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[1] Text with EEA relevance

EN

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

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

EN

[1] Text with EEA relevance

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2013/48/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 October 2013

on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

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 point (b) of Article 82(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) Article 47 of the Charter of Fundamental Rights of the European Union (the Charter), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR) and Article 14 of the International Covenant on Civil and Political Rights (the ICCPR) enshrine the right to a fair trial. Article 48(2) of the Charter guarantees respect for the rights of the defence.

(2) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Presidency conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point (33) thereof, the principle of mutual recognition of judgments and other decisions of judicial authorities should become the cornerstone of judicial cooperation in civil and criminal matters within the Union because enhanced mutual recognition and the necessary approximation of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights.

(3) Pursuant to Article 82(1) of the Treaty on the Functioning of the European Union (TFEU), 'judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions…'.

(4) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States trust in each other's criminal justice systems. The extent of the mutual recognition is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.

(5) Although the Member States are party to the ECHR and to the ICCPR, experience has shown that that alone does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.

(6) Mutual recognition of decisions in criminal matters can operate effectively only in a spirit of trust in which not only judicial authorities, but all actors in the criminal process consider decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of other Member States' rules, but also trust that those rules are correctly applied. Strengthening mutual trust requires detailed rules on the protection of the procedural rights and guarantees arising from the Charter, the ECHR and the ICCPR. It also requires, by means of this Directive and by means of other measures, further development within the Union of the minimum standards set out in the Charter and in the ECHR.

[1] OJ C 43, 15.2.2012, p. 51.

[2] Position of the European Parliament of 10 September 2013 (not yet published in the Official Journal) and decision of the Council of 7 October 2013.

(7) Article 82(2) TFEU provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. That Article refers to 'the rights of individuals in criminal procedure' as one of the areas in which minimum rules may be established.

(8) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust and to the promotion of a fundamental rights culture in the Union. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States. Such common minimum rules should be established in relation to the right of access to a lawyer in criminal proceedings, the right to have a third party informed upon deprivation of liberty and the right to communicate with third persons and with consular authorities while deprived of liberty.

(9) On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ('the Roadmap') ([1]). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). The Roadmap emphasises that the order of the rights is only indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole; only when all its components are implemented will its benefits be felt in full.

(10) On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — An open and secure Europe serving and protecting citizens ([2]) (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.

(11) Two measures have been adopted pursuant to the Roadmap to date, namely Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings ([3]) and Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings ([4]).

(12) This Directive lays down minimum rules concerning the right of access to a lawyer in criminal proceedings and in proceedings for the execution of a European arrest warrant pursuant to Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ([5]) (European arrest warrant proceedings) and the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. In doing so, it promotes the application of the Charter, in particular Articles 4, 6, 7, 47 and 48 thereof, by building upon Articles 3, 5, 6 and 8 ECHR, as interpreted by the European Court of Human Rights, which, in its case-law, on an ongoing basis, sets standards on the right of access to a lawyer. That case-law provides, inter alia, that the fairness of proceedings requires that a suspect or accused person be able to obtain the whole range of services specifically associated with legal assistance. In that regard, the lawyers of suspects or accused persons should be able to secure without restriction, the fundamental aspects of the defence.

(13) Without prejudice to the obligations of Member States under the ECHR to ensure the right to a fair trial, proceedings in relation to minor offending which take place within a prison and proceedings in relation to offences committed in a military context which are dealt with by a commanding officer should not be considered to be criminal proceedings for the purposes of this Directive.

(14) This Directive should be implemented taking into account the provisions of Directive 2012/13/EU, which provide that suspects or accused persons are provided promptly with information concerning the right of access to a lawyer, and that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights containing information about the right of access to a lawyer.

(15) The term 'lawyer' in this Directive refers to any person who, in accordance with national law, is qualified and entitled, including by means of accreditation by an authorised body, to provide legal advice and assistance to suspects or accused persons.

(16) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions other than deprivation of liberty in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent

([1]) OJ C 295, 4.12.2009, p. 1.
([2]) OJ C 115, 4.5.2010, p. 1.
([3]) OJ L 280, 26.10.2010, p. 1.
([4]) OJ L 142, 1.6.2012, p. 1.
([5]) OJ L 190, 18.7.2002, p. 1.

authorities ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.

(17) In some Member States certain minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.

(18) The scope of application of this Directive in respect of certain minor offences should not affect the obligations of Member States under the ECHR to ensure the right to a fair trial including obtaining legal assistance from a lawyer.

(19) Member States should ensure that suspects or accused persons have the right of access to a lawyer without undue delay in accordance with this Directive. In any event, suspects or accused persons should be granted access to a lawyer during criminal proceedings before a court, if they have not waived that right.

(20) For the purposes of this Directive, questioning does not include preliminary questioning by the police or by another law enforcement authority the purpose of which is to identify the person concerned, to verify the possession of weapons or other similar safety issues or to determine whether an investigation should be started, for example in the course of a road-side check, or during regular random checks when a suspect or accused person has not yet been identified.

(21) Where a person other than a suspect or accused person, such as a witness, becomes a suspect or accused person, that person should be protected against self-incrimination and has the right to remain silent, as confirmed by the case-law of the European Court of Human Rights. This Directive therefore makes express reference to the practical situation where such a person becomes a suspect or accused person during questioning by the police or by another law enforcement authority in the context of criminal proceedings. Where, in the course of such questioning, a person other than a suspect or accused person becomes a suspect or accused person, questioning should be suspended immediately. However, questioning may be continued if the person concerned has been made aware that he or she is a suspect or accused person and is able to fully exercise the rights provided for in this Directive.

(22) Suspects or accused persons should have the right to meet in private with the lawyer representing them. Member States may make practical arrangements concerning the duration and frequency of such meetings, taking into account the circumstances of the proceedings, in particular the complexity of the case and the procedural steps applicable. Member States may also make practical arrangements to ensure safety and security, in particular of the lawyer and of the suspect or accused person, in the place where such a meeting is conducted. Such practical arrangements should not prejudice the effective exercise or essence of the right of suspects or accused persons to meet their lawyer.

(23) Suspects or accused persons should have the right to communicate with the lawyer representing them. Such communication may take place at any stage, including before any exercise of the right to meet that lawyer. Member States may make practical arrangements concerning the duration, frequency and means of such communication, including concerning the use of video-conferencing and other communication technology in order to allow such communications to take place. Such practical arrangements should not prejudice the effective exercise or essence of the right of suspects or accused persons to communicate with their lawyer.

(24) In respect of certain minor offences, this Directive should not prevent Member States from organising the right of suspects or accused persons to have access to a lawyer by telephone. However, limiting the right in this way should be restricted to cases where a suspect or accused person will not be questioned by the police or by another law enforcement authority.

(25) Member States should ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when they are questioned by the police or by another law enforcement or judicial authority, including during court hearings. Such participation should be in accordance with any procedures under national law which may regulate the participation of a lawyer during questioning of the suspect or accused person by the police or by another law enforcement or judicial authority, including during court hearings, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. During questioning by the police or by another law

enforcement or judicial authority of the suspect or accused person or in a court hearing, the lawyer may, inter alia, in accordance with such procedures, ask questions, request clarification and make statements, which should be recorded in accordance with national law.

(26) Suspects or accused persons have the right for their lawyer to attend investigative or evidence-gathering acts, insofar as they are provided for in the national law concerned and in so far as the suspects or accused persons are required or permitted to attend. Such acts should at least include identity parades, at which the suspect or accused person figures among other persons in order to be identified by a victim or witness; confrontations, where a suspect or accused person is brought together with one or more witnesses or victims where there is disagreement between them on important facts or issues; and reconstructions of the scene of a crime in the presence of the suspect or accused person, in order to better understand the manner and circumstances under which a crime was committed and to be able to ask specific questions to the suspect or accused person. Member States may make practical arrangements concerning the presence of a lawyer during investigative or evidence-gathering acts. Such practical arrangements should not prejudice the effective exercise and essence of the rights concerned. Where the lawyer is present during an investigative or evidence-gathering act, this should be noted using the recording procedure in accordance with the law of the Member State concerned.

(27) Member States should endeavour to make general information available, for instance on a website or by means of a leaflet that is available at police stations, to facilitate the obtaining of a lawyer by suspects or accused persons. However, Member States would not need to take active steps to ensure that suspects or accused persons who are not deprived of liberty will be assisted by a lawyer if they have not themselves arranged to be assisted by a lawyer. The suspect or accused person concerned should be able freely to contact, consult and be assisted by a lawyer.

(28) Where suspects or accused persons are deprived of liberty, Member States should make the necessary arrangements to ensure that such persons are in a position to exercise effectively the right of access to a lawyer, including by arranging for the assistance of a lawyer when the person concerned does not have one, unless they have waived that right. Such arrangements could imply, inter alia, that the competent authorities arrange for the assistance of a lawyer on the basis of a list of available lawyers from which the suspect or accused person could choose. Such arrangements could include those on legal aid if applicable.

(29) The conditions in which suspects or accused persons are deprived of liberty should fully respect the standards set out in the ECHR, in the Charter, and in the case-law of the Court of Justice of the European Union (the Court of Justice) and of the European Court of Human Rights. When providing assistance under this Directive to a suspect or to an accused person who is deprived of liberty, the lawyer concerned should be able to raise a question with the competent authorities regarding the conditions in which that person is deprived of liberty.

(30) In cases of geographical remoteness of the suspect or accused person, such as in overseas territories or where the Member State undertakes or participates in military operations outside its territory, Member States are permitted to derogate temporarily from the right of the suspect or accused person to have access to a lawyer without undue delay after deprivation of liberty. During such a temporary derogation, the competent authorities should not question the person concerned or carry out any of the investigative or evidence-gathering acts provided for in this Directive. Where immediate access to a lawyer is not possible because of the geographical remoteness of the suspect or accused person, Member States should arrange for communication via telephone or video conference unless this is impossible.

(31) Member States should be permitted to derogate temporarily from the right of access to a lawyer in the pre-trial phase when there is a need, in cases of urgency, to avert serious adverse consequences for the life, liberty or physical integrity of a person. During a temporary derogation on that ground, the competent authorities may question suspects or accused persons without the lawyer being present, provided that they have been informed of their right to remain silent and can exercise that right, and provided that such questioning does not prejudice the rights of the defence, including the privilege against self-incrimination. Questioning may be carried out for the sole purpose and to the extent necessary to obtain information that is essential to avert serious adverse consequences for the life, liberty or physical integrity of a person. Any abuse of this derogation would in principle irretrievably prejudice the rights of the defence.

