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I

(Legislative acts)

REGULATIONS

**REGULATION (EU) No 510/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 April 2014****laying down the trade arrangements applicable to certain goods resulting from the processing of
agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) and Article 207(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⁾,Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Council Regulation (EC) No 1216/2009 ⁽³⁾ and Council Regulation (EC) No 614/2009 ⁽⁴⁾ need to be adapted as a consequence of the entry into force of the Lisbon Treaty, and in particular its introduction of a distinction between delegated and implementing acts. Further adaptations are needed to improve the clarity and transparency of the existing texts.
- (2) Until 31 December 2013, the main instrument of the common agricultural policy ('the CAP') for which the Treaty on the Functioning of the European Union (TFEU) provides was Council Regulation (EC) No 1234/2007 ⁽⁵⁾.
- (3) In the framework of the reform of the CAP, Regulation (EC) No 1234/2007 was replaced, with effect from 1 January 2014, by Regulation (EU) No 1308/2013 of the European Parliament and of the Council ⁽⁶⁾. Regulations (EC) No 1216/2009 and (EC) No 614/2009 should be adapted to take account of that Regulation in order to maintain the coherence of the trade arrangements with third countries, on the one hand, for agricultural products, and, on the other hand, for goods resulting from the processing of agricultural products.
- (4) Certain agricultural products are used for manufacturing both processed agricultural products and goods not listed in Annex I to the TFEU. It is necessary to take measures both under the CAP and under the common commercial policy in order to take account of the impact which trade in such products and goods has on the achievement of the objectives of Article 39 TFEU and of the effects which measures adopted to implement Article 43 TFEU have on the economic position of those products and goods, given the differences between the cost of procuring agricultural products in the Union and on the world market.
- (5) In order to take account of the different situations of agriculture and the food industry in the Union, a distinction is drawn, in the Union, between agricultural products listed in Annex I to the TFEU and processed agricultural products not listed in that Annex. The same distinction may not be drawn in certain third countries with which

⁽¹⁾ OJ C 327, 12.11.2013, p. 90.

⁽²⁾ Position of the European Parliament of 11 March 2014 (not yet published in the Official Journal), decision of the Council of 14 April 2014.

⁽³⁾ Council Regulation (EC) No 1216/2009 of 30 November 2009 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products (OJ L 328, 15.12.2009, p. 10).

⁽⁴⁾ Council Regulation (EC) No 614/2009 of 7 July 2009 on the common system of trade for ovalbumin and lactalbumin (OJ L 181, 14.7.2009, p. 8).

⁽⁵⁾ 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) (OJ L 299, 16.11.2007, p. 1).

⁽⁶⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

the Union concludes agreements. Provision should therefore be made for extending the general rules applicable to processed agricultural products not listed in Annex I to the TFEU to certain agricultural products listed in that Annex where an international agreement provides for the assimilation of those two types of products.

- (6) Where reference is made in this Regulation to international agreements concluded or provisionally applied by the Union in accordance with the TFEU, it is Article 218 TFEU which is being referred to.
- (7) In order to prevent or counteract the adverse effects which imports of certain processed agricultural products could have on the Union market and on the efficiency of the CAP, it should be possible to subject imports of such products to payment of an additional duty if certain conditions are fulfilled.
- (8) Ovalbumin and lactalbumin are processed agricultural products which are not included in Annex I to the TFEU. For reasons of harmonisation and simplification, the common system of trade for ovalbumin and lactalbumin laid down in Regulation (EC) No 614/2009 should be integrated in the trade arrangements applicable to certain goods resulting from the processing of agricultural products. In view of the fact that eggs can, to a large extent, be substituted by ovalbumin and, to a certain extent, by lactalbumin, the trade arrangements for ovalbumin and lactalbumin should correspond to those established for eggs.
- (9) Without prejudice to specific provisions concerning preferential trade arrangements under Regulation (EU) No 978/2012 of the European Parliament and of the Council ⁽¹⁾ as well as other autonomous trade arrangements of the Union, it is necessary to lay down the main rules governing the trade arrangements applicable to processed agricultural products and non-Annex I goods resulting from the processing of agricultural products. It is also necessary to provide for the fixing of reduced import duties and tariff quotas and the granting of export refunds in accordance with those main rules. Those rules and provisions should take account of the constraints on import duties and export subsidies arising from the commitments accepted by the Union under the WTO agreements and bilateral agreements.
- (10) Due to the close links between the markets for ovalbumin and lactalbumin and the market for eggs, it should be possible to require the presentation of an import licence for imports of ovalbumin and lactalbumin and suspend the inward processing arrangements for ovalbumin and lactalbumin where the Union market for those products or the market for eggs is disturbed or is liable to be disturbed by inward processing arrangements of ovalbumin and lactalbumin. It should be possible to make the issuing of import licences for ovalbumin and lactalbumin, and their release into free circulation covered by a licence, subject to requirements as to their origin, provenance, authenticity and quality characteristics.
- (11) In order to take into account the evolution of trade and market developments, the needs of the markets for ovalbumin and lactalbumin or the market for eggs and the results of the monitoring of the imports of ovalbumin and lactalbumin, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of rules making the import of ovalbumin and lactalbumin for release into free circulation subject to the presentation of an import licence, rules on the rights and obligations deriving from that import licence and its legal effects, the cases in which a tolerance applies as regards the obligation mentioned in the licence, rules making the issuing of an import licence and the release into free circulation subject to the presentation of a document issued by a third country or an entity certifying, inter alia, the origin, the provenance, the authenticity and the quality characteristics of the products, rules on the transfer of the import licences or restrictions on that transfer, the cases where the presentation of an import licence is not required and the cases where the lodging of the security guaranteeing that the products are imported within the period of validity of the licence is or is not required.
- (12) Certain processed agricultural products not listed in Annex I to the TFEU are obtained using agricultural products subject to the CAP. The duties applied to imports of those processed agricultural products should counterbalance the difference between the world market prices and the prices on the Union market for the agricultural products used in their production while ensuring the competitiveness of the processing industry concerned.
- (13) Under certain international agreements, the reduction or the phasing out of import duties for processed agricultural products is granted in respect of the agricultural component, the additional duties on sugar and flour and the ad valorem duty, within the framework of the commercial policy of the Union. It should be possible for those reductions to be established by reference to the agricultural components applicable to non-preferential trade.

⁽¹⁾ Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1).

- (14) The agricultural component of the import duty should counterbalance the difference between prices for the agricultural products used in the production of the processed agricultural products in question on the world market and on the Union market. Therefore, it is necessary to maintain a close link between the calculation of the agricultural component of the import duty applicable to processed agricultural products and that applicable to agricultural products imported in an unaltered state.
- (15) In order to implement the international agreements providing for the reduction or phasing out of import duties on processed agricultural products on the basis of specific agricultural products used or considered to have been used in the manufacturing of the processed agricultural products, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the establishment of a list of those agricultural products which are to be considered to have been used in the manufacture of the processed agricultural products, the establishment of the equivalent quantities and the rules for the conversion of other agricultural products to equivalent quantities of the specific agricultural products considered to have been used, the elements necessary for the calculation of the reduced agricultural component and the reduced additional duties and the methods of that calculation, and the negligible amounts for which the reduced agricultural components and the additional duties on sugar and flour are to be fixed at zero.
- (16) It is possible for import tariff concessions to be granted for unlimited quantities of the goods concerned or to be granted for limited quantities falling under a tariff quota. Where, under certain international agreements, tariff concessions are granted within tariff quotas, the quotas should be opened and managed by the Commission. For practical reasons, it is essential that the management of the non-agricultural part of the import duties of the goods for which tariff preferences have been agreed are subject to the same rules as the management of the agricultural component.
- (17) Due to the close links between the markets for ovalbumin and lactalbumin and the market for eggs, tariff quotas for ovalbumin and lactalbumin should be opened and managed in the same way as those for eggs under Regulation (EU) No 1308/2013. Where necessary, the method of management should take account of the supply needs of the Union market and of the need to preserve its equilibrium and should be based on methods used in the past, taking into account the rights arising under the WTO agreements.
- (18) In order to ensure equitable market access for operators and equal treatment of operators, to take account of the supply requirements of the Union market and to preserve the equilibrium of that market, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the conditions to be fulfilled in order to submit an application within the tariff quota and the rules on the transfer of rights within the tariff quota, the making of participation in the tariff quota subject to the lodging of a security and the specific characteristics, requirements or restrictions applicable to the tariff quotas.
- (19) In order to ensure that it is possible for exported products to benefit from special treatment on importation into a third country under certain conditions, pursuant to international agreements concluded by the Union in accordance with the TFEU, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of rules requiring the competent authorities of Member States to issue, on request and after appropriate checks, a document certifying that the conditions are met for products which, if exported, may benefit from a special treatment on importation into a third country if certain conditions are complied with.
- (20) It is possible that demand by the processing industries for agricultural raw materials cannot be covered completely by Union raw materials under competitive conditions. Council Regulation (EEC) No 2913/92 ⁽¹⁾ admits such goods under the inward processing arrangements subject to the fulfilment of the economic conditions defined by Commission Regulation (EEC) No 2454/93 ⁽²⁾. Regulation (EEC) No 2913/1992 is to be replaced by Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽³⁾, but only with effect from 1 June 2016. It is therefore appropriate to make reference to Regulation (EEC) No 2913/1992 in this Regulation, in particular in view of the fact that in the future, references to Regulation (EEC) No 2913/1992 are to be considered as references to Regulation (EU) No 952/2013. In clearly defined circumstances, economic conditions should be considered to be fulfilled for the admission of certain quantities of agricultural products under the inward processing arrangements. Those quantities should be determined on the basis of a supply balance. Fair access to the quantities available, equal treatment of operators and clarity should be assured by a system of inward processing certificates issued by Member States.

⁽¹⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

⁽²⁾ 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).

⁽³⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (21) In order to ensure the prudent and efficient management of the inward processing arrangements, taking account of the situation on the Union market for the commodities concerned and of the needs and practices of the processing industries, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the list of those agricultural products for which inward processing certificates may be issued, the rights derived from the inward processing certificates and its legal effects, the transfer of rights between operators and the rules necessary for the reliability and the efficiency of the inward processing certificate system as regards the authenticity of the certificate, its transfer or restrictions on that transfer.
- (22) Arrangements should be made for granting export refunds, within the limit set by the Union's WTO commitments, on certain agricultural products used in the manufacturing of goods not listed in Annex I to the TFEU in order not to penalise producers of those goods in view of the prices at which they are obliged to procure their supplies as a result of the CAP. Those refunds should only cover the difference between the price of an agricultural product on the Union market and on the world market. Those arrangements should therefore be established as part of the trade arrangements for certain goods resulting from the processing of agricultural products.
- (23) The list of non-Annex I goods qualifying for export refunds should be established taking account of the impact of the difference between the prices of the agricultural products used in their production on the Union market and on the world market and the need to counterbalance this difference in whole or in part in order to facilitate the exportation of the agricultural products used in the non-Annex I goods concerned.
- (24) It is necessary to ensure that no export refund is granted for imported non-Annex I goods released into free circulation which are re-exported, exported after processing or incorporated in other non-Annex I goods. As regards imported cereals, rice, milk and milk products or eggs released into free circulation it is necessary to ensure that no refund is granted where the goods are exported after processing or incorporated in non-Annex I goods.
- (25) The export refund rates for agricultural products exported in the form of non-Annex I goods should be fixed in accordance with the same rules and practical arrangements and in accordance with the same procedure as the export refund rates for agricultural products exported in the unaltered state pursuant to Regulation (EU) No 1308/2013 and Council Regulation (EU) No 1370/2013 ⁽¹⁾.
- (26) Given, on the one hand, the close relationship between non-Annex I goods and the agricultural products which are used in the manufacturing of those non-Annex I goods and, on the other hand, the differences between those goods and products, it is necessary to provide for the application of the horizontal provisions on export refunds, laid down in Regulation (EU) No 1308/2013, to non-Annex I goods.
- (27) In order to take account of the specific manufacturing processes and trading requirements of non-Annex I goods incorporating certain agricultural products, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission concerning rules on the characteristics of the non-Annex I goods to be exported and of the agricultural products used for their manufacture, rules on the determination of the export refunds for certain agricultural products exported after processing into non-Annex I goods, rules on the evidence needed to prove the composition of the exported non-Annex I goods, rules requiring a declaration of the use of certain imported agricultural products, rules on the assimilation of agricultural products to basic products and on the determination of the reference quantity of each of the basic products, and the application of horizontal rules on export refunds for agricultural products to non-Annex I goods.
- (28) Compliance with the export limits arising from international agreements concluded or provisionally applied by the Union in accordance with the TFEU should be ensured through the issuing of refund certificates for the reference periods laid down in the agreements, taking into account the annual amount provided for in respect of small exporters.

⁽¹⁾ Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products (OJ L 346, 20.12.2013, p. 12).

- (29) Export refunds should be granted up to the total amount available, depending on the particular situation of trade in non-Annex I goods. The system of refund certificates should facilitate the efficient management of the amounts of refunds.
- (30) Provision should be made for refund certificates issued by Member States to be valid throughout the Union and for their issuing to be subject to the lodging of a security guaranteeing that the operator will apply for refunds. Rules should be laid down for refunds under the advance fixing system to be granted for all the applicable refund rates and for the lodging and release of securities.
- (31) In order to monitor the expenditure on export refunds and the implementation of the refund certificate system, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of rules on the rights and obligations deriving from the refund certificates, rules on their transfer or restrictions on that transfer, the cases and situations where the presentation of a refund certificate or the lodging of a security is not required and the tolerance within which the obligation to apply for refunds does not apply.
- (32) When taking account of the impact of targeted measures relating to export refunds consideration should be given to undertakings processing agricultural products in general and the situation of small and medium-sized enterprises in particular. In view of the specific needs of small exporters, a global amount should be allocated to them for each budget year, and they should be exempted from the requirement to submit refund certificates under the export refund arrangements.
- (33) Where pursuant to Regulation (EU) No 1308/2013 measures with regard to the export of an agricultural product are adopted and the export of non-Annex I goods with a high content of the agricultural product is likely to hinder the achievement of the objectives of those measures, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of providing for equivalent measures to be taken with regard to exports of those non-Annex I goods, while complying with any obligations resulting from international agreements.
- (34) Under certain international agreements, the Union may limit import duties and amounts payable in respect of exports in order to counterbalance, in whole or in part, differences in the price of agricultural products used in the production of the processed agricultural products or the non-Annex I goods in question. For those processed agricultural products and non-Annex I goods, it is necessary to lay down that those amounts are to be determined jointly as a part of the overall duty and are to counterbalance the differences between the prices of the agricultural products that have to be taken into account on the market of the country or the region concerned and the Union market.
- (35) Since the composition of processed agricultural products and non-Annex I goods may be relevant for the right application of the trade arrangements laid down in this Regulation, it should be possible to establish their composition using qualitative and quantitative analyses.
- (36) In order to implement international agreements concluded by the Union and ensure clarity and coherence with amendments to Council Regulation (EEC) No 2658/87 ⁽¹⁾, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of supplementing and amending certain non-essential elements of this Regulation and its Annexes for those purposes.
- (37) Provision should be made for Member States to provide the Commission and each other with the information necessary for the implementation of the trade arrangements for processed agricultural products and non-Annex I goods.

⁽¹⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

- (38) In order to ensure the integrity of information systems and the authenticity and legibility of documents and associated data transmitted, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of defining the nature and type of the information to be notified, the categories of data to be processed, the maximum retention periods and the purpose of processing, the access rights to the information or information systems and the conditions of publication of this information.
- (39) Union law concerning the protection of individuals with regard to the processing of personal data and concerning the free movement of such data, in particular Directive 95/46/EC of the European Parliament and of the Council ⁽¹⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾ is applicable.
- (40) In order to avoid unnecessary administrative burdens for operators and national authorities the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of setting a threshold below which amounts are not to be levied or granted in respect of import duties, additional import duties, reduced import duties, export refunds and amounts to be levied or payable when offsetting a jointly established price.
- (41) Given the close relationship between non-Annex I goods and the agricultural products which are used in the manufacturing of those non-Annex I goods, it is necessary to provide for the application *mutatis mutandis* of horizontal provisions on securities, checks, verification, scrutiny and penalties laid down in and adopted on the basis of Regulation (EU) No 1306/2013 of the European Parliament and of the Council ⁽³⁾ to non-Annex I goods.
- (42) In order to ensure the application of horizontal rules adopted on the basis of Regulation (EU) No 1306/2013 to import licences and tariff quotas for processed agricultural products and to export refunds and refund certificates for non-Annex I goods, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of rules adapting, as necessary, the horizontal provisions on securities, checks, verification, scrutiny and penalties adopted on the basis of that Regulation.
- (43) When adopting delegated acts in accordance with Article 290 TFEU, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work prior to adopting delegated acts, 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.
- (44) In order to ensure uniform conditions for the implementation of this Regulation as regards imports, implementing powers should be conferred on the Commission in respect of measures determining the processed agricultural products to which additional import duties should apply in order to prevent or counteract adverse effects on the Union market, measures for the application of those additional import duties as regards time limits for proving the import price, for the submission of documentary evidence, and for determining the level of the additional import duties, measures fixing the representative prices and trigger volumes for the purposes of applying additional import duties, measures on the format and the content of the import licence for ovalbumin and lactalbumin, on the submission of applications and the issuing and use of those import licences, on their period of validity, on the procedure for lodging a security in respect of those licences and its amount, on the evidence needed to prove that the requirements for the use of those licences have been fulfilled, on the level of tolerance as regards compliance with the obligation to import the quantity mentioned in the import licence, and on the issuing of replacement and duplicate import licences, measures on the treatment of import licences by the Member States, as well as on the exchange of information needed for the management of the system of import licences for ovalbumin and lactalbumin, including the procedures relating to specific administrative assistance between Member States, to the calculation of import duties and to the fixing of the level of import duties for processed agricultural products in the implementation of international arrangements.

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

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

⁽³⁾ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

- (45) In order to ensure uniform conditions for the implementation of this Regulation as regards imports, implementing powers should also be conferred on the Commission in respect of measures laying down fixed quantities of agricultural products considered to have been used in the manufacturing of the processed agricultural products for the purposes of the reduction or phasing out of import duties applicable in preferential trade and establishing the appropriate documentary requirements, the annual tariff quotas and the method of administration to be used for the import of processed agricultural products and certain agricultural products in accordance with the Union's international commitments, procedures for the application of specific provisions laid down in international agreements or acts adopting the import or export regime in particular on the guarantees covering the nature, provenance and origin of the product, recognition of the document used for verifying these guarantees, the presentation of a document issued by the exporting country and on the destination and use of the products, measures laying down the period of validity of import licences, the procedure for lodging a security and its amount, the use of those import licences and, where necessary, the specific measures relating to, in particular, the conditions under which applications for import are to be submitted and authorisation granted within the tariff quota and the appropriate documentary requirements.
- (46) In order to ensure uniform conditions for the implementation of this Regulation as regards imports and inward processing arrangements, implementing powers should also be conferred on the Commission in respect of measures to manage the process guaranteeing that the quantities available within the tariff quotas are not exceeded, and measures to reallocate unused quantities of the tariff quota, safeguard measures against imports into the Union in accordance with Council Regulations (EC) No 260/2009 ⁽¹⁾ and (EC) No 625/2009 ⁽²⁾ or safeguard measures provided for in international agreements, measures concerning the quantity of agricultural products for which inward processing certificates may be issued, measures on the implementation of the inward processing certificate system as regards required documents and procedures for lodging applications and issuing inward processing certificates, measures on the management of the inward processing certificates by the Member States, the procedures relating to administrative assistance between the Member States, measures limiting the quantities for which inward processing certificates may be issued, rejecting quantities applied for in respect of those certificates and suspending the lodging of applications for inward processing certificates where large quantities are applied for, and measures suspending the use of processing or inward processing arrangements for ovalbumin and lactalbumin.
- (47) In order to ensure uniform conditions for the implementation of this Regulation as regards exports, implementing powers should be conferred on the Commission in respect of measures on the application of refund rates, on the calculation of the export refunds, on the assimilation of certain products to basic products and the determination of the reference quantity of basic products, on the application for, the issuing of and the management of certificates for the export of certain non-Annex I goods to certain destinations when provided for in an international agreement concluded or provisionally applied by the Union in accordance with the TFEU and on the treatment of disappearances of products and quantity losses during the manufacturing process and the treatment of by-products.
- (48) In order to ensure uniform conditions for the implementation of this Regulation as regards exports, implementing powers should also be conferred on the Commission in respect of measures defining the procedures for declaring and the evidence needed to prove the composition of the exported non-Annex I goods necessary for the implementation of the export refund system, the simplified evidence needed to prove arrival at destination in the case of differentiated refunds, measures on the application of horizontal provisions on export refunds for non-Annex I goods, measures on the implementation of the export refund certificate system as regards the submission, the format and the content of the application for the refund certificate, the format, the content and the period of validity of the refund certificate, the procedure for lodging applications and issuing refund certificates and for their use, the procedure for lodging a security and its amount, the level of tolerance for the amounts of export refund which were not applied for and the means of proving that the obligations derived from the refund certificate have been fulfilled.

⁽¹⁾ Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports (OJ L 84, 31.3.2009, p. 1).

⁽²⁾ Council Regulation (EC) No 625/2009 of 7 July 2009 on common rules for imports from certain third countries (OJ L 185, 17.7.2009, p. 1).

- (49) In order to ensure uniform conditions for the implementation of this Regulation as regards exports and certain general provisions, implementing powers should also be conferred on the Commission in respect of measures on the treatment of refund certificates by the Member States and the exchange of information and the specific administrative assistance between the Member States as regards the refund certificates, measures on the fixing of the global amount allocated to small exporters and the individual threshold of exemption from the presentation of refund certificates, measures on the issuing of replacement refund certificates and duplicate refund certificates, measures limiting the amounts for which refund certificates may be issued, rejecting amounts applied for in respect of those certificates and suspending the lodging of applications for refund certificates where amounts that exceed available amounts fixed on the basis of the commitments resulting from international agreements, are applied for, necessary procedural rules and technical criteria for the application of other measures with regard of exports, measures on fixing the applicable duty in case of direct offsetting in preferential trade and the related amounts payable on exports to the country or region concerned, measures ensuring that processed agricultural products declared for export under a preferential trade agreement are not in fact exported under a non-preferential agreement or vice versa, measures concerning the methods of qualitative and quantitative analysis of processed agricultural products and non-Annex I goods, the technical provisions necessary for their identification and the procedures for the purpose of their classification in the Combined Nomenclature.
- (50) In order to ensure uniform conditions for the implementation of this Regulation as regards exports and certain general provisions, implementing powers should also be conferred on the Commission in respect of measures necessary for the implementation of the obligations of the Commission and the Member States to exchange information relating to the methods of notification, the rules on the information to be notified, the arrangements for the management of the information to be notified, the content, form, timing, frequency and deadlines of the notifications and on the arrangements for transmitting or making information and documents available subject to the protection of personal data and the legitimate interest of undertakings in the protection of their business secrets and measures on the application of horizontal provisions on securities, checks, verification, scrutiny and penalties adopted pursuant to Regulation (EU) No 1306/2013 to import licences and tariff quotas for processed agricultural products and to export refunds and refund certificates for non-Annex I goods.
- (51) Given their special nature, implementing acts in respect of measures to fix the representative prices and trigger volumes for the purposes of applying additional import duties and the level of import duties in accordance with the Union's international commitments, measures limiting the quantities for which inward processing certificates and refund certificates may be issued, rejecting quantities applied for in respect of those certificates and suspending the lodging of applications for those certificates, and measures to manage the process guaranteeing that the quantities available within the tariff quota are not exceeded and to reallocate unused quantities of the tariff quota, should be adopted without applying Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾. All other implementing acts under this Regulation should be adopted in accordance with Regulation (EU) No 182/2011.
- (52) The examination procedure should be used for the adoption of the implementing acts to be adopted in accordance with Regulation (EU) No 182/2011, given that those acts relate to the CAP, as referred to in point (ii) of Article 2(2)(b) of that Regulation.
- (53) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to safeguard measures against imports of processed agricultural products into the Union or to a disturbance or a potential disturbance of the Union market requiring the suspension of the use of processing or inward processing arrangements for ovalbumin and lactalbumin, imperative grounds of urgency so require.
- (54) In accordance with the principle of proportionality it is necessary and appropriate for the achievement of the objectives of this Regulation to lay down the trade arrangements applicable to certain goods resulting from the processing of agricultural products. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union.

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

- (55) In order to maintain the status quo, this Regulation should include annexes containing each of the following: a list with processed agricultural products, which replaces Annex II to Regulation (EC) No 1216/2009; a list with non-Annex I goods, which replaces Annex II to Commission Regulation (EU) No 578/2010⁽¹⁾ and Annex XX to Regulation (EC) No 1234/2007; a list with the basic products used for the manufacture of non-Annex I goods, which replaces Annex I to Regulation (EU) No 578/2010; a list with processed agricultural products on which additional import duties may be levied which replaces Annex III to Regulation (EC) No 1216/2009; and a list with agricultural products used for the manufacture of processed agricultural products, which replaces Annex I to Regulation (EC) No 1216/2009.
- (56) Regulations (EC) No 1216/2009 and (EC) No 614/2009 should be repealed accordingly.
- (57) In view of the fact that, prior to the entry into force of this Regulation, the necessary coherence has been ensured through the transitional provision in point (i) of the second subparagraph of Article 230(1) of the Regulation (EU) No 1308/2013, this Regulation should start to apply as early as possible following the adoption of the CAP reform package Regulations, while fully respecting the interest of legal certainty and economic operators' legitimate expectations,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

This Regulation lays down the trade arrangements applicable to imports of processed agricultural products and exports of non-Annex I goods and agricultural products incorporated in those non-Annex I goods.

This Regulation also applies to imports of agricultural products covered by an international agreement concluded, or provisionally applied, by the Union in accordance with the TFEU and which provides for the assimilation of those products to processed agricultural products subject to preferential trade.

Article 2

Definitions

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

- (a) 'agricultural products' means those products referred to in Article 1 of Regulation (EU) No 1308/2013;
- (b) 'processed agricultural products' means those products listed in Annex I to this Regulation;
- (c) 'non-Annex I goods' means those products not listed in Annex I to the TFEU which are listed in the first and second column of Annex II to this Regulation;
- (d) 'basic products' means those agricultural products listed in Annex III to this Regulation;
- (e) 'agricultural component' means either that part of the import duty applicable to processed agricultural products corresponding to the import duties applicable to agricultural products listed in Annex V to this Regulation or, where relevant, the reduced duties applicable to those agricultural products originating in the countries concerned, for the quantities of the agricultural products used or considered to have been used;
- (f) 'non-agricultural component' means the part of the charge corresponding to the Common Customs Tariff duties, reduced by the agricultural component defined in point (e);
- (g) 'additional duties on sugar and flour' means the additional duty on sugar (AD S/Z) and the additional duty on flour (AD F/M) referred to in point B.6 of Section 1 of Part One, of Annex I to Regulation (EEC) No 2658/87 and laid down in Table 2 of Annex 1 of Section I of Part Three of Annex I to that Regulation;
- (h) 'ad valorem duty' means the part of the import duty that is expressed as a percentage rate of the customs value;
- (i) 'Product Group 1' means whey in powder, granules or other solid forms, not containing added sugar or other sweetening matter, of CN code ex 0404 10 02 to CN code ex 0404 10 16;

⁽¹⁾ Commission Regulation (EU) No 578/2010 of 29 June 2010 on the implementation of Council Regulation (EC) No 1216/2009 as regards the system of granting export refunds for certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds (OJ L 171, 6.7.2010, p. 1).

- (j) 'Product Group 2' means milk in powder, granules or other solid forms, not containing added sugar or other sweetening matter, of a fat content, by weight, not exceeding 1,5 %, other than in immediate packings of a net content not exceeding 2,5 kg, of CN code ex 0402 10 19;
- (k) 'Product Group 3' means milk in powder, granules or other solid forms, not containing added sugar or other sweetening matter, of a fat content, by weight, of 26 %, other than in immediate packings of a net content not exceeding 2,5 kg, of CN code ex 0402 21 18;
- (l) 'Product Group 6' means butter, of a fat content by weight of 82 %, of CN code ex 0405 10;

CHAPTER II

IMPORTS OF PROCESSED AGRICULTURAL PRODUCTS

SECTION I

General Provisions For Imports

Subsection I

import duties on processed agricultural products

Article 3

Components of import duties

1. For processed agricultural products listed in Table 1 of Annex I, the import duties fixed in the Common Customs Tariff shall consist of an agricultural component which is not part of an ad valorem duty and a non-agricultural component which is an ad valorem duty.
2. For processed agricultural products listed in Table 2 of Annex I, the import duties fixed in the Common Customs Tariff shall consist of an ad valorem duty and an agricultural component which is part of the ad valorem duty. Where, for processed agricultural products listed in Table 2 of Annex I, no ad valorem duty exists, the agricultural component for such products shall be deemed to be a part of the specific duty on those products.

Article 4

Maximum rate of import duty

1. Where a maximum rate of duty is to be applied, the calculation method for determining that maximum rate of duty shall be fixed in the Common Customs Tariff pursuant to Article 31 TFEU.
2. Where, for processed agricultural products listed in Table 1 of Annex I, the maximum rate of duty consists of an additional duty on sugar and flour, the calculation method for determining that additional duty shall be fixed in the Common Customs Tariff pursuant to Article 31 TFEU.

Article 5

Additional import duties intended to prevent or counteract adverse effects on the Union market

1. The Commission may adopt implementing acts, determining the processed agricultural products listed in Annex IV to which, when imported subject to the rate of duty laid down in the Common Customs Tariff, an additional import duty is to apply. Those implementing acts shall only be adopted in order to prevent or counteract adverse effects on the Union market which may result from such imports and if:

- (a) the imports are made at a price below the level notified by the Union to the WTO ('the trigger price'); or
- (b) the volume of imports in any year exceeds a certain level ('the trigger volume').

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

2. Additional import duties shall not be imposed in accordance with paragraph 1 where the imports are unlikely to disturb the Union market, or where the effects of such additional import duties would, in view of the intended objective, be disproportionate.

3. For the purposes of paragraph 1(a), import prices shall be determined on the basis of the c.i.f. import prices of the consignment under consideration.

C.i.f. import prices shall be checked against the representative prices for the product on the world market or on the Union import market for that product.

The representative prices shall be determined at regular intervals on the basis of data collected under the Community surveillance system established pursuant to Article 308d of Commission Regulation (EEC) No 2454/1993 ⁽¹⁾.

4. The trigger volume shall be based on market access opportunities defined as imports as a percentage of the corresponding domestic consumption during the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or seem likely to arise.

5. The Commission may adopt implementing acts containing measures necessary for the application of this Article, in particular those concerning the time limits for proving the import price and for submitting documentary evidence. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

6. The Commission may adopt implementing acts without applying the procedure referred to in Article 44(2) or (3), as regards the products identified in accordance with paragraph 1:

- (a) fixing the representative prices and trigger volumes for the purposes of applying additional import duties;
- (b) fixing the level of the additional import duties in accordance with the rules set out in international agreements concluded or provisionally applied by the Union in accordance with the TFEU.

7. The Commission shall publish the trigger prices referred to in paragraph 1(a) in the *Official Journal of the European Union*.

Subsection II

import of ovalbumin and lactalbumin

Article 6

Imports licences for ovalbumin and lactalbumin

1. The import for release into free circulation of ovalbumin and lactalbumin may be made subject to presentation of an import licence, where such licence is necessary for the management of the markets concerned and, in particular, for the monitoring of trade in those products.

2. Without prejudice to measures taken in accordance with Article 14, Member States shall issue the import licences referred to in paragraph 1 to any applicant established in the Union, irrespective of that applicant's place of establishment, unless an act adopted in accordance with Article 43(2) TFEU provides otherwise.

3. The import licences referred to in paragraph 1 shall be valid throughout the Union.

4. The issuing of the import licences referred to in paragraph 1 and the release into free circulation of the goods covered by the licence may be made subject to requirements as to the origin and provenance of the products concerned and to the presentation of a document issued by a third country or an entity that certifies, inter alia, the origin, the provenance, the authenticity and the quality characteristics of the products.

Article 7

Security in respect of import licences

1. The issuing of the import licences referred to in Article 6 may be made subject to the lodging of a security guaranteeing that the economic operator will import the products within the period of validity of the import licence.

⁽¹⁾ 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).

2. The security shall be forfeited in whole or in part if the products are not imported within the period of validity of the import licence.

3. However, the security shall not be forfeited if the products were not imported within that period due to force majeure or if the quantity which was not imported within that period is within the level of tolerance.

Article 8

Delegated powers

The Commission shall be empowered to adopt delegated acts, in accordance with Article 42, concerning:

- (a) rules making the import of ovalbumin and lactalbumin for release into free circulation subject to presentation of an import licence;
- (b) rules on the rights and obligations deriving from the import licence and its legal effects;
- (c) the cases in which a tolerance applies as regards compliance with the obligation to import the quantity mentioned in the licence or in which the origin is to be indicated in the licence;
- (d) rules on the issuing of the import licence or rules making the release into free circulation of the goods covered by the licence subject to the presentation of a document issued by a third country or an entity certifying, inter alia, the origin, the provenance, the authenticity and the quality characteristics of the products;
- (e) rules on the transfer of the import licence or restrictions on such transfer;
- (f) the cases in which the presentation of an import licence is not required;
- (g) rules making the issuing of the import licences referred to in Article 6 subject to the lodging of a security.

Article 9

Implementing powers

The Commission shall, where necessary, adopt implementing acts, concerning:

- (a) the format and the content of the import licence;
- (b) the submission of applications for import licences, the issuing of those licences and their use;
- (c) the period of validity of the import licence, the amount of security to be lodged and the procedure for lodging it;
- (d) the evidence needed to prove that the requirements for the use of import licences have been fulfilled;
- (e) the level of tolerance as regards compliance with the obligation to import the quantity mentioned in the import licence;
- (f) the issuing of replacement import licences and duplicate import licences;
- (g) the treatment of import licences by Member States and the exchange of information needed for the management of the system, including the procedures relating to the specific administrative assistance between Member States.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

SECTION II

Preferential Trade

Subsection I

reduction of import duties*Article 10***Reduction and phasing out of agricultural components, ad valorem duties and additional duties**

1. Where an international agreement concluded or provisionally applied by the Union in accordance with the TFEU:
 - (a) provides for a reduction or consecutive reductions leading to a phasing out of import duties for processed agricultural products; and
 - (b) sets out the products eligible for these reductions, the quantities of goods, the value of any quotas to which these reductions apply, the method of calculating such quantities or values or the factors determining the reduction in the agricultural component, in the additional duties on sugar and flour, or in the ad valorem duty,

the agricultural component, the additional duties on sugar and flour, or the ad valorem duty may be subject to the reduction or consecutive reductions leading to a phasing out that are provided for in the case of import duties for processed agricultural products.

For the purpose of this Article, the agricultural component may also include the agricultural element as referred to in point B 1 of Section I of Part One of Annex I to Regulation (EEC) No 2658/87 and laid down in Table 2 of Annex 1 to Section I of Part Three of Annex I to that Regulation.

2. Where an international agreement concluded or provisionally applied by the Union in accordance with the TFEU provides for a reduction or phasing out of the agricultural components with regard to the products listed in Table 2 of Annex I to this Regulation, the duty consisting of the agricultural component, which is part of the ad valorem duty, shall be replaced by a non-ad valorem agricultural component.

*Article 11***Quantities actually used or considered to have been used**

1. The reductions or phasing out of agricultural components or of additional duties on sugar and flour in accordance with Article 10(1) shall be determined on the basis of the following:
 - (a) the quantities of the agricultural products listed in Annex V which have been actually used or are considered to have been used in the manufacturing of the processed agricultural product;
 - (b) the duties that apply to the agricultural products referred to in point (a) and which are used for calculating the reduced agricultural component and additional duties on sugar and flour in the case of certain preferential trade arrangements.
2. The agricultural products which are to be considered to have been used in the manufacture of the processed agricultural product shall be selected, from agricultural products actually used in the manufacture of the processed agricultural product, on the basis of their importance in international trade and of the extent to which their price levels are representative of the price levels of all the other agricultural products used in the manufacture of that processed agricultural product.
3. The quantities of agricultural products listed in Annex V and actually used, shall be converted to equivalent quantities of the specific agricultural products considered to have been used.

*Article 12***Delegated powers**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 42, concerning:

- (a) the establishment of a list of those agricultural products listed in Annex V which are to be considered to have been used in the manufacture of the processed agricultural products on the basis of the selection criteria laid down in Article 11(2);
- (b) the establishment of the equivalent quantities and the rules for the conversion provided for in Article 11(3);

- (c) the elements necessary for the calculation of the reduced agricultural component and the reduced additional duties on sugar and flour and the establishing of the methods of that calculation;
- (d) the negligible amounts for which the reduced agricultural components and additional duties on sugar and flour shall be fixed at zero.

Article 13

Implementing powers

1. The Commission shall, where appropriate, adopt implementing acts, containing measures to implement international agreements concluded or provisionally applied by the Union in accordance with the TFEU concerning the calculation of import duties for processed agricultural products which are subject to reduction in accordance with Article 10(1) and (2) of this Regulation.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

2. The Commission may, where necessary, adopt implementing acts laying down:

- (a) the fixed quantities of the agricultural products, referred to in Article 12(a), which are considered to have been used in the manufacturing of the processed agricultural products;
- (b) the quantities of the agricultural products, referred to in Article 12(a), which are considered to have been used in the manufacturing of the processed agricultural products, for each possible composition of those processed agricultural products for which fixed quantities of the specific agricultural products cannot be established in accordance with point (a) of this subparagraph;
- (c) documentary requirements.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

3. The Commission may adopt implementing acts, without applying the procedure referred to in Article 44(2) or (3), fixing, in accordance with the rules set out in an international agreement concluded or provisionally applied by the Union in accordance with the TFEU and those rules adopted pursuant to paragraph 1 of this Article, the level of the import duty to be applied.

Subsection II

tariff quotas and special treatment of imports by third countries

Article 14

Opening and management of tariff quotas

1. Tariff quotas for the import of processed agricultural products and of agricultural products referred to in the second paragraph of Article 1, for their release into free circulation in the Union, resulting from international agreements concluded or provisionally applied by the Union in accordance with the TFEU shall be opened and managed by the Commission in accordance with Articles 15 and 16.

2. The tariff quotas referred to in paragraph 1 shall be managed in a manner which avoids any discrimination between operators and which gives due weight to the supply requirements of the Union market and the need to preserve the equilibrium of that market.

3. The tariff quotas referred to in paragraph 1 shall be managed by applying one of the following methods, another appropriate method, or a combination of any of them:

- (a) a method of allocation based on the chronological order of the submission of applications ('first come, first served principle');
- (b) a method of allocation of quotas in proportion to the quantities requested in the applications ('simultaneous examination method');
- (c) a method of allocation based on traditional trade patterns ('traditional/newcomers method').

*Article 15***Delegated powers**

1. The Commission shall be empowered to adopt delegated acts, in accordance with Article 42, concerning:
 - (a) the conditions and eligibility requirements that an operator is required to fulfil in order to submit an application within the tariff quota set out in an international agreement, as referred to in Article 14(1);
 - (b) the rules on the transfer of rights between operators and, where necessary, the limitations on that transfer within the management of the tariff quota, set out in an international agreement, as referred to in Article 14(1);
 - (c) the provisions making the participation in the tariff quota set out in an international agreement, as referred to in Article 14(1), subject to the presentation of an import licence and to the lodging of a security;
 - (d) the specific characteristics, the requirements or the restrictions applicable to the tariff quota set out in the international agreement, as referred to in Article 14(1).
2. The Commission shall be empowered to adopt delegated acts, in accordance with Article 42, requiring the competent authorities of Member States, on request and after carrying out appropriate checks, to issue a document certifying that a product fulfils the conditions for benefitting from special treatment on importation into a third country.

*Article 16***Implementing powers**

1. The Commission shall adopt implementing acts, laying down:
 - (a) the annual tariff quotas, which shall, if necessary, be suitably phased in over the year, and the method of administration to be used;
 - (b) procedures for the application of the specific provisions laid down in the international agreement or legal act adopting the import or export regime, in particular those concerning:
 - (i) guarantees covering the nature, provenance and origin of the product;
 - (ii) the recognition of any document used to verify the guarantees referred to in point (i);
 - (iii) the presentation of a document issued by the exporting country;
 - (iv) the destination and use of the products;
 - (c) the period of validity of the import licences to be presented in accordance with Article 15(1)(c);
 - (d) the procedure for lodging a security in accordance with Article 15(1)(c), and its amount;
 - (e) the use of import licences to be presented in accordance with Article 15(1)(c) and where necessary, specific measures relating, in particular, to the conditions under which applications for importation shall be submitted and authorisation granted within the tariff quota;
 - (f) documentary requirements;
 - (g) necessary measures concerning the content, form, issuing and use of the document referred to in Article 15(2).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

2. The Commission shall adopt implementing acts, without applying the procedure referred to in Article 44(2) or (3):
 - (a) managing the process guaranteeing that the quantities available within the tariff quota are not exceeded, in particular by fixing an allocation coefficient to each application when the available quantities are reached, rejecting pending applications and, where necessary, suspending the submission of applications;
 - (b) reallocating unused quantities of the tariff quota.

SECTION III

Safeguard Measures

Article 17

Safeguard measures

1. The Commission shall, subject to paragraph 3 of this Article, adopt implementing acts containing safeguard measures against imports of processed agricultural products into the Union. In order to ensure the uniformity of the common commercial policy, those implementing acts shall be consistent with Regulations (EC) No 260/2009 and (EC) No 625/2009. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).
2. Save as otherwise provided for in any other legal act of the European Parliament and the Council and any other legal act of the Council, the Commission shall, subject to paragraph 3 of this Article, adopt implementing acts containing safeguard measures against imports of processed agricultural products into the Union provided for in international agreements concluded or provisionally applied by the Union in accordance with the TFEU. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).
3. The Commission may take the measures referred to in paragraphs 1 and 2 at the request of a Member State or on its own initiative.

Where the Commission receives a request from a Member State for the adoption of the implementing acts referred to in paragraphs 1 or 2, or both, it shall adopt implementing acts containing its decision thereon within five working days following receipt of the request. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

4. On duly justified imperative grounds of urgency, relating to the safeguard measures provided for in paragraphs 1 and 2, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 44(3).
5. If the Commission wishes to revoke or to amend safeguard measures adopted pursuant to paragraphs 1 to 4, it shall adopt implementing acts in order to do so. Those implementing acts shall be adopted in accordance with Article 44(2), except where there are duly justified imperative grounds of urgency, in which case those implementing acts shall be adopted in accordance with Article 44(3).

SECTION IV

Inward Processing

Subsection I

inward processing without examination of the economic conditions

Article 18

Inward processing of agricultural products without examination of the economic conditions

1. Where non-Annex I goods are obtained from agricultural products listed in Annex III to this Regulation under inward processing, the economic conditions referred to in Article 117(c) of Regulation (EEC) No 2913/92 shall be deemed to have been fulfilled on presentation of an inward processing certificate for those agricultural products.
2. Inward processing certificates shall be issued for agricultural products used in the manufacturing of the non-Annex I goods within the limits of quantities determined by the Commission.

Those quantities shall be determined by balancing, on the one hand, the compulsory budgetary limits for export refunds for non-Annex I goods and, on the other hand, the expected expenditure requirements for export refunds for non-Annex I goods, and in particular, by taking account of:

- (a) the estimated volume of exports of the non-Annex I goods concerned;
- (b) the Union market and world market situation of the relevant basic products, where applicable;
- (c) economic and regulatory factors.

The quantities shall be reviewed at regular intervals in order to take account of developments in economic and regulatory factors.

3. Member States shall issue the inward processing certificates referred to in paragraph 1 to any applicant for a certificate who is established in the Union, irrespective of that applicant's place of establishment.

Inward processing certificates shall be valid throughout the Union.

Article 19

Delegated powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 42 concerning:

- (a) a list of those agricultural products used in the manufacturing of non-Annex I goods, for which inward processing certificates may be issued;
- (b) the rights derived from the inward processing certificate and its legal effects;
- (c) the transfer of rights derived from inward processing certificates between operators;
- (d) the rules necessary for the reliability and the efficiency of the inward processing certificate system, concerning the authenticity of the certificate, its transfer or restrictions on its transfer.

Article 20

Implementing powers

1. The Commission shall, where necessary, adopt implementing acts, concerning:

- (a) the determination, pursuant to Article 18(2), of the quantity of agricultural products for which inward processing certificates may be issued;
- (b) the format and the content of applications for inward processing certificates;
- (c) the format, the content and the period of validity of the inward processing certificates;
- (d) the documents required and the procedure for lodging applications and for issuing inward processing certificates;
- (e) the management of the inward processing certificates by the Member States;
- (f) the procedures relating to administrative assistance between Member States;

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

2. Where quantities that exceed those determined in accordance with paragraph 1(a), are applied for, the Commission may adopt implementing acts, without applying the procedure referred to in Article 44(2) or (3), limiting the quantities in respect of which inward processing certificates may be issued, rejecting quantities applied for in respect of inward processing certificates and suspending the lodging of applications for inward processing certificates for the product concerned.

Subsection II

suspension of inward processing arrangements*Article 21***Suspension of inward processing arrangements for ovalbumin and lactalbumin**

1. Where the Union market is disturbed or is liable to be disturbed by inward processing arrangements, the Commission may, at the request of a Member State or on its own initiative, adopt implementing acts, fully or partially suspending the use of inward processing arrangements for ovalbumin and lactalbumin. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2)

Where the Commission receives a request from a Member State for the adoption of the implementing acts referred to in the first subparagraph, it shall adopt implementing acts, containing its decision thereon within five working days following the receipt of the request. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

2. On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts relating to suspension referred to in paragraph 1 in accordance with the procedure referred to in Article 44(3).

CHAPTER III

EXPORTS

SECTION I

Export Refunds*Article 22***Eligible goods and products**

1. Where non-Annex I goods are exported, the agricultural products listed in points (i), (ii), (iii), (v) and (vii) of Article 196(1)(a) of Regulation (EU) No 1308/2013 which have been used in the manufacturing of those non-Annex I goods shall qualify for export refunds pursuant to Article 196 of that Regulation, as set out in Annex II to this Regulation, and Article 196(1)(b), (2) and (3) of Regulation (EU) No 1308/2013 shall apply.

2. The export refunds referred to in paragraph 1 shall not be granted in respect of the following:

- (a) imported non-Annex I goods which are considered to be in free circulation in accordance with Article 29 TFEU and which are re-exported;
- (b) imported non-Annex I goods which are considered to be in free circulation in accordance with Article 29 TFEU and which are exported after processing or incorporated in other non-Annex I goods;
- (c) imported cereals, rice, milk and milk products or eggs which are considered to be in free circulation in accordance with Article 29 TFEU and which are exported after processing or incorporated in non-Annex I goods.

*Article 23***Determination of the export refunds**

1. The export refunds referred to in Article 22 shall be determined, by the competent authorities of the Member States, on the basis of the composition of the exported goods and the export refund rates fixed for each basic product of which the exported goods consist.

2. For the determination of the export refunds, products listed in points (i), (ii), (iii), (v) and (vii) of Article 196(1)(a) of Regulation (EU) No 1308/2013 which are not listed in Annex III to this Regulation shall be assimilated to basic products or to products derived from the processing of basic products.

*Article 24***Horizontal rules and export refund rates**

1. The horizontal rules on export refunds for agricultural products laid down in Article 199(3) of Regulation (EU) No 1308/2013 shall apply to non-Annex I goods.
2. Measures shall be taken in accordance with Article 198 of Regulation (EU) No 1308/2013 and Article 13 of Regulation (EU) No 1370/2013 to fix export refund rates for the basic products.
3. For the calculation of the export refunds, agricultural products which are listed in points (i), (ii), (iii), (v) and (vii) of Article 196(1)(a) of Regulation (EU) No 1308/2013 and not listed in Annex III to this Regulation, and which are derived from or assimilated to basic products or to products derived from the processing of basic products, in accordance with Article 23(2) shall be converted into basic products.

*Article 25***Certificates regarding exports of specific non-Annex I goods to specific destinations**

Where an international agreement concluded or provisionally applied by the Union in accordance with the TFEU so requires, the competent authorities of the Member State concerned shall, at the request of the party concerned, issue a certificate stating whether export refunds have been paid in respect of specific non-Annex I goods exported to specific destinations.

*Article 26***Delegated powers**

The Commission shall be empowered to adopt delegated acts in accordance with Article 42 concerning:

- (a) rules on the characteristics of the non-Annex I goods to be exported and of the agricultural products used for their manufacture;
- (b) rules on the determination of the export refunds for agricultural products that are exported after processing into non-Annex I goods;
- (c) rules on the evidence needed to prove the composition of the exported non-Annex I goods;
- (d) rules requiring a declaration of the use of certain imported agricultural products;
- (e) rules on the assimilation of agricultural products which are listed in points (i), (ii), (iii), (v) and (vii) of Article 196(1)(a) of Regulation (EU) No 1308/2013, and which are not listed in Annex III to this Regulation, to basic products and on the determination of the reference quantity of each of the basic products;
- (f) the application of horizontal rules on export refunds for agricultural products, adopted pursuant to Article 202 of Regulation (EU) No 1308/2013, to non-Annex I goods.

*Article 27***Implementing powers**

The Commission shall, where necessary, adopt implementing acts, concerning:

- (a) the application of the refund rates where the characteristics of the components of the products referred to in point (c) of this Article and of the non-Annex I goods need to be taken into account when calculating the export refunds;
- (b) the calculation of the export refunds for:
 - (i) basic products;
 - (ii) products derived from the processing of basic products;
 - (iii) products assimilated to the products referred to in point (i) or (ii);

- (c) the assimilation of the products referred to in point (b)(ii) and (iii), which are listed in points (i), (ii), (iii), (v) and (vii) of Article 196(1)(a) of Regulation (EU) No 1308/2013, and which are not listed in Annex III to this Regulation, to basic products;
- (d) the determination, for each of the basic products, of the reference quantity that serves as a basis for the determination of export refunds, on the basis of the quantity of the product actually used in the manufacturing of the goods exported or on a fixed basis, as set out in Annex II;
- (e) the application for, the issuing of and the management of certificates referred to in Article 25;
- (f) the treatment of disappearances of products and quantity losses during the manufacturing process and the treatment of by-products;
- (g) the procedure for declaring and the evidence needed to prove the composition of the exported non-Annex I goods necessary for the implementation of the export refund system;
- (h) the simplified evidence needed to prove arrival at destination, in the case of refunds differentiated according to destination;
- (i) the application of horizontal provisions on export refunds for agricultural products adopted pursuant to Article 203 of Regulation (EU) No 1308/2013 to export refunds for non-Annex I goods;

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

SECTION II

Refund Certificates

Article 28

Refund certificates

1. Export refunds on agricultural products incorporated in non-Annex I goods shall be granted where an application for export refunds has been submitted and a refund certificate which was valid at the time of export, is presented.

Small exporters, including refund certificate holders, applying for limited amounts of export refunds that are too small to be covered by refund certificates, which do not endanger compliance with the budgetary constraints, shall be exempted from the presentation of a refund certificate. Those exemptions shall not exceed a global amount allocated to small exporters.

2. Member States shall issue a refund certificate to any applicant for a refund certificate established in the Union, irrespective of the applicant's place of establishment. Refund certificates shall be valid throughout the Union.

Article 29

Applicable refund rates

1. The rate of the refund to be applied shall be that which applies on the day on which the export declaration for the non-Annex I goods is accepted by the customs authorities, unless an application has been made in accordance with paragraph 2 for the refund rate to be fixed in advance.
2. An application for the fixing in advance of the rate of refund may be submitted at the time of the application for a refund certificate, on the day on which the refund certificate is granted or at any time after that day but before the end of the validity period of the refund certificate.
3. The rate shall be fixed in advance at the rate applicable on the day of the application for advance fixing. The refund rates that have been fixed in advance shall apply from that day on to all the refund rates covered by the refund certificate.
4. Export refunds on non-Annex I goods shall be granted on the basis of:
 - (a) the refund rates to be applied in accordance with paragraph 1 for the basic products incorporated in those non-Annex I goods where the refund rates have not been fixed in advance; or
 - (b) the refund rates, fixed in advance in accordance with paragraph 3, for the basic products incorporated in those non-Annex I goods.

*Article 30***Security in respect of refund certificates**

1. Refund certificates shall be issued subject to the lodging of a security guaranteeing that the economic operator will submit an application for export refunds to the competent authorities of the Member State concerned in respect of exports of non-Annex I goods carried out within the period of validity of the refund certificate.
2. The security shall be forfeited in whole or in part if the export refund was not applied for or was applied for only partially in respect of exports carried out within the period of validity of the refund certificate.

Notwithstanding the first subparagraph, the security shall not be forfeited:

- (a) if it was due to force majeure that the goods were not exported, or were only partially exported, or that an export refund was not applied for or was applied for only partially;
- (b) if the amounts of export refund which were not applied for are within the level of tolerance.

*Article 31***Delegated powers**

The Commission shall be empowered to adopt delegated acts in accordance with Article 42 concerning:

- (a) rules on the rights and obligations deriving from the refund certificate, including the guarantee, subject to fulfilment of all conditions, that the export refunds will be paid and the obligation to apply for export refunds for agricultural products exported after processing into non-Annex I goods;
- (b) rules on the transfer of the refund certificate or restrictions on such transfer;
- (c) the cases and situations where the presentation of a refund certificate is not required under Article 28(1), taking into account the purpose of the operation, the amounts involved and the global amount that may be granted to small exporters;
- (d) the cases and situations where, by way of derogation from Article 30, the lodging of a security is not required;
- (e) rules on the tolerance referred to in point (b) of the second subparagraph of Article 30(2) having regard to the need to comply with budgetary constraints.

*Article 32***Implementing powers**

1. The Commission shall, where necessary, adopt implementing acts, concerning:
 - (a) the submission, the format and the content of the application for the refund certificate;
 - (b) the format, the content and the period of validity of the refund certificate;
 - (c) the procedure for lodging applications, as well as the procedure for issuing refund certificates and for their use;
 - (d) the procedure for the lodging of a security and its amount;
 - (e) the level of tolerance referred to in point (b) of the second subparagraph of Article 30(2), having regard to the need to comply with budgetary constraints;
 - (f) the means of proving that the obligations derived from refund certificates have been fulfilled;
 - (g) the treatment of refund certificates by Member States and the exchange of information needed for the management of the system, including the procedures relating to specific administrative assistance between Member States;
 - (h) the fixing of the global amount allocated to small exporters and the individual threshold of exemption from the presentation of refund certificates in accordance with the second subparagraph of Article 28(1);

- (i) the issuing of replacement refund certificates and duplicate refund certificates.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

2. Where amounts are applied for that exceed available amounts fixed on the basis of the commitments resulting from the international agreements concluded in accordance with the TFEU, the Commission may adopt implementing acts, without applying the procedure referred to in Article 44(2) or (3), limiting the amounts for which refund certificates may be issued, rejecting amounts applied for in respect of refund certificates and suspending the lodging of applications for refund certificates.

SECTION III

Other Measures With Regard To Exports

Article 33

Other measures with regard to exports

1. Where pursuant to Regulation (EU) No 1308/2013 measures with regard to export of an agricultural product listed in Annex III are adopted in the form of levies or charges, and where the export of non-Annex I goods with a high content of that agricultural product is likely to hinder the achievement of the objectives of those measures, the Commission shall be empowered to adopt delegated acts, in accordance with Article 42 of this Regulation, concerning equivalent measures with regard to those non-Annex I goods, provided that those delegated acts comply with any obligations resulting from international agreements concluded in accordance with the TFEU. Those delegated acts shall be adopted only if existing measures available under Regulation (EU) No 1308/2013 appear to be insufficient.

Where, in the cases referred to in the first subparagraph, imperative grounds of urgency so require, the procedure provided for in Article 43 shall apply to delegated acts adopted pursuant to this paragraph.

Those imperative grounds of urgency may include the need to take immediate action to address or to prevent market disturbance, where threats of market disturbance occur so swiftly or unexpectedly that immediate action is necessary to efficiently and effectively address the situation, or where action would prevent such threats of market disturbance from materialising, continuing or turning into a more severe or prolonged disturbance, or where delaying immediate action would threaten to cause or aggravate the disturbance or would increase the extent of the measures which would later be necessary to address the threat or disturbance or be detrimental to production or market conditions.

2. The Commission shall, where necessary, adopt implementing acts, laying down the procedures and technical criteria for the application of paragraph 1.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

CHAPTER IV

MEASURES APPLYING TO BOTH IMPORTS AND EXPORTS

Article 34

Direct offsetting in preferential trade

1. Where an international agreement concluded or provisionally applied by the Union in accordance with the TFEU so provides, the duty applicable on importation of agricultural products may be replaced by an amount established on the basis of the difference between agricultural prices in the Union and those in the country or the region concerned, or by an amount offsetting a jointly established price for the country or the region concerned.

In that case, the amounts payable on exports to the country or region concerned shall be determined jointly and on the same basis as the agricultural component of the import duty under the conditions laid down in the agreement.

2. The Commission shall, where necessary, adopt implementing acts,;

- (a) fixing the applicable duty referred to in paragraph 1 and the related amounts payable on exports to the country or region concerned;

- (b) ensure that processed agricultural products declared for export under a preferential arrangement are not actually exported under a non-preferential arrangement or vice versa.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 35

Methods of analysis

1. For the purposes of trade arrangements under this Regulation, where the processed agricultural products or non-Annex I goods so require, the characteristics and the composition of these products and goods shall be determined by analysis of their composing elements.
2. The Commission shall, where necessary, adopt implementing acts, in relation to the products and goods referred to in paragraph 1, concerning:
 - (a) the methods of qualitative and quantitative analysis;
 - (b) the technical provisions necessary for their identification;
 - (c) the procedures for their CN classification.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 36

Adaptation of this Regulation

The Commission shall be empowered to adopt delegated acts, in accordance with Article 42, concerning:

- (a) the adaptations of Annexes I to V including deletion of processed agricultural products and non-Annex I goods and inclusion of new processed agricultural products and non-Annex I goods, to international agreements concluded or provisionally applied by the Union in accordance with the TFEU;
- (b) the adaptations of Article 2(i) to (l), Article 25 and Annexes I to V to amendments to Annex I to Regulation (EEC) No 2658/87.

Article 37

Exchange of information

1. Where necessary for the implementation of this Regulation, the Member States shall provide, on request, the Commission with the following information:
 - (a) imports of processed agricultural products;
 - (b) exports of non-Annex I goods;
 - (c) applications for, the issuing and the use of inward processing certificates for agricultural products referred to in Article 18;
 - (d) applications for the issuing and the use of refund certificates referred to in Article 28(1);
 - (e) payments and reimbursements of export refunds for non-Annex I goods referred to in Article 22(1);
 - (f) the administrative implementing measures adopted;
 - (g) other relevant information.

Where export refunds are applied for in another Member State than that in which the non-Annex I goods were produced, information on the production and the composition of the non-Annex I goods referred to in point (e) shall be notified to that other Member State on its request.

2. The Commission may forward the information submitted to it in accordance with paragraph 1, points (a) to (g), to all Member States.

3. In order to ensure the integrity of information systems and the authenticity and legibility of documents and associated data transmitted, the Commission shall be empowered to adopt delegated acts, in accordance with Article 42, establishing:

- (a) the nature and type of the information to be notified in accordance with paragraph 1;
- (b) the categories of data to be processed, maximum retention periods and the purpose of processing, in particular in the event of the publication of such data and their transfer to third countries;
- (c) the access rights to the information or information systems made available, having due regard to professional secrecy and confidentiality;
- (d) the conditions subject to which the information is to be published.

4. The Commission may adopt implementing acts necessary for the application of this Article, concerning:

- (a) the methods of notification;
- (b) the details regarding the information that is to be notified;
- (c) arrangements for the management of the information to be notified, as well as for the content, form, timing, frequency and deadlines of the notifications;
- (d) the arrangements for transmitting or making information and documents available to the Member States, the European Parliament, the Council, international organisations, the competent authorities in third countries, or the public, while guaranteeing the protection of personal data and the legitimate interest of undertakings in the protection of their business secrets.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 38

Processing and protection of personal data

1. Member States and the Commission shall collect personal data for the purposes set out in Article 37(1) and shall not process that data in a way that goes beyond those purposes.

2. Where personal data are processed for the purposes referred to in Article 37(1), they shall be made anonymous and processed in aggregated form only.

3. Personal data shall be processed in accordance with the rules of Directive 95/46/EC and Regulation (EC) No 45/2001. In particular, such data shall not be stored in a form which permits identification of data subjects for longer than is necessary for the purposes for which they were collected or for which they are further processed, taking into account the minimum retention periods laid down in the applicable national and Union law.

4. Member States shall inform the data subjects that their personal data may be processed by national and Union bodies in accordance with paragraph 1 and that, in that respect, they enjoy the rights set out in the data protection rules of, respectively, Directive 95/46/EC and Regulation (EC) No 45/2001.

*Article 39***Negligible amounts**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 42, concerning the thresholds below which Member States may refrain from applying amounts to be levied or granted pursuant to Articles 3, 5, 10, 22 and 34. The threshold shall be set at a level below which the administrative costs of applying the amounts would be disproportionate to the amounts levied or granted.

*Article 40***Securities, checks, verification, scrutiny and penalties**

1. When relevant, the horizontal rules on securities, checks, verification, scrutiny and penalties and on the use of the EURO laid down in Articles 58 to 66, 79 to 88 and 105 to 108 of Regulation (EU) No 1306/2013 and legal acts adopted on the basis thereof shall apply *mutatis mutandis* to import licences and tariff quotas for processed agricultural products and to export refunds and refund certificates for non-Annex I goods.

2. The Commission shall be empowered to adopt delegated acts, in accordance with Article 42, concerning rules adapting, as necessary, the provisions adopted on the basis of the Articles referred to in paragraph 1 for the purpose of this Regulation.

3. The Commission shall, where necessary, adopt implementing acts, concerning the application of the provisions adopted on the basis of the Articles referred to in paragraph 1 for the purpose of this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

*Article 41***International obligations and applicable standards**

When adopting delegated acts and implementing acts, the Commission shall consider international obligations of the Union and the applicable Union social, environmental and animal welfare standards, the need to monitor evolution of trade and market developments, the need for sound market management and the need to reduce the administrative burden.

CHAPTER V

DELEGATION OF POWER AND COMMITTEE PROCEDURE*Article 42***Exercise of the delegation**

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

2. The power to adopt the delegated acts referred to in Articles 8, 12, 15, 19, 26, 31, Article 33(1), Article 36, Article 37(3), Article 39 and Article 40(2) shall be conferred on the Commission for a period of seven years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the seven-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of powers referred to in Articles 8, 12, 15, 19, 26, 31, Article 33(1), Article 36, Article 37(3), Article 39 and Article 40(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to Articles 8, 12, 15, 19, 26, 31, Article 33(1), Article 36, Article 37(3), Article 39 and Article 40(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 43

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act adopted under this Article to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act adopted under this Article in accordance with the procedure referred to in Article 42(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

Article 44

Committee procedure

1. For the purposes of Article 13, Article 17(1), (2), (4) and (5), Article 20(1), Article 27, Article 32(1), Article 33(2), Article 34(2) and Article 37(4) and, as regards processed agricultural products other than ovalbumin and lactalbumin, for the purposes of Article 5(1) and (5), and Article 16(1) and, as regards import licences and tariff quotas for processed agricultural products other than ovalbumine and lactalbumine and export refunds and refund certificates for non-Annex I goods, for the purpose of Article 40(3), the Commission shall be assisted by a committee called the Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

For the purposes of Article 9(1) and Article 21(1) and (2), as regards ovalbumin and lactalbumin, for the purposes of Article 5(1) and (5), and Article 16(1) and, as regards import licences and tariff quotas for ovalbumine and lactalbumine, for the purpose of Article 40(3), the Commission shall be assisted by the Committee for the Common Organisation of the Agricultural Markets, established by Article 229(1) of Regulation (EU) No 1308/2013. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

For the purposes of Article 35(2), the Commission shall be assisted by the Customs Code Committee established by Article 247a of Regulation (EEC) No 2913/92. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.
4. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or at least a quarter of committee members so request.

CHAPTER VI

FINAL PROVISIONS

Article 45

Repeals

Regulations (EC) No 614/2009 and (EC) No 1216/2009 are repealed.

References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex VI.

*Article 46***Entry into force**

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

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

Done at Strasbourg, 16 April 2014.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

D. KOURKOULAS

ANNEX I

Processed agricultural products as referred to in Article 2(b)

Table 1

Processed agricultural products for which the import duty consists of an ad valorem duty and an agricultural component which is not part of the ad valorem duty, as referred to in Article 3(1)

CN code	Description
ex 0403	Buttermilk, curdled milk and cream, yoghurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa:
0403 10 51 to 0403 10 99	– Yoghurt, flavoured or containing added fruit, nuts or cocoa
0403 90 71 to 0403 90 99	– Other, flavoured or containing added fruit, nuts or cocoa
0405 20 10 and 0405 20 30	Dairy spreads of a fat content, by weight, of 39 % or more but not exceeding 75 %
0710 40 00	Sweetcorn (uncooked or cooked by steaming or boiling in water), frozen
0711 90 30	Sweetcorn provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption
ex 1517	Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of Chapter 15, other than edible fats or oils or their fractions of heading 1516:
1517 10 10	– Margarine, excluding liquid margarine, containing, by weight, more than 10 % but not more than 15 % of milkfats
1517 90 10	– Other, containing, by weight, more than 10 % but not more than 15 % of milkfats
1702 50 00	Chemically pure fructose
ex 1704	Sugar confectionery (including white chocolate), not containing cocoa, excluding liquorice extract containing more than 10 % by weight of sucrose but not containing other added substances, falling within CN code 1704 90 10
1806	Chocolate and other food preparations containing cocoa
Ex 1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included, excluding preparations of CN code 1901 90 91
ex 1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared, excluding stuffed pasta falling within CN codes 1902 20 10 and 1902 20 30

CN code	Description
1903 00 00	Tapioca and substitutes therefor prepared from starch, in the form of flakes, grains, pearls, siftings or similar forms
1904	Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals (other than maize (corn)) in grain form or in the form of flakes or other worked grains (except flour, groats and meal), pre-cooked or otherwise prepared, not elsewhere specified or included
1905	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products
2001 90 30	Sweetcorn (<i>Zea mays</i> var. <i>saccharata</i>), prepared or preserved by vinegar or acetic acid
2001 90 40	Yams, sweet potatoes and similar edible parts of plants containing 5 % or more by weight of starch, prepared or preserved by vinegar or acetic acid
2004 10 91	Potatoes in the form of flour, meal or flakes, prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006
2004 90 10	Sweetcorn (<i>Zea mays</i> var. <i>saccharata</i>) prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006
2005 20 10	Potatoes in the form of flour, meal or flakes, prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006
2005 80 00	Sweetcorn (<i>Zea mays</i> var. <i>saccharata</i>) prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006
2008 99 85	Maize (corn), other than sweetcorn (<i>Zea mays</i> var. <i>saccharata</i>), otherwise prepared or preserved, not containing added spirit or added sugar
2008 99 91	Yams, sweet potatoes and similar edible parts of plants, containing 5 % or more by weight of starch, otherwise prepared or preserved, not containing added spirit or added sugar
2101 12 98	Preparations with a basis of coffee
2101 20 98	Preparations with a basis of tea or maté
2101 30 19	Roasted coffee substitutes excluding roasted chicory
2101 30 99	Extracts, essences and concentrates of roasted coffee substitutes excluding those of roasted chicory
2102 10 31 and 2102 10 39	Bakers' yeast, dried or not
2105 00	Ice cream and other edible ice, whether or not containing cocoa
ex 2106	Food preparations not elsewhere specified or included other than those falling within CN codes 2106 10 20, 2106 90 20 and 2106 90 92, and other than flavoured or coloured sugar syrups

CN code	Description
2202 90 91, 2202 90 95 and 2202 90 99	Other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009, containing products of heading 0401 to 0404 or fat obtained from products of heading 0401 to 0404
2905 43 00	Mannitol
2905 44	D-glucitol (sorbitol)
3302 10 29	Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, and other preparations based on odoriferous substances, of a kind used in the drink industries, containing all flavouring agents characterising a beverage, of an actual alcoholic strength by volume not exceeding 0,5 %, other than those of CN code 3302 10 21
3501	Caseins, caseinates and other casein derivatives; casein glues
ex 3505 10	Dextrins and other modified starches, excluding esterified or etherified starches of CN code 3505 10 50
3505 20	Glues based on starches, or on dextrins or other modified starches
3809 10	Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, with a basis of amylaceous substances, not elsewhere specified or included
3824 60	Sorbitol other than that of subheading 2905 44

Table 2

Processed agricultural products for which the import duty consists of an ad valorem duty including an agricultural component or of a specific duty, as referred to in Article 3(2)

CN code	Description
ex 0505	Skins and other parts of birds, with their feathers or down, feathers and parts of feathers (whether or not with trimmed edges) and down, not further worked than cleaned, disinfected or treated for preservation; powder and waste of feathers or parts of feathers:
0505 10 90	– Feathers of a kind used for stuffing and down, other than raw
0505 90 00	– Other
0511 99 39	Natural sponges of animal origin, other than raw
ex 1212 29 00	Seaweeds and other algae, fresh, chilled, frozen or dried, whether or not ground, unfit for human consumption, other than those used in pharmacy
ex 1302	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:

CN code	Description
1302 12 00	– Vegetable saps and extracts of liquorice
1302 13 00	– Vegetable saps and extracts of hops
1302 19 20 and 1302 19 70	– Vegetable saps and extracts other than saps and extracts of liquorice and hops, vanilla oleoresin and opium
ex 1302 20	– Pectates
1302 31 00	– Agar-agar, whether or not modified
1302 32 10	– Mucilages and thickeners, whether or not modified, derived from locust beans or locust bean seeds
1505 00	Wool grease and fatty substances derived therefrom (including lanolin)
1506 00 00	Other animal fats and oils and their fractions, whether or not refined, but not chemically modified
ex 1515 90 11	Jojoba oil and its fractions, whether or not refined, but not chemically modified
1516 20 10	Hydrogenated castor oil, so called 'opal-wax'
1517 90 93	Edible mixtures or preparations of a kind used as mould-release preparations
ex 1518 00	Animal or vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516; inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of chapter 15, not elsewhere specified or included; excluding the oils of CN codes 1518 00 31 and 1518 00 39
1520 00 00	Glycerol, crude; glycerol waters and glycerol lyes
1521	Vegetable waxes (other than triglycerides), beeswax, other insect waxes and spermaceti, whether or not refined or coloured
1522 00 10	Degras
1702 90 10	Chemically pure maltose
1704 90 10	Liquorice extract containing more than 10 % by weight of sucrose but not containing other added substances
1803	Cocoa paste, whether or not defatted
1804 00 00	Cocoa butter, fat and oil
1805 00 00	Cocoa powder, not containing added sugar or other sweetening matter

CN code	Description
ex 1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:
1901 90 91	-- Other preparations containing no milkfats, sucrose, isoglucose, glucose or starch or containing less than 1,5 % milkfat, 5 % sucrose (including invert sugar) or isoglucose, 5 % glucose or starch, excluding food preparations in powder form of goods of heading 0401 to 0404
ex 2001 90 92	Palm hearts, prepared or preserved by vinegar or acetic acid
ex 2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:
2008 11 10	- Peanut butter
2008 91 00	- Palm hearts
ex 2101	Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products; roasted chicory and extracts, essences and concentrates thereof, other than preparations of CN codes 2101 12 98, 2101 20 98, 2101 30 19 and 2101 30 99
ex 2102 10	Active yeasts:
2102 10 10	- Culture yeast
2102 10 90	- Other, excluding bakers' yeast
2102 20	Inactive yeasts; other single-cell micro-organisms, dead
2102 30 00	Prepared baking powders
2103	Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard
2104	Soups and broths and preparations therefor; homogenised composite food preparations
ex 2106	Food preparations not elsewhere specified or included:
ex 2106 10	- Protein concentrates and textured protein substances:
2106 10 20	-- Containing no milkfats, sucrose, isoglucose, glucose or starch or containing by weight less than 1,5 % milkfat, 5 % sucrose or isoglucose, 5 % glucose or starch
ex 2106 90	- Other:
2106 90 20	-- Compound alcoholic preparations, other than those based on odoriferous substances, of a kind used for the manufacture of beverages

CN code	Description
2106 90 92	-- Other preparations containing no milkfats, sucrose, isoglucose, glucose or starch or containing, by weight, less than 1,5 % milkfat, 5 % sucrose or isoglucose, 5 % glucose or starch
2201 10	Natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured
2202 10 00	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured
2202 90 10	Other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009, not containing products of headings 0401 to 0404 or fat obtained from products of headings 0401 to 0404
2203 00	Beer made from malt
2205	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances
ex 2207	Except where obtained from agricultural products listed in Annex I to the TFEU, undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher and ethyl alcohol and other spirits, denatured, of any strength
ex 2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol, other than obtained from agricultural products listed in Annex I to the TFEU; spirits, liqueurs and other spirituous beverages
2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
2403	Other manufactured tobacco and manufactured tobacco substitutes; 'homogenised' or 'reconstituted' tobacco; tobacco extracts and essences
3301 90	Extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils
ex 3302	Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages:
3302 10 10	- Preparations of a kind used in the drink industries containing all flavouring agents characterising a beverage of an actual alcoholic strength by volume exceeding 0,5 %
3302 10 21	- Preparations of a kind used in the drink industries containing all flavouring agents characterising a beverage of an alcoholic strength by volume not exceeding 0,5 %, containing no milkfats, sucrose, isoglucose, glucose or starch or containing, by weight, less than 1,5 % milkfat, 5 % sucrose or isoglucose, 5 % glucose or starch
Ex 3502	Albumins (including concentrates of two or more whey proteins, containing by weight more than 80 % whey proteins, calculated on the dry matter), albuminates and other albumin derivatives: - Egg albumin:

CN code	Description
ex 3502 11	– Dried:
3502 11 90	--- Other than unfit, or to be rendered unfit, for human consumption
ex 3502 19	-- Other:
3502 19 90	--- Other than unfit, or to be rendered unfit, for human consumption
ex 3502 20	– Milk albumin, including concentrates of two or more whey proteins:
3502 20 91 and 3502 20 99	-- Other than unfit, or to be rendered unfit, for human consumption, whether or not dried (for example, in sheets, scales, flakes, powder)
3823	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols

Non-Annex I goods and agricultural products used in the manufacturing of those goods, qualifying for export refunds, as referred to in Article 22(1)

CN code	Description of non-Annex I goods	Agricultural products on which an export refund may be granted				
		A: Reference quantity determined on the basis of the quantity of the product actually used in the manufacturing of the goods exported (Art 27(d))				
		B: Reference quantity determined on a fixed basis (Art 27(d))				
		Cereals ⁽¹⁾	Rice ⁽²⁾	Eggs ⁽³⁾	Sugar, molasses or isoglucose ⁽⁴⁾	Milk products ⁽⁵⁾
1	2	3	4	5	6	7
ex 0403	Buttermilk, curdled milk and cream, yoghurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa:					
ex 0403 10	– Yoghurt:					
0403 10 51 to 0403 10 99	– – Flavoured or containing added fruit, nuts or cocoa: – – – Flavoured – – – other:	A	A	A	A	
	– – – – Containing added fruit and/or nuts	A	A		A	
	– – – – Containing added cocoa	A	A	A	A	
ex 0403 90	– Other:					
0403 90 71 to 0403 90 99	– – Flavoured or containing added fruit and/or nuts or cocoa: – – – Flavoured – – – Other:	A	A	A	A	
	– – – – Containing added fruit or nuts	A	A		A	
	– – – – Containing added cocoa	A	A	A	A	

1	2	3	4	5	6	7
ex 0405	Butter and other fats and oils derived from milk; dairy spreads:					
ex 0405 20	– Dairy spreads:					
0405 20 10	– – Of a fat content, by weight, of 39 % or more but less than 60 %					A
0405 20 30	– – Of a fat content, by weight, of 60 % or more but not exceeding 75 %					A
ex 0710	Vegetables (uncooked or cooked by steaming or boiling in water), frozen:					
	– Sweetcorn:					
0710 40 00	– – In ear form	A			A	
	– – In grain form	B			A	
ex 0711	Vegetables provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption:					
	– – – Sweetcorn:					
0711 90 30	– – – – In ear form	A			A	
	– – – – In grain form	B			A	
ex 1517	Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of chapter 15, other than edible fats or oils or their fractions of heading 1516:					
ex 1517 10	– Margarine, excluding liquid margarine:					

1	2	3	4	5	6	7
1517 10 10	– – Containing, by weight, more than 10 % but not more than 15 % of milkfats					A
ex 1517 90	– Other:					
1517 90 10	– – Containing, by weight, more than 10 % but not more than 15 % of milkfats					A
1702 50 00	– Chemically pure fructose				A	
ex 1704	Sugar confectionery (including white chocolate), not containing cocoa:					
1704 10	– Chewing gum, whether or not sugar-coated	A			A	
ex 1704 90	– Other:					
1704 90 30	– – White chocolate	A			A	A
1704 90 51 to 1704 90 99	– – Other	A	A		A	A
1806	Chocolate and other food preparations containing cocoa:					
1806 10	– Cocoa powder, containing added sugar or other sweetening matter:					
	– – Sweetened exclusively by the addition of sucrose	A		A	A	
	– – Other	A		A	A	A
1806 20	– Other preparations in blocks, slabs or bars weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg:					

1	2	3	4	5	6	7
	– – Chocolate milk crumb of subheading 1806 20 70	A		A	A	A
	– – Other preparations of subheading 1806 20	A	A	A	A	A
1806 31 00 and 1806 32	– Other, in blocks, slabs or bars	A	A	A	A	A
1806 90	– Other:					
1806 90 11, 1806 90 19, 1806 90 31, 1806 90 39, 1806 90 50	– – Chocolate and chocolate products; sugar confectionery and substitutes therefor made from sugar substitution products, containing cocoa	A	A	A	A	A
1806 90 60, 1806 90 70, 1806 90 90	– – Spreads containing cocoa; preparations containing cocoa for making beverages; other	A		A	A	A
ex 1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:					
1901 10 00	– Preparations for infant use, put up for retail sale:					
	– – Food preparations of dairy products of headings 0401 to 0404, containing less than 5 % by weight of cocoa calculated on a totally defatted basis	A	A	A	A	A
	– – Other	A	A		A	A
1901 20 00	– Mixes and doughs for the preparation of bakers' wares of heading 1905:					

1	2	3	4	5	6	7
	-- Food preparations of dairy products of headings 0401 to 0404, containing less than 5 % by weight of cocoa calculated on a totally defatted basis	A	A	A	A	A
	-- Other	A	A		A	A
ex 1901 90	-- Other:					
1901 90 11 and 1901 90 19	-- Malt extract	A	A			
	-- Other:					
1901 90 99	--- Other:					
	---- Food preparations of goods of headings 0401 to 0404, containing less than 5 % by weight of cocoa calculated on a totally defatted basis	A	A	A	A	A
	---- Other	A	A		A	A
ex 1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous whether or not prepared:					
	-- Uncooked pasta, not stuffed or otherwise prepared:					
1902 11 00	-- Containing eggs:					
	--- Of durum wheat or of other cereals	B		A		
	--- Other:	A		A		
	-- Other:					

1	2	3	4	5	6	7
1902 19	--- Of durum wheat or of other cereals	B				A
	--- Other	A				A
ex 1902 20	- Stuffed pasta, whether or not cooked or otherwise prepared:					
1902 20 91 and 1902 20 99	-- Other	A	A		A	A
1902 30	- Other pasta	A	A		A	A
1902 40	- Couscous:					
1902 40 10	-- Unprepared:					
	--- Of durum wheat	B				
	--- Other	A				
1902 40 90	-- Other	A	A		A	A
1903 00 00	Tapioca and substitutes therefor prepared from starch, in the form of flakes, grains, pearls, siftings or similar forms	A				
1904	Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals, (other than maize (corn)) in grain form or in the form of flakes or other worked grains (except flour, groats and meal), pre-cooked, or otherwise prepared, not elsewhere specified or included:					
	- Unsweetened puffed rice or pre-cooked rice:					
	-- Containing cocoa ⁽⁶⁾	A	B	A	A	A
	-- Not containing cocoa	A	B		A	A

1	2	3	4	5	6	7
	– Other, containing cocoa ⁽⁶⁾	A	A	A	A	A
	– Other	A	A		A	A
1905	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products					
1905 10 00	– Crispbread	A			A	A
1905 20	– Gingerbread and the like	A		A	A	A
	– Sweet biscuits; waffles and wafers:					
1905 31 and 1905 32	– Sweet biscuits; waffles and wafers	A		A	A	A
1905 40	– Rusks, toasted bread and similar toasted products	A		A	A	A
1905 90	– Other:					
1905 90 10	– – Matzos	A				
1905 90 20	– – Communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products	A	A			
	– – Other:					
1905 90 30	– – – Bread, not containing added honey, eggs, cheese or fruit, and containing by weight in the dry matter state not more than 5 % of sugars and not more than 5 % of fat:	A				
1905 90 45 to 1905 90 90	– – – Other products	A		A	A	A

1	2	3	4	5	6	7
ex 2001	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:					
ex 2001 90	– Other:					
2001 90 30	– – Sweetcorn (<i>Zea mays</i> var. <i>saccharata</i>): – – – In ear form – – – In grain form	A B			A A	
2001 90 40	– – Yams, sweet potatoes and similar edible parts of plants containing 5 % or more by weight of starch	A			A	
ex 2004	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006:					
ex 2004 10	– Potatoes: – – Other:					
2004 10 91	– – – In the form of flour, meal or flakes	A	A		A	A
ex 2004 90	– Other vegetables and mixtures of vegetables:					
2004 90 10	– – Sweetcorn (<i>Zea mays</i> var. <i>saccharata</i>): – – – In ear form – – – In grain form	A B			A A	
ex 2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006:					
ex 2005 20	– Potatoes:					

1	2	3	4	5	6	7
2005 20 10	-- In the form of flour, meal or flakes	A	A		A	A
2005 80 00	– Sweetcorn (<i>Zea mays</i> var. <i>saccharata</i>): -- In ear form -- In grain form	A B			A A	
ex 2008	Fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:					
ex 2008 99	-- Other: --- Not containing added spirit: ---- Not containing added sugar:					
2008 99 85	----- Maize (corn) other than sweetcorn (<i>Zea mays</i> var. <i>saccharata</i>): ----- In ear form ----- In grain form	A B				
2008 99 91	----- Yams, sweet potatoes and similar edible parts of plants containing 5 % or more by weight of starch	A				
ex 2101	Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof:					
	– Extracts, essences and concentrates, of coffee and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee:					
2101 12 98	--- Other	A	A		A	

1	2	3	4	5	6	7
ex 2101 20	– Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates, or with a basis of tea or maté:					
2101 20 98	– – – Other	A	A		A	
ex 2101 30	– Roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof:					
	– – Roasted chicory and other roasted coffee substitutes:					
2101 30 19	– – – Other	A			A	
	– – Extracts, essences and concentrates of roasted chicory and other roasted coffee substitutes:					
2101 30 99	– – – Other	A			A	
ex 2102	Yeasts (active or inactive); other single-cell micro-organisms, dead (but not including vaccines of heading 3002); prepared baking powders:					
ex 2102 10	– Active yeasts:					
2102 10 31 and 2102 10 39	– – Bakers' yeast	A				
2105 00	Ice cream and other edible ice, whether or not containing cocoa:					
	– Containing cocoa	A	A	A	A	A
	– Other	A	A		A	A
ex 2106	Food preparations not elsewhere specified or included:					

1	2	3	4	5	6	7
ex 2106 90	– Other:					
2106 90 92 and 2106 90 98	– – Other	A	A		A	A
2202	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009:					
2202 10 00	– Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured	A			A	
2202 90	– Other:					
2202 90 10	– – Not containing products of headings 0401 to 0404 or fat obtained from products of headings 0401 to 0404: – – – Beer made from malt, of an actual alcoholic strength by volume not exceeding 0,5 % vol – – – Other	B A			A	
2202 90 91 to 2202 90 99	– – Other	A			A	A
2205	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances	A			A	
ex 2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages:					
2208 20	– Spirits obtained by distilling grape wine or grape marc				A	
ex 2208 30	– Whiskies: – – Other than Bourbon whiskey:					

1	2	3	4	5	6	7
ex 2208 30 30 to 2208 30 88	--- Whiskies, other than those listed in Commission Regulation (EC) No 1670/2006 ⁽⁷⁾	A				
2208 50 11 and 2208 50 19	-- Gin	A				
2208 50 91 and 2208 50 99	-- Geneva	A			A	
2208 60	- Vodka	A				
2208 70	- Liqueurs and cordials	A		A	A	A
ex 2208 90	- Other:					
2208 90 41	---- Ouzo, in containers holding 2 litres or less	A			A	
2208 90 45	----- Calvados, in containers holding 2 litres or less				A	
2208 90 48	----- Other spirits (excluding liqueurs) distilled from fruit, in containers holding 2 litres or less				A	
2208 90 56	----- Other spirits (excluding liqueurs) than those distilled from fruit and other than tequila, in containers holding 2 litres or less	A			A	
2208 90 69	- - - - Other spirituous beverages, in containers holding 2 litres or less	A			A	A
2208 90 71	----- Spirits distilled from fruit, in containers holding more than 2 litres				A	
2208 90 77	----- Other spirits (excluding liqueurs) than those distilled from fruit and other than tequila, in containers holding more than 2 litres	A			A	

1	2	3	4	5	6	7
2208 90 78	---- Other spirituous beverages, in containers holding more than 2 litres	A			A	A
ex 2905	Acyclic alcohols and their halogenated, sulphonated, nitrated or nitrosated derivatives:					
2905 43 00	-- Mannitol	B			B	
2905 44	-- D-glucitol (sorbitol)	B			B	
ex 3302	Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages:					
ex 3302 10	- Of a kind used in the food or drink industries:					
3302 10 29	----- Other	A			A	A
3501	Casein, caseinates and other casein derivatives; casein glues:					
3501 10	- Casein					B
3501 90	- Other:					
3501 90 10	-- Casein glues					A
3501 90 90	-- Other					B
ex 3502	Albumins, (including concentrates of two or more whey proteins, containing by weight more than 80 % whey proteins, calculated on the dry matter), albuminates and other albumin derivatives: - Egg albumin:					

1	2	3	4	5	6	7
ex 3502 11	-- Dried					
3502 11 90	--- Other than unfit or to be rendered unfit, for human consumption			B		
ex 3502 19	-- Other:					
3502 19 90	--- Other than unfit or to be rendered unfit, for human consumption			B		
ex 3502 20	- Milk albumin (lactalbumin):					
3502 20 91 and 3502 20 99	-- Other than unfit, or to be rendered unfit, for human consumption, whether or not dried (for example, in sheets, scales, flakes, powder)					B
ex 3505	Dextrins and other modified starches (for example, pregelatinised or esterified starches); glues based on starches, or on dextrins or other modified starches, excluding starches of CN code 3505 10 50	A	A			
3505 10 50	--- Starches, esterified or etherified	A				
ex 3809	Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included:					
3809 10	- With a basis of amylaceous substances	A	A			

1	2	3	4	5	6	7
ex 3824	Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:					
3824 60	– Sorbitol other than that of subheading 2905 44	B			B	

(¹) Part I of Annex I to Regulation (EU) No 1308/2013.

(²) Part II of Annex I to Regulation (EU) No 1308/2013.

(³) Part XIX of Annex I to Regulation (EU) No 1308/2013.

(⁴) Part III, points (b), (c), (d) and (g) of Annex I to Regulation (EU) No 1308/2013.

(⁵) Part XVI, points (a) to (g) of Annex I to Regulation (EU) No 1308/2013.

(⁶) Containing no more than 6 % of cocoa

(⁷) Commission Regulation (EC) No 1670/2006 of 10 November 2006 laying down certain detailed rules for the application of Council Regulation (EC) No 1784/2003 as regards the fixing and granting of adjusted refunds in respect of cereals exported in the form of certain spirit drinks (OJ L 312, 11.11.2006, p. 33).

ANNEX III

Basic products referred to in Article 2(d)

CN code	Description
ex 0402 10 19	Milk in powder, granules or other solid forms, not containing added sugar or other sweetening matter, of a fat content, by weight, not exceeding 1,5 %, other than in immediate packings of a net content not exceeding 2,5 kg (Product Group 2)
ex 0402 21 18	Milk in powder, granules or other solid forms, not containing added sugar or other sweetening matter, of a fat content, by weight, of 26 %, other than in immediate packings of a net content not exceeding 2,5 kg (Product Group 3)
ex 0404 10 02 to ex 0404 10 16	Whey in powder, granules or other solid forms, not containing added sugar or other sweetening matter (Product Group 1)
ex 0405 10	Butter, of a fat content by weight of 82 % (Product Group 6)
0407 21 00, 0407 29 10, ex 0407 90 10	Poultry eggs, in shell, fresh or preserved, other than for hatching
ex 0408	Birds' eggs, not in shell, and egg yolks, fit for human consumption, fresh, dried, frozen or otherwise preserved, not containing added sugar or other sweetening matter
1001 19 00	Durum wheat, other than for sowing
ex 1001 99 00	Common wheat and meslin, other than for sowing
1002 90 00	Rye, other than for sowing
1003 90 00	Barley, other than seed barley
1004 90 00	Oats, other than for sowing
1005 90 00	Maize (corn), other than seed maize
ex 1006 30	Wholly milled rice
1006 40 00	Broken rice
1007 90 00	Grain sorghum, other than for sowing
1701 99 10	White sugar
ex 1702 19 00	Lactose containing by weight 98,5 % lactose, expressed as anhydrous lactose, calculated on the dry matter
1703	Molasses resulting from the extraction or refining of sugar

ANNEX IV

Processed agricultural products that may be subject to an additional import duty as referred to in Article 5(1)

CN code	Description of goods
0403 10 51 to 0403 10 99	Yogurt, flavoured or containing added fruit, nuts or cocoa
0403 90 71 to 0403 90 99	Buttermilk, curdled milk and cream, kephir and other fermented or acidified milk and cream, flavoured or containing added fruit, nuts or cocoa
0710 40 00	Sweetcorn (uncooked or cooked by steaming or boiling in water), frozen
0711 90 30	Sweetcorn provisionally preserved (for example, by sulphur dioxide gas, in brine, sulphur water or in other preservative solutions) but unsuitable in that state for immediate consumption
1517 10 10	Margarine, excluding liquid margarine containing, by weight, more than 10 % but not more than 15 % of milkfats
1517 90 10	Other edible mixtures or preparations of animal or vegetable fats or oils or fractions of different fats or oils of Chapter 15, other than edible fats or oils or their fractions of heading 1516, containing, by weight, more than 10 % but not more than 15 % of milkfats
1702 50 00	Chemically pure fructose
2005 80 00	Sweetcorn (<i>Zea mays</i> var. <i>saccharata</i>) prepared or preserved otherwise than by vinegar or acetic acid, not frozen other than products of heading 2006
2905 43 00	Mannitol
2905 44	D-glucitol (sorbitol)
Ex 3502	Albumins (including concentrates of two or more whey proteins, containing by weight more than 80 % whey proteins, calculated on the dry matter), albuminates and other albumin derivatives: – Egg albumin:
ex 3502 11	– – Dried:
3502 11 90	– – – Other than unfit, or to be rendered unfit, for human consumption
ex 3502 19	– – Other:
3502 19 90	– – – Other than unfit, or to be rendered unfit, for human consumption
ex 3502 20	– Milk albumin, including concentrates of two or more whey proteins: – – Other than unfit, or to be rendered unfit, for human consumption
3502 20 91	– – – Dried (for example, in sheets, scales, flakes, powder)
3502 20 99	– – – Other

CN code	Description of goods
3505 10 10	Dextrins
3505 10 90	Modified starches other than dextrins, excluding esterified or etherified starches
3505 20	Glues based on starches, or on dextrins or other modified starches
3809 10	Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, with a basis of amylaceous substances, not elsewhere specified or included
3824 60	Sorbitol other than of subheading 2905 44

ANNEX V

Agricultural products, as referred to in Article 11(1)(a) ⁽¹⁾

CN code	Description of the agricultural products
0401	Milk and cream, not concentrated nor containing added sugar or other sweetening matter
0402	Milk and cream, concentrated or containing added sugar or other sweetening matter
ex 0403	Buttermilk, curdled milk and cream, yoghurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter, not flavoured or containing added fruit, nuts or cocoa
0404	Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included
ex 0405	Butter and other fats and oils derived from milk
0407 21 00	Poultry eggs, in shell, fresh, of fowls of the species <i>Gallus domesticus</i> , other than for hatching
0709 99 60	Sweetcorn, fresh or chilled
0712 90 19	Dried sweetcorn, whole, cut, sliced, broken or in powder, but not further prepared, other than hybrid sweet corn for sowing
Chapter 10	Cereals ⁽²⁾
1701	Cane or beet sugar and chemically pure sucrose, in solid form
1703	Molasses resulting from the extraction or refining of sugar

⁽¹⁾ Agricultural products taken into account when used in the unprocessed state or after processing or considered to have been used in the manufacturing of the goods listed in Table 1 of Annex I.

⁽²⁾ Excluding wheat and meslin seed falling within subheading 1001 11 00, 1001 91 10, 1001 91 20 and 1001 91 90, rye seed falling within subheading 1002 10 00, barley seed falling within subheading 1003 10 00, oats seed falling within subheading 1004 10 00, maize seed falling within subheading 1005 10, rice for sowing falling within subheading 1006 10 10, sorghum seed falling within subheading 1007 10 and millet seed falling within subheading 1008 21 00.

ANNEX VI

Correlation table

This Regulation	Regulation (EC) No 1216/2009	Regulation (EC) No 614/2009
Article 1, first paragraph	Article 1	Article 1
Article 1, second paragraph	Article 3	—
Article 2(a)	Article 2(1), first subparagraph, point (a)	—
Article 2(b)	Article 2(1), first subparagraph, point (b)	—
Article 2(c)	Article 2(1), second subparagraph	—
Article 2(d)	—	—
Article 2(e)	Article 2(2)(a) and (c)	—
Article 2 (f)	Article 2(2)(b)	—
Article 2(g)	—	—
Article 2(h)	—	—
Article 2(i)	—	—
Article 2(j)	—	—
Article 2(k)	—	—
Article 2(l)	—	—
Article 3	Article 4(1)	—
—	Article 4(3)	Article 8(1)
—	Article 4(2)	Article 8(2)
—	Article 4(4)	—
Article 4	Article 5	—
Article 5	Article 11	Article 3
Article 6(1)	—	Article 2(1)
Article 6(2)	—	Article 2(2)
Article 6(3)	—	Article 2(3), first sentence

This Regulation	Regulation (EC) No 1216/2009	Regulation (EC) No 614/2009
Article 6(4)	—	—
Article 7	—	Article 2(3), second sentence
Article 8	—	Article 2(4)
Article 9	—	Article 2(4)
Article 10(1)	Article 6(1) and Article 7(1)	—
—	Article 6(2)	—
Article 10(2)	Article 6(3)	—
Article 11	Article 14 first paragraph	—
Article 12(a) (b) (c)	Article 6(4) and Article 14 second paragraph	—
Article 12(d)	Article 6(4) and 15(1)	—
Article 13(1), (2) and (3)	Article 6(4), Article 6(6), Article 7(2), (3) and (4), Article 14, first paragraph	—
Article 13(2)	Article 14, second paragraph	—
Article 14(1)	—	Article 4(1)
Article 14(2)	—	Article 4(2), second subparagraph and Article 4(3)
Article 14(3)	—	—
Article 14(4)	—	Article 4(2), first subparagraph and Article 4(3)
Article 15(1)	—	Article 4(1) and (4)
Article 15(2)	—	—
Article 16	—	Article 4(1) and (4)
Article 17	Article 10	—
Article 18	Article 12(1), first and second subparagraphs	—
Article 19	Article 12(1), third and fourth subparagraph	—

This Regulation	Regulation (EC) No 1216/2009	Regulation (EC) No 614/2009
Article 20	Article 12(1), third subparagraph	—
—	Article 12(2)	—
Article 21	—	Article 7
Article 22(1)	Article 8(1) and (2)	—
Article 22(2)	—	—
Article 23	—	—
Article 24(1)	Article 8(3), second subparagraph	—
Article 24(2)	—	—
Article 25	—	—
Article 26	Article 8(3), first subparagraph	—
Article 27	Article 8(3), first subparagraph	—
Article 28	Article 8(5)	—
Article 29	—	—
Article 30	—	—
Article 31	Article 8(3), first subparagraph, 8(5) and (6)	—
Article 32	Article 8(3), first subparagraph, Article 8(5) and (6)	—
Article 33	Article 9	Article 5
Article 34(1)	Article 8(4), first subparagraph	—
Article 34(2)	Article 8(4), second subparagraph	—
Article 35	Article 18, Article 6(5) and Article 8(4), third subparagraph	—
Article 36	Article 13	—
Article 37	Article 19	Article 10
Article 38	—	—

This Regulation	Regulation (EC) No 1216/2009	Regulation (EC) No 614/2009
Article 39	Article 15(2)	—
Article 40	—	—
Article 41	—	—
Article 42	Article 16	—
Article 43	Article 16	—
Article 44	Article 16	—
—	Article 17	—
Article 45	Article 20	Article 11
Article 46	Article 21(1)	Article 12
—	Article 21(2)	
—	—	Article 6
—	—	Article 9
Annex I	Annex II	Article 1
Annex II	—	—
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Annex IV	Annex III	Article 1
Annex V	Annex I	
—	Annex IV	Annex I
Annex VI	Annex V	Annex II

Commission statement on delegated acts

In the context of this Regulation, the Commission recalls the commitment it has taken in paragraph 15 of the Framework Agreement on relations between the European Parliament and the European Commission to provide to the Parliament full information and documentation on its meetings with national experts within the framework of its work on the presentation of delegated acts.

**REGULATION (EU) No 511/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 April 2014**

**on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and
the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) The main international instrument providing a general framework for the conservation and sustainable use of biological diversity and the fair and equitable sharing of the benefits arising from the utilisation of genetic resources is the Convention on Biological Diversity, approved on behalf of the Union in accordance with Council Decision 93/626/EEC ⁽³⁾ (the 'Convention').
- (2) The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity ⁽⁴⁾ (the 'Nagoya Protocol') is an international treaty adopted on 29 October 2010 by the Parties to the Convention. The Nagoya Protocol further elaborates upon the general rules of the Convention on access to genetic resources and sharing of monetary and non-monetary benefits arising from the utilisation of genetic resources and traditional knowledge associated with genetic resources ('access and benefit-sharing'). In accordance with Council Decision 2014/283/EU ⁽⁵⁾, the Nagoya Protocol was approved on behalf of the Union.
- (3) A broad range of users and suppliers in the Union, including academic, university and non-commercial researchers and companies from different sectors of industry, use genetic resources for research, development and commercialisation purposes. Some also use traditional knowledge associated with genetic resources.
- (4) Genetic resources represent the gene pool in both natural and domesticated or cultivated species and play a significant and growing role in many economic sectors, including food production, forestry, and the development of medicines, cosmetics and bio-based sources of energy. Furthermore, genetic resources play a significant role in the implementation of strategies designed to restore damaged ecosystems and safeguard endangered species.
- (5) Traditional knowledge that is held by indigenous and local communities could provide important lead information for the scientific discovery of interesting genetic or biochemical properties of genetic resources. Such traditional knowledge includes knowledge, innovations and practices, of indigenous and local communities embodying traditional lifestyles, relevant for the conservation and sustainable use of biological diversity.

⁽¹⁾ OJ C 161, 6.6.2013, p. 73.

⁽²⁾ Position of the European Parliament of 11 March 2014 (not yet published in the Official Journal) and decision of the Council of 14 April 2014.

⁽³⁾ Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity (OJ L 309, 13.12.1993, p. 1).

⁽⁴⁾ Annex I to Document UNEP/CBD/COP/DEC/X/1 of 29 October 2010.

⁽⁵⁾ Council Decision 2014/283/EU of 14 April 2014 on the conclusion, on behalf of the Union, of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (see page 231 of this Official Journal).

- (6) The Convention recognises that States have sovereign rights over natural resources found within their jurisdiction and the authority to determine access to their genetic resources. The Convention imposes an obligation on all Parties thereto to endeavour to create conditions to facilitate access to genetic resources, over which they exercise sovereign rights, for environmentally sound uses by other Parties to the Convention. The Convention also makes it mandatory for all Parties thereto to take measures with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from commercial and other utilisation of genetic resources with the Party to the Convention that provided those resources. Such sharing is to take place upon mutually agreed terms. The Convention also addresses access and benefit-sharing in relation to the knowledge, innovations and practices of indigenous and local communities, which are relevant for the conservation and sustainable use of biological diversity.
- (7) Genetic resources should be preserved in situ and utilised in sustainable ways, and the benefits arising from their utilisation should be shared fairly and equitably, in order to contribute to poverty eradication and, thereby, to achieving the United Nations Millennium Development Goals, as acknowledged in the preamble of the Nagoya Protocol. The implementation of the Nagoya Protocol should also aim to realise that potential.
- (8) The Nagoya Protocol applies to genetic resources, over which States exercise sovereign rights, falling within the scope of Article 15 of the Convention as opposed to the wider scope of Article 4 of the Convention. That implies that the Nagoya Protocol does not extend to the full jurisdictional scope of Article 4 of the Convention, such as to activities taking place in marine areas beyond national jurisdiction. Research on genetic resources is gradually being extended into new areas, especially the oceans which are still the planet's least explored and least well-known environments. The deep ocean in particular represents the last great frontier on the planet and is attracting growing interest in terms of research, prospecting and resource exploration.
- (9) It is important to set out a clear and sound framework for implementing the Nagoya Protocol that should contribute to the conservation of biological diversity and the sustainable use of its components, the fair and equitable sharing of the benefits arising from the utilisation of genetic resources and poverty eradication, while at the same time enhancing opportunities available for nature-based research and development activities in the Union. It is also essential to prevent the utilisation in the Union of genetic resources or traditional knowledge associated with genetic resources, which were not accessed in accordance with the national access and benefit-sharing legislation or regulatory requirements of a Party to the Nagoya Protocol, and to support the effective implementation of benefit-sharing commitments set out in mutually agreed terms between providers and users. It is also essential to improve the conditions for legal certainty in connection with the utilisation of genetic resources and traditional knowledge associated with genetic resources.
- (10) The framework created by this Regulation will contribute to maintaining and increasing trust between Parties to the Nagoya Protocol as well as other stakeholders, including indigenous and local communities, involved in access and benefit-sharing of genetic resources.
- (11) In order to ensure legal certainty, it is important that the rules implementing the Nagoya Protocol apply only to genetic resources over which States exercise sovereign rights within the scope of Article 15 of the Convention, and to traditional knowledge associated with genetic resources within the scope of the Convention, which are accessed after the entry into force of the Nagoya Protocol for the Union.
- (12) The Nagoya Protocol requires each Party thereto, in the development and implementation of its access and benefit-sharing legislation or regulatory requirements, to consider the importance of genetic resources for food and agriculture (GRFA) and their special role for food security. In accordance with Council Decision 2004/869/EC ⁽¹⁾, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) was approved on behalf of the Union. The ITPGRFA constitutes a specialised international access and benefit-sharing instrument within the meaning of Article 4(4) of the Nagoya Protocol that should not be affected by the rules implementing the Nagoya Protocol.

⁽¹⁾ Council Decision 2004/869/EC of 24 February 2004 concerning the conclusion, on behalf of the European Community, of the International Treaty on Plant Genetic Resources for Food and Agriculture (OJ L 378, 23.12.2004, p. 1).

- (13) Many Parties to the Nagoya Protocol, in the exercise of their sovereign rights, have decided that Plant Genetic Resources for Food and Agriculture (PGRFA) under their management and control and in the public domain, not listed in Annex I to the ITPGRFA, are also to be subject to the terms and conditions of the standard material transfer agreement (sMTA) for the purposes set out under the ITPGRFA.
- (14) The Nagoya Protocol should be implemented in a manner that is mutually supportive with other international instruments that do not run counter to the Protocol's objectives or to those of the Convention.
- (15) In Article 2 of the Convention, the terms 'domesticated species' are defined as any species in which the evolutionary process has been influenced by humans to meet their needs and 'biotechnology' as any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use. In Article 2 of the Nagoya Protocol, the term 'derivatives' is defined as a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.
- (16) The Nagoya Protocol requires each Party thereto to pay due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, as determined nationally or internationally. On 24 May 2011, the Sixty-fourth World Health Assembly adopted the Pandemic Influenza Preparedness Framework for the sharing of influenza viruses and access to vaccines and other benefits (the 'PIP Framework'). The PIP Framework applies only to influenza viruses with human pandemic potential and specifically does not apply to seasonal influenza viruses. The PIP Framework constitutes a specialised international access and benefit-sharing instrument that is consistent with the Nagoya Protocol and that should not be affected by the rules implementing the Nagoya Protocol.
- (17) It is important to include in this Regulation the definitions from the Nagoya Protocol and the Convention that are necessary for the implementation of this Regulation by users. It is important that the new definitions contained in this Regulation, which are not included in the Convention or in the Nagoya Protocol, are consistent with the definitions of the Convention and the Nagoya Protocol. In particular, the term 'user' should be consistent with the definition of 'utilization of genetic resources' from the Nagoya Protocol.
- (18) The Nagoya Protocol lays down an obligation to promote and encourage research related to biological diversity, in particular research with non-commercial intent.
- (19) It is important to recall paragraph 2 of Decision II/11 of the Conference of the Parties to the Convention which reaffirms that human genetic resources are not included within the framework of the Convention.
- (20) There is currently no internationally-agreed definition of 'traditional knowledge associated with genetic resources'. Without prejudice to the competence and responsibility of the Member States for matters relating to traditional knowledge associated with genetic resources and the implementation of measures to safeguard indigenous and local communities' interests, in order to ensure flexibility and legal certainty for providers and users, this Regulation should make reference to traditional knowledge associated with genetic resources as described in benefit-sharing agreements.
- (21) With a view to ensuring the effective implementation of the Nagoya Protocol, all users of genetic resources and traditional knowledge associated with genetic resources should exercise due diligence to ascertain whether genetic resources and traditional knowledge associated with genetic resources have been accessed in accordance with applicable legal or regulatory requirements and to ensure that, where relevant, benefits are fairly and equitably shared. In that context, competent authorities should accept internationally-recognised certificates of compliance as evidence that the genetic resources covered were legally accessed and that mutually agreed terms were established for the user and the utilisation specified therein. The specific choices made by users as regards the tools and measures to apply in order to exercise due diligence should be supported through the recognition of best practices, as well as complementary measures in support of sectoral codes of conduct, model contractual clauses and guidelines with a view to increasing legal certainty and reducing costs. The obligation on users to keep information which is relevant for access and benefit-sharing should be limited in time and in accordance with the time-frame for potential innovation.

- (22) The successful implementation of the Nagoya Protocol depends on users and providers of genetic resources or of traditional knowledge associated with genetic resources negotiating mutually agreed terms that lead to fair and equitable benefit-sharing and contribute to the Nagoya Protocol's wider objective of contributing to the conservation and sustainable use of biological diversity. Users and providers are also encouraged to raise awareness of the importance of genetic resources and of traditional knowledge associated with genetic resources.
- (23) The due diligence obligation should apply to all users irrespective of their size, including micro, small and medium-sized enterprises. This Regulation should offer a range of measures and tools to enable micro, small and medium-sized enterprises to comply with their obligations at an affordable cost and with a high level of legal certainty.
- (24) Best practices developed by users should play an important role in identifying due diligence measures that are particularly suitable for achieving compliance with the system of implementation of the Nagoya Protocol at an affordable cost and with a high level of legal certainty. Users should build on existing access and benefit-sharing codes of conduct developed for the academic, university and non-commercial research sectors and different industries. Associations of users should be able to request that the Commission determine whether it is possible for a specific combination of procedures, tools or mechanisms overseen by an association to be recognised as best practice. Competent authorities of the Member States should consider that the implementation of a recognised best practice by a user reduces that user's risk of non-compliance and justifies a reduction in compliance checks. The same should apply to best practices adopted by the Parties to the Nagoya Protocol.
- (25) Under the Nagoya Protocol check-points must be effective and should be relevant to the utilisation of genetic resources. At identified points in the chain of activities that constitute utilisation, users should declare and provide evidence, when requested, that they have exercised due diligence. One suitable point for such a declaration is when research funds are received. Another suitable point is at the final stage of utilisation, meaning at the stage of final development of a product before requesting market approval for a product developed via the utilisation of genetic resources or traditional knowledge associated with such resources, or, where market approval is not required, at the stage of final development of a product before first placing it on the Union market. In order to ensure the effectiveness of check-points, while at the same time increasing legal certainty for users, implementing powers should be conferred on the Commission in accordance with Article 291(2) of the Treaty of the Functioning of the European Union. The Commission should make use of those implementing powers to determine the stage of final development of a product, in accordance with the Nagoya Protocol, in order to identify the final stage of utilisation in different sectors.
- (26) It is important to acknowledge that the Access and Benefit-Sharing Clearing House would play an important role in implementing the Nagoya Protocol. In accordance with Articles 14 and 17 of the Nagoya Protocol, information would be submitted to the Access and Benefit-Sharing Clearing House as part of the internationally-recognised certificate of compliance process. The competent authorities should cooperate with the Access and Benefit-Sharing Clearing House to ensure that the information is exchanged to facilitate the monitoring by the competent authorities of the compliance of users.
- (27) The collection of genetic resources in the wild is mostly undertaken for non-commercial purposes by academic, university and non-commercial researchers or collectors. In the vast majority of cases and in almost all sectors, newly-collected genetic resources are accessed through intermediaries, collections, or agents that acquire genetic resources in third countries.
- (28) Collections are major suppliers of genetic resources and traditional knowledge associated with genetic resources utilised in the Union. As suppliers they can play an important role in helping other users in the chain of custody to comply with their obligations. In order to do so, a system of registered collections within the Union should be put in place through the establishment of a voluntary register of collections to be maintained by the Commission. Such a system would ensure that collections included in the register effectively apply measures restricting the supply of samples of genetic resources to third persons with documentation providing evidence of legal access, and ensure the establishment of mutually agreed terms, where required. A system of registered collections within

the Union should substantially lower the risk that genetic resources which were not accessed in accordance with the national access and benefit-sharing legislation or regulatory requirements of a Party to the Nagoya Protocol are utilised in the Union. The competent authorities of Member States should verify if a collection meets the requirements for recognition as a collection for inclusion in the register. Users that obtain a genetic resource from a collection included in the register should be considered to have exercised due diligence as regards the seeking of all necessary information. This should prove particularly beneficial for academic, university and non-commercial researchers as well as small and medium-sized enterprises and should contribute to a reduction in administrative and compliance requirements.

- (29) Competent authorities of Member States should check whether users comply with their obligations, have obtained prior informed consent and have established mutually agreed terms. Competent authorities should also keep records of the checks made, and relevant information should be made available in accordance with Directive 2003/4/EC of the European Parliament and of the Council ⁽¹⁾.
- (30) Member States should ensure that infringements of the rules implementing the Nagoya Protocol are sanctioned by means of effective, proportionate and dissuasive penalties.
- (31) Taking into account the international character of access and benefit-sharing transactions, competent authorities of the Member States should cooperate with each other, with the Commission, and with the competent national authorities of third countries in order to ensure that users comply with this Regulation and support an effective application of the rules implementing the Nagoya Protocol.
- (32) The Union and the Member States should act in a proactive manner to ensure that the objectives of the Nagoya Protocol are achieved in order to increase resources to support the conservation of biological diversity and the sustainable use of its components globally.
- (33) The Commission and the Member States should take appropriate complementary measures to enhance the effectiveness of the implementation of this Regulation and to lower costs, particularly where this would benefit academic, university and non-commercial researchers and small and medium-sized enterprises.
- (34) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽²⁾.
- (35) Since the objective of this Regulation, namely to support the fair and equitable sharing of the benefits arising from the utilisation of genetic resources in accordance with the Nagoya Protocol, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and the need to ensure the functioning of the internal market, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
- (36) The date of entry into force of this Regulation should be directly correlated to the entry into force of the Nagoya Protocol for the Union in order to ensure equal conditions at Union and global level in activities relating to access and benefit-sharing of genetic resources,

⁽¹⁾ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

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

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation establishes rules governing compliance with access and benefit-sharing for genetic resources and traditional knowledge associated with genetic resources in accordance with the provisions of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the 'Nagoya Protocol'). The effective implementation of this Regulation will also contribute to the conservation of biological diversity and the sustainable use of its components, in accordance with the provisions of the Convention on Biological Diversity (the 'Convention').

Article 2

Scope

1. This Regulation applies to genetic resources over which States exercise sovereign rights and to traditional knowledge associated with genetic resources that are accessed after the entry into force of the Nagoya Protocol for the Union. It also applies to the benefits arising from the utilisation of such genetic resources and traditional knowledge associated with genetic resources.
2. This Regulation does not apply to genetic resources for which access and benefit-sharing is governed by specialised international instruments that are consistent with, and do not run counter to the objectives of the Convention and the Nagoya Protocol.
3. This Regulation is without prejudice to Member States' rules on access to genetic resources over which they exercise sovereign rights within the scope of Article 15 of the Convention, and to Member States' provisions on Article 8(j) of the Convention concerning traditional knowledge associated with genetic resources.
4. This Regulation applies to genetic resources and traditional knowledge associated with genetic resources to which access and benefit-sharing legislation or regulatory requirements of a Party to the Nagoya Protocol are applicable.
5. Nothing in this Regulation shall oblige a Member State to supply information the disclosure of which it considers contrary to the essential interests of its security.

Article 3

Definitions

For the purposes of this Regulation, the definitions of the Convention and the Nagoya Protocol as well as the following definitions apply:

- (1) 'genetic material' means any material of plant, animal, microbial or other origin containing functional units of heredity;
- (2) 'genetic resources' means genetic material of actual or potential value;
- (3) 'access' means the acquisition of genetic resources or of traditional knowledge associated with genetic resources in a Party to the Nagoya Protocol;
- (4) 'user' means a natural or legal person that utilises genetic resources or traditional knowledge associated with genetic resources;
- (5) 'utilisation of genetic resources' means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention;

- (6) 'mutually agreed terms' means the contractual arrangements concluded between a provider of genetic resources, or of traditional knowledge associated with genetic resources, and a user, that set out specific conditions for the fair and equitable sharing of benefits arising from the utilisation of genetic resources or of traditional knowledge associated with genetic resources, and that may also include further conditions and terms for such utilisation as well as subsequent applications and commercialisation;
- (7) 'traditional knowledge associated with genetic resources' means traditional knowledge held by an indigenous or local community that is relevant for the utilisation of genetic resources and that is as such described in the mutually agreed terms applying to the utilisation of genetic resources;
- (8) 'illegally accessed genetic resources' means genetic resources and traditional knowledge associated with genetic resources which were not accessed in accordance with the national access and benefit-sharing legislation or regulatory requirements of the provider country that is a Party to the Nagoya Protocol requiring prior informed consent;
- (9) 'collection' means a set of collected samples of genetic resources and related information that is accumulated and stored, whether held by public or private entities;
- (10) 'association of users' means an organisation, established in accordance with the requirements of the Member State in which it is located, that represents the interests of users and that is involved in developing and overseeing the best practices referred to in Article 8 of this Regulation;
- (11) 'internationally recognised certificate of compliance' means a permit or its equivalent issued at the time of access as evidence that the genetic resource it covers has been accessed in accordance with the decision to grant prior informed consent, and that mutually agreed terms have been established for the user and the utilisation specified therein by a competent authority in accordance with Article 6(3)(e) and Article 13(2) of the Nagoya Protocol, that is made available to the Access and Benefit-sharing Clearing House established under Article 14(1) of that Protocol.

CHAPTER II

USER COMPLIANCE

Article 4

Obligations of users

1. Users shall exercise due diligence to ascertain that genetic resources and traditional knowledge associated with genetic resources which they utilise have been accessed in accordance with applicable access and benefit-sharing legislation or regulatory requirements, and that benefits are fairly and equitably shared upon mutually agreed terms, in accordance with any applicable legislation or regulatory requirements.
2. Genetic resources and traditional knowledge associated with genetic resources shall only be transferred and utilised in accordance with mutually agreed terms if they are required by applicable legislation or regulatory requirements.
3. For the purposes of paragraph 1, users shall seek, keep and transfer to subsequent users:
 - (a) the internationally-recognised certificate of compliance, as well as information on the content of the mutually agreed terms relevant for subsequent users; or
 - (b) where no internationally-recognised certificate of compliance is available, information and relevant documents on:
 - (i) the date and place of access of genetic resources or of traditional knowledge associated with genetic resources;
 - (ii) the description of the genetic resources or of traditional knowledge associated with genetic resources utilised;

- (iii) the source from which the genetic resources or traditional knowledge associated with genetic resources were directly obtained, as well as subsequent users of genetic resources or traditional knowledge associated with genetic resources;
- (iv) the presence or absence of rights and obligations relating to access and benefit-sharing including rights and obligations regarding subsequent applications and commercialisation;
- (v) access permits, where applicable;
- (vi) mutually agreed terms, including benefit-sharing arrangements, where applicable.

4. Users acquiring Plant Genetic Resources for Food and Agriculture (PGRFA) in a country that is a Party to the Nagoya Protocol which has determined that PGRFA under its management and control and in the public domain, not contained in Annex I to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), will also be subject to the terms and conditions of the standard material transfer agreement for the purposes set out under the ITPGRFA, shall be considered to have exercised due diligence in accordance with paragraph 3 of this Article.

5. When the information in their possession is insufficient or uncertainties about the legality of access and utilisation persist, users shall obtain an access permit or its equivalent and establish mutually agreed terms, or discontinue utilisation.

6. Users shall keep the information relevant to access and benefit-sharing for 20 years after the end of the period of utilisation.

7. Users obtaining a genetic resource from a collection included in the register of collections within the Union referred to in Article 5(1) shall be considered to have exercised due diligence as regards the seeking of information listed in paragraph 3 of this Article.

8. Users acquiring a genetic resource that is determined to be, or is determined as likely to be, the causing pathogen of a present or imminent public health emergency of international concern, within the meaning of the International Health Regulations (2005), or of a serious cross-border threat to health as defined in the Decision No 1082/2013/EU of the European Parliament and of the Council ⁽¹⁾, for the purpose of public health emergency preparedness in not yet affected countries and response in affected countries, shall fulfil the obligations listed in paragraph 3 or 5 of this Article at the latest:

- (a) one month after the imminent or present threat to public health is terminated; or
- (b) three months after commencement of utilisation of the genetic resource;

whichever is the earlier.

Should the obligations listed in paragraph 3 or 5 of this Article not be fulfilled by the deadlines laid down in points (a) and (b) of the first subparagraph of this paragraph, utilisation shall be discontinued.

In the event of a request for market approval or the placing on the market of products deriving from utilisation of a genetic resource as referred to in the first subparagraph, the obligations listed in paragraph 3 or 5 shall apply entirely and without delay.

In the absence of prior informed consent having been obtained in a timely manner and mutually agreed terms having been established, and until an agreement is reached with the provider country concerned, no exclusive rights of any kind will be claimed by such a user to any developments made via the use of such pathogens.

Specialised international access and benefit-sharing instruments as mentioned in Article 2 remain unaffected.

⁽¹⁾ Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC (OJ L 293, 5.11.2013, p. 1).

*Article 5***Register of collections**

1. The Commission shall establish and maintain a register of collections within the Union ('the register'). The Commission shall ensure that the register is internet-based and is easily accessible to users. The register shall include the references of the collections of genetic resources, or of parts of those collections, identified as meeting the criteria set out in paragraph 3.

2. A Member State shall, upon request by a collection holder under its jurisdiction, consider the inclusion of that collection, or a part of it, in the register. After verifying that the collection, or a part of it, meets the criteria set out in paragraph 3, the Member State shall notify the Commission without undue delay of the name and contact details of the collection and of its holder, and of the type of collection concerned. The Commission shall without delay include the information received in the register.

3. In order for a collection or a part of a collection to be included in the register, a collection shall demonstrate its capacity to:

- (a) apply standardised procedures for exchanging samples of genetic resources and related information with other collections, and for supplying samples of genetic resources and related information to third persons for their utilisation in line with the Convention and the Nagoya Protocol;
- (b) supply genetic resources and related information to third persons for their utilisation only with documentation providing evidence that the genetic resources and the related information were accessed in accordance with applicable access and benefit-sharing legislation or regulatory requirements and, where relevant, with mutually agreed terms;
- (c) keep records of all samples of genetic resources and related information supplied to third persons for their utilisation;
- (d) establish or use unique identifiers, where possible, for samples of genetic resources supplied to third persons; and
- (e) use appropriate tracking and monitoring tools for exchanging samples of genetic resources and related information with other collections.

4. The Member States shall regularly verify that each collection or part of a collection under their jurisdiction included in the register meets the criteria set out in paragraph 3.

Where there is evidence, on the basis of information provided pursuant to paragraph 3, that a collection or a part of a collection included in the register does not meet the criteria set out in paragraph 3, the Member State concerned shall, in dialogue with the collection holder concerned and without undue delay, identify remedial actions or measures.

A Member State which determines that a collection or a part of a collection within its jurisdiction no longer complies with paragraph 3 shall inform the Commission thereof without undue delay.

Upon receipt of that information, the Commission shall remove the collection or the part of the collection concerned from the register.

5. The Commission shall adopt implementing acts to establish the procedures for implementing paragraphs 1 to 4 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).

*Article 6***Competent authorities and focal point**

1. Each Member State shall designate one or more competent authorities to be responsible for the application of this Regulation. Member States shall notify the Commission of the names and addresses of their competent authorities as of the date of entry into force of this Regulation. Member States shall inform the Commission without undue delay of any changes to the names or addresses of the competent authorities.

2. The Commission shall make public, including via the internet, a list of the competent authorities of the Member States. The Commission shall keep the list up-to-date.
3. The Commission shall designate a focal point on access and benefit-sharing responsible for liaising with the Secretariat of the Convention with regard to matters covered by this Regulation.
4. The Commission shall ensure that the Union bodies established under Council Regulation (EC) No 338/97 ⁽¹⁾ contribute to the achievement of the objectives of this Regulation.

Article 7

Monitoring user compliance

1. The Member States and the Commission shall request all recipients of research funding involving the utilisation of genetic resources and traditional knowledge associated with genetic resources to declare that they exercise due diligence in accordance with Article 4.
2. At the stage of final development of a product developed via the utilisation of genetic resources or traditional knowledge associated with such resources, users shall declare to the competent authorities referred to in Article 6(1) that they have fulfilled the obligations under Article 4 and shall simultaneously submit:
 - (a) the relevant information from the internationally-recognised certificate of compliance; or
 - (b) the related information as referred to in Article 4(3)(b)(i)-(v) and Article 4(5), including information that mutually agreed terms were established, where applicable.

Users shall further provide evidence to the competent authority upon request.

3. The competent authorities shall transmit the information received on the basis of paragraphs 1 and 2 of this Article to the Access and Benefit-Sharing Clearing House, established under Article 14(1) of the Nagoya Protocol, to the Commission and, where appropriate, to the competent national authorities referred to in Article 13(2) of the Nagoya Protocol.
4. The competent authorities shall cooperate with the Access and Benefit-Sharing Clearing House to ensure the exchange of the information listed in Article 17(2) of the Nagoya Protocol for monitoring the compliance of users.
5. The competent authorities shall take due account of the respect of confidentiality of commercial or industrial information where such confidentiality is provided for by Union or national law to protect a legitimate economic interest, in particular concerning the designation of the genetic resources and the designation of utilisation.
6. The Commission shall adopt implementing acts to establish the procedures for implementing paragraphs 1, 2 and 3 of this Article. In those implementing acts, the Commission shall determine the stage of final development of a product in order to identify the final stage of utilisation in different sectors. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).

Article 8

Best practices

1. Associations of users or other interested parties may submit an application to the Commission to have a combination of procedures, tools or mechanisms, developed and overseen by them, recognised as a best practice in accordance with the requirements of this Regulation. The application shall be supported by evidence and information.
2. Where, on the basis of evidence and information provided pursuant to paragraph 1 of this Article, the Commission determines that the specific combination of procedures, tools or mechanisms, when effectively implemented by a user, enables that user to comply with its obligations under Articles 4 and 7, it shall grant recognition as best practice.
3. An association of users or other interested parties shall inform the Commission of any changes or updates made to a best practice for which recognition was granted in accordance with paragraph 2.

⁽¹⁾ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1).

4. If there is evidence of repeated or significant cases where users implementing a best practice have failed to comply with their obligations under this Regulation, the Commission shall examine, in dialogue with the relevant association of users or other interested parties, whether those cases indicate possible deficiencies in the best practice.
5. The Commission shall withdraw the recognition of a best practice when it has determined that changes to the best practice compromise a user's ability to comply with its obligations under Articles 4 and 7, or when repeated or significant cases of non-compliance by users relate to deficiencies in the best practice.
6. The Commission shall establish and keep up-to-date an internet-based register of recognised best practices. That register shall, in one section, list the best practices recognised by the Commission in accordance with paragraph 2 of this Article, and, in another section, list the best practices adopted on the basis of Article 20(2) of the Nagoya Protocol.
7. The Commission shall adopt implementing acts to establish the procedures for implementing paragraphs 1 to 5 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).

Article 9

Checks on user compliance

1. The competent authorities referred to in Article 6(1) shall carry out checks to verify whether users comply with their obligations under Articles 4 and 7, taking into account that the implementation by a user of a best practice in relation to access and benefit-sharing, recognised under Article 8(2) of this Regulation or under Article 20(2) of the Nagoya Protocol, may reduce that user's risk of non-compliance.
2. Member States shall ensure that the checks carried out pursuant to paragraph 1 are effective, proportionate, dissuasive and detect cases of user non-compliance with this Regulation.
3. The checks referred to in paragraph 1 shall be conducted:
 - (a) in accordance with a periodically reviewed plan developed using a risk-based approach;
 - (b) when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, regarding a user's non-compliance with this Regulation. Special consideration shall be given to such concerns raised by provider countries.
4. The checks referred to in paragraph 1 of this Article may include an examination of:
 - (a) the measures taken by a user to exercise due diligence in accordance with Article 4;
 - (b) documentation and records that demonstrate the exercise of due diligence in accordance with Article 4 in relation to specific use activities;
 - (c) instances where a user was obliged to make declarations under Article 7.

On-the-spot checks may also be carried out, as appropriate.

5. Users shall offer all assistance necessary to facilitate the performance of the checks referred to in paragraph 1.
6. Without prejudice to Article 11, where, following the checks referred to in paragraph 1 of this Article, shortcomings have been detected, the competent authority shall issue a notice of remedial action or measures to be taken by the user.

Depending on the nature of the shortcomings, Member States may also take immediate interim measures.

*Article 10***Records of checks**

1. The competent authorities shall keep, for at least five years, records of the checks referred to in Article 9(1), indicating, in particular, their nature and results, as well as records of any remedial actions and measures taken under Article 9(6).
2. The information referred to in paragraph 1 shall be made available in accordance with Directive 2003/4/EC.

*Article 11***Penalties**

1. Member States shall lay down the rules on penalties applicable to infringements of Articles 4 and 7 and shall take all the measures necessary to ensure that they are applied.
2. The penalties provided for shall be effective, proportionate and dissuasive.
3. By 11 June 2015, Member States shall notify to the Commission the rules referred to in paragraph 1 and any subsequent amendments thereto without delay.

CHAPTER III

FINAL PROVISIONS*Article 12***Cooperation**

The competent authorities referred to in Article 6(1) shall:

- (a) cooperate with each other and with the Commission in order to ensure that users comply with this Regulation;
- (b) consult, if appropriate, with stakeholders on the implementation of the Nagoya Protocol and this Regulation;
- (c) cooperate with the competent national authorities referred to in Article 13(2) of the Nagoya Protocol in order to ensure that users comply with this Regulation;
- (d) inform the competent authorities of other Member States and the Commission of any serious shortcomings, detected by means of the checks referred to in Article 9(1), and of the types of penalties imposed in accordance with Article 11;
- (e) exchange information on the organisation of their system of checks for monitoring user compliance with this Regulation.

*Article 13***Complementary measures**

The Commission and Member States shall, as appropriate:

- (a) promote and encourage information, awareness-raising and training activities to help stakeholders and interested parties to understand their obligations arising from the implementation of this Regulation, and of the relevant provisions of the Convention and the Nagoya Protocol in the Union;
- (b) encourage the development of sectoral codes of conduct, model contractual clauses, guidelines and best practices, particularly where they would benefit academic, university and non-commercial researchers and small and medium-sized enterprises;
- (c) promote the development and use of cost-effective communication tools and systems in support of monitoring and tracking the utilisation of genetic resources and traditional knowledge associated with genetic resources by collections and users;
- (d) provide technical and other guidance to users, taking into account the situation of academic, university and non-commercial researchers and of small and medium-sized enterprises, in order to facilitate compliance with the requirements of this Regulation;
- (e) encourage users and providers to direct benefits from the utilisation of genetic resources towards the conservation of biological diversity and the sustainable use of its components in accordance with the provisions of the Convention;

- (f) promote measures in support of collections that contribute to the conservation of biological diversity and cultural diversity.

Article 14

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 15

Consultation forum

The Commission shall ensure a balanced participation of representatives of the Member States and other interested parties in issues related to the implementation of this Regulation. They shall meet in a consultation forum. The rules of procedure of that consultation forum shall be established by the Commission.

Article 16

Reports and review

1. Unless an alternative interval for reports is determined, as referred to in Article 29 of the Nagoya Protocol, Member States shall submit to the Commission a report on the application of this Regulation by 11 June 2017 and every five years thereafter.
2. Not later than one year after the time-limit for submission of reports referred to in paragraph 1, the Commission shall submit to the European Parliament and to the Council a report on the application of this Regulation, including a first assessment of the effectiveness of this Regulation.
3. Every 10 years after its first report the Commission shall, on the basis of reporting on, and experience with the application of, this Regulation, review the functioning and effectiveness of this Regulation in achieving the objectives of the Nagoya Protocol. In its review the Commission shall, in particular, consider the administrative consequences for public research institutions, micro, small or medium-sized enterprises and specific sectors. It shall also consider the need to review the implementation of the provisions of this Regulation in light of developments in other relevant international organisations.
4. The Commission shall report to the Conference of the Parties to the Convention serving as the meeting of the Parties to the Nagoya Protocol on the measures taken by the Union to implement compliance measures in respect of the Nagoya Protocol.

Article 17

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. As soon as possible following the deposit of the Union's instrument of acceptance of the Nagoya Protocol, the Commission shall publish a notice in the *Official Journal of the European Union* specifying the date on which the Nagoya Protocol will enter into force for the Union. This Regulation shall apply from that date.
3. Articles 4, 7, and 9 of this Regulation shall apply one year after the date of entry into force of the Nagoya Protocol for the Union.

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

Done at Strasbourg, 16 April 2014.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
D. KOURKOULAS

**REGULATION (EU) No 512/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 April 2014**

amending Regulation (EU) No 912/2010 setting up the European GNSS Agency

THE EUROPEAN PARLIAMENT AND THE COUNCIL,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 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) It follows from the combined provisions of Article 14 of Regulation (EU) No 1285/2013 of the European Parliament and of the Council ⁽³⁾ and Article 2 of Regulation (EU) No 912/2010 of the European Parliament and of the Council ⁽⁴⁾ that the European GNSS Agency (the 'Agency') is to ensure the security accreditation of the European satellite navigation systems (the 'systems') and, to that end, initiate and monitor the implementation of security procedures and the performance of security audits.
- (2) The systems are defined in Article 2 of Regulation (EU) No 1285/2013. They are complex systems and their establishment and operation involve numerous stakeholders with different roles. In this context, it is crucial that EU classified information be handled and protected by all the stakeholders involved in the implementation of the Galileo and EGNOS programmes (the 'programmes') in accordance with the basic principles and minimum standards set out in the Commission's and the Council's security rules on the protection of EU classified information and that Article 17 of Regulation (EU) No 1285/2013, which guarantees an equivalent level of protection for EU classified information, apply, where appropriate, to all stakeholders involved in implementing the programmes.
- (3) The stakeholders participating in and affected by the security accreditation process are Member States, the Commission, relevant Union Agencies and the European Space Agency (ESA) and the parties involved in Council Joint Action 2004/552/CFSP ⁽⁵⁾.
- (4) Considering the specificity and complexity of the systems, the different bodies involved in their implementation and the variety of potential users, security accreditation should be facilitated by appropriate consultation of all relevant parties, such as national authorities of Member States and of third countries operating networks connected to the system established under the Galileo programme for the provision of the Public Regulated Service (PRS), other relevant authorities of Member States, ESA or, if provided for in an international agreement, third countries hosting the ground stations of the systems.
- (5) In order to enable the appropriate performance of tasks relating to security accreditation, it is crucial that the Commission provide all the information necessary to perform these tasks. It is also important for security accreditation activities to be coordinated with the work of the bodies responsible for managing the programmes in accordance with Regulation (EU) No 1285/2013 and other entities responsible for implementing security provisions.

⁽¹⁾ OJ C 198, 10.7.2013, p. 67.

⁽²⁾ Position of the European Parliament of 12 March 2014 (not yet published in the Official Journal) and decision of the Council of 14 April 2014.

⁽³⁾ Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems and repealing Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council (OJ L 347, 20.12.2013, p. 1).

⁽⁴⁾ Regulation (EU) No 912/2010 of the European Parliament and of the Council of 22 September 2010 setting up the European GNSS Agency, repealing Council Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio navigation programmes and amending Regulation (EC) No 683/2008 of the European Parliament and of the Council (OJ L 276, 20.10.2010, p. 11).

⁽⁵⁾ Council Joint Action 2004/552/CFSP of 12 July 2004 on aspects of the operation of the European satellite radio-navigation system affecting the security of the European Union (OJ L 246, 20.7.2004, p. 30).

- (6) The risk assessment and management approach to be applied should follow best practices. It should include applying security measures in accordance with the concept of defence-in-depth. It should take into consideration the likelihood of the occurrence of a risk or feared event. It should also be proportionate, appropriate and cost-effective, taking into account the cost of implementing measures to mitigate risk compared to the subsequent security benefit. Defence-in-depth aims to enhance the security of the systems by implementing technical and non-technical security measures organised as multiple layers of defence.
- (7) The development, including the relevant associated research activities, and the manufacture of PRS receivers and PRS security modules, constitute particularly sensitive activities. It is therefore essential that procedures be established to authorise the manufacturers of PRS receivers and PRS security modules.
- (8) Moreover, given the potentially high number of networks and equipment connected to the system established under the Galileo programme, in particular for the use of PRS, principles for the security accreditation of those networks and equipment should be defined in the security accreditation strategy, in order to ensure the homogeneity of the accreditation without encroaching on the competence of national entities of the Member States competent in security matters. The application of those principles would allow for consistent risk management and reduce the need to escalate all mitigation actions at system level, which would have a negative impact on cost, schedule, performance and service provision.
- (9) Products and measures which protect against electromagnetic emanations (i.e. against electronic eavesdropping) and cryptographic products used to provide security for the systems should be evaluated and approved by the national entities competent in security matters of the country where the company manufacturing such products is established. In relation to cryptographic products, that evaluation and approval should be complemented in accordance with the principles set out in points 26 to 30 of Annex IV to Council Decision 2013/488/EU ⁽¹⁾. The authority responsible for the security accreditation of the systems should endorse the selection of those approved products and measures taking into account the overall security requirements of the systems.
- (10) Regulation (EU) No 912/2010, and in particular Chapter III thereof, expressly lays down the terms under which the Agency must perform its task concerning security accreditation of the systems. In particular, it stipulates, as a principle, that security accreditation decisions must be taken independently of the Commission and the bodies responsible for implementing the programmes and that the systems' security accreditation authority should be an independent body within the Agency, that makes decisions independently.
- (11) In accordance with that principle, Regulation (EU) No 912/2010 establishes the Security Accreditation Board for European GNSS systems (the 'Security Accreditation Board') which, alongside the Administrative Board and the Executive Director, is one of the three bodies of the Agency. The Security Accreditation Board performs the tasks entrusted to the Agency concerning security accreditation and is authorised to make security accreditation decisions on behalf of the Agency. It should adopt its rules of procedure and appoint its chairperson.
- (12) Given that the Commission, in accordance with Regulation (EU) No 1285/2013, is to ensure the security of the programmes, including the security of the systems and their operation, the activities of the Security Accreditation Board should be limited to the security accreditation activities of the systems and should be without prejudice to the tasks and responsibilities of the Commission. This should apply in particular in relation to the tasks and responsibilities of the Commission under Article 13 of Regulation (EU) No 1285/2013 and Article 8 of Decision No 1104/2011/EU of the European Parliament and of the Council ⁽²⁾, including the adoption of any document relating to security by means of a delegated act, an implementing act or otherwise in accordance with those Articles. Without prejudice to those tasks and responsibilities of the Commission, in the light of its particular expertise, the Security Accreditation Board should however, within its field of competence, be entitled to advise the Commission on the drawing-up of the draft texts for the acts referred to in those Articles.

⁽¹⁾ Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

⁽²⁾ Decision No 1104/2011/EU of the European Parliament and of the Council of 25 October 2011 on the rules for access to the public regulated service provided by the global navigation satellite system established under the Galileo programme (OJ L 287, 4.11.2011, p. 1).

- (13) It should also be ensured that activities relating to security accreditation are carried out without prejudice to the national competences and prerogatives of Member States as regards security accreditation.
- (14) In relation to security, the terms 'audits' and 'tests' may include security assessments, inspections, reviews, audits and tests.
- (15) In order for it to carry out its activities efficiently and effectively, the Security Accreditation Board should be able to set up appropriate subordinate bodies acting on its instructions. It should in particular set up a panel that will assist in preparing its decisions.
- (16) A group of experts of the Member States should be set up under the supervision of the Security Accreditation Board to perform the tasks of the Crypto Distribution Authority (CDA) relating to the management of EU cryptographic material. That group should be established on a temporary basis to ensure the continuity of the management of communications security items during the deployment phase of the Galileo programme. A sustainable solution for performing such operational tasks should be applied in the longer term when the system established under the Galileo programme is fully operational.
- (17) Regulation (EU) No 1285/2013 defines the public governance arrangements for the programmes during the years 2014-2020. It confers overall responsibility for the programmes on the Commission. In addition, it extends the tasks entrusted to the Agency and provides, in particular, for the Agency to play a major role in the exploitation of the systems and in maximising their socioeconomic benefits.
- (18) In this new context, it is essential to ensure that the Security Accreditation Board be able to perform the tasks entrusted to it with complete independence, in particular vis-à-vis the other bodies and activities of the Agency and to avoid any conflicts of interest. It is therefore essential to further separate, within the Agency itself, the activities associated with security accreditation from its other activities, such as management of the Galileo Security Monitoring Centre, contribution to the commercialisation of the systems and any activities that the Commission might entrust to the Agency by way of delegation, in particular those associated with exploitation of the systems. To that end, the Security Accreditation Board and the Agency staff under its control should carry out their work in a manner ensuring their autonomy and independence with regard to the Agency's other activities. A tangible and effective structural division should be set up within the Agency between its various activities by 1 January 2014. The Agency's internal rules on staff should also ensure the autonomy and independence of the staff performing the security accreditation activities vis-à-vis staff carrying out other Agency activities.
- (19) Regulation (EU) No 912/2010 should therefore be amended in order to increase the independence and powers of the Security Accreditation Board and its chairperson and broadly to align that independence and those powers to the independence and powers of the Administrative Board and of the Executive Director of the Agency respectively, while providing for a cooperation requirement between the various bodies of the Agency.
- (20) When appointing members of the Boards and electing their Chairpersons and Deputy Chairpersons, the importance of balanced gender representation should be taken into account, where appropriate. Furthermore, relevant managerial, administrative and budgetary skills should also be taken into account.
- (21) The Security Accreditation Board, rather than the Administrative Board, should prepare and approve that part of the Agency's work programmes describing the operational activities associated with the security accreditation of the systems, as well as that part of the annual report concerning the activities and prospects of the Agency with regard to the systems' security accreditation activities. It should submit them in good time to the Administrative Board so that they can be incorporated in the Agency's work programme and annual report. It should also exercise disciplinary authority over its Chairperson.

- (22) It is desirable to assign a role in relation to security accreditation activities to the Chairperson of the Security Accreditation Board comparable to that of the Executive Director in other Agency activities. Therefore, in addition to the function of representing the Agency, already provided for under Regulation (EU) No 912/2010, the Chairperson of the Security Accreditation Board should manage the security accreditation activities under the direction of the Security Accreditation Board and ensure the implementation of that part of the Agency's work programmes associated with accreditation. At the request of the European Parliament or the Council, the Chairperson of the Security Accreditation Board should also submit a report on the performance of the tasks of the Security Accreditation Board and make a declaration before them.
- (23) Appropriate procedures should be established for the eventuality that the Administrative Board does not approve the Agency's work programmes, in order to ensure that the security accreditation process is not affected and can be carried out without discontinuity.
- (24) Given the involvement of a number of third countries and the potential involvement of international organisations in the programmes, including in security matters, express provision should be made for representatives of international organisations and of third countries, in particular Switzerland — with which a cooperation agreement should be concluded ⁽¹⁾ - to be able to participate, on an exceptional basis and under certain conditions, in the work of the Security Accreditation Board. Such conditions should be specified in an international agreement in accordance with Article 218 of the Treaty on the Functioning of the European Union (TFEU) to be concluded with the Union, taking into account security matters and, in particular, the protection of EU classified information. The Cooperation Agreement on Satellite Navigation between the European Union and its Member States and the Kingdom of Norway ⁽²⁾, as well as Protocols 31 and 37 to the EEA Agreement, already provide a framework for the participation of Norway. Considering its particular expertise, it should be possible to consult the Security Accreditation Board, within its field of competence, before or during the negotiation of such international agreements.
- (25) Regulation (EU) No 912/2010 should be aligned with the principles contained in the common approach of the European Parliament, the Council and of the Commission to the decentralised agencies, adopted by the three institutions on 5 July, 26 June and 12 June 2012 respectively, particularly with regard to the rules for adopting decisions of the Administrative Board, the terms of office of the members of the Administrative Board and of the Security Accreditation Board and those of their chairpersons, the existence of a multiannual work programme, the powers of the Administrative Board concerning staff management, assessment and revision of that Regulation, prevention and management of conflicts of interest and handling of non-classified but sensitive information. The process for the adoption of the multiannual work programme should be carried out in full compliance with the principles of sincere cooperation and taking into account the time constraints relating to such work programme.
- (26) With reference to the prevention and management of conflicts of interest, it is essential that the Agency establish and maintain a reputation for impartiality, integrity and high professional standards. There should never be any legitimate reason to suspect that decisions might be influenced by interests conflicting with the role of the Agency as a body serving the Union as a whole or by the private interests or affiliations of any member of the Agency staff, any seconded national expert or observer, or of any member of the Administrative Board or the Security Accreditation Board, which would create, or have the potential to create, a conflict with the proper performance of the official duties of the person concerned. The Administrative Board and the Security Accreditation Board should therefore adopt comprehensive rules on conflicts of interest that cover the entire Agency. Those rules should take account of the recommendations issued by the Court of Auditors in its Special Report No 15 of 2012 which was prepared at the request of the European Parliament, and of the need to avoid conflicts of interest between the Members of the Administrative Board and of the Security Accreditation Board.
- (27) In order to ensure the transparent operation of the Agency, its rules of procedure should be published. However, by way of exception, certain public and private interests should be protected. In order to ensure the smooth running of the programmes, the multiannual and the annual work programmes and the annual report should be as detailed as possible. As a consequence, they might contain material that is sensitive from the point of view of security or contractual relations. It would therefore be appropriate to publish only an executive summary of those documents. In the interests of transparency, those summaries should nevertheless be as complete as possible.

⁽¹⁾ OJ L 15, 20.1.2014, p. 1.

⁽²⁾ OJ L 283, 29.10.2010, p. 12.

- (28) It should also be emphasised that the Agency's work programmes should be established on the basis of a performance management process, including performance indicators, for effective and efficient assessment of the results achieved.
- (29) The work programmes of the Agency should also contain resource programming, including the human and financial resources assigned to each activity and taking into account the fact that the expenditure associated with the new staff requirements of the Agency should be partially offset by an appropriate reduction in the Commission's establishment plan during the same period, that is from 2014 to 2020.
- (30) Without prejudice to the political decision regarding Union agencies' seats, to the desirability of geographical spread and to the objectives set by Member States as regards new agencies' seats, as contained in the conclusions of the Representatives of the Member States, meeting at Head of State or Government level in Brussels on 13 December 2003, and recalled in the European Council conclusions of June 2008, objective criteria should be taken into account in the decision-making process for choosing a location for the Agency's local offices. Those criteria include the accessibility of the premises, the existence of suitable educational infrastructure for the children of members of staff and seconded national experts, access to the employment market, the social security system and healthcare for the families of members of staff and seconded national experts, as well as implementation and operating costs.
- (31) The hosting States should provide, through specific arrangements, the necessary conditions for the smooth operation of the Agency, such as appropriate education and transport facilities.
- (32) By Decision 2010/803/EU ⁽¹⁾, the Representatives of the Governments of the Member States decided that the Agency would have its seat in Prague. The Host Agreement between the Czech Republic and the Agency was concluded on 16 December 2011 and entered into force on 9 August 2012. It is considered that the Host Agreement and other specific arrangements fulfil the requirements of Regulation (EU) No 912/2010.
- (33) The financial interests of the Union are to be protected using proportionate measures throughout the expenditure cycle, in particular, by means of prevention and detection of irregularities, carrying out surveys, recovering lost, unduly paid or poorly administered funds and, if necessary, applying penalties.
- (34) Given that Article 8 of Regulation (EU) No 1285/2013 allows the Member States to contribute extra funds in order to finance certain programme features, the Agency should be permitted to award contracts jointly with the Member States when appropriate for the performance of its tasks.
- (35) The Agency should apply the Commission's rules as regards the security of EU classified information. It should also be able to establish rules for the handling of non-classified but sensitive information. Those rules should apply only to the handling of such information by the Agency. Non-classified but sensitive information is information or material that the Agency should protect because of legal obligations laid down in the Treaties and/or because of its sensitivity. It includes, but is not limited to, information or material covered by the obligation of professional secrecy, as referred to in Article 339 TFEU, information relating to issues referred to in Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽²⁾ or information within the scope of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽³⁾.
- (36) Regulation (EU) No 912/2010 should therefore be amended accordingly,

⁽¹⁾ Decision 2010/803/EU taken by common accord between the Representatives of the Governments of the Member States of 10 December 2010 on the location of the seat of the European GNSS Agency (OJ L 342, 28.12.2010, p. 15).

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

⁽³⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 912/2010 is amended as follows:

(1) Articles 2 to 8 are replaced by the following:

'Article 2

Tasks

The tasks of the Agency shall be as set out in Article 14 of Regulation (EU) No 1285/2013 of the European Parliament and of the Council (*).

Article 3

Bodies

1. The bodies of the Agency shall be:

(a) the Administrative Board;

(b) the Executive Director;

(c) the Security Accreditation Board for European GNSS systems (the "Security Accreditation Board").

2. The bodies of the Agency shall perform their tasks as specified in Articles 6, 8 and 11 respectively.

3. The Administrative Board and the Executive Director, Security Accreditation Board and its Chairperson, shall cooperate to ensure the operation of the Agency and the coordination of its bodies in accordance with the procedures determined by the Agency's internal rules, such as the rules of procedure of the Administrative Board, the rules of procedure of the Security Accreditation Board, the financial rules applicable to the Agency, the implementing rules for the status of staff and the rules governing access to documents.

Article 4

Legal status, local offices

1. The Agency shall be a body of the Union. It shall have legal personality.

2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under the law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.

3. The Agency may decide to establish local offices in the Member States, subject to their consent, or in third countries participating in the work of the Agency, in accordance with Article 23.

4. The choice of the location of those offices shall be made on the basis of objective criteria defined to ensure the Agency's smooth operation.

The provisions relating to the installation and operation of the Agency in the host Member States and host third countries and those relating to advantages accorded by them to the Executive Director, to members of the Administrative Board and the Security Accreditation Board and to Agency staff and members of their families are subject to specific arrangements made by the Agency with those Member States and countries. The specific arrangements shall be approved by the Administrative Board.

5. The host Member States and host third countries shall provide, through the specific arrangements referred to in paragraph 4, the necessary conditions for the smooth operation of the Agency.

6. Subject to point (f) of Article 11a(1), the Agency shall be represented by its Executive Director.

*Article 5***Administrative Board**

1. An Administrative Board is hereby set up to perform the tasks listed in Article 6.

2. The Administrative Board shall be composed of:

- (a) one representative appointed by each Member State;
- (b) four representatives appointed by the Commission;
- (c) one non-voting representative appointed by the European Parliament.

Members of the Administrative Board and of the Security Accreditation Board shall be appointed on the basis of their degree of relevant experience and expertise.

The term of office of the members of the Administrative Board shall be four years renewable once. The European Parliament, the Commission and the Member States shall endeavour to limit the turnover of their representatives on the Administrative Board.

The Chairperson or the Deputy Chairperson of the Security Accreditation Board, a representative of the High Representative of the Union for Foreign Affairs and Security Policy (the "HR") and a representative of the European Space Agency ("ESA") shall be invited to attend the meetings of the Administrative Board as observers, under the conditions laid down in the rules of procedure of the Administrative Board.

3. Where appropriate, the participation of representatives of third countries or international organisations and the conditions therefor shall be established in the agreements referred to in Article 23(1) and shall comply with the rules of procedure of the Administrative Board.

4. The Administrative Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall automatically take the place of the Chairperson when the Chairperson is prevented from attending to his/her duties. The term of office of the Chairperson and of the Deputy Chairperson shall be two years, renewable once, and each term of office shall expire when that person ceases to be a member of the Administrative Board.

The Administrative Board shall have the power to dismiss the Chairperson, the Deputy Chairperson or both of them.

5. The meetings of the Administrative Board shall be convened by its Chairperson.

The Executive Director shall normally take part in the deliberations, unless the Chairperson decides otherwise.

The Administrative Board shall hold an ordinary meeting twice a year. In addition, it shall meet on the initiative of its Chairperson or at the request of at least one third of its members.

The Administrative Board may invite any person whose opinion may be of interest to attend its meetings as an observer. The members of the Administrative Board may, subject to its rules of procedure, be assisted by advisers or experts.

The secretariat of the Administrative Board shall be provided by the Agency.

6. Unless this Regulation provides otherwise, the Administrative Board shall take its decisions by an absolute majority of its voting members.

A majority of two-thirds of all voting members shall be required for the election and dismissal of the Chairperson and Deputy Chairperson of the Administrative Board as referred to in paragraph 4, and for the adoption of the budget and work programmes.

7. Each representative of the Member States and of the Commission shall have one vote. The Executive Director shall not vote. Decisions based on points (a) and (b) of Article 6(2) and Article 6(5), except for matters covered by Chapter III, shall not be adopted without a favourable vote of the representatives of the Commission.

The rules of procedure of the Administrative Board shall establish more detailed voting arrangