and 291 TFEU.

(2) In connection with the adoption of Regulation (EU) No 182/2011 of the European Parliament and of the Council ([2]), the Commission has committed itself ([3]) to reviewing, in the light of the criteria laid down in the TFEU, legislative acts which currently contain references to the regulatory procedure with scrutiny.

(3) Regulation (EC) No 471/2009 of the European Parliament and of the Council ([4]) confers powers upon the Commission in order to implement some of the provisions of that Regulation.

(4) In the context of the alignment of Regulation (EC) No 471/2009 with the new rules of the TFEU, implementing powers currently conferred upon the Commission should be provided for by conferring powers on the Commission to adopt delegated and implementing acts.

(5) In order to take into account changes in the Customs Code or provisions deriving from international conventions, changes necessary for methodological reasons and the necessity to set up an efficient system for the collection of data and the compilation of statistics, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the adaptation of the list of customs procedures or customs-approved treatment or use, specific goods or movements and different or specific provisions applicable to them, the exclusion of goods or movements from external trade statistics, the data collection according to Article 4(2) and (4) of Regulation (EC) No 471/2009, the further specification of the statistical data, the requirement for limited sets of data for specific goods or movements and data provided in accordance with Article 4(2) thereof, the characteristics of the sample, the reporting period and the level of aggregation for partner countries, goods and currencies for statistics on trade by invoicing currency, the adaptation of the deadline for transmitting statistics and of the content, coverage and revision conditions for statistics already transmitted, the deadline for transmitting statistics on trade by business characteristics and statistics on trade broken down by invoicing currency.

(6) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(7) The Commission should ensure that those delegated acts do not impose a significant additional administrative burden on the Member States and on the respondent units.

~~(8) In order to ensure uniform conditions for the implementation of Regulation (EC) No 471/2009, implementing powers should be conferred upon the Commission enabling it to adopt measures relating to the codes to be used for data referred to in Article 5(1) of that Regulation and measures relating to the linking of the data on business characteristics with data recorded in accordance with the same Article. These powers should be exercised in accordance with Regulation (EU) No 182/2011.~~ **[Am. 1]**

([1]) Position of the European Parliament of 12 March 2014.
([2]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).
([3]) OJ L 55, 28.2.2011, p. 19.
([4]) Regulation (EC) No 471/2009 of the European Parliament and of the Council of 6 May 2009 on Community statistics relating to external trade with non-member countries and repealing Council Regulation (EC) No 1172/95 (OJ L 152, 16.6.2009, p. 23).

~~(9) The Committee on statistics relating to the trading of goods with non-member countries (Extrastat Committee) referred to in Article 11 of Regulation (EC) No 471/2009 provides advice to the Commission and assists it in exercising its implementing powers.~~ **[Am. 2]**

~~(10) Under the strategy for a new European Statistical System (hereinafter referred to as 'ESS') structure intended to improve coordination and partnership in a clear pyramid structure within the ESS, the European Statistical System Committee (hereinafter referred to as 'ESSC'), established by Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics ([1]), should have an advisory role and assist the Commission in exercising its implementing powers.~~ **[Am. 3]**

~~(11) Regulation (EC) No 471/2009 should be amended by replacing the reference to the Extrastat Committee with a reference to the ESSC.~~ **[Am. 4]**

(12) To ensure legal certainty, procedures for adopting measures that have been initiated but not completed before the entry into force of this Regulation should not be affected by this Regulation.

(13) Regulation (EC) No 471/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 471/2009 is amended as follows:

(1) Article 3 is amended as follows:

(a) Paragraph 2 is replaced by the following:

'2. In order to take into account changes in the Customs Code or provisions deriving from international conventions, the Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts, to adapt the list of customs procedures or customs-approved treatment or use referred to in paragraph 1.';

(b) In paragraph 3, the second subparagraph is replaced by the following:

'The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts relating to specific goods or movements and to different or specific provisions applicable to them.';

(c) In paragraph 4, the second subparagraph is replaced by the following:

'The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts, relating to the exclusion of goods or movements from external trade statistics.'.

(2) In Article 4, paragraph 5 is replaced by the following:

'5. The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts relating to the data collection according to paragraphs 2 and 4 of this Article.'.

(3) Article 5 is amended as follows:

(a) Paragraph 2 is replaced by the following:

'2. The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts relating to the ***adoption of rules with respect to the*** further specification of the data referred to in paragraph 1 ***and with respect to the measures relating to the codes to be used for those data***.

~~([1]) OJ L 87, 31.3.2009, p. 164.~~

~~The Commission shall adopt, by means of implementing acts, measures relating to the codes to be used for these data.~~

~~These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11 (2).~~'; **[Am. 5]**

(b) In paragraph 4, the second subparagraph is replaced by the following:

'The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts relating to these limited sets of data.'.

(4) Article 6 is amended as follows:

(a) In paragraph 2, the last subparagraph is replaced by the following:

'The Commission shall ***be empowered to*** adopt, ~~by means of implementing acts, measures~~ ***in accordance with Article 10a, delegated acts*** relating to ***the adoption of rules on*** the linking of the data and these statistics to be compiled.

~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11 (2).~~'; **[Am. 6]**

(b) In paragraph 3, the last subparagraph is replaced by the following:

'The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts relating to the characteristics of the sample, the reporting period and the level of aggregation for partner countries, goods and currencies.'.

(5) Article 8 is amended as follows:

(a) In paragraph 1, the last subparagraph is replaced by the following:

'The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts to adapt the deadline for transmitting statistics, content, coverage and revision conditions for the statistics already transmitted.';

(b) Paragraph 2 is replaced by the following:

'2. The Commission shall be empowered to adopt, in accordance with Article 10a, delegated acts relating to the deadline for transmitting statistics on trade by business characteristics referred to in Article 6(2) and statistics on trade broken down by invoicing currency referred to in Article 6(3).'.

(6) The following Article is inserted:

'Article 10a

Exercise of the delegation

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

2. When exercising the power to adopt delegated acts referred to in Article 3(2), (3) and (4), Article 4(5), Article 5(2) and (4), Article 6(3) and Article 8(1) and (2), the Commission shall ensure that the delegated acts do not impose a significant additional administrative burden on the Member States and on the respondents.

3. The power to adopt delegated acts referred to in Article 3(2), (3) and (4), Article 4(5), Article 5(2) and (4), Article 6 (3) and Article 8(1) and (2) shall be conferred on the Commission for ~~an indeterminate period of time from~~ ***a period of five years from …*** (*). ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*** **[Am. 7]**

4. The delegation of power referred to in Article 3(2), (3) and (4), Article 4(5), Article 5(2) and (4), Article 6(3) and Article 8(1) and (2) 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 powers specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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 3(2), (3) and (4), Article 4(5), Article 5(2) and (4), Article 6(3) and Article 8(1) and (2), shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.'.

(*) ***Date of entry into force of this Regulation.***

(7) Article 11 is ~~replaced by the following:~~ ***deleted.***

~~'*Article 11*~~

~~*Committee*~~

~~1. The Commission shall be assisted by the European Statistical System Committee established by Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics (*) This committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (**).~~

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

(*) ~~OJ L 87, 31.3.2009, p. 164.~~
(**) ~~OJ L 55, 28.2.2011, p. 13.'~~ **[Am. 8]**

Article 2

This Regulation shall not affect the procedures for the adoption of measures provided for in Regulation (EC) No 471/2009 that have been initiated but not completed before the entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union* ***and shall be consolidated with the Regulation amended by it within three months of its entry into force.*** **[Am. 9]**

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

Done at …,

For the European Parliament	*For the Council*
The President	*The President*

Wednesday 12 March 2014

P7_TA(2014)0227

Copernicus Programme ***I

European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council establishing the Copernicus Programme and repealing Regulation (EU) No 911/2010 (COM(2013)0312 — C7-0195/2013 — 2013/0164(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/67)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0312),

— having regard to Article 294(2) and Article 189(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0195/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 16 October 2013 ([1]),

— after consulting the Committee of the Regions,

— having regard to the undertaking given by the Council representative by letter of 20 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Budgets and the Committee on the Environment, Public Health and Food Safety (A7-0027/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0164

Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council establishing the Copernicus Programme and repealing Regulation (EU) No 911/2010

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 377/2014.)

([1]) OJ C 67, 6.3.2014, p. 88.

Wednesday 12 March 2014

P7_TA(2014)0228

European GNSS Agency ***I

European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 912/2010 setting up the European GNSS Agency (COM(2013)0040 — C7-0031/2013 — 2013/0022(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/68)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0040),

— having regard to Article 294(2) and Article 172 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0031/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 17 April 2013 ([1]),

— after consulting the Committee of the Regions,

— having regard to the undertaking given by the Council representative by letter of 13 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Budgets and the Committee on Budgetary Control (A7-0364/2013),

1. Adopts its position at first reading hereinafter set out;

2. Emphasises that any decision of the legislative authority in favour of multiannual funding for the European GNSS Agency ('the Agency') shall be without prejudice to the decisions of the budgetary authority in the context of the annual budgetary procedure;

3. Requests that the Commission present a financial statement which fully takes into account the result of the legislative agreement between the European Parliament and the Council to meet the budgetary and staff requirements of the Agency and possibly of the Commission services;

4. Requests that the Commission find a feasible solution to the problems the Agency might be facing with regard to the funding for Type II European Schools, as this has a direct effect on the Agency's ability to attract qualified personnel;

5. Requests that, when determining the correction coefficient for staff remuneration for the Agency, the Commission not consider the Czech average but adjust to the cost of living in the metropolitan area of Prague;

6. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

7. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

([1]) OJ C 198, 10.7.2013, p. 67.

Wednesday 12 March 2014

P7_TC1-COD(2013)0022

Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council amending Regulation (EU) No 912/2010 setting up the European GNSS Agency

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 512/2014.)

Thursday 13 March 2014

P7_TA(2014)0237

Asylum, Migration and Integration Fund ***I

European Parliament legislative resolution of 13 March 2014 on the proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund (COM(2011)0751 — C7-0443/2011 — 2011/0366(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/69)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2011)0751),

— having regard to Article 294(2) and Articles 78(2) and 79(2) and (4) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0443/2011),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 11 July 2012 ([1])

— having regard to the opinion of the Committee of the Regions of 18 July 2012 ([2]),

— having regard to its decision of 17 January 2013 on the opening of, and the mandate for, interinstitutional negotiations on the proposal ([3]),

— having regard to the undertaking given by the Council representative by letter of 20 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs, the Committee on Development and the Committee on Budgets (A7-0022/2014),

1. Adopts its position at first reading hereinafter set out;

2. Approves its statements annexed to this resolution;

3. Takes note of the Council statement and the Commission statements annexed to this resolution;

4. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

5. Instructs its President to forward its position to the Council, the Commission, the European Asylum Support Office and the national parliaments.

([1]) OJ C 299, 4.10.2012, p. 108.
([2]) OJ C 277, 13.9.2012, p. 23.
([3]) Texts adopted, P7_TA(2013)0020.

Thursday 13 March 2014

P7_TC1-COD(2011)0366

Position of the European Parliament adopted at first reading on 13 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 516/2014.)

ANNEX TO THE LEGISLATIVE RESOLUTION

Statements by the European Parliament

Article 80 TFEU:

The European Parliament, in the light of the need to adopt this Regulation in time for implementation of the Asylum, Migration and Integration Fund ('the Fund') from the beginning of 2014, in the interests of finding an agreement to that end, and in the light of the intransigence of the Council, has accepted the text of the Regulation as agreed above. Nevertheless, the European Parliament reiterates its view — which it has maintained throughout negotiations on this Regulation — that the correct legal basis for the Fund includes Article 80, second sentence, TFEU as a joint legal basis. This legal basis is designed to give effect to the principle of solidarity as expressed in Article 80, first sentence, TFEU. In particular, the Fund implements the principle of solidarity in its provisions on the transfer of applicants for and beneficiaries of international protection (Articles 7 and 18) and in its provisions on resettlement (Article 17). The European Parliament underlines the fact that the adoption of this Regulation is strictly without prejudice to the range of legal bases available to the co-legislator in the future, in particular with regard to Article 80 TFEU.

Relocation:

With the aim of promoting relocation as a solidarity tool and improving the conditions pertaining to relocation, the European Parliament calls the European Asylum Support Office (EASO), in cooperation with the European Commission (EC), to develop a handbook and a methodology on relocation, following a mapping of relocation best practices in Member States, including internal organization systems and reception and integration conditions. In order to create an incentive for relocation and facilitate relocation operations for the participating Member States, the European Parliament calls also the EASO to provide expertise on relocation and coordinate, in cooperation with the EC, an expert network on relocation, which could regularly meet for technical meetings on specific practical and legislative issues, as well as provide support on the use of the Asylum, Migration and Integration Fund for relocation. The European Parliament calls the EC to monitor and regularly report on the evolution and improvement of the asylum system in Member States beneficiating from relocation.

Statement by the Council

Article 80 TFEU:

The Council underlines the importance of the principle of solidarity and fair sharing of responsibility which, in accordance with Article 80 TFEU, is to be given effect in Union acts adopted pursuant to the Chapter of the TFEU on policies on border checks, asylum and immigration. The Regulation establishing the Asylum and Migration Fund contains appropriate measures to give effect to the above principle. However, the Council reiterates its view that Article 80 TFEU does not constitute a legal basis within the meaning of EU law. Within the said Chapter, only Article 77(2) and (3), Article 78(2) and (3) and Article 79(2), (3) and (4) TFEU contain legal bases enabling the relevant EU institutions to adopt EU legal acts.

Statements by the Commission

Article 80 TFEU:

The Commission, in a spirit of compromise and in order to ensure the immediate adoption of the proposal, supports the final text; however it notes that this is without prejudice to its right of initiative with regard to the choice of legal bases, in particular in reference to the future use of Article 80 TFEU.

European Migration Network (EMN):

The Commission, in a spirit of compromise, supports the final text on Article 23 which ensures continued funding support to the activities of the European Migration Network while maintaining its current structure, objectives and governance, as set out in Council Decision 2008/381/EC of 14 May 2008. However the Commission notes that this is without prejudice to its right of initiative with regard to a future more comprehensive revision of the set up and functioning of this network, as envisaged in the Commission's initial proposal for Article 23.

Thursday 13 March 2014

P7_TA(2014)0238

Hong Kong International Convention for the safe and environmentally sound recycling of ships ***

European Parliament legislative resolution of 13 March 2014 on the draft Council decision concerning the ratification of, or the accession to, the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009, by the Member States in the interests of the European Union (15902/2013 — C7-0485/2013 — 2012/0056(NLE))

(Consent)

(2017/C 378/70)

The European Parliament,

— having regard to the draft Council decision (15902/2013),

— having regard to the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009,

— having regard to Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC [1],

— having regard to the request for consent submitted by the Council in accordance with Article 192(1) and Article 218(6), second subparagraph, point (a)(v), and paragraph 8, of the Treaty on the Functioning of the European Union (C7-0485/2013),

— having regard to Rule 81(1), first and third subparagraphs, Rule 81(2), and Rule 90(7) of its Rules of Procedure,

— having regard to the recommendation of the Committee on the Environment, Public Health and Food Safety (A7-0166/2014),

1. Gives its consent to the draft Council Decision;

2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States.

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[1] OJ L 330, 10.12.2013, p. 1.

Thursday 13 March 2014

P7_TA(2014)0241

Asylum, Migration and Integration Fund and Internal Security Fund (general provisions) ***I

European Parliament legislative resolution of 13 March 2014 on the proposal for a regulation of the European Parliament and of the Council laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (COM(2011)0752 — C7-0444/2011 — 2011/0367(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/71)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2011)0752),

— having regard to Article 294(2) and Articles 78(2), 79(2) and (4), 82(1), 84 and 87(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0444/2011),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 11 July 2012 ([1]),

— having regard to the opinion of the Committee of the Regions of 18 July 2012 ([2]),

— having regard to the undertaking given by the Council representative by letter of 20 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Budgets (A7-0021/2014),

1. Adopts its position at first reading hereinafter set out;

2. Takes note of the Commission statements annexed to this resolution;

3. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

([1]) OJ C 299, 4.10.2012, p. 108.
([2]) OJ C 277, 13.9.2012, p. 23.

Thursday 13 March 2014

P7_TC1-COD(2011)0367

Position of the European Parliament adopted at first reading on 13 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 514/2014.)

ANNEX TO THE LEGISLATIVE RESOLUTION

Statement by the Commission on the adoption of national programmes

The Commission will use its best efforts to inform the European Parliament in advance of the adoption of the national programmes.

Statement by the Commission on Article 5(4), subparagraph 2, point b of Regulation (EU) No 182/2011

The Commission underlines that it is contrary to the letter and to the spirit of Regulation (EU) No 182/2011 (OJ L 55, 28.2.2011, p. 13) to invoke Article 5(4), subparagraph 2, point b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5(4) recourse to subparagraph 2, point b), cannot be simply seen as a 'discretionary power' of the Legislator, but must be interpreted in a restrictive manner and thus must be justified.

Thursday 13 March 2014

P7_TA(2014)0242

Internal Security Fund (Police cooperation, preventing and combating crime and crisis management) ***I

European Parliament legislative resolution of 13 March 2014 on the proposal for a regulation of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (COM(2011)0753 — C7-0445/2011 — 2011/0368(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/72)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2011)0753),

— having regard to Article 294(2) and Articles 82(1), 84 and 87(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0445/2011),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 11 July 2012 ([1])

— having regard to the opinion of the Committee of the Regions of 18 July 2012 ([2]),

— having regard to its decision of 17 January 2013 on the opening of, and the mandate for, interinstitutional negotiations on the proposal ([3]),

— having regard to the undertaking given by the Council representative by letter of 11 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Budgets (A7-0026/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2011)0368

Position of the European Parliament adopted at first reading on 13 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 513/2014.)

([1]) OJ C 299, 4.10.2012, p. 108.
([2]) OJ C 277, 13.9.2012, p. 23.
([3]) Texts adopted, P7_TA(2013)0021.

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P7_TA(2014)0243

Internal Security Fund (External borders and visas) ***I

European Parliament legislative resolution of 13 March 2014 on the proposal for a regulation of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa (COM(2011)0750 — C7-0441/2011 — 2011/0365(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/73)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2011)0750),

— having regard to Article 294(2) and Article 77(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0441/2011),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 11 July 2012 ([1]),

— having regard to the opinion of the Committee of the Regions of 18 July 2012 ([2]),

— having regard to its decision of 17 January 2013 on the opening of, and the mandate for, interinstitutional negotiations on the proposal ([3]),

— having regard to the undertaking given by the Council representative by letter of 4 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Budgets (A7-0025/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2011)0365

Position of the European Parliament adopted at first reading on 13 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 515/2014.)

([1]) OJ C 299, 4.10.2012, p. 108.
([2]) OJ C 277, 13.9.2012, p. 23.
([3]) Texts adopted P7_TA(2013)0019.

Thursday 13 March 2014

P7_TA(2014)0244

High common level of network and information security ***I

European Parliament legislative resolution of 13 March 2014 on the proposal for a directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union (COM(2013)0048 — C7-0035/2013 — 2013/0027(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/74)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2013)0048),

— having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0035/2013),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,

— having regard to the opinion of the European Economic and Social Committee of 22 May 2013 ([1]),

— having regard to its resolution of 12 September 2013 on a Cybersecurity Strategy of the European Union: An Open, Safe and Secure Cyberspace ([2]),

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Industry, Research and Energy, the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Foreign Affairs (A7-0103/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0027

Position of the European Parliament adopted at first reading on 13 March 2014 with a view to the adoption of Directive 2014/…/EU of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union

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,

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([1]) OJ C 271, 19.9.2013, p. 133.
([2]) Texts adopted, P7_TA(2013)0376.

Having regard to the proposal from the European Commission,

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

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

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

Whereas:

(1) Network and information systems and services play a vital role in society. Their reliability and security are essential to ***the freedom and overall security of Union citizens as well as to*** economic activities and social welfare, and in particular to the functioning of the internal market. **[Am. 1]**

(2) The magnitude ~~and~~, frequency ***and impact*** of ~~deliberate or accidental~~ security incidents is increasing and represents a major threat to the functioning of networks and information systems. ***Those systems may also become an easy target for deliberate harmful actions intended to damage or interrupt the operation of the systems.*** Such incidents can impede the pursuit of economic activities, generate substantial financial losses, undermine user ***and investor*** confidence and cause major damage to the economy of the Union ***and, ultimately, endanger the wellbeing of Union citizens and the ability of Member States to protect themselves and ensure the security of critical infrastructures***. **[Am. 2]**

(3) As a communication instrument without frontiers, digital information systems, and primarily the Internet, play an essential role in facilitating the cross-border movement of goods, services and people. Due to that transnational nature, substantial disruption of those systems in one Member State can also affect other Member States and the Union as a whole. The resilience and stability of network and information systems is therefore essential to the smooth functioning of the internal market.

(3a) Since common causes of system failure continue to be unintentional ones, such as natural causes or human error, infrastructure should be resilient both to intentional and unintentional disruptions, and operators of critical infrastructure should design resilience-based systems. **[Am. 3]**

(4) A cooperation mechanism should be established at Union level to allow for information exchange and coordinated ***prevention,*** detection and response regarding network and information security ('NIS'). For that mechanism to be effective and inclusive, it is essential that all Member States have minimum capabilities and a strategy ensuring a high level of NIS in their territory. Minimum security requirements should also apply to ~~public administrations and~~ ***at least certain market*** operators of ~~critical~~ information infrastructure to promote a culture of risk management and ensure that the most serious incidents are reported. ***Companies listed on the stock markets should be encouraged to make incidents public in their financial reports on a voluntary basis. The legal framework should be based upon the need to safeguard the privacy and integrity of citizens. The Critical Infrastructure Warning Information Network (CIWIN) should be expanded to the market operators covered by this Directive.*** **[Am. 4]**

(4a) While public administrations, because of their public mission, should exercise due diligence in the management and the protection of their own network and information systems, this Directive should focus on critical infrastructure essential for the maintenance of vital economic and societal activities in the fields of energy, transport, banking, financial market infrastructures and health. Software developers and hardware manufacturers should be excluded from the scope of this Directive. **[Am. 5]**

([1]) OJ C 271, 19.9.2013, p. 133.
([2]) Position of the European Parliament of 13 March 2014.

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(4b) ***Cooperation and coordination between the relevant Union authorities with the High Representative/Vice President, with the responsibility for the Common Foreign and Security Policy and the Common Security and Defence Policy, as well as the EU Counter-terrorism Coordinator should be ensured where incidents having a significant impact are perceived to be of an external and terrorist nature.*** **[Am. 6]**

(5) To cover all relevant incidents and risks, this Directive should apply to all network and information systems. The obligations on public administrations and market operators should, however, not apply to undertakings providing public communication networks or publicly available electronic communication services within the meaning of Directive 2002/21/EC of the European Parliament and of the Council ([1]), which are subject to the specific security and integrity requirements laid down in Article 13a of that Directive nor should they apply to trust service providers.

(6) The existing capabilities are not sufficient enough to ensure a high level of NIS within the Union. Member States have very different levels of preparedness leading to fragmented approaches across the Union. This leads to an unequal level of protection of consumers and businesses, and undermines the overall level of NIS within the Union. Lack of common minimum requirements on ~~public administrations and~~ market operators in turn makes it impossible to set up a global and effective mechanism for cooperation at Union level. ***Universities and research centres have a decisive role in spurring research, development and innovation in those areas and should be provided with adequate funding.*** **[Am. 7]**

(7) Responding effectively to the challenges of the security of network and information systems therefore requires a global approach at Union level covering common minimum capacity building and planning requirements, ***developing sufficient cyber security skills,*** exchange of information and coordination of actions, and common minimum security requirements ~~for all market operators concerned and public administrations~~. ***Minimum common standards should be applied in accordance with appropriate recommendations by the Cyber Security Coordination Groups (CSGCs).*** **[Am. 8]**

(8) The provisions of this Directive should be without prejudice to the possibility for each Member State to take the necessary measures to ensure the protection of its essential security interests, to safeguard public policy and public security, and to permit the investigation, detection and prosecution of criminal offences. In accordance with Article 346 of the Treaty on the Functioning of the European Union (TFEU), no Member State is to be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security. ***No Member State is obliged to disclose EU classified information as defined in Council Decision 2011/292/EU*** ([2])***, information subject to non-disclosure agreements or informal non-disclosure agreements, such as the Traffic Light Protocol.*** **[Am. 9]**

(9) To achieve and maintain a common high level of security of network and information systems, each Member State should have a national NIS strategy defining the strategic objectives and concrete policy actions to be implemented. NIS cooperation plans complying with essential requirements need to be developed at national level***, on the basis of minimum requirements set out in this Directive,*** in order to reach capacity response levels allowing for effective and efficient cooperation at national and Union level in case of incidents***, respecting and protecting private life and personal data. Each Member State should therefore be obliged to meet common standards regarding data format and the exchangeability of data to be shared and evaluated. Member States should be able to ask for the assistance of the European Union Agency for Network and Information Security (ENISA) in developing their national NIS strategies, based on a common minimum NIS strategy blueprint.*** **[Am. 10]**

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

([2]) ***Council Decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information (OJ L 141, 27.5.2011, p. 17).***

(10) To allow for the effective implementation of the provisions adopted pursuant to this Directive, a body responsible for coordinating NIS issues and acting as a focal point for cross-border cooperation at Union level should be established or identified in each Member State. Those bodies should be given the adequate technical, financial and human resources to ensure that they can carry out in an effective and efficient manner the tasks assigned to them and thus achieve the objectives of this Directive.

(10a) In view of the differences in national governance structures and in order to safeguard pre-existing sectoral arrangements or Union supervisory and regulatory bodies, and to avoid duplication, Member States should be able to designate more than one national competent authority in charge of fulfilling the tasks linked to the security of the networks and information systems of market operators under this Directive. However, in order to ensure smooth cross-border cooperation and communication, it is necessary for each Member State, without prejudice to sectoral regulatory arrangements, to designate only one national single point of contact in charge of cross-border cooperation at Union level. Where its constitutional structure or other arrangements so require, a Member State should be able to designate only one authority to carry out the tasks of the competent authority and the single point of contact. The competent authorities and the single points of contact should be civilian bodies, subject to full democratic oversight and should not fulfil any tasks in the field of intelligence, law enforcement or defence or be organisationally linked in any form to bodies active in those fields. **[Am. 11]**

(11) All Member States ***and market operators*** should be adequately equipped, both in terms of technical and organisational capabilities, to prevent, detect, respond to and mitigate network and information systems' incidents and risks ***at any time. The security systems of public administrations should be safe and subject to democratic control and scrutiny. Commonly required equipment and capabilities should comply with commonly agreed technical standards as well as standards procedures of operation (SPO).*** Well-functioning Computer Emergency Response Teams ***(CERTs)*** complying with essential requirements should therefore be established in all Member States to guarantee effective and compatible capabilities to deal with incidents and risks and ensure efficient cooperation at Union level. ***Those CERTs should be enabled to interact on the basis of common technical standards and SPO. In view of the different characteristics of existing CERTs, which respond to different subject needs and actors, Member States should guarantee that each of the sectors referred to in the list of market operators set out in this Directive is provided services by at least one CERT. Regarding cross-border CERT cooperation, Member States should ensure that CERTs have sufficient means to participate in the existing international and Union cooperation networks already in place.*** **[Am. 12]**

(12) Building upon the significant progress within the European Forum of Member States ('EFMS') in fostering discussions and exchanges on good policy practices including the development of principles for European cyber crisis cooperation, the Member States and the Commission should form a network to bring them into permanent communication and support their cooperation. This secure and effective cooperation mechanism***, including the participation of market operators, where appropriate,*** should enable structured and coordinated information exchange, detection and response at Union level. **[Am. 13]**

(13) ~~The European Network and Information Security Agency (~~'ENISA') should assist the Member States and the Commission by providing its expertise and advice and by facilitating exchange of best practices. In particular, in the application of this Directive, the Commission ***and Member States*** should consult ENISA. To ensure effective and timely information to the Member States and the Commission, early warnings on incidents and risks should be notified within the cooperation network. To build capacity and knowledge among Member States, the cooperation network should also serve as an instrument for the exchange of best practices, assisting its members in building capacity, steering the organisation of peer reviews and NIS exercises. **[Am. 14]**

(13a) Where appropriate, Member States should be able to use or adapt existing organisational structures or strategies when applying the provisions of this Directive. **[Am. 15]**

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(14) A secure information-sharing infrastructure should be put in place to allow for the exchange of sensitive and confidential information within the cooperation network. ***Existing structures within the Union should be fully used for that purpose.*** Without prejudice to their obligation to notify incidents and risks of Union dimension to the cooperation network, access to confidential information from other Member States should only be granted to Members States upon demonstration that their technical, financial and human resources and processes, as well as their communication infrastructure, guarantee their effective, efficient and secure participation in the network***, using transparent methods***. **[Am. 16]**

(15) As most network and information systems are privately operated, cooperation between the public and private sector is essential. Market operators should be encouraged to pursue their own informal cooperation mechanisms to ensure NIS. They should also cooperate with the public sector and ***mutually*** share information and best practices ~~in~~ ***including the reciprocal*** exchange of ***relevant information and*** operational support ***and strategically analysed information,*** in case of incidents. ***To effectively encourage the sharing of information and of best practices, it is essential to ensure that market operators who participate in such exchanges are not disadvantaged as a result of their cooperation. Adequate safeguards are needed to ensure that such cooperation will not expose those operators to higher compliance risk or new liabilities under, inter alia, competition, intellectual property, data protection or cybercrime law, nor expose them to increased operational or security risks.*** **[Am. 17]**

(16) To ensure transparency and properly inform Union citizens and market operators, the ~~competent authorities~~ ***single points of contact*** should set up a common ***Union-wide*** website to publish non confidential information on the incidents ~~and~~, risks ***and means of risk mitigation, and where necessary advise on appropriate maintenance measures***. ***The information on the website should be accessible irrespective of the device used. Any personal data published on that website should be limited only to what is necessary and should be as anonymous as possible.*** **[Am. 18]**

(17) Where information is considered confidential in accordance with Union and national rules on business confidentiality, such confidentiality shall be ensured when carrying out the activities and fulfilling the objectives set by this Directive.

(18) On the basis in particular of national crisis management experiences and in cooperation with ENISA, the Commission and the Member States should develop a Union NIS cooperation plan defining cooperation mechanisms***, best practices and operation patterns*** to ***prevent, detect, report, and*** counter risks and incidents. That plan should be duly taken into account in the operation of early warnings within the cooperation network. **[Am. 19]**

(19) Notification of an early warning within the network should be required only where the scale and severity of the incident or risk concerned are or may become so significant that information or coordination of the response at Union level is necessary. Early warnings should therefore be limited to ~~actual or potential~~ incidents or risks that grow rapidly, exceed national response capacity or affect more than one Member State. To allow for a proper evaluation, all information relevant for the assessment of the risk or incident should be communicated to the cooperation network. **[Am. 20]**

(20) Upon receipt of an early warning and its assessment, the ~~competent authorities~~ ***single points of contact*** should agree on a coordinated response under the Union NIS cooperation plan. ~~Competent authorities~~ ***The single points of contact, ENISA*** and the Commission should be informed about the measures adopted at national level as a result of the coordinated response. **[Am. 21]**

(21) Given the global nature of NIS problems, there is a need for closer international cooperation to improve security standards and information exchange, and promote a common global approach to NIS issues. ***Any framework for such international cooperation should be subject to Directive 95/46/EC of the European Parliament and of the Council*** [1] ***and Regulation (EC) No 45/2001 of the European Parliament and of the Council*** [2]**. [Am. 22]**

(22) Responsibility for ensuring NIS lies to a great extent with ~~public administrations and~~ market operators. A culture of risk management***, close cooperation and trust***, involving risk assessment and the implementation of security measures appropriate to the risks ~~faced~~ ***and incidents, whether deliberate or accidental,*** should be promoted and developed through appropriate regulatory requirements and voluntary industry practices. Establishing a ***trustworthy*** level playing field is also essential to the effective functioning of the cooperation network to ensure effective cooperation from all Member States. **[Am. 23]**

(23) Directive 2002/21/EC requires that undertakings providing public electronic communications networks or publicly available electronic communications services take appropriate measures to safeguard their integrity and security and introduces security breach and integrity loss notification requirements. Directive 2002/58/EC of the European Parliament and of the Council [3] requires a provider of a publicly available electronic communications service to take appropriate technical and organisational measures to safeguard the security of its services.

(24) Those obligations should be extended beyond the electronic communications sector ***to operators of infrastructure which rely heavily on information and communications technology and are essential to the maintenance of vital economic or societal functions such as electricity and gas, transport, credit institutions, financial market infrastructures and health. Disruption of those network and information systems would affect the internal market. While the obligations set out in this Directive should not extend*** to key providers of information society services, as defined in Directive 98/34/EC of the European Parliament and of the Council [4], which underpin downstream information society services or on-line activities, such as e-commerce platforms, Internet payment gateways, social networks, search engines, cloud computing services, ***in general or*** application stores~~. Disruption of these enabling information society services prevents the provision of other information society services which rely on them as key inputs. Software developers and hardware manufacturers are not providers of information society services and are therefore excluded. Those obligations should also be extended to public administrations, and operators of critical infrastructure which rely heavily on information and communications technology and are essential to the maintenance of vital economical or societal functions such as electricity and gas, transport, credit institutions, stock exchange and health. Disruption of those network and information systems would affect the internal market.~~***, those providers might, on a voluntary basis, inform the competent authority or single point of contact of those network security incidents they deem appropriate. The competent authority or the single point of contact should, if possible, present the market operators that informed it of the incident with strategically analysed information that will help to overcome the security threat***. **[Am. 24]**

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

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

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

(4) Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ L 204, 21.7.1998, p. 37).

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(24a) ***While hardware and software providers are not market operators comparable to those covered in this Directive, their products facilitate the security of network and information systems. They therefore have an important role in enabling market operators to secure their network and information infrastructures. Given that hardware and software products are already subject to existing rules on product liability, Member States should ensure that those rules are enforced.*** **[Am. 25]**

(25) Technical and organisational measures imposed on ~~public administrations and~~ market operators should not require that a particular commercial information and communications technology product be designed, developed or manufactured in a particular manner. **[Am. 26]**

(26) The ~~public administrations and~~ market operators should ensure security of the networks and systems which are under their control. These would be primarily private networks and systems managed either by their internal IT staff or the security of which has been outsourced. The security and notification obligations should apply to the relevant market operators ~~and public administrations~~ regardless of whether they perform the maintenance of their network and information systems internally or outsource it. **[Am. 27]**

(27) To avoid imposing a disproportionate financial and administrative burden on small operators and users, the requirements should be proportionate to the risk presented by the network or information system concerned, taking into account the state of the art of such measures. Those requirements should not apply to micro enterprises.

(28) Competent authorities ***and single points of contact*** should pay due attention to preserving informal and trusted channels of information-sharing between market operators and between the public and the private sectors. ***Competent authorities and single points of contact should inform manufacturers and service providers of affected ICT products and services about incidents having a significant impact notified to them.*** Publicity of incidents reported to the competent authorities ***and single points of contact*** should duly balance the interest of the public in being informed about threats with possible reputational and commercial damages for the ~~public administrations and~~ market operators reporting incidents. In the implementation of the notification obligations, competent authorities ***and single points of contact*** should pay particular attention to the need to maintain information about product vulnerabilities strictly confidential prior to the ~~release~~ ***deployment*** of appropriate security fixes. ***As a general rule, single points of contact should not disclose the personal data of individuals involved in incidents. Single points of contact should only disclose personal data where the disclosure of such data is necessary and proportionate in view of the objective pursued.*** **[Am. 28]**

(29) Competent authorities should have the necessary means to perform their duties, including powers to obtain sufficient information from market operators ~~and public administrations~~ in order to assess the level of security of network and information systems, ***measure the number, scale and scope of incidents,*** as well as reliable and comprehensive data about actual incidents that have had an impact on the operation of network and information systems. **[Am. 29]**

(30) Criminal activities are in many cases underlying an incident. The criminal nature of incidents can be suspected even if the evidence to support it may not be sufficiently clear from the start. In this context, appropriate co-operation between competent authorities***, single points of contact*** and law enforcement authorities ***as well as cooperation with the EC3 (Europol Cybercrime Centre) and ENISA*** should form part of an effective and comprehensive response to the threat of security incidents. In particular, promoting a safe, secure and more resilient environment requires a systematic reporting of incidents of a suspected serious criminal nature to law enforcement authorities. The serious criminal nature of incidents should be assessed in the light of Union laws on cybercrime. **[Am. 30]**

(31) Personal data are in many cases compromised as a result of incidents. ***Member States and market operators should protect personal data stored, processed or transmitted against accidental or unlawful destruction, accidental loss or alteration, and unauthorised or unlawful storage, access, disclosure or dissemination; and ensure the implementation of a security policy with respect to the processing of personal data.*** In this context, competent authorities***, single points of contact*** and data protection authorities should cooperate and exchange information ~~on all relevant matters~~ ***including, where appropriate, with market operators, in order*** to tackle the personal data breaches resulting from incidents ***in accordance with applicable data protection rules***. ~~Member states shall implement~~ ***The*** obligation to notify security incidents ***should be carried out*** in a way that minimises the administrative burden in case the security incident is also a personal data breach ~~in line with the Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([1]). Liaising with the competent authorities and the data protection authorities,~~ ***that has to be notified in accordance with Union data protection law.*** ENISA ~~could~~ ***should*** assist by developing information exchange mechanisms and ~~templates avoiding the need for two notification templates. This~~ ***a*** single notification template ***that*** would facilitate the reporting of incidents compromising personal data, thereby easing the administrative burden on businesses and public administrations. **[Am. 31]**

(32) Standardisation of security requirements is a market-driven process ***of a voluntary nature that should allow market operators to use alternative means to achieve at least similar outcomes***. To ensure a convergent application of security standards, Member States should encourage compliance or conformity with specified ***interoperable*** standards to ensure a high level of security at Union level. To this end, ~~it~~ ***the application of open international standards on network information security or the design of such tools need to be considered. Another necessary step forward*** might be ~~necessary~~ to draft harmonised standards, which should be done in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council ([2]). ***In particular, ETSI, CEN and CENELEC should be mandated to suggest effective and efficient Union open security standards, where technological preferences are avoided as much as possible, and which should be made easily manageable by small and medium-sized market operators. International standards pertaining to cybersecurity should be carefully vetted in order to ensure that they have not been compromised and that they provide adequate levels of security, thus making sure that the mandated compliance with cybersecurity standards enhances the overall level of cybersecurity of the Union and not the contrary.*** **[Am. 32]**

(33) The Commission should periodically review this Directive, ***in consultation with all interested stakeholders,*** in particular with a view to determining the need for modification in the light of changing ***societal, political,*** technological or market conditions. **[Am. 33]**

(34) In order to allow for the proper functioning of the cooperation network, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the ~~definition of the criteria to be fulfilled for a Member State to be authorized to participate to~~ ***common set of interconnection and security standards for*** the secure information-sharing ~~system, of the~~ ***infrastructure and the*** further specification of the triggering events for early warning~~, and of the definition of the circumstances in which market operators and public administrations are required to notify incidents~~. **[Am. 34]**

([1]) ~~SEC(2012) 72 final.~~

([2]) Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

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(35) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(36) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission as regards the cooperation between ~~competent authorities~~ ***single points of contact*** and the Commission within the cooperation network, ~~the access to the secure information-sharing infrastructure~~ ***without prejudice to existing cooperation mechanisms at national level,*** the Union NIS cooperation plan, ***and*** the formats and procedures applicable to ~~informing the public about~~ ***the notification of*** incidents~~, and the standards and/or technical specifications relevant to NIS~~ ***having a significant impact***. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([1]). **[Am. 35]**

(37) In the application of this Directive, the Commission should liaise as appropriate with relevant sectoral committees and relevant bodies set up at Union level in particular in the fields of ***e-government,*** energy, transport ~~and~~, health ***and defence***. **[Am. 36]**

(38) Information that is considered confidential by a competent authority ***or a single point of contact***, in accordance with Union and national rules on business confidentiality, should be exchanged with the Commission, ***its relevant agencies, single points of contact*** and/***or*** other ***national*** competent authorities only where such exchange is strictly necessary for the application of this Directive. The information exchanged should be limited to that which is relevant***, necessary*** and proportionate to the purpose of such exchange***, and should respect pre-defined criteria for confidentiality and security, in accordance with Decision 2011/292/EU, information subject to non-disclosure agreements and informal non-disclosure agreements, such as the Traffic Light Protocol.*** **[Am. 37]**

(39) The sharing of information on risks and incidents within the cooperation network and compliance with the requirements to notify incidents to the national competent authorities ***or single points of contact*** may require the processing of personal data. Such a processing of personal data is necessary to meet the objectives of public interest pursued by this Directive and is thus legitimate under Article 7 of Directive 95/46/EC. It does not constitute, in relation to those legitimate aims, a disproportionate and intolerable interference impairing the very substance of the right to the protection of personal data guaranteed by Article 8 of the Charter of Fundamental Rights of the European Union. In the application of this Directive, Regulation (EC) No 1049/2001 of the European Parliament and of the Council ([2]) should apply as appropriate. When data are processed by Union institutions and bodies, such processing for the purpose of implementing this Directive should comply with Regulation (EC) No 45/2001. **[Am. 38]**

(40) Since the objective of this Directive, namely to ensure a high level of NIS in the Union, cannot be sufficiently achieved by the Member States alone but can rather, by reason of the effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 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 that objective.

(41) This Directive respects the fundamental rights, and observes the principles, recognised by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private life and communications, the protection for personal data, the freedom to conduct a business, the right to property, the right to an effective remedy before a court and the right to be heard. This Directive must be implemented in accordance with those rights and principles.

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

([2]) 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).

(41a) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, 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. **[Am. 39]**

(41b) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 14 June 2013 ([1]),

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Directive lays down measures to ensure a high common level of network and information security ('NIS') within the Union.

2. To that end, this Directive:

(a) lays down obligations for all Member States concerning the prevention, the handling of and the response to risks and incidents affecting networks and information systems;

(b) creates a cooperation mechanism between Member States in order to ensure a uniform application of this Directive within the Union and, where necessary, a coordinated ~~and~~, efficient ***and effective*** handling of and response to risks and incidents affecting network and information systems ***with the participation of relevant stakeholders***; **[Am. 40]**

(c) establishes security requirements for market operators ~~and public administrations~~. **[Am. 41]**

3. The security requirements provided for in Article 14 of this Directive shall apply neither to undertakings providing public communication networks or publicly available electronic communication services within the meaning of Directive 2002/21/EC, which shall comply with the specific security and integrity requirements laid down in Articles 13a and 13b of that Directive, nor to trust service providers.

4. This Directive shall be without prejudice to Union laws on cybercrime and Council Directive 2008/114/EC ([2]).

5. This Directive shall also be without prejudice to Directive 95/46/EC, to Directive 2002/58/EC and to Regulation ***(EC) No 45/2001***. ***Any use of the personal data shall be limited to what is strictly necessary for the purposes of this Directive, and those data shall be as anonymous as possible, if not completely anonymous.*** **[Am. 42]**

6. The sharing of information within the cooperation network under Chapter III and the notifications of NIS incidents under Article 14 may require the processing of personal data. Such processing, which is necessary to meet the objectives of public interest pursued by this Directive, shall be authorised by the Member State pursuant to Article 7 of Directive 95/46/EC and Directive 2002/58/EC, as implemented in national law.

([1]) OJ C 32, 4.2.2014, p. 19.
([2]) Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p. 75).

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Article 1a

Protection and processing of personal data

1. Any processing of personal data in the Member States pursuant to this Directive shall be carried out in accordance with Directive 95/46/EC and Directive 2002/58/EC.

2. Any processing of personal data by the Commission and ENISA pursuant to this Regulation shall be carried out in accordance with Regulation (EC) No 45/2001.

3. Any processing of personal data by the European Cybercrime Centre within Europol for the purposes of this Directive shall be carried out pursuant to Council Decision 2009/371/JHA [1].

4. The processing of personal data shall be fair and lawful and strictly limited to the minimum data needed for the purposes for which they are processed. They shall be kept in a form which permits the identification of data subjects for no longer than necessary for the purpose for which the personal data are processed.

5. Incident notifications referred to in Article 14 of this Directive shall be without prejudice to the provisions and obligations regarding personal data breach notifications set out in Article 4 of Directive 2002/58/EC and in Commission Regulation (EU) No 611/2013 [2]**. [Am. 43]**

Article 2

Minimum harmonisation

Member States shall not be prevented from adopting or maintaining provisions ensuring a higher level of security, without prejudice to their obligations under Union law.

Article 3

Definitions

For the purpose of this Directive, the following definitions shall apply:

(1) 'network and information system' means:

(a) an electronic communications network within the meaning of Directive 2002/21/EC, and

(b) any device or group of inter-connected or related devices, one or more of which, pursuant to a program, perform automatic processing of ~~computer~~ ***digital*** data, as well as **[Am. 44]**

(c) ~~computer~~ ***digital*** data stored, processed, retrieved or transmitted by elements covered under points (a) and (b) for the purposes of their operation, use, protection and maintenance; **[Am. 45]**

(2) 'security' means the ability of a network and information system to resist, at a given level of confidence, accident or malicious action that compromises the availability, authenticity, integrity and confidentiality of stored or transmitted data or the related services offered by or accessible via that network and information system; ***'security' includes appropriate technical devices, solutions and operating procedures ensuring the security requirements set out in this Directive;*** **[Am. 46]**

([1]) ***Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).***

([2]) ***Commission Regulation (EU) No 611/2013 of 24 June 2013 on the measures applicable to the notification of personal data breaches under Directive 2002/58/EC of the European Parliament and of the Council on privacy and electronic communications (OJ L 173, 26.6.2013, p. 2).***

(3) 'risk' means any ***reasonably identifiable*** circumstance or event having a potential adverse effect on security; **[Am. 47]**

(4) 'incident' means any ~~circumstance or~~ event having an actual adverse effect on security; **[Am. 48]**

~~(5) 'information society service' mean service within the meaning of point (2) of Article 1 of Directive 98/34/EC;~~ **[Am. 49]**

(6) 'NIS cooperation plan' means a plan establishing the framework for organisational roles, responsibilities and procedures to maintain or restore the operation of networks and information systems, in the event of a risk or an incident affecting them;

(7) 'incident handling' means all procedures supporting the ***detection, prevention,*** analysis, containment and response to an incident; **[Am. 50]**

(8) 'market operator' means:

~~(a) provider of information society services which enable the provision of other information society services, a non exhaustive list of which is set out in Annex II;~~ **[Am. 51]**

(b) operator of ~~critical~~ infrastructure that are essential for the maintenance of vital economic and societal activities in the fields of energy, transport, banking, ~~stock exchanges~~ ***financial market infrastructures, internet exchange points, food supply chain*** and health***, and the disruption or destruction of which would have a significant impact in a Member State as a result of the failure to maintain those functions***, a non-exhaustive list of which is set out in Annex II***, insofar as the network and information systems concerned are related to its core services;*** **[Am. 52]**

(8a) 'incident having a significant impact' means an incident affecting the security and continuity of an information network or system that leads to the major disruption of vital economic or societal functions; **[Am. 53]**

(9) 'standard' means a standard referred to in Regulation (EU) No 1025/2012;

(10) 'specification' means a specification referred to in Regulation (EU) No 1025/2012;

(11) 'Trust service provider' means a natural or legal person who provides any electronic service consisting in the creation, verification, validation, handling and preservation of electronic signatures, electronic seals, electronic time stamps, electronic documents, electronic delivery services, website authentication, and electronic certificates, including certificates for electronic signature and for electronic seals;

(11a) 'regulated market' means regulated market as defined in point 14 of Article 4 of Directive 2004/39/EC of the European Parliament and of the Council [1]**; [Am. 54]**

(11b) 'multilateral trading facility (MTF)' means multilateral trading facility as defined in point 15 of Article 4 of Directive 2004/39/EC; **[Am. 55]**

(11c) 'organised trading facility' means a multilateral system or facility, which is not a regulated market, a multilateral trading facility or a central counterparty, operated by an investment firm or a market operator, in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in such a way as to result in a contract in accordance with Title II of Directive 2004/39/EC. **[Am. 56]**

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[1] ***Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ L 45, 16.2.2005, p. 18).***

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CHAPTER II

NATIONAL FRAMEWORKS ON NETWORK AND INFORMATION SECURITY

Article 4

Principle

Member States shall ensure a high level of security of the network and information systems in their territories in accordance with this Directive.

Article 5

National NIS strategy and national NIS cooperation plan

1. Each Member State shall adopt a national NIS strategy defining the strategic objectives and concrete policy and regulatory measures to achieve and maintain a high level of network and information security. The national NIS strategy shall address in particular the following issues:

(a) The definition of the objectives and priorities of the strategy based on an up-to-date risk and incident analysis;

(b) A governance framework to achieve the strategy objectives and priorities, including a clear definition of the roles and responsibilities of the government bodies and the other relevant actors;

(c) The identification of the general measures on preparedness, response and recovery, including cooperation mechanisms between the public and private sectors;

(d) An indication of the education, awareness raising and training programmes;

(e) Research and development plans and a description of how these plans reflect the identified priorities;

(ea) Member States may request the assistance of ENISA in developing their national NIS strategies and national NIS cooperation plans, based on a common minimum NIS strategy. **[Am. 57]**

2. The national NIS strategy shall include a national NIS cooperation plan complying at least with the following requirements:

(a) A risk ***management framework to establish a methodology for the identification, prioritisation, evaluation and treatment of risks, the*** assessment ~~plan to identify risks and assess~~ ***of*** the impacts of potential incidents***, prevention and control options, and to define criteria for the choice of possible countermeasures***; **[Am. 58]**

(b) The definition of the roles and responsibilities of the various ***authorities and other*** actors involved in the implementation of the ~~plan~~ ***framework***; **[Am. 59]**

(c) The definition of cooperation and communication processes ensuring prevention, detection, response, repair and recovery, and modulated in accordance with the alert level;

(d) A roadmap for NIS exercises and training to reinforce, validate, and test the plan. Lessons learned to be documented and incorporated into updates to the plan.

3. The national NIS strategy and the national NIS cooperation plan shall be communicated to the Commission within ~~one month~~ ***three months*** from their adoption. **[Am. 60]**

Article 6

National competent ~~authority~~ ***authorities and single points of contact*** on the security of network and information systems
[Am. 61]

1. Each Member State shall designate ~~a~~ ***one or more civilian*** national competent ~~authority~~ ***authorities*** on the security of network and information systems (~~the~~ 'competent authority***/ies***'). **[Am. 62]**

2. The competent authorities shall monitor the application of this Directive at national level and contribute to its consistent application throughout the Union.

2a. Where a Member State designates more than one competent authority, it shall designate a civilian national authority, for instance a competent authority, as national single point of contact on the security of network and information systems ('single point of contact'). Where a Member State designates only one competent authority, that competent authority shall also be the single point of contact. **[Am. 63]**

2b. The competent authorities and the single point of contact of the same Member State shall cooperate closely with regard to the obligations laid down in this Directive. **[Am. 64]**

2c. The single point of contact shall ensure cross-border cooperation with other single points of contact. **[Am. 65]**

3. Member States shall ensure that the competent authorities ***and the single points of contact*** have adequate technical, financial and human resources to carry out in an effective and efficient manner the tasks assigned to them and thereby to fulfil the objectives of this Directive. Member States shall ensure the effective, efficient and secure cooperation of the ~~competent authorities~~ ***single points of contact*** via the network referred to in Article 8. **[Am. 66]**

4. Member States shall ensure that the competent authorities ***and single points of contact, where applicable in accordance with paragraph 2a of this Article,*** receive the notifications of incidents from ~~public administrations and~~ market operators as specified in Article 14(2) and are granted the implementation and enforcement powers referred to in Article 15. **[Am. 67]**

4a. Where Union law provides for a sector-specific Union supervisory or regulatory body, inter alia on the security of network and information systems, that body shall receive the notifications of incidents in accordance with Article 14(2) from the market operators concerned in that sector and shall be granted the implementation and enforcement powers referred to in Article 15. That Union body shall cooperate closely with the competent authorities and the single point of contact of the host Member State with regard to those obligations. The single point of contact of the host Member State shall represent the Union body with regard to the obligations laid down in Chapter III. **[Am. 68]**

5. The competent authorities ***and single points of contact*** shall consult and cooperate, whenever appropriate, with the relevant law enforcement national authorities and data protection authorities. **[Am. 69]**

6. Each Member State shall notify to the Commission without delay the designation of the competent ~~authority~~ ***authorities and the single point of contact***, its tasks, and any subsequent change thereto. Each Member State shall make public its designation of the competent ~~authority~~ ***authorities***. **[Am. 70]**

Article 7

Computer Emergency Response Team

1. Each Member State shall set up ~~a~~ ***at least one*** Computer Emergency Response Team ('CERT') ***for each of the sectors listed in Annex II,*** responsible for handling incidents and risks according to a well-defined process, which shall comply with the requirements set out in point (1) of Annex I. A CERT may be established within the competent authority. **[Am. 71]**

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2. Member States shall ensure that CERTs have adequate technical, financial and human resources to effectively carry out their tasks set out in point (2) of Annex I.

3. Member States shall ensure that CERTs rely on a secure and resilient communication and information infrastructure at national level, which shall be compatible and interoperable with the secure information-sharing system referred to in Article 9.

4. Member States shall inform the Commission about the resources and mandate as well as the incident handling process of the CERTs.

5. The ~~CERT~~ ***CERTs*** shall act under the supervision of the competent authority ***or the single point of contact***, which shall regularly review the adequacy of ~~its~~ ***their*** resources, ~~its mandate~~ ***mandates*** and the effectiveness of ~~its~~ ***their*** incident-handling process. **[Am. 72]**

5a. Member States shall ensure that CERTs have adequate human and financial resources to participate actively in international, and in particular Union, cooperation networks. **[Am. 73]**

5b. The CERTs shall be enabled and encouraged to initiate and to participate in joint exercises with other CERTs, with all the CERTs of the Member States, and with appropriate institutions of non-Member States as well as with CERTs of multinational and international institutions such as the North Atlantic Treaty Organisation and the United Nations. **[Am. 74]**

5c. Member States may ask for the assistance of ENISA or of other Member States in developing their national CERTs. **[Am. 75]**

CHAPTER III

COOPERATION BETWEEN COMPETENT AUTHORITIES

Article 8

Cooperation network

1. The ~~competent authorities~~ ***single points of contact*** and the Commission ***and ENISA*** shall form a network ('cooperation network') to cooperate against risks and incidents affecting network and information systems. **[Am. 76]**

2. The cooperation network shall bring into permanent communication the Commission and the ~~competent authorities~~ ***single points of contact***. When requested, ~~the European Network and Information Security Agency ('~~ENISA') shall assist the cooperation network by providing its expertise and advice. ***Where appropriate, market operators and suppliers of cyber security solutions may also be invited to participate in the activities of the cooperation network referred to in points (g) and (i) of paragraph 3.***

Where relevant, the cooperation network shall cooperate with the data protection authorities.

The Commission shall regularly inform the cooperation network of security research and other relevant programmes of Horizon 2020. **[Am. 77]**

3. Within the cooperation network the ~~competent authorities~~ ***single points of contact*** shall:

(a) circulate early warnings on risks and incidents in accordance with Article 10;

(b) ensure a coordinated response in accordance with Article 11;

(c) publish on a regular basis non-confidential information on on-going early warnings and coordinated response on a common website;

(d) jointly discuss and assess ~~, at the request of one Member State or of the Commission,~~ one or more national NIS strategies and national NIS cooperation plans referred to in Article 5, within the scope of this Directive;

(e) jointly discuss and assess ~~, at the request of a Member State or the Commission,~~ the effectiveness of the CERTs, in particular when NIS exercises are performed at Union level;

(f) cooperate and exchange ~~information on all~~ ***expertise on*** relevant matters ~~with the European Cybercrime Centre within Europol, and with other relevant European bodies~~ ***on network and information security,*** in particular in the fields of data protection, energy, transport, banking, ~~stock exchanges~~ ***financial markets*** and health ***with the European Cybercrime Centre within Europol, and with other relevant European bodies***;

(fa) where appropriate, inform the EU Counter-terrorism Coordinator, by means of reporting, and may ask for assistance for analysis, preparatory works and actions of the cooperation network;

(g) exchange information and best practices between themselves and the Commission, and assist each other in building capacity on NIS;

~~(h) organise regular peer reviews on capabilities and preparedness;~~

(i) organise NIS exercises at Union level and participate, as appropriate, in international NIS exercises;

(ia) involve, consult and exchange, where appropriate, information with market operators with respect to the risks and incidents affecting their network and information systems;

(ib) develop, in cooperation with ENISA, guidelines for sector-specific criteria for the notification of significant incidents, in addition to the parameters laid down in Article 14(2), for a common interpretation, consistent application and coherent implementation within the Union. **[Am. 78]**

3a. The cooperation network shall publish a report once a year, based on the activities of the network and on the summary report submitted in accordance with Article 14(4) of this Directive, for the preceding 12 months. **[Am. 79]**

4. The Commission shall establish, by means of implementing acts, the necessary modalities to facilitate the cooperation between ~~competent authorities and~~ ***single points of contact,*** the Commission ***and ENISA*** referred to in paragraphs 2 and 3. Those implementing acts shall be adopted in accordance with the ~~consultation~~ ***examination*** procedure referred to in Article 19(~~2~~***3***). **[Am. 80]**

Article 9

Secure information-sharing system

1. The exchange of sensitive and confidential information within the cooperation network shall take place through a secure infrastructure.

1a. Participants to the secure infrastructure shall comply with, inter alia, appropriate confidentiality and security measures in accordance with Directive 95/46/EC and Regulation (EC) No 45/2001 at all steps of the processing. **[Am. 81]**

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~~2. The Commission shall be empowered to adopt delegated acts in accordance with Article 18 concerning the definition of the criteria to be fulfilled for a Member State to be authorized to participate to the secure information-sharing system, regarding:~~

~~(a) the availability of a secure and resilient communication and information infrastructure at national level, compatible and interoperable with the secure infrastructure of the cooperation network in compliance with Article 7(3), and~~

~~(b) the existence of adequate technical, financial and human resources and processes for their competent authority and CERT allowing an effective, efficient and secure participation in the secure information-sharing system under Article 6 (3), Article 7(2) and Article 7(3).~~ **[Am. 82]**

3. The Commission shall adopt, by means of ~~implementing~~ ***delegated*** acts ***in accordance with Article 18***, ~~decisions on the access of the Member States to this secure infrastructure, pursuant to the criteria referred to in paragraph 2 and 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(3)~~ ***a common set of interconnection and security standards that single points of contact are to meet before exchanging sensitive and confidential information across the cooperation network***. **[Am. 83]**

Article 10

Early warnings

1. The ~~competent authorities~~ ***single points of contact*** or the Commission shall provide early warnings within the cooperation network on those risks and incidents that fulfil at least one of the following conditions:

~~(a) they grow rapidly or may grow rapidly in scale;~~

(b) ~~they exceed or may exceed~~ ***the single point of contact assesses that the risk or incident potentially exceeds*** national response capacity;

(c) ~~they affect or may affect~~ ***the single points of contact or the Commission assess that the risk or incident affects*** more than one Member State. **[Am. 84]**

2. In the early warnings, the ~~competent authorities~~ ***single points of contact*** and the Commission shall communicate ***without undue delay*** any relevant information in their possession that may be useful for assessing the risk or incident. **[Am. 85]**

~~3. At the request of a Member State, or on its own initiative, the Commission may request a Member State to provide any relevant information on a specific risk or incident.~~ **[Am. 86]**

4. Where the risk or incident subject to an early warning is of a suspected criminal nature~~, the competent authorities or the Commission~~ ***and where the concerned market operator has reported incidents of a suspected serious criminal nature as referred to in Article 15(4), the Member States*** shall ~~inform~~ ***ensure that*** the European Cybercrime Centre within Europol ***is informed, where appropriate***. **[Am. 87]**

4a. Members of the cooperation network shall not make public any information received on risks and incidents referred to in paragraph 1 without having received the prior approval of the notifying single point of contact.

Furthermore, prior to sharing information in the cooperation network, the notifying single point of contact shall inform the market operator to which the information relates of its intention and, where it considers this appropriate, it shall make the information concerned anonymous. **[Am. 88]**

4b. Where the risk or incident subject to an early warning is of a suspected severe cross-border technical nature, the single points of contact or the Commission shall inform ENISA. **[Am. 89]**

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 18, concerning the further specification of the risks and incidents triggering early warning referred to in paragraph 1 of this Article.

Article 11

Coordinated response

1. Following an early warning referred to in Article 10 the ~~competent authorities~~ ***single points of contact*** shall, after assessing the relevant information, agree ***without undue delay*** on a coordinated response in accordance with the Union NIS cooperation plan referred to in Article 12. **[Am. 90]**

2. The various measures adopted at national level as a result of the coordinated response shall be communicated to the cooperation network.

Article 12

Union NIS cooperation plan

1. The Commission shall be empowered to adopt, by means of implementing acts, a Union NIS cooperation plan. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(3).

2. The Union NIS cooperation plan shall provide for:

(a) for the purposes of Article 10:

— a definition of the format and procedures for the collection and sharing of compatible and comparable information on risks and incidents by the ~~competent authorities~~ ***single points of contact***, **[Am. 91]**

— a definition of the procedures and the criteria for the assessment of the risks and incidents by the cooperation network;

(b) the processes to be followed for the coordinated responses under Article 11, including identification of roles and responsibilities and cooperation procedures;

(c) a roadmap for NIS exercises and training to reinforce, validate, and test the plan;

(d) a programme for transfer of knowledge between the Member States in relation to capacity building and peer learning;

(e) a programme for awareness raising and training between the Member States.

3. The Union NIS cooperation plan shall be adopted no later than one year following the entry into force of this Directive and shall be revised regularly. ***The results of each revision shall be reported to the European Parliament.*** **[Am. 92]**

3a. Coherence between the Union NIS cooperation plan and national NIS strategies and cooperation plans, as provided for in Article 5, shall be ensured. **[Am. 93]**

Article 13

International cooperation

Without prejudice to the possibility for the cooperation network to have informal international cooperation, the Union may conclude international agreements with third countries or international organisations allowing and organizing their participation in some activities of the cooperation network. Such agreement shall take into account the need to ensure adequate protection of the personal data circulating on the cooperation network ***and shall set out the monitoring procedure that must be followed to guarantee the protection of such personal data. The European Parliament shall be informed about the negotiation of the agreements. Any transfer of personal data to recipients located in countries outside the Union shall be conducted in accordance with Articles 25 and 26 of Directive 95/46/EC and Article 9 of Regulation (EC) No 45/2001.*** **[Am. 94]**

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Article 13a

Level of criticality of market operators

Member States may determine the level of criticality of market operators, taking into account the specificities of sectors, parameters including the importance of the particular market operator for maintaining a sufficient level of the sectoral service, the number of parties supplied by the market operator, and the time period until the discontinuity of the core services of the market operator has a negative impact on the maintenance of vital economic and societal activities. **[Am. 95]**

CHAPTER IV

SECURITY OF THE NETWORKS AND INFORMATION SYSTEMS OF PUBLIC ADMINISTRATIONS AND MARKET OPERATORS

Article 14

Security requirements and incident notification

1. Member States shall ensure that ~~public administrations and~~ market operators take appropriate ***and proportionate*** technical and organisational measures to ***detect and effectively*** manage the risks posed to the security of the networks and information systems which they control and use in their operations. Having regard to the state of the art, ~~these~~ ***those*** measures shall ~~guarantee~~ ***ensure*** a level of security appropriate to the risk presented. In particular, measures shall be taken to prevent and minimise the impact of incidents affecting ***the security of*** their network and information ~~system~~ ***systems*** on the core services they provide and thus ensure the continuity of the services underpinned by those networks and information systems. **[Am. 96]**

2. Member States shall ensure that ~~public administrations and~~ market operators notify ***without undue delay*** to the competent authority ***or to the single point of contact*** incidents having a significant impact on the ~~security~~ ***continuity*** of the core services they provide. ***Notification shall not expose the notifying party to increased liability.***

To determine the significance of the impact of an incident, the following parameters shall inter alia be taken into account: **[Am. 97]**

(a) the number of users whose core service is affected; **[Am. 98]**

(b) the duration of the incident; **[Am. 99]**

(c) geographic spread with regard to the area affected by the incident. **[Am. 100]**

Those parameters shall be further specified in accordance with point (ib) of Article 8(3). **[Am. 101]**

2a. Market operators shall notify the incidents referred to in paragraphs 1 and 2 to the competent authority or the single point of contact in the Member State where the core service is affected. Where core services in more than one Member State are affected, the single point of contact which has received the notification shall, based on the information provided by the market operator, alert the other single points of contact concerned. The market operator shall be informed, as soon as possible, which other single points of contact have been informed of the incident, as well as of any undertaken steps, results and any other information with relevance to the incident. **[Am. 102]**

2b. Where the notification contains personal data, it shall be only disclosed to recipients within the notified competent authority or single point of contact who need to process those data for the performance of their tasks in accordance with data protection rules. The disclosed data shall be limited to what is necessary for the performance of their tasks. **[Am. 103]**

2c. Market operators not covered by Annex II may report incidents as specified in Article 14(2) on a voluntary basis. **[Am. 104]**

3. Paragraphs 1 and 2 shall apply to all market operators providing services within the European Union.

4. ~~The~~ ***After consultation with the notified*** competent authority ***and the market operator concerned, the single point of contact*** may inform the public~~, or require the public administrations and~~ ***about individual incidents, where it determines that public awareness is necessary to prevent an incident or deal with an ongoing incident, or where that*** market ~~operators to do so, where it determines that~~ ***operator, subject to an incident, has refused to address a serious structural vulnerability related to that incident without undue delay.***

Before any public disclosure ~~of the incident is in the public interest~~***, the notified competent authority shall ensure that the market operator concerned has the possibility to be heard and that the decision for public disclosure is duly balanced with the public interest***.

Where information about individual incidents is made public, the notified competent authority or the single point of contact shall ensure that it is made as anonymous as possible.

The competent authority or the single point of contact shall, if reasonably possible, provide the market operator concerned with information that supports the effective handling of the notified incident.

Once a year, the ~~competent authority~~ ***single point of contact*** shall submit a summary report to the cooperation network on the notifications received***, including the number of notifications, and regarding the incident parameters listed in paragraph 2 of this Article,*** and the action taken in accordance with this paragraph. **[Am. 105]**

4a. Member States shall encourage market operators to make public incidents involving their business in their financial reports on a voluntary basis. **[Am. 106]**

~~5. The Commission shall be empowered to adopt delegated acts in accordance with Article 18 concerning the definition of circumstances in which public administrations and market operators are required to notify incidents.~~ **[Am. 107]**

6. ~~Subject to any delegated act adopted under paragraph 5, the competent authorities~~ ***The competent authorities or the single points of contact*** may adopt guidelines ~~and, where necessary, issue instructions~~ concerning the circumstances in which ~~public administrations and~~ market operators are required to notify incidents. **[Am. 108]**

7. The Commission shall be empowered to define, by means of implementing acts, the formats and procedures applicable for the purpose of paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(3).

8. Paragraphs 1 and 2 shall not apply to microenterprises as defined in Commission Recommendation 2003/361/EC ([1]), ***unless the microenterprise acts as subsidiary for a market operator as defined in point (b) of Article 3(8)***. **[Am. 109]**

8a. Member States may decide to apply this Article and Article 15 to public administrations mutatis mutandis. **[Am. 110]**

Article 15

Implementation and enforcement

1. Member States shall ensure that the competent authorities ~~have all~~ ***and the single points of contact have*** the powers necessary to ~~investigate cases of non-compliance of public administrations or~~ ***ensure compliance of*** market operators with their obligations under Article 14 and the effects thereof on the security of networks and information systems. **[Am. 111]**

([1]) Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

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2. Member States shall ensure that the competent authorities ***and the single points of contact*** have the power to require market operators ~~and public administrations~~ to: **[Am. 112]**

(a) provide information needed to assess the security of their networks and information systems, including documented security policies;

(b) ~~undergo~~ ***provide evidence of effective implementation of security policies, such as the results of*** a security audit carried out by a qualified independent body or national authority, and make the ~~results thereof~~ ***evidence*** available to the competent authority ***or to the single point of contact***. **[Am. 113]**

When sending that request, the competent authorities and the single points of contact shall state the purpose of the request and sufficiently specify what information is required. **[Am. 114]**

3. Member States shall ensure that ***the*** competent authorities ***and the single points of contact*** have the power to issue binding instructions to market operators ~~and public administrations~~. **[Am. 115]**

3a. By way of derogation from point (b) of paragraph 2 of this Article, Member States may decide that the competent authorities or the single points of contact, as applicable, are to apply a different procedure to particular market operators, based on their level of criticality determined in accordance with Article 13a. In the event that Member States so decide:

(a) competent authorities or the single points of contact, as applicable, shall have the power to submit a sufficiently specific request to market operators requiring them to provide evidence of effective implementation of security policies, such as the results of a security audit carried out by a qualified internal auditor, and make the evidence available to the competent authority or to the single point of contact;

(b) where necessary, following the submission by the market operator of the request referred to in point (a), the competent authority or the single point of contact may require additional evidence or an additional audit to be carried out by a qualified independent body or national authority.

3b. Member States may decide to reduce the number and intensity of audits for a market operator concerned, where its security audit has indicated compliance with Chapter IV in a consistent manner. **[Am. 116]**

4. The competent authorities ***and the single points of contact*** shall ~~notify~~ ***inform the market operators concerned about the possibility of reporting*** incidents of a suspected serious criminal nature to ***the*** law enforcement authorities. **[Am. 117]**

5. ***Without prejudice to applicable data protection rules*** the competent authorities ***and the single points of contact*** shall work in close cooperation with personal data protection authorities when addressing incidents resulting in personal data breaches. ***The single points of contact and the data protection authorities shall develop, in cooperation with ENISA, information exchange mechanisms and a single template to be used both for notifications under Article 14(2) of this Directive and other Union law on data protection.*** **[Am. 118]**

6. Member States shall ensure that any obligations imposed on ~~public administrations and~~ market operators under this Chapter may be subject to judicial review. **[Am. 119]**

6a. Member States may decide to apply Article 14 and this Article to public administrations mutatis mutandis. **[Am. 120]**

Article 16

Standardisation

1. To ensure convergent implementation of Article 14(1), Member States***, without prescribing the use of any particular technology,*** shall encourage the use of ***European or international interoperable*** standards and/or specifications relevant to networks and information security. **[Am. 121]**

2. The Commission shall ***give a mandate to a relevant European standardisation body to*** draw up, ***in consultation with relevant stakeholders,*** ~~, by means of implementing acts~~ a list of the standards ***and/or specifications*** referred to in paragraph 1. The list shall be published in the *Official Journal of the European Union*. **[Am. 122]**

CHAPTER V

FINAL PROVISIONS

Article 17

Penalties

1. Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date of transposition of this Directive at the latest and shall notify it without delay of any subsequent amendment affecting them.

1a. Member States shall ensure that the penalties referred to in paragraph 1 of this Article only apply where the market operator has failed to fulfil its obligations under Chapter IV with intent or as a result of gross negligence. **[Am. 123]**

2. Member States shall ensure that when a security incident involves personal data, the penalties provided for are consistent with the penalties provided by the Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([1]).

Article 18

Exercise of the delegation

1. The power to adopt the 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(3) and Article 10(5) shall be conferred on the Commission. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of ~~powers~~ ***power*** referred to in ~~Articles~~ ***Article*** 9(3) and Article 10(5) ~~and 14(5)~~ may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the powers specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated act already in force. **[Am. 124]**

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

([1]) SEC(2012) 72 final.

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5. A delegated act adopted pursuant to ~~Articles~~ ***Article*** 9(3) and Article 10(5) ~~and 14(5)~~ shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council. **[Am. 125]**

Article 19

Committee procedure

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

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

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

Article 20

Review

The Commission shall periodically review the functioning of this Directive***, in particular the list set out in Annex II,*** and shall report to the European Parliament and the Council. The first report shall be submitted no later than three years after the date of transposition referred to in Article 21. For that purpose, the Commission may request Member States to provide information without undue delay. **[Am. 126]**

Article 21

Transposition

1. Member States shall adopt and publish, by [one year and a half after adoption] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of such measures.

They shall apply those measures from [one year and a half after adoption].

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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 22

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 23

Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President

ANNEX I

Requirements and tasks of the Computer Emergency Response ~~Team (CERT)~~ ***Teams (CERTs)*** **[Am. 127]**

The requirements and tasks of the CERT shall be adequately and clearly defined and supported by national policy and/or regulation. They shall include the following elements:

(1) Requirements for the CERT

(a) The ~~CERT~~ ***CERTs*** shall ensure high availability of its communications services by avoiding single points of failure and have several means for being contacted and for contacting others ***at all times***. Furthermore, the communication channels shall be clearly specified and well known to the constituency and cooperative partners. **[Am. 128]**

(b) The CERT shall implement and manage security measures to ensure the confidentiality, integrity, availability and authenticity of information it receives and treats.

(c) The offices of the ~~CERT~~ ***CERTs*** and the supporting information systems shall be located in secure sites ***with secured network information systems***. **[Am. 129]**

(d) A service management quality system shall be created to follow-up on the performance of the CERT and ensure a steady process of improvement. It shall be based on clearly defined metrics that include formal service levels and key performance indicators.

(e) Business continuity:

— The CERT shall be equipped with an appropriate system for managing and routing requests, in order to facilitate handovers,

— The CERT shall be adequately staffed to ensure availability at all times,

— The CERT shall rely on an infrastructure whose continuity is ensured. To this end, redundant systems and backup working space shall be set up for the CERT to ensure permanent access to the means of communication.

(2) Tasks of the CERT

(a) Tasks of the CERT shall include at least the following:

— ***Detecting and*** monitoring incidents at a national level, **[Am. 130]**

— Providing early warning, alerts, announcements and dissemination of information to relevant stakeholders about risks and incidents,

— Responding to incidents,

— Providing dynamic risk and incident analysis and situational awareness,

— Building broad public awareness of the risks associated with online activities,

— ***Actively participating in Union and international CERT cooperation networks,*** *[Am. 131]*

— Organising campaigns on NIS.

(b) The CERT shall establish cooperative relationships with private sector.

(c) To facilitate cooperation, the CERT shall promote the adoption and use of common or standardised practises for:

— incident and risk handling procedures,

— incident, risk and information classification schemes,

— taxonomies for metrics,

— information exchange formats on risks, incidents, and system naming conventions.

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ANNEX II

List of market operators

~~Referred to in Article 3(8) a):~~

~~1. e-commerce platforms~~

~~2. Internet payment gateways~~

~~3. Social networks~~

~~4. Search engines~~

~~5. Cloud computing services~~

~~6. Application stores~~

~~Referred to in Article (3(8) b):~~ **[Am. 132]**

1. Energy

(a) Electricity

— ~~Electricity and gas~~ Suppliers

— ~~Electricity and/or gas~~ Distribution system operators and retailers for final consumers

— ~~Natural gas transmission system operators, storage operators and LNG operators~~

— Transmission system operators in electricity

(b) Oil

— Oil transmission pipelines and oil storage

— ***Operators of oil production, refining and treatment facilities, storage and transmission***

(c) Gas

— ~~Electricity and gas market operators~~

— ***Suppliers***

— ***Distribution system operators and retailers for final consumers***

— ***Natural gas transmission system operators, storage system operators and Liquefied Natural Gas system operators***

— Operators of ~~oil and~~ natural gas production, refining ~~and~~, treatment facilities***, storage facilities and transmission***

— ***Gas market operators*** *[Am. 133]*

2. Transport

— ~~Air carriers (freight and passenger air transport)~~

— ~~Maritime carriers (sea and coastal passenger water transport companies and sea and coastal freight water transport companies)~~

— ~~Railways (infrastructure managers, integrated companies and railway transport operators)~~

— ~~Airports~~

— ~~Ports~~

— ~~Traffic management control operators~~

— ~~Auxiliary logistics services (a) warehousing and storage, b) cargo handling and c) other transportation support activities)~~

(a) Road transport

(i) Traffic management control operators

(ii) Auxiliary logistics services:

— warehousing and storage,

— cargo handling, and

— other transportation support activities

(b) Rail transport

(i) Railways (infrastructure managers, integrated companies and railway transport operators)

(ii) Traffic management control operators

(iii) Auxiliary logistics services:

— warehousing and storage,

— cargo handling, and

— other transportation support activities

(c) Air transport

(i) Air carriers (freight and passenger air transport)

(ii) Airports

(iii) Traffic management control operators

(iv) Auxiliary logistics services:

— warehousing,

— cargo handling, and

— other transportation support activities

(d) Maritime transport

(i) Maritime carriers (inland, sea and coastal passenger water transport companies and inland, sea and coastal freight water transport companies) *[Am. 134]*

3. Banking: credit institutions in accordance with point 1 of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council ([1])

([1]) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.6.2006, p. 1)

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4. Financial market infrastructures: ~~stock exchanges~~ ***regulated markets, multilateral trading facilities, organised trading facilities*** and central counterparty clearing houses **[Am. 135]**

5. Health sector: health care settings (including hospitals and private clinics) and other entities involved in health care provisions

5a. Water production and supply **[Am. 136]**

5b. Food supply chain **[Am. 137]**

5c. Internet exchange points **[Am. 138]**

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P7_TA(2014)0245

Union programme in the field of financial reporting and auditing 2014-2020 ***I

European Parliament legislative resolution of 13 March 2014 on the proposal for a regulation of the European Parliament and of the Council on establishing a Union programme to support specific activities in the field of financial reporting and auditing for the period of 2014-2020 (COM(2012)0782 — C7-0417/2012 — 2012/0364(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/75)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2012)0782),

— having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0417/2012),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 20 March 2013 ([1]),

— having regard to the undertaking given by the Council representative by letter of 11 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A7-0315/2013),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2012)0364

Position of the European Parliament adopted at first reading on 13 March 2014 with a view to the adoption of Regulation (EU) No …/2014 of the European Parliament and of the Council establishing a Union programme to support specific activities in the field of financial reporting and auditing for the period of 2014-2020 and repealing Decision No 716/2009/EC

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 258/2014.)

([1]) OJ C 161, 6.6.2013, p. 64.

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P7_TA(2014)0246

Radio equipment ***I

European Parliament legislative resolution of 13 March 2014 on the proposal for a directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment (COM(2012)0584 — C7-0333/2012 — 2012/0283(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/76)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2012)0584),

— having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0333/2012),

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 13 February 2013 ([1]),

— having regard to the undertaking given by the Council representative by letter of 17 January 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rule 55 of its Rules of Procedure,

— having regard to the report of the Committee on the Internal Market and Consumer Protection (A7-0316/2013),

1. Adopts its position at first reading hereinafter set out;

2. Approves its statement annexed hereto, which will be published in the L series of the *Official Journal of the European Union* together with the final legislative act;

3. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2012)0283

Position of the European Parliament adopted at first reading on 13 March 2014 with a view to the adoption of Directive 2014/…/EU of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Directive 2014/53/EU.)

([1]) OJ C 133, 9.5.2013, p. 58.

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ANNEX TO THE LEGISLATIVE RESOLUTION

STATEMENT OF THE EUROPEAN PARLIAMENT

The European Parliament considers that only when and insofar as implementing acts in the sense of Regulation (EU) No 182/2011 are discussed in meetings of committees, can the latter be considered as 'comitology committees' within the meaning of Annex I to the Framework Agreement on the relations between the European Parliament and the European Commission. Meetings of committees thus fall within the scope of point 15 of the Framework Agreement when and insofar as other issues are discussed.

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