(32) Member States should also be permitted to derogate temporarily from the right of access to a lawyer in the pre-trial phase where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings, in particular to prevent destruction or alteration of essential evidence, or to prevent interference with witnesses. During a temporary derogation on that ground, the competent authorities may question suspects or accused persons without a lawyer being present, provided that they have been informed of their right to remain silent and can exercise that right, and provided that such questioning does not prejudice the rights of the defence, including the privilege against self-incrimination. Questioning may be carried out for the sole purpose and to the extent necessary to obtain information that is essential to prevent substantial jeopardy to criminal proceedings. Any abuse of this derogation would in principle irretrievably prejudice the rights of the defence.

(33) Confidentiality of communication between suspects or accused persons and their lawyer is key to ensuring the effective exercise of the rights of the defence and is an essential part of the right to a fair trial. Member States should therefore respect the confidentiality of meetings and other forms of communication between the lawyer and the suspect or accused person in the exercise of the right of access to a lawyer provided for in this Directive, without derogation. This Directive is without prejudice to procedures that address the situation where there are objective and factual circumstances giving rise to the suspicion that the lawyer is involved with the suspect or accused person in a criminal offence. Any criminal activity on the part of a lawyer should not be considered to be legitimate assistance to suspects or accused persons within the framework of this Directive. The obligation to respect confidentiality not only implies that Member States should refrain from interfering with or accessing such communication but also that, where suspects or accused persons are deprived of liberty or otherwise find themselves in a place under the control of the State, Member States should ensure that arrangements for communication uphold and protect confidentiality. This is without prejudice to any mechanisms that are in place in detention facilities with the purpose of avoiding illicit enclosures being sent to detainees, such as screening correspondence, provided that such mechanisms do not allow the competent authorities to read the communication between suspects or accused persons and their lawyer. This Directive is also without prejudice to procedures under national law according to which forwarding correspondence may be rejected if the sender does not agree to the correspondence first being submitted to a competent court.

(34) This Directive should be without prejudice to a breach of confidentiality which is incidental to a lawful surveillance operation by competent authorities. This Directive should also be without prejudice to the work that is carried out, for example, by national intelligence services to safeguard national security in accordance with Article 4(2) of the Treaty on European Union (TEU) or that falls within the scope of Article 72 TFEU, pursuant to which Title V on an area of Freedom, Security and Justice must not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

(35) Suspects or accused persons who are deprived of liberty should have the right to have at least one person, such as a relative or an employer, nominated by them, informed of their deprivation of liberty without undue delay, provided that this does not prejudice the due course of the criminal proceedings against the person concerned or any other criminal proceedings. Member States may make practical arrangements in relation to the application of that right. Such practical arrangements should not prejudice the effective exercise and essence of the right. In limited, exceptional circumstances, however, it should be possible to derogate temporarily from that right when this is justified, in the light of the particular circumstances of the case, by a compelling reason as specified in this Directive. When the competent authorities envisage making such a temporary derogation in respect of a specific third person, they should firstly consider whether another third person, nominated by the suspect or accused person, could be informed of the deprivation of liberty.

(36) Suspects or accused persons should, while deprived of liberty, have the right to communicate without undue delay with at least one third person, such as a relative, nominated by them. Member States may limit or defer the exercise of that right in view of imperative requirements or proportionate operational requirements. Such requirements could include, inter alia, the need to avert serious adverse consequences for the life, liberty or physical integrity of a person, the need to prevent prejudice to criminal proceedings, the need to prevent a criminal offence, the need to await a court hearing, and the need to protect victims of crime. When the competent authorities envisage limiting or deferring the exercise of the right to communicate in respect of a specific third person, they should first consider whether the suspects or accused persons could communicate with another third person nominated by them. Member States may make practical arrangements concerning the timing, means, duration and frequency of communication with third persons, taking account of the need to maintain good order, safety and security in the place where the person is being deprived of liberty.

(37) The right of suspects and accused persons who are deprived of liberty to consular assistance is enshrined in Article 36 of the 1963 Vienna Convention on Consular Relations where it is a right conferred on States to have access to their nationals. This Directive confers a corresponding right on suspects or accused persons who are deprived of liberty, subject to their wishes. Consular protection may be exercised by diplomatic authorities where such authorities act as consular authorities.

(38) Member States should clearly set out in their national law the grounds and criteria for any temporary derogations from the rights granted under this Directive, and they should make restricted use of those temporary derogations. Any such temporary derogations should be proportional, should be strictly limited in time, should not be based exclusively on the type or the seriousness of the alleged offence, and should not prejudice the overall fairness of the proceedings. Member States should ensure that where a temporary derogation has been authorised under this Directive by a judicial authority which is not a judge or a court, the decision on authorising the temporary derogation can be assessed by a court, at least during the trial stage.

(39) Suspects or accused persons should be able to waive a right granted under this Directive provided that they have been given information about the content of the right concerned and the possible consequences of waiving that right. When providing such information, the specific conditions of the suspects or accused persons concerned should be taken into account, including their age and their mental and physical condition.

(40) A waiver and the circumstances in which it was given should be noted using the recording procedure in accordance with the law of the Member State concerned. This should not lead to any additional obligation for Member States to introduce new mechanisms or to any additional administrative burden.

(41) Where a suspect or accused person revokes a waiver in accordance with this Directive, it should not be necessary to proceed again with questioning or any procedural acts that have been carried out during the period when the right concerned was waived.

(42) Persons subject to a European arrest warrant ('requested persons') should have the right of access to a lawyer in the executing Member State in order to allow them to exercise their rights effectively under Framework Decision 2002/584/JHA. Where a lawyer participates in a hearing of a requested person by an executing judicial authority, that lawyer may, inter alia, in accordance with procedures provided for under national law, ask questions, request clarification and make statements. The fact that the lawyer has participated in such a hearing should be noted using the recording procedure in accordance with the law of the Member State concerned.

(43) Requested persons should have the right to meet in private with the lawyer representing them in the executing Member State. Member States may make practical arrangements concerning the duration and frequency of such meetings, taking into account the particular circumstances of the case. Member States may also make practical arrangements to ensure safety and security, in particular of the lawyer and of the requested person, in the place where the meeting between the lawyer and the requested person is conducted. Such practical arrangements should not prejudice the effective exercise and essence of the right of requested persons to meet with their lawyer.

(44) Requested persons should have the right to communicate with the lawyer representing them in the executing Member State. It should be possible for such communication to take place at any stage, including before any exercise of the right to meet with the lawyer. Member States may make practical arrangements concerning the duration, frequency and means of communication between requested persons and their lawyer, including concerning the use of videoconferencing and other communication technology in order to allow such communications to take place. Such practical arrangements should not prejudice the effective exercise and essence of the right of requested persons to communicate with their lawyer.

(45) Executing Member States should make the necessary arrangements to ensure that requested persons are in a position to exercise effectively their right of access to a lawyer in the executing Member State, including by arranging for the assistance of a lawyer when requested persons do not have one, unless they have waived that right. Such arrangements, including those on legal aid if applicable, should be governed by national law. They could imply, inter alia, that the competent authorities arrange for the assistance of a lawyer on the basis of a list of available lawyers from which requested persons could choose.

(46) Without undue delay after being informed that a requested person wishes to appoint a lawyer in the issuing Member State, the competent authority of that Member State should provide the requested person with

information to facilitate the appointment of a lawyer in that Member State. Such information could, for example, include a current list of lawyers, or the name of a lawyer on duty in the issuing State, who can provide information and advice in European arrest warrant cases. Member States could request that the appropriate bar association draw up such a list.

(47) The surrender procedure is crucial for cooperation in criminal matters between the Member States. Observance of the time-limits contained in Framework Decision 2002/584/JHA is essential for such cooperation. Therefore, while requested persons should be able to exercise fully their rights under this Directive in European arrest warrant proceedings, those time-limits should be respected.

(48) Pending a legislative act of the Union on legal aid, Member States should apply their national law in relation to legal aid, which should be in line with the Charter, the ECHR and the case-law of the European Court of Human Rights.

(49) In accordance with the principle of effectiveness of Union law, Member States should put in place adequate and effective remedies to protect the rights that are conferred upon individuals by this Directive.

(50) Member States should ensure that in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer, or in cases where a derogation from that right was authorised in accordance with this Directive, the rights of the defence and the fairness of the proceedings are respected. In this context, regard should be had to the case-law of the European Court of Human Rights, which has established that the rights of the defence will, in principle, be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction. This should be without prejudice to the use of statements for other purposes permitted under national law, such as the need to execute urgent investigative acts to avoid the perpetration of other offences or serious adverse consequences for any person or related to an urgent need to prevent substantial jeopardy to criminal proceedings where access to a lawyer or delaying the investigation would irretrievably prejudice the ongoing investigations regarding a serious crime. Further, this should be without prejudice to national rules or systems regarding admissibility of evidence, and should not prevent Member States from maintaining a system whereby all existing evidence can be adduced before a court or a judge, without there being any separate or prior assessment as to admissibility of such evidence.

(51) The duty of care towards suspects or accused persons who are in a potentially weak position underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore facilitate the effective exercise by such persons of the rights provided for in this Directive, for example by taking into account any potential vulnerability that affects their ability to exercise the right of access to a lawyer and to have a third party informed upon deprivation of liberty, and by taking appropriate steps to ensure those rights are guaranteed.

(52) This Directive upholds the fundamental rights and principles recognised by the Charter, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.

(53) Member States should ensure that the provisions of this Directive, where they correspond to rights guaranteed by the ECHR, are implemented consistently with those of the ECHR and as developed by case-law of the European Court of Human Rights.

(54) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter or by the ECHR, as interpreted by the case-law of the Court of Justice and of the European Court of Human Rights.

(55) This Directive promotes the rights of children and takes into account the Guidelines of the Council of Europe on child friendly justice, in particular its provisions on information and advice to be given to children. This Directive ensures that suspects and accused persons, including children, are provided with adequate information to understand the consequences of waiving a right under this Directive and that any such waiver is made voluntarily and unequivocally. Where the suspect or accused person is a child, the holder of parental responsibility should be notified as soon as possible after the child's deprivation of liberty and should be provided with the reasons therefor. If providing such information to the holder of parental responsibility is contrary to the best interests of the child, another suitable adult such as a relative should be informed instead. This should be without prejudice to provisions

of national law which require that any specified authorities, institutions or individuals, in particular those that are responsible for the protection or welfare of children, should be informed of the deprivation of liberty of a child. Member States should refrain from limiting or deferring the exercise of the right to communicate with a third party in respect of suspects or accused persons who are children and who are deprived of liberty, save in the most exceptional circumstances. Where a deferral is applied the child should, however, not be held incommunicado and should be permitted to communicate, for example with an institution or an individual responsible for the protection or welfare of children.

(56) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents [1], 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.

(57) Since the objectives of this Directive, namely setting common minimum rules for the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings and the right to have a third person informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale of the measure, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(58) In accordance with Articles 1 and 2 of 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 TEU and to the TFEU and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(59) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,

[1] OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down minimum rules concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant to Framework Decision 2002/584/JHA ('European arrest warrant proceedings') to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

Article 2

Scope

1. This Directive applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. It applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.

2. This Directive applies to persons subject to European arrest warrant proceedings (requested persons) from the time of their arrest in the executing Member State in accordance with Article 10.

3. This Directive also applies, under the same conditions as provided for in paragraph 1, to persons other than suspects or accused persons who, in the course of questioning by the police or by another law enforcement authority, become suspects or accused persons.

4. Without prejudice to the right to a fair trial, in respect of minor offences:

(a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or

(b) where deprivation of liberty cannot be imposed as a sanction;

this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters.

In any event, this Directive shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.

Article 3

The right of access to a lawyer in criminal proceedings

1. Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.

2. Suspects or accused persons shall have access to a lawyer without undue delay. In any event, suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest:

(a) before they are questioned by the police or by another law enforcement or judicial authority;

(b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 3;

(c) without undue delay after deprivation of liberty;

(d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

3. The right of access to a lawyer shall entail the following:

(a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;

(b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. Such participation shall be in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure in accordance with the law of the Member State concerned;

(c) Member States shall ensure that suspects or accused persons shall have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:

(i) identity parades;

(ii) confrontations;

(iii) reconstructions of the scene of a crime.

4. Member States shall endeavour to make general information available to facilitate the obtaining of a lawyer by suspects or accused persons.

Notwithstanding provisions of national law concerning the mandatory presence of a lawyer, Member States shall make the necessary arrangements to ensure that suspects or accused persons who are deprived of liberty are in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with Article 9.

5. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of point (c) of paragraph 2 where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

6. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

Article 4

Confidentiality

Member States shall respect the confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

Article 5

The right to have a third person informed of the deprivation of liberty

1. Member States shall ensure that suspects or accused persons who are deprived of liberty have the right to have at least one person, such as a relative or an employer, nominated by them, informed of their deprivation of liberty without undue delay if they so wish.

2. If the suspect or accused person is a child, Member States shall ensure that the holder of parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed. For the purposes of this paragraph, a person below the age of 18 years shall be considered to be a child.

3. Member States may temporarily derogate from the application of the rights set out in paragraphs 1 and 2 where justified in the light of the particular circumstances of the case on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised.

4. Where Member States temporarily derogate from the application of the right set out in paragraph 2, they shall ensure that an authority responsible for the protection or welfare of children is informed without undue delay of the deprivation of liberty of the child.

Article 6

The right to communicate, while deprived of liberty, with third persons

1. Member States shall ensure that suspects or accused persons who are deprived of liberty have the right to communicate without undue delay with at least one third person, such as a relative, nominated by them.

2. Member States may limit or defer the exercise of the right referred to in paragraph 1 in view of imperative requirements or proportionate operational requirements.

Article 7

The right to communicate with consular authorities

1. Member States shall ensure that suspects or accused persons who are non-nationals and who are deprived of liberty have the right to have the consular authorities of their State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities, if they so wish. However, where suspects or accused persons have two or more nationalities, they may choose which consular authorities, if any, are to be informed of the deprivation of liberty and with whom they wish to communicate.

2. Suspects or accused persons also have the right to be visited by their consular authorities, the right to converse and correspond with them and the right to have legal representation arranged for by their consular authorities, subject to the agreement of those authorities and the wishes of the suspects or accused persons concerned.

3. The exercise of the rights laid down in this Article may be regulated by national law or procedures, provided that such law or procedures enable full effect to be given to the purposes for which these rights are intended.

Article 8

General conditions for applying temporary derogations

1. Any temporary derogation under Article 3(5) or (6) or under Article 5(3) shall

(a) be proportionate and not go beyond what is necessary;

(b) be strictly limited in time;

(c) not be based exclusively on the type or the seriousness of the alleged offence; and

(d) not prejudice the overall fairness of the proceedings.

2. Temporary derogations under Article 3(5) or (6) may be authorised only by a duly reasoned decision taken on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review. The duly reasoned decision shall be recorded using the recording procedure in accordance with the law of the Member State concerned.

3. Temporary derogations under Article 5(3) may be authorised only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.

Article 9

Waiver

1. Without prejudice to national law requiring the mandatory presence or assistance of a lawyer, Member States shall ensure that, in relation to any waiver of a right referred to in Articles 3 and 10:

(a) the suspect or accused person has been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it; and

(b) the waiver is given voluntarily and unequivocally.

2. The waiver, which can be made in writing or orally, shall be noted, as well as the circumstances under which the waiver was given, using the recording procedure in accordance with the law of the Member State concerned.

3. Member States shall ensure that suspects or accused persons may revoke a waiver subsequently at any point during the criminal proceedings and that they are informed about that possibility. Such a revocation shall have effect from the moment it is made.

Article 10

The right of access to a lawyer in European arrest warrant proceedings

1. Member States shall ensure that a requested person has the right of access to a lawyer in the executing Member State upon arrest pursuant to the European arrest warrant.

2. With regard to the content of the right of access to a lawyer in the executing Member State, requested persons shall have the following rights in that Member State:

(a) the right of access to a lawyer in such time and in such a manner as to allow the requested persons to exercise their rights effectively and in any event without undue delay from deprivation of liberty;

(b) the right to meet and communicate with the lawyer representing them;

(c) the right for their lawyer to be present and, in accordance with procedures in national law, participate during a hearing of a requested person by the executing judicial authority. Where a lawyer participates during the hearing this shall be noted using the recording procedure in accordance with the law of the Member State concerned.

3. The rights provided for in Articles 4, 5, 6, 7, 9, and, where a temporary derogation under Article 5(3) is applied, in Article 8, shall apply, *mutatis mutandis*, to European arrest warrant proceedings in the executing Member State.

4. The competent authority in the executing Member State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State. The role of that lawyer in the issuing Member State is to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA.

5. Where requested persons wish to exercise the right to appoint a lawyer in the issuing Member State and do not already have such a lawyer, the competent authority in the executing Member State shall promptly inform the competent authority in the issuing Member State. The competent authority of that Member State shall, without undue delay, provide the requested persons with information to facilitate them in appointing a lawyer there.

6. The right of a requested person to appoint a lawyer in the issuing Member State is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation on the executing judicial authority to decide, within those time-limits and the conditions defined under that Framework Decision, whether the person is to be surrendered.

Article 11

Legal aid

This Directive is without prejudice to national law in relation to legal aid, which shall apply in accordance with the Charter and the ECHR.

Article 12

Remedies

1. Member States shall ensure that suspects or accused persons in criminal proceedings, as well as requested persons in European arrest warrant proceedings, have an effective remedy under national law in the event of a breach of the rights under this Directive.

2. Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with Article 3(6), the rights of the defence and the fairness of the proceedings are respected.

Article 13

Vulnerable persons

Member States shall ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of this Directive.

Article 14

Non-regression clause

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

Article 15

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 November 2016. They shall immediately inform the Commission thereof.

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

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

Article 16

Report

The Commission shall, by 28 November 2019, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including an evaluation of the application of Article 3(6) in conjunction with Article 8(1) and (2), accompanied, if necessary, by legislative proposals.

Article 17

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 18

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 22 October 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	V. LEŠKEVIČIUS

DIRECTIVE 2013/50/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 October 2013

amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC

(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 Articles 50 and 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) Under Article 33 of Directive 2004/109/EC of the European Parliament and of the Council [4], the Commission had to report on the operation of that Directive to the European Parliament and to the Council, including on the appropriateness of ending the exemption for existing debt securities after the 10-year period as provided for by Article 30(4) of that Directive, and on the potential impact of the operation of that Directive on the European financial markets.

(2) On 27 May 2010 the Commission adopted a report on the operation of Directive 2004/109/EC which identified areas where the regime created by that Directive could be improved. In particular, the report demonstrates the need to provide for the simplification of certain issuers' obligations with a view to making regulated markets more attractive to small and medium-sized issuers raising capital in the Union. Furthermore, the effectiveness of the existing transparency regime needs to be improved, in particular with respect to the disclosure of corporate ownership.

(3) In addition, in its communication of 13 April 2011 entitled 'Single Market Act, Twelve levers to boost growth and strengthen confidence, Working together to create new growth', the Commission identified the need to review Directive 2004/109/EC in order to make the obligations applicable to listed small and medium-sized enterprises more proportionate, whilst guaranteeing the same level of investor protection.

(4) According to the Commission report and the Commission communication, the administrative burden associated with obligations linked to admission to trading on a regulated market should be reduced for small and medium-sized issuers in order to improve their access to capital. The obligations to publish interim management statements or quarterly financial reports represent an important burden for many small and medium-sized issuers whose securities are admitted to trading on regulated markets, without being necessary for investor protection. Those obligations also encourage short-term performance and discourage long-term investment. In order to encourage sustainable value creation and long-term oriented investment strategy, it is essential to reduce short-term pressure on issuers and give investors an incentive to adopt a longer term vision. The requirement to publish interim management statements should therefore be abolished.

(5) Member States should not be allowed to impose in their national legislation the requirement to publish periodic financial information on a more frequent basis than annual financial reports and half-yearly financial reports. However, Member States should nevertheless be able to require issuers to publish additional periodic financial information if such a requirement does not constitute a significant financial burden, and if the additional information required is proportionate to the factors that contribute to investment decisions.

[1] OJ C 93, 30.3.2012, p. 2.
[2] OJ C 143, 22.5.2012, p. 78.
[3] Position of the European Parliament of 12 June 2013 (not yet published in the Official Journal) and decision of the Council of 17 October 2013.
[4] OJ L 390, 31.12.2004, p. 38.

This Directive is without prejudice to any additional information that is required by sectoral Union legislation, and in particular Member States can require the publication of additional periodic financial information by financial institutions. Moreover, a regulated market can require issuers which have their securities admitted to trading thereon to publish additional periodic financial information in all or some of the segments of that market.

(6) In order to provide additional flexibility and thereby reduce administrative burdens, the deadline for publishing half-yearly financial reports should be extended to three months after the end of the reporting period. As the period in which issuers can publish their half-yearly financial reports is extended, small and medium-sized issuers' reports are expected to receive more attention from the market participants, and thereby those issuers become more visible.

(7) In order to provide for enhanced transparency of payments made to governments, issuers whose securities are admitted to trading on a regulated market and who have activities in the extractive or logging of primary forest industries should disclose in a separate report, on an annual basis, payments made to governments in the countries in which they operate. The report should include types of payments comparable to those disclosed under the Extractive Industries Transparency Initiative (EITI). The disclosure of payments to governments should provide civil society and investors with information to hold governments of resource-rich countries to account for their receipts from the exploitation of natural resources. The initiative is also complementary to the Forest Law Enforcement, Governance and Trade Action Plan of the European Union (EU FLEGT) and the provisions of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market ([1]), which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering into the Union market. Member States should ensure that the members of the responsible bodies of an undertaking, acting within the competences assigned to them by national law, have responsibility for ensuring that, to the best of their knowledge and ability, the report on payments to governments is prepared in accordance with the requirements of this Directive. The detailed requirements are defined in Chapter 10 of 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 ([2]).

([1]) OJ L 295, 12.11.2010, p. 23.
([2]) OJ L 182, 29.6.2013, p. 19.

(8) For the purposes of transparency and investor protection, Member States should require the following principles to apply to reporting on payments to governments in accordance with Chapter 10 of Directive 2013/34/EU: materiality (any payment, whether made as a single payment or a series of related payments, need not be taken into account in the report if it is below EUR 100 000 within a financial year); government and project-by-project reporting (reporting on payments to governments should be done on a government and project-by-project basis); universality (no exemptions, for instance for issuers active in certain countries, should be made which have a distortive impact and allow issuers to exploit lax transparency requirements); comprehensiveness (all relevant payments to governments should be reported, in line with Chapter 10 of Directive 2013/34/EU and supporting recitals).

(9) Financial innovation has led to the creation of new types of financial instruments that give investors economic exposure to companies, the disclosure of which has not been provided for in Directive 2004/109/EC. Those instruments could be used to secretly acquire stocks in companies, which could result in market abuse and give a false and misleading picture of economic ownership of publicly listed companies. In order to ensure that issuers and investors have full knowledge of the structure of corporate ownership, the definition of financial instruments in that Directive should cover all instruments with similar economic effect to holding shares and entitlements to acquire shares.

(10) Financial instruments with similar economic effect to holding shares and entitlements to acquire shares which provide for cash settlement should be calculated on a 'delta-adjusted' basis, by multiplying the notional amount of underlying shares by the delta of the instrument. Delta indicates how much a financial instrument's theoretical value would move in the event of variation in the underlying instrument's price and provides an accurate picture of the exposure of the holder to the underlying instrument. This approach is taken in order to ensure that the information about the total voting rights accessible by the investor is as accurate as possible.

(11) In addition, in order to ensure adequate transparency of major holdings, where a holder of financial instruments exercises its entitlement to acquire shares and the total holdings of voting rights attaching to underlying shares exceed the notification threshold without affecting the overall percentage of the previously notified holdings, a new notification should be required to disclose the change in the nature of the holdings.

(12) A harmonised regime for notification of major holdings of voting rights, especially regarding the aggregation of holdings of shares with holdings of financial instruments, should improve legal certainty, enhance transparency and reduce the administrative burden for cross-border investors. Member States should therefore not be allowed to adopt more stringent rules than those provided for in Directive 2004/109/EC regarding the calculation of notification thresholds, aggregation of holdings of voting rights attaching to shares with holdings of voting rights relating to financial instruments, and exemptions from the notification requirements. However, taking into account the existing differences in ownership concentration in the Union, and the differences in company laws in the Union leading to the total number of shares differing from the total number of voting rights for some issuers, Member States should continue to be allowed to set both lower and additional thresholds for notification of holdings of voting rights, and to require equivalent notifications in relation to thresholds based on capital holdings. Moreover, Member States should continue to be allowed to set stricter obligations than those provided for in Directive 2004/109/EC with regard to the content (such as disclosure of shareholders' intentions), the process and the timing for notification, and to be able to require additional information regarding major holdings not provided for by Directive 2004/109/EC. In particular, Member States should also be able to continue to apply laws, regulations or administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies supervised by the authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids [1] that impose disclosure requirements more stringent than those in Directive 2004/109/EC.

(13) Technical standards should ensure consistent harmonisation of the regime for notification of major holdings and adequate transparency levels. It would be efficient and appropriate to entrust 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 [2], with the elaboration, for submission to the Commission, of draft regulatory technical standards which do not involve policy choices. The Commission should adopt the regulatory technical standards developed by ESMA to specify the conditions for the application of existing exemptions from the notification requirements for major holdings of voting rights. Using its expertise, ESMA should in particular determine the cases of exemptions while taking account of their possible misuse to circumvent notification requirements.

(14) In order to take account of technical developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission to specify the contents of notification of major holdings of financial instruments. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(15) To facilitate cross-border investment, investors should be able to easily access regulated information for all listed companies in the Union. However, the current network of officially appointed national mechanisms for the central storage of regulated information does not ensure an easy search for such information across the Union. In order to ensure cross-border access to information and to take account of technical developments in financial markets and in communication technologies, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to specify minimum standards for dissemination of regulated information, access to regulated information at Union level and the mechanisms for the central storage of regulated information. The Commission, with assistance of ESMA, should also be empowered to take measures to improve the functioning of the network of officially appointed national storage mechanisms and to develop technical criteria for access to regulated information at Union level, in particular, concerning the operation of a central access point for the search for regulated information at Union level. ESMA should develop and operate a web portal serving as a European electronic access point ('the access point').

(16) In order to improve compliance with the requirements of Directive 2004/109/EC and following the communication from the Commission of 9 December 2010 entitled 'Reinforcing sanctioning regimes in the financial sector', the sanctioning powers should be enhanced and should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying an administrative sanction or measure, key sanctioning powers and levels of administrative pecuniary sanctions. Those sanctioning powers should be available at least in case of breach of key provisions of Directive 2004/109/EC. Member States should also be able to exercise them in other circumstances. In particular, Member States should ensure that the administrative sanctions and measures that can be applied include the possibility of imposing pecuniary sanctions which are sufficiently high to be dissuasive. In the case of breaches by legal entities, Member States should be able to provide for the application of sanctions to members

[1] OJ L 142, 30.4.2004, p. 12.
[2] OJ L 331, 15.12.2010, p. 84.

of administrative, management or supervisory bodies of the legal entity concerned or other individuals who can be held liable for those breaches under the conditions laid down in national law. Member States should also be able to provide for the suspension of, or for the possibility of suspending, the exercise of voting rights for holders of shares and financial instruments who do not comply with the notification requirements. Member States should be able to provide that the suspension of voting rights is to apply only to the most serious breaches. Directive 2004/109/EC should refer to both administrative sanctions and measures in order to cover all cases of non-compliance, irrespective of their qualification as a sanction or a measure under national law, and should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.

Member States should be able to provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than those provided for in Directive 2004/109/EC, having regard to the need for sufficiently dissuasive sanctions in order to support clean and transparent markets. The provisions regarding sanctions, and those regarding the publication of administrative sanctions, do not constitute a precedent for other Union legislation, in particular for more serious regulatory breaches.

(17) In order to ensure that decisions imposing an administrative measure or sanction have a dissuasive effect on the public at large, they should normally be published. The publication of decisions is also an important tool to inform market participants of what behaviour is considered to be in violation of Directive 2004/109/EC and to promote wider good behaviour amongst market participants. However if the publication of a decision would seriously jeopardise the stability of the financial system or an ongoing official investigation or would, in so far as can be determined, cause disproportionate and serious damage to the institutions or individuals involved, or where, in the event that the sanction is imposed on a natural person, publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication, the competent authority should be able to decide to delay such publication or to publish the information on an anonymous basis.

(18) In order to clarify the treatment of non-listed securities represented by depository receipts admitted to trading on a regulated market and in order to avoid transparency gaps, the definition of 'issuer' should be further specified to include issuers of non-listed securities represented by depository receipts admitted to trading on a regulated market. It is also appropriate to amend the definition of 'issuer' taking into account the fact that in some Member States issuers of securities admitted to trading on a regulated market can be natural persons.

(19) Under Directive 2004/109/EC, in the case of a third-country issuer of debt securities the denomination per unit of which is less than EUR 1 000 or of shares, the issuer's home Member State is the Member State referred to in point (1)(m)(iii) of Article 2 of Directive 2003/71/EC of the European Parliament and of the Council [1]. To clarify and simplify the determination of the home Member State of such third-country issuers, the definition of that term should be amended to establish that the home Member State is to be the Member State chosen by the issuer from amongst the Member States where its securities are admitted to trading on a regulated market.

(20) All issuers whose securities are admitted to trading on a regulated market within the Union should be supervised by a competent authority of a Member State to ensure that they comply with their obligations. Issuers who, under Directive 2004/109/EC, have to choose their home Member State but who have not done so, can avoid being supervised by any competent authority in the Union. Therefore, Directive 2004/109/EC should be amended to determine a home Member State for issuers that have not disclosed their choice of home Member State to the competent authorities within a three-month period. In such cases, the home Member State should be the Member State where the issuer's securities are admitted to trading on a regulated market. Where the securities are admitted to trading on a regulated market in more than one Member State, all those Member States will be home Member States until the issuer chooses, and discloses, a single home Member State. This would become an incentive for such issuers to choose and disclose their choice of home Member State to the relevant competent authorities, and in the meantime competent authorities would no longer lack the necessary powers to intervene until an issuer has disclosed its choice of home Member State.

(21) Under Directive 2004/109/EC, in the case of an issuer of debt securities the denomination per unit of which is EUR 1 000 or more, the issuer's choice of a home Member State is valid for three years. However, where an issuer's securities are no longer admitted to trading on the regulated market in the issuer's home Member State and remain admitted to trading in one or more host Member States, such issuer has no relationship with

[1] OJ L 345, 31.12.2003, p. 64.

the home Member State originally chosen by it where that is not the Member State of its registered office. Such issuer should be able to choose one of its host Member States or the Member State where it has its registered office as its new home Member State before the expiration of the three-year period. The same possibility of choosing a new home Member State would also apply to a third-country issuer of debt securities the denomination per unit of which is less than EUR 1 000 or of shares whose securities are no longer admitted to trading on the regulated market in the issuer's home Member State but remain admitted to trading in one or more host Member States.

(22) There should be consistency between Directives 2004/109/EC and 2003/71/EC concerning the definition of the home Member State. In this respect, in order to ensure supervision by the most relevant Member State, Directive 2003/71/EC should be amended to provide for greater flexibility for situations where the securities of an issuer incorporated in a third country are no longer admitted to trading on the regulated market in its home Member State but instead are admitted to trading in one or more other Member States.

(23) Commission Directive 2007/14/EC [1] contains, in particular, rules concerning the notification of the choice of the home Member State by the issuer. Those rules should be incorporated into Directive 2004/109/EC. To ensure that competent authorities of the host Member State(s) and of the Member State where the issuer has its registered office, where such Member State is neither home nor host Member State, are informed about the choice of home Member State by the issuer, all issuers should be required to communicate the choice of their home Member State to the competent authority of their home Member State, the competent authorities of all host Member States and the competent authority of the Member State where they have their registered office, where it is different from their home Member State. The rules concerning notification of the choice of home Member State should therefore be amended accordingly.

(24) The requirement under Directive 2004/109/EC regarding disclosure of new loan issues has led to many implementation problems in practice and its application is considered to be complex. Furthermore, that requirement overlaps partially with the requirements laid down in Directive 2003/71/EC and Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) [2] and it does not provide much additional information to the market. Therefore, and in order to reduce unnecessary administrative burdens for issuers, that requirement should be abolished.

(25) The requirement to communicate any amendment of an issuer's instruments of incorporation or statutes to the competent authorities of the home Member State overlaps with the similar requirement under Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies [3] and can result in confusion regarding the role of the competent authority. Therefore, and in order to reduce unnecessary administrative burdens for issuers, that requirement should be abolished.

(26) A harmonised electronic format for reporting would be very beneficial for issuers, investors and competent authorities, since it would make reporting easier and facilitate accessibility, analysis and comparability of annual financial reports. Therefore, the preparation of annual financial reports in a single electronic reporting format should be mandatory with effect from 1 January 2020, provided that a cost-benefit analysis has been undertaken by ESMA. ESMA should develop draft technical regulatory standards, for adoption by the Commission, to specify the electronic reporting format, with due reference to current and future technological options, such as eXtensible Business Reporting Language (XBRL). ESMA, when preparing the draft regulatory technical standards, should conduct open public consultations for all stakeholders concerned, make a thorough assessment of the potential impacts of the adoption of the different technological options, and conduct appropriate tests in Member States on which it should report to the Commission when it submits the draft regulatory technical standards. In developing the draft regulatory technical standards on the formats to be applied to banks and financial intermediaries and to insurance companies, ESMA should cooperate regularly and closely with the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council [4], and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council [5], in order to take into account the specific characteristics of those sectors, ensuring cross-sectoral consistency of work and reaching joint positions. The European Parliament and the Council should be able to object to the regulatory technical standards pursuant to Article 13(3) of Regulation (EU) No 1095/2010, in which case those standards should not enter into force.

[1] OJ L 69, 9.3.2007, p. 27.

[2] OJ L 96, 12.4.2003, p. 16.

[3] OJ L 184, 14.7.2007, p. 17.

[4] OJ L 331, 15.12.2010, p. 12.

[5] OJ L 331, 15.12.2010, p. 48.

(27) 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 [1] and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [2], are fully applicable to the processing of personal data for the purposes of this Directive.

(28) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaty and has to be implemented in accordance with those rights and principles.

(29) Since the objective of this Directive, namely to harmonise the transparency requirements relating to information about issuers whose securities are admitted to trading on a regulated market, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale or effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(30) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents [3], 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.

(31) Directives 2004/109/EC, 2003/71/EC and 2007/14/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2004/109/EC

Directive 2004/109/EC is hereby amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 1 is amended as follows:

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

'(d) "issuer" means a natural person, or a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market.

In the case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented, whether or not those securities are admitted to trading on a regulated market;';

(ii) point (i) is amended as follows:

(i) in point (i), the second indent is replaced by the following:

'— where the issuer is incorporated in a third country, the Member State chosen by the issuer from amongst the Member States where its securities are admitted to trading on a regulated market. The choice of home Member State shall remain valid unless the issuer has chosen a new home Member State under point (iii) and has disclosed the choice in accordance with the second paragraph of this point [letter] (i);';

(ii) point (ii) is replaced by the following:

'(ii) for any issuer not covered by point (i), the Member State chosen by the issuer from among the Member State in which the issuer has its registered office, where applicable, and those Member States where its securities are admitted to trading on a regulated market. The issuer may choose only one Member State as its home Member State. Its choice shall remain valid for at least three years unless its securities are no longer admitted to trading on any regulated market in the Union or unless the issuer becomes covered by points (i) or (iii) during the three-year period;';

(iii) the following point is added:

'(iii) for an issuer whose securities are no longer admitted to trading on a regulated market in its home Member State as defined by the second indent of point (i) or (ii) but instead are admitted to trading in one or more other Member States, such new home Member State as the issuer may choose from amongst the Member States where its securities are admitted to trading on a regulated market and, where applicable, the Member State where the issuer has its registered office;';

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.
[3] OJ C 369, 17.12.2011, p. 14.

(iv) the following paragraphs are added:

'An issuer shall disclose its home Member State as referred to in points (i), (ii) or (iii) in accordance with Articles 20 and 21. In addition, an issuer shall disclose its home Member State to the competent authority of the Member State where it has its registered office, where applicable, to the competent authority of the home Member State and to the competent authorities of all host Member States.

In the absence of disclosure by the issuer of its home Member State as defined by the second indent of point (i) or (ii) within a period of three months from the date the issuers' securities are first admitted to trading on a regulated market, the home Member State shall be the Member State where the issuer's securities are admitted to trading on a regulated market. Where the issuer's securities are admitted to trading on regulated markets situated or operating within more than one Member State, those Member States shall be the issuer's home Member States until a subsequent choice of a single home Member State has been made and disclosed by the issuer.

For an issuer whose securities are already admitted to trading on a regulated market and whose choice of home Member State as referred to in the second indent of point (i) or in point (ii) has not been disclosed prior to 27 November 2015, the period of three months shall start on 27 November 2015.

An issuer that has made a choice of a home Member State as referred to in the second indent of point (i) or in point (ii) or (iii) and has communicated that choice to the competent authorities of the home Member State prior to 27 November 2015 shall be exempted from the requirement under the second paragraph of this point [letter] (i), unless such issuer chooses another home Member State after 27 November 2015';

(iii) the following point is added:

'(q) "formal agreement" means an agreement which is binding under the applicable law.';

(b) the following paragraph is inserted:

'2a. Any reference to legal entities in this Directive shall be understood as including registered business associations without legal personality and trusts.';

(2) Article 3 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The home Member State may make an issuer subject to requirements more stringent than those laid down in this Directive, except that it may not require issuers to publish periodic financial information on a more frequent basis than the annual financial reports referred to in Article 4 and the half-yearly financial reports referred to in Article 5.';

(b) the following paragraph is inserted:

'1a. By way of derogation from paragraph 1, the home Member States may require issuers to publish additional periodic financial information on a more frequent basis than the annual financial reports referred to in Article 4 and the half-yearly financial reports referred to in Article 5, where the following conditions are met:

— the additional periodic financial information does not constitute a disproportionate financial burden in the Member State concerned, in particular for the small and medium-sized issuers concerned, and

— the content of the additional periodic financial information required is proportionate to the factors that contribute to investment decisions by the investors in the Member State concerned.

Before taking a decision requiring issuers to publish additional periodic financial information, Member States shall assess both whether such additional requirements may lead to an excessive focus on the issuers' short-term results and performance and whether they may impact negatively on the ability of small and medium-sized issuers to have access to the regulated markets.

This is without prejudice to the ability of Member States to require the publication of additional periodic financial information by issuers who are financial institutions.

The home Member State may not make a holder of shares, or a natural person or legal entity referred to in Article 10 or 13, subject to requirements more stringent than those laid down in this Directive, except when:

(i) setting lower or additional notification thresholds than those laid down in Article 9(1) and requiring equivalent notifications in relation to thresholds based on capital holdings;

(ii) applying more stringent requirements than those referred to in Article 12; or

(iii) applying laws, regulations or administrative provisions adopted in relation to takeover bids, merger transactions and other transactions

affecting the ownership or control of companies, supervised by the authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (*).

(*) OJ L 142, 30.4.2004, p. 12.';

(3) Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The issuer shall make public its annual financial report at the latest four months after the end of each financial year and shall ensure that it remains publicly available for at least 10 years.';

(b) the following paragraph is added:

'7. With effect from 1 January 2020 all annual financial reports shall be prepared in a single electronic reporting format provided that a cost-benefit analysis has been undertaken by 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 (*).

ESMA shall develop draft regulatory technical standards to specify the electronic reporting format, with due reference to current and future technological options. Before the adoption of the draft regulatory technical standards, ESMA shall carry out an adequate assessment of possible electronic reporting formats and conduct appropriate field tests. ESMA shall submit those draft regulatory technical standards to the Commission at the latest by 31 December 2016.

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

(*) OJ L 331, 15.12.2010, p. 84.';

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

'1. The issuer of shares or debt securities shall make public a half-yearly financial report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest three months thereafter. The issuer shall ensure that the half-yearly financial report remains available to the public for at least 10 years.';

(5) Article 6 is replaced by the following:

'Article 6

Report on payments to governments

Member States shall require issuers active in the extractive or logging of primary forest industries, as defined in Article 41(1) and (2) of 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 (*), to prepare on an annual basis, in accordance with Chapter 10 of that Directive, a report on payments made to governments. The report shall be made public at the latest six months after the end of each financial year and shall remain publicly available for at least 10 years. Payments to governments shall be reported at consolidated level.

(*) OJ L 182, 29.6.2013, p. 19.';

(6) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Articles 4 and 5 shall not apply to the following issuers:

(a) a State, a regional or local authority of a State, a public international body of which at least one Member State is a member, the European Central Bank (ECB), the European Financial Stability Facility (EFSF) established by the EFSF Framework Agreement and any other mechanism established with the objective of preserving the financial stability of European monetary union by providing temporary financial assistance to the Member States whose currency is the euro and Member States' national central banks whether or not they issue shares or other securities; and

(b) an issuer exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least EUR 100 000 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 100 000.';

(b) paragraph 4 is replaced by the following:

'4. By way of derogation from point (b) of paragraph 1 of this Article, Articles 4 and 5 shall not apply to issuers exclusively of debt securities the denomination per unit of which is at least EUR 50 000 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000, which have already been admitted to trading on a regulated market in the Union before 31 December 2010, for as long as such debt securities are outstanding.';

(7) Article 9 is amended as follows:

(a) paragraph 6 is replaced by the following:

'6. This Article shall not apply to voting rights held in the trading book, as defined in Article 11 of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (*), of a credit institution or investment firm provided that:

(a) the voting rights held in the trading book do not exceed 5 %; and

(b) the voting rights attached to shares held in the trading book are not exercised or otherwise used to intervene in the management of the issuer.

(*) OJ L 177, 30.6.2006, p. 201.';

(b) the following paragraphs are inserted:

'6a. This Article shall not apply to voting rights attached to shares acquired for stabilisation purposes in accordance with Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (*), provided the voting rights attached to those shares are not exercised or otherwise used to intervene in the management of the issuer.

6b. ESMA shall develop draft regulatory technical standards to specify the method of calculation of the 5 % threshold referred to in paragraphs 5 and 6, including in the case of a group of companies, taking into account Article 12(4) and (5).

ESMA shall submit those draft regulatory technical standards to the Commission by 27 November 2014.

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

(*) OJ L 336, 23.12.2003, p. 33.';

(8) in Article 12(2), the introductory wording is replaced by the following:

'The notification to the issuer shall be effected promptly, but not later than four trading days after the date on which the shareholder, or the natural person or legal person referred to in Article 10,';

(9) Article 13 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The notification requirements laid down in Article 9 shall also apply to a natural person or legal entity who holds, directly or indirectly:

(a) financial instruments that, on maturity, give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market;

(b) financial instruments which are not included in point (a) but which are referenced to shares referred to in that point and with economic effect similar to that of the financial instruments referred to in that point, whether or not they confer a right to a physical settlement.

The notification required shall include the breakdown by type of financial instruments held in accordance with point (a) and financial instruments held in accordance with point (b) of that subparagraph, distinguishing between the financial instruments which confer a right to a physical settlement and the financial instruments which confer a right to a cash settlement.';

(b) the following paragraphs are inserted:

'1a. The number of voting rights shall be calculated by reference to the full notional amount of shares underlying the financial instrument except where the financial instrument provides exclusively for a cash settlement, in which case the number of voting rights shall be calculated on a "delta-adjusted" basis, by multiplying the notional amount of underlying shares by the delta of the instrument. For this purpose, the holder shall aggregate and notify all financial instruments relating to the same underlying issuer. Only long positions shall be taken into account for the calculation of voting rights. Long positions shall not be netted with short positions relating to the same underlying issuer.

ESMA shall develop draft regulatory technical standards to specify:

(a) the method for calculating the number of voting rights referred to in the first subparagraph in the case of financial instruments referenced to a basket of shares or an index; and

(b) the methods for determining delta for the purposes of calculating voting rights relating to financial instruments which provide exclusively for a cash settlement as required by the first subparagraph.

ESMA shall submit those draft regulatory technical standards to the Commission by 27 November 2014.

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

1b. For the purposes of paragraph 1, the following shall be considered to be financial instruments, provided they satisfy any of the conditions set out in points (a) or (b) of the first subparagraph of paragraph 1:

(a) transferable securities;

(b) options;

(c) futures;

(d) swaps;

(e) forward rate agreements;

(f) contracts for differences; and

(g) any other contracts or agreements with similar economic effects which may be settled physically or in cash.

ESMA shall establish and periodically update an indicative list of financial instruments that are subject to notification requirements pursuant to paragraph 1, taking into account technical developments on financial markets.';

(c) paragraph 2 is replaced by the following:

'2. The Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions laid down by Articles 27a and 27b, the measures to specify the contents of the notification to be made, the notification period and to whom the notification is to be made as referred to in paragraph 1.';

(d) the following paragraph is added:

'4. The exemptions laid down in Article 9(4), (5) and (6) and in Article 12(3), (4) and (5) shall apply *mutatis mutandis* to the notification requirements under this Article.

ESMA shall develop draft regulatory technical standards to specify the cases in which the exemptions referred to in the first subparagraph apply to financial instruments held by a natural person or a legal entity fulfilling orders received from clients or responding to a client's requests to trade otherwise than on a proprietary basis, or hedging positions arising out of such dealings.

ESMA shall submit those draft regulatory technical standards to the Commission by 27 November 2014.

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

(10) the following article is inserted:

'*Article 13a*

Aggregation

1. The notification requirements laid down in Articles 9, 10 and 13 shall also apply to a natural person or a legal entity when the number of voting rights held directly or indirectly by such person or entity under Articles 9 and 10 aggregated with the number of voting rights relating to financial instruments held directly or indirectly under Article 13 reaches, exceeds or falls below the thresholds set out in Article 9(1).

The notification required under the first subparagraph of this paragraph shall include a breakdown of the number of voting rights attached to shares held in accordance with Articles 9 and 10 and voting rights relating to financial instruments within the meaning of Article 13.

2. Voting rights relating to financial instruments that have already been notified in accordance with Article 13 shall be notified again when the natural person or the legal entity has acquired the underlying shares and such acquisition results in the total number of voting rights attached to shares issued by the same issuer reaching or exceeding the thresholds laid down by Article 9(1).';

(11) Article 16(3) is deleted;

(12) in Article 19(1), the second subparagraph is deleted;

(13) Article 21(4) is replaced by the following:

'4. The Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions laid down in Articles 27a and 27b, measures to specify the following:

(a) minimum standards for the dissemination of regulated information, as referred to in paragraph 1;

(b) minimum standards for the central storage mechanisms as referred to in paragraph 2;

(c) rules to ensure the interoperability of the information and communication technologies used by the mechanisms referred to in paragraph 2 and access to regulated information at the Union level, referred to therein.

The Commission may also specify and update a list of media for the dissemination of information to the public.';

(14) the following article is inserted:

'*Article 21a*

European electronic access point

1. A web portal serving as a European electronic access point ("the access point") shall be established by 1 January 2018. ESMA shall develop and operate the access point.

2. The system of interconnection of officially appointed mechanisms shall be composed of:

— the mechanisms referred to in Article 21(2),

— the portal serving as the European electronic access point.

3. Member States shall ensure access to their central storage mechanisms via the access point.';

(15) Article 22 is replaced by the following:

'*Article 22*

Access to regulated information at Union level

1. ESMA shall develop draft regulatory technical standards setting technical requirements regarding access to regulated information at Union level in order to specify the following:

(a) the technical requirements regarding communication technologies used by the mechanisms referred to in Article 21(2);

(b) the technical requirements for the operation of the central access point for the search for regulated information at Union level;

(c) the technical requirements regarding the use of a unique identifier for each issuer by the mechanisms referred to in Article 21(2);

(d) the common format for the delivery of regulated information by the mechanisms referred to in Article 21(2);

(e) the common classification of regulated information by the mechanisms referred to in Article 21(2) and the common list of types of regulated information.

2. In developing the draft regulatory technical standards, ESMA shall take into account the technical requirements for the system of interconnection of business registers established by Directive 2012/17/EU of the European Parliament and of the Council (*).

ESMA shall submit those draft regulatory technical standards to the Commission by 27 November 2015.

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

(*) OJ L 156, 16.6.2012, p. 1.';

(16) in Article 23(1), the following subparagraph is added:

'The information covered by the requirements laid down in the third country shall be filed in accordance with Article 19 and disclosed in accordance with Articles 20 and 21.';

(17) in Article 24, the following paragraphs are inserted:

'4a. Without prejudice to paragraph 4, competent authorities shall be given all investigative powers that are necessary for the exercise of their functions. Those powers shall be exercised in conformity with national law.

4b. Competent authorities shall exercise their sanctioning powers, in accordance with this Directive and national law, in any of the following ways:

— directly,

— in collaboration with other authorities,

— under their responsibility by delegation to such authorities,

— by application to the competent judicial authorities.';

(18) in Article 25(2), the following subparagraph is added:

'In the exercise of their sanctioning and investigative powers, competent authorities shall cooperate to ensure that sanctions or measures produce the desired results, and shall coordinate their action when dealing with cross-border cases.';

(19) the following title is inserted after Article 27b:

'CHAPTER VIA

SANCTIONS AND MEASURES';

(20) Article 28 is replaced by the following:

'Article 28

Administrative measures and sanctions

1. Without prejudice to the powers of competent authorities in accordance with Article 24 and the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative measures and sanctions applicable to breaches of the national provisions adopted in transposition of this Directive and shall take all measures necessary to ensure that they are implemented. Those administrative measures and sanctions shall be effective, proportionate and dissuasive.

2. Without prejudice to Article 7, Member States shall ensure that where obligations apply to legal entities, in the event of a breach, sanctions can be applied, subject to the conditions laid down in national law, to the members of administrative, management or supervisory bodies of the legal entity concerned, and to other individuals who are responsible for the breach under national law.';

(21) the following articles are inserted:

'Article 28a

Breaches

Article 28b shall apply at least to the following breaches:

(a) failure by the issuer to make public, within the required time limit, information required under the national provisions adopted in transposition of Articles 4, 5, 6, 14 and 16;

(b) failure by the natural or the legal person to notify, within the required time limit, the acquisition or disposal of a major holding in accordance with the national provisions adopted in transposition of Articles 9, 10, 12, 13 and 13a.

Article 28b

Sanctioning powers

1. In the case of breaches referred to in Article 28a, competent authorities shall have the power to impose at least the following administrative measures and sanctions:

(a) a public statement indicating the natural person or the legal entity responsible and the nature of the breach;

(b) an order requiring the natural person or the legal entity responsible to cease the conduct constituting the breach and to desist from any repetition of that conduct;

(c) administrative pecuniary sanctions of;

(i) in the case of a legal entity,

— up to EUR 10 000 000 or up to 5 % of the total annual turnover according to the last available annual accounts approved by the management body; where the legal entity is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts pursuant to Directive 2013/34/EU, the relevant total turnover shall be the total annual turnover or the corresponding type of income pursuant to the relevant accounting Directives according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking, or

— up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined,

whichever is higher;

(ii) in the case of a natural person:

— up to EUR 2 000 000, or

— up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined,

whichever is higher.

In Member States where the euro is not the official currency, the corresponding value to euro in the national currency shall be calculated taking into account the official exchange rate on the date of entry into force of Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (*).

2. Without prejudice to the powers of competent authorities under Article 24 and the right of Member States to impose criminal sanctions, Member States shall ensure that their laws, regulations or administrative provisions provide for the possibility of suspending the exercise of voting rights attached to shares in the event of breaches as referred to in point (b) of Article 28a. Member States may provide that the suspension of voting rights is to apply only to the most serious breaches.

3. Member States may provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than those provided for in this Directive.

Article 28c

Exercise of sanctioning powers

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

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the natural person or legal entity responsible;

(c) the financial strength of the natural person or legal entity responsible, for example as indicated by the total turnover of the legal entity responsible or the annual income of the natural person responsible;

(d) the importance of profits gained or losses avoided by the natural person or legal entity responsible, in so far as they can be determined;

(e) the losses sustained by third parties as a result of the breach, in so far as they can be determined;

(f) the level of cooperation of the natural person or legal entity responsible with the competent authority;

(g) previous breaches by the natural person or legal entity responsible.

2. The processing of personal data collected in or for the exercise of the supervisory and investigatory powers in accordance with this Directive shall be carried out in accordance with Directive 95/46/EC and Regulation (EC) No 45/2001 where relevant.

(*) OJ L 294, 6.11.2013, p. 13.';

(22) the following title is inserted before Article 29:

'CHAPTER VIB

PUBLICATION OF DECISIONS';

(23) Article 29 is replaced by the following:

'*Article 29*

Publication of decisions

1. Member States shall provide that competent authorities are to publish every decision on sanctions and measures imposed for a breach of this Directive without undue delay, including at least information on the type and nature of the breach and the identity of natural persons or legal entities responsible for it.

However, competent authorities may delay publication of a decision, or may publish the decision on an anonymous basis in a manner which is in conformity with national law, in any of the following circumstances:

(a) where, in the event that the sanction is imposed on a natural person, publication of personal data is found to be disproportionate by an obligatory prior assessment of the proportionality of such publication;

(b) where publication would seriously jeopardise the stability of the financial system or an ongoing official investigation;

(c) where publication would, in so far as can be determined, cause disproportionate and serious damage to the institutions or natural persons involved.

2. If an appeal is submitted against the decision published under paragraph 1, the competent authority shall be obliged either to include information to that effect in the publication at the time of the publication or to amend the publication if the appeal is submitted after the initial publication.';

(24) Article 31(2) is replaced by the following:

'2. Where Member States adopt measures pursuant to Article 3(1), 8(2) or 8(3) or Article 30, they shall immediately communicate those measures to the Commission and to the other Member States.'.

Article 2

Amendments to Directive 2003/71/EC

Point (1)(m)(iii) of Article 2 of Directive 2003/71/EC is replaced by the following:

'(iii) for all issuers of securities incorporated in a third country which are not mentioned in point (ii), the Member State where the securities are intended to be offered to the public for the first time after the date of entry into force of Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (*) or where the first application for admission to trading on a regulated market is made, at the choice of the issuer, the offeror or the person asking for admission, as the case may be, subject to a subsequent election by issuers incorporated in a third country in the following circumstances:

— where the home Member State was not determined by their choice, or

— in accordance with Point (1)(i)(iii) of Article 2 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (**).

(*) OJ L 294, 6.11.2013, p. 13.
(**) OJ L 390, 31.12.2004, p. 38.'.

Article 3

Amendments to Directive 2007/14/EC

Directive 2007/14/EC is hereby amended as follows:

(1) Article 2 is deleted;

(2) in Article 11, paragraphs 1 and 2 are deleted;

(3) Article 16 is deleted.

Article 4

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within a period of 24 months from the date of its entry into force. They shall immediately inform the Commission thereof.

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

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

Article 5

Review

By 27 November 2015, the Commission shall report on the operation of this Directive to the European Parliament and the Council, including on its impact on small and medium-sized issuers and on the application of sanctions, in particular whether they are effective, proportionate and dissuasive, and shall review the functioning and assess the effectiveness of the retained method for the purposes of calculating the number of voting rights relating to the financial instruments referred to in the first subparagraph of Article 13(1a) of Directive 2004/109/EC.

The report shall be submitted together with a legislative proposal, if appropriate.

Article 6

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 7

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 22 October 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	V. LEŠKEVIČIUS

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 1093/2013

of 4 November 2013

amending Regulation (EC) No 638/2004 of the European Parliament and of the Council and Commission Regulation (EC) No 1982/2004 as regards the simplification within the Intrastat system and the collection of Intrastat information

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 638/2004 of the European Parliament and of the Council of 31 March 2004 on Community statistics relating to trading of goods between Member States and repealing Council Regulation (EEC) No 3330/91 [1] and in particular Articles 9(1) and 10(3) thereof,

Whereas:

(1) Regulation (EC) No 638/2004 established a common framework for the systematic production of Community statistics relating to the trading of goods between Member States.

(2) Following technical and economic developments, the established minimum coverage rate for arrivals could be adapted while maintaining statistics which meet the quality indicators and standards in force. This simplification will allow reducing the response burden on the parties responsible for providing statistical information, particularly small and medium-sized enterprises. The coverage rate for arrivals should, therefore, be reduced from 95 % to 93 %.

(3) Commission Regulation (EC) No 1982/2004 of 18 November 2004 implementing Regulation (EC) No 638/2004 of the European Parliament and of the Council on Community statistics relating to the trading of goods between Member States and repealing Commission Regulations (EC) No 1901/2000 and (EEC) No 3590/92 [2] lays down the arrangements for the collection of Intrastat information. While Member States have to send Eurostat their monthly results by statistical value, they are limited in the practical arrangements for its collection. An overall coherent approach to the collection of Intrastat information should be provided for and the collection arrangements in terms of the statistical value should be streamlined.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the statistics on the trading of goods between Member States,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 10(3) of Regulation (EC) No 638/2004 '95 %' is replaced by '93 %'.

Article 2

Article 8(2) of Regulation (EC) No 1982/2004 is replaced by the following:

'2. Additionally, Member States may also collect the statistical value of the goods, as defined in the Annex to Regulation (EC) No 638/2004.'

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*.

[1] OJ L 102, 7.4.2004, p. 1.

[2] OJ L 343, 19.11.2004, p. 3.

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

Done at Brussels, 4 November 2013.

For the Commission
The President
José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 1094/2013

of 4 November 2013

on the allocation to France and the United Kingdom of additional days at sea within ICES division VIIe

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EU) No 39/2013 of 21 January 2013 fixing for 2013 the fishing opportunities available to EU vessels for certain fish stocks and groups of fish stocks which are not subject to international negotiations or agreements ([1]), and in particular point 7 of Annex IIC thereof,

Having regard to the requests made by France and the United Kingdom,

Whereas:

(1) Table I of Annex IIC to Regulation (EU) No 39/2013 specifies the maximum number of days at sea on which EU vessels of overall length equal to or greater than 10 metres carrying on board or deploying beam trawls of mesh size equal to or greater than 80 mm or static nets, including gill-nets, trammel-nets and tangle-nets, with mesh size equal to or less than 220 mm may be present in ICES division VIIe from 1 February 2013 to 31 January 2014.

(2) Point 7.5 of that Annex enables the Commission to allocate an additional number of days at sea on which a vessel may be present in that area when carrying on board or deploying such beam trawls or static nets, on the basis of permanent cessations of fishing activities that have taken place since 1 January 2004.

(3) In view of the data on beam trawlers withdrawn from the fishing fleet presented in the request submitted by France in accordance with points 7.1 and 7.4 of Annex IIC and applying the calculation method provided for in point 7.2 of that Annex, 11 additional days at sea should be allocated to France for the period between 1 February 2013 and 31 January 2014 for vessels carrying on board or deploying such beam trawls.

(4) In view of the data on vessels with static nets withdrawn from the fishing fleet presented in the request submitted by France in accordance with points 7.1 and 7.4 of Annex IIC and applying the calculation method provided for in point 7.2 of that Annex, 14 additional days at sea should be allocated to France for the period between 1 February 2013 and 31 January 2014 for vessels carrying on board or deploying such static nets.

(5) In view of the data on beam trawlers withdrawn from the fishing fleet presented in the request submitted by the United Kingdom in accordance with points 7.1 and 7.4 of Annex IIC and applying the calculation method provided for in point 7.2 of that Annex, 43 additional days at sea should be allocated to the United Kingdom for the period between 1 February 2013 and 31 January 2014 for vessels carrying on board or deploying such beam trawls.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Additional fishing days for France

1. For the period between 1 February 2013 and 31 January 2014 the maximum number of days a fishing vessel flying the flag of France and carrying on board or deploying beam trawls of mesh size equal to or greater than 80 mm may be present in ICES division VIIe, as laid down in Table I of Annex IIC to Regulation (EU) No 39/2013, is increased to 175 days per year.

2. For the period between 1 February 2013 and 31 January 2014 the maximum number of days a fishing vessel flying the flag of France and carrying on board or deploying static nets, including gill-nets, trammel-nets and tangle-nets, with mesh size equal to or less than 220 mm may be present in ICES division VIIe, as laid down in Table I of Annex IIC to Regulation (EU) No 39/2013, is increased to 178 days per year.

Article 2

Additional fishing days for the United Kingdom

For the period between 1 February 2013 and 31 January 2014 the maximum number of days a fishing vessel flying the flag of the United Kingdom and carrying on board or deploying beam trawls of mesh size equal to or greater than 80 mm may be present in ICES division VIIe, as laid down in Table I of Annex IIC to Regulation (EU) No 39/2013, is increased to 207 days per year.

([1]) OJ L 23, 25.1.2013, p. 1.

Article 3

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

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

Done at Brussels, 4 November 2013.

For the Commission
The President
José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 1095/2013

of 4 November 2013

approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Sierra de Cádiz (PDO)]

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [1], and in particular Article 52(2) thereof,

Whereas:

(1) Regulation (EU) No 1151/2012 repealed and replaced Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2].

(2) Pursuant to the first subparagraph of Article 9(1) of Regulation (EC) No 510/2006, the Commission examined Spain's application for the approval of amendments to the specification for the protected designation of origin 'Sierra de Cádiz' registered under Commission Regulation (EC) No 205/2005 [3].

(3) Since the amendments in question are not minor, the Commission published the amendment application in the *Official Journal of the European Union* [4], as required by Article 6(2) of Regulation (EC) No 510/2006. As no statement of objection under Article 7 of that Regulation has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* regarding the name contained in the Annex to this Regulation are hereby approved.

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 Brussels, 4 November 2013.

For the Commission,
On behalf of the President,
Dacian CIOLOȘ
Member of the Commission

[1] OJ L 343, 14.12.2012, p. 1.
[2] OJ L 93, 31.3.2006, p. 12.
[3] OJ L 33, 5.2.2005, p. 6.
[4] OJ C 376, 6.12.2012, p. 8.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.5. Oils and fats (butter, margarine, oil, etc.)

SPAIN

Sierra de Cádiz (PDO)

COMMISSION IMPLEMENTING REGULATION (EU) No 1096/2013

of 4 November 2013

entering a name in the register of protected designations of origin and protected geographical indications [Poulet des Cévennes / Chapon des Cévennes (PGI)]

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [1], and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, France's application to register the name 'Poulet des Cévennes' / 'Chapon des Cévennes' was published in the *Official Journal of the European Union* [2].

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Poulet des Cévennes' / 'Chapon des Cévennes' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

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 Brussels, 4 November 2013.

For the Commission,
On behalf of the President,
Dacian CIOLOȘ
Member of the Commission

[1] OJ L 343, 14.12.2012, p. 1.
[2] OJ C 33, 5.2.2013, p. 10.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.1. Fresh meat (and offal)

FRANCE

Poulet des Cévennes / Chapon des Cévennes (PGI)

COMMISSION IMPLEMENTING REGULATION (EU) No 1097/2013

of 4 November 2013

approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Lentilles vertes du Berry (PGI)]

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ([1]), and in particular Article 52(2) thereof,

Whereas:

(1) Regulation (EU) No 1151/2012 repealed and replaced Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ([2]).

(2) In accordance with the first subparagraph of Article 9(1) of Regulation (EC) No 510/2006, the Commission has examined France's application for the approval of amendments to the specification for the protected geographical indication 'Lentilles vertes du Berry' registered under Commission Regulation (EC) No 1576/98 ([3]).

(3) Since the amendments in question are not minor, the Commission published the amendment application in the *Official Journal of the European Union* ([4]), as required by Article 6(2) of Regulation (EC) No 510/2006. As no statement of objection under Article 7 of that Regulation has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* regarding the name contained in the Annex to this Regulation are hereby approved.

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 Brussels, 4 November 2013.

For the Commission,
On behalf of the President,
Dacian CIOLOȘ
Member of the Commission

([1]) OJ L 343, 14.12.2012, p. 1.
([2]) OJ L 93, 31.3.2006, p. 12.
([3]) OJ L 206, 23.7.1998, p. 15.
([4]) OJ C 387, 15.12.2012, p. 16.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.6. Fruit, vegetables and cereals, fresh or processed

FRANCE

Lentilles vertes du Berry (PGI)

COMMISSION IMPLEMENTING REGULATION (EU) No 1098/2013

of 4 November 2013

entering a name in the register of protected designations of origin and protected geographical indications [Gâche vendéenne (PGI)]

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [1], and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, France's application to register the name 'Gâche vendéenne' was published in the *Official Journal of the European Union* [2].

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Gâche vendéenne' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

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 Brussels, 4 November 2013.

For the Commission,
On behalf of the President,
Dacian CIOLOȘ
Member of the Commission

[1] OJ L 343, 14.12.2012, p. 1.
[2] OJ C 68, 8.3.2013, p. 48.

ANNEX

Agricultural products and foodstuffs listed in Annex I(I) to Regulation (EU) No 1151/2012:

Class 2.4. Bread, pastry, cakes, confectionery, biscuits and other baker's wares

FRANCE

Gâche vendéenne (PGI)

COMMISSION IMPLEMENTING REGULATION (EU) No 1099/2013

of 5 November 2013

amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (enhancement of regular shipping services)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1], and in particular Article 247 thereof,

Whereas:

(1) Key action 2 of the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions 'Single Market Act II, Together for new growth' [2] calls for the establishment of a true Single Market for maritime transport by no longer subjecting Union goods transported between Union seaports to administrative and customs formalities that apply to goods arriving from overseas ports.

(2) To this end, the Commission committed itself to tabling a 'Blue Belt' package with legislative and non-legislative initiatives to reduce the administrative burden on operators engaging in intra-Union maritime transport to a level that is comparable to that of other modes of transport (air, rail and road).

(3) This Regulation forms part of the Blue Belt package.

(4) According to Article 313(2)(a) of Commission Regulation (EEC) No 2454/93 [3], goods brought into the customs territory of the Community in accordance with Article 37 of Regulation (EEC) No 2913/92 shall not be deemed to be Community goods unless it is established that they have Community status.

(5) Article 313(3)(b) of Regulation (EEC) No 2454/93 provides that goods shipped between ports in the customs territory of the Community by an authorised regular shipping service shall be considered to be Community goods, unless established otherwise. Regular shipping service vessels may also transport non-Community goods, provided they are placed under the external Community transit procedure. In addition, the use of a regular shipping service for the transport of non-Community goods is without prejudice to the application of controls for other purposes, including those relating to animal, public or plant health risks.

(6) Before issuing an authorisation for a regular shipping service, the authorising customs authority is required to consult the customs authorities of the other Member States concerned by that service. If, after having been granted authorisation, the holder of such authorisation (hereinafter the 'holder') subsequently wishes to extend the service to other Member States, further consultations would be required with the customs authorities of such Member States. To avoid in as much as possible the need to hold further consultations after the authorisation has been granted, it should be provided that shipping companies applying for authorisation may, in addition to listing the Member States actually concerned by the service, also specify Member States which could potentially be concerned for which they declare that they have plans for future services.

(7) Since 2010, a period of 45 days has been allowed for the consultation of the customs authorities of other Member States. However, experience has shown that this period is unnecessarily long and should be reduced.

(8) The use of an electronic information and communication system has rendered Annex 42A of Regulation (EEC) No 2454/93 redundant.

(9) At the request of the holder, authorisations for regular shipping services existing before the entry into force of this Regulation should be reviewed to take into account any Member States which could potentially be concerned for which the holder declares that he has plans for future services.

(10) The electronic information and communication system currently used to store information and to notify the customs authorities of other Member States about regular shipping service authorisations is not the system referred to in Article 14x of Regulation (EEC) No 2454/93. The references to this system should be corrected.

(11) Regulation (EEC) No 2454/93 should therefore be amended accordingly.

(12) The changes in the length of the period allowed for the consultation of the customs authorities of other Member States and in the number of Member States which may be specified in the application require changes to the electronic regular shipping services information and communication system and a deferred application of the relevant provisions of this Regulation.

[1] OJ L 302, 19.10.1992, p. 1.
[2] COM(2012) 573 final, 3.10.2012.
[3] Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

(13) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2454/93 is amended as follows:

(1) Article 313b is amended as follows:

(a) The following paragraph 2a is inserted after paragraph 2:

'2a. The Commission and the customs authorities of the Member States shall, using an electronic regular shipping services information and communication system, store and have access to the following information:

(a) the data of the applications;

(b) the regular shipping service authorisations and, where applicable, their amendment or revocation;

(c) the names of the ports of call and the names of the vessels assigned to the service;

(d) all other relevant information.',

(b) paragraph 3 is amended as follows:

(i) the first subparagraph is replaced by the following:

'The application for an authorisation for a regular shipping services shall specify the Member States actually concerned by the service and may specify Member States which could potentially be concerned for which the applicant declares that he has plans for future services. The customs authorities of the Member State to whom the application has been made (the authorising customs authority) shall notify the customs authorities of the other Member States actually or potentially concerned by the shipping service (the corresponding customs authorities) through the electronic regular shipping services information and communication system referred to in paragraph 2a.'

(ii) In the second sub-paragraph, '45' is replaced by '15',

(iii) In the second sub-paragraph, the words 'the electronic information and communication system referred to in Article 14x' are replaced by 'the electronic regular shipping services information and communication system referred to in paragraph 2a.',

(iv) In the third sub-paragraph, the words 'the electronic information and communication system referred to in Article 14x' are replaced by 'the electronic regular shipping services information and communication system referred to in paragraph 2a.';

(2) In the second sub-paragraph of Article 313c(2), the words 'the electronic information and communication system referred to in Article 14x' are replaced by 'the electronic regular shipping services information and communication system referred to in Article 313b(2a).';

(3) In the first sub-paragraph of Article 313d(2), the words 'the electronic information and communication system referred to in Article 14x' are replaced by 'the electronic regular shipping services information and communication system referred to in Article 313b(2a).';

(4) In Article 313f(2), the words 'the electronic information and communication system referred to in Article 14x' are replaced by 'the electronic regular shipping services information and communication system referred to in Article 313b(2a).';

(5) Annex 42A is deleted.

Article 2

The authorising customs authorities shall, at the request of the holder, review authorisations for regular shipping services which already exist on the date of application of this Regulation laid down in the second paragraph of Article 3 in order to take into account Member States which could potentially be concerned for which the holder declares that he has plans for future services.

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*.

Point 1 (b) (i) and (ii) of Article 1 shall apply from 1 March 2014.

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

Done at Brussels, 5 November 2013.

For the Commission
The President
José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 1100/2013

of 5 November 2013

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard 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 [2], and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 5 November 2013.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	AL	41,5
	MA	41,8
	MK	36,9
	TR	75,3
	ZZ	48,9
0707 00 05	AL	53,3
	EG	177,3
	MK	71,7
	TR	144,5
	ZZ	111,7
0709 93 10	AL	50,7
	MA	88,1
	TR	127,3
	ZZ	88,7
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	TR	67,6
	ZZ	67,6
0805 50 10	TR	72,1
	ZA	54,2
	ZZ	63,2
0806 10 10	BR	231,7
	PE	281,8
	TR	169,9
	ZZ	227,8
0808 10 80	BA	66,4
	CL	210,3
	NZ	151,7
	US	132,2
	ZA	127,9
	ZZ	137,7
0808 30 90	CN	72,8
	TR	116,3
	ZZ	94,6

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

RECOMMENDATIONS

COMMISSION RECOMMENDATION

of 4 November 2013

amending Recommendation 2006/576/EC as regards T-2 and HT-2 toxin in compound feed for cats

(Text with EEA relevance)

(2013/637/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

(1) T-2 toxin and HT-2 toxin are mycotoxins produced by various *Fusarium* species. T-2 toxin is rapidly metabolised to a large number of products, HT-2 toxin being a major metabolite.

(2) The Scientific Panel on Contaminants in the Food Chain (CONTAM panel) of the European Food Safety Authority (EFSA) adopted an opinion on a request from the Commission related to the risks for animal and public health related to the presence of T-2 and HT-2 toxin in food and feed ([1]).

(3) As regards the animal health risk, the CONTAM panel concluded that for ruminants, rabbits and fish, the current estimated exposure to T-2 and HT-2 toxin is considered unlikely to be a health concern. For pigs, poultry, horses and dogs, the estimates of exposure to T-2 and HT-2 toxin indicate that the risk of adverse health effects is low. Cats are amongst the most sensitive animal species. Due to the limited data and the severe adverse health effects at low dose levels, no No Observed Adverse Effect Level (NOAEL) or Lowest Observed Adverse Effect Level (LOAEL) could be established.

(4) Taking into account the conclusions of the scientific opinion, investigations have to be undertaken in order to collect information on the factors resulting in relative high levels of T2 and HT-2 toxin in cereals and cereal products and on the effects of feed and food processing. Therefore, Commission Recommendation 2013/165/EU ([2]) was adopted to recommend carrying out these investigations.

(5) Given the toxicity of T-2 and HT-2 toxin for cats it is appropriate to establish in addition a guidance value for the sum of T-2 and HT-2 toxin in cat feed to be applied for judging the acceptability of cat feed as regards the presence of T-2 and HT-2 toxin. Commission Recommendation 2006/576/EC ([3]) should therefore be amended,

HAS ADOPTED THIS RECOMMENDATION:

In the Annex of Recommendation 2006/576/EC, the following entry is added after the entry on Fumonisin B1 + B2:

'Mycotoxin	Products intended for animal feed	Guidance value in mg/kg (ppm) relative to a feedingstuff with a moisture content of 12 %
T-2 + HT-2 toxin	Compound feed for cats	0,05'

Done at Brussels, 4 November 2013.

For the Commission

Tonio BORG

Member of the Commission

([1]) EFSA Panel on Contaminants in the Food Chain (CONTAM); Scientific Opinion on risks for animal and public health related to the presence of T-2 and HT-2 toxin in food and feed, *EFSA Journal* 2011; 9(12):2481. [187 pp.] doi:10.2903/j.efsa.2011.2481. Available online: www.efsa.europa.eu/efsajournal

([2]) Commission Recommendation 2013/165/EU of 27 March 2013 on the presence of T-2 and HT-2 toxin in cereals and cereal products (OJ L 91, 3.4.2013, p. 12).

([3]) Commission Recommendation 2006/576/EC of 17 August 2006 on the presence of deoxynivalenol, zearalenone, ochratoxin A, T-2 and HT-2 and fumonisins in products intended for animal feeding (OJ L 229, 23.8.2006, p. 7).

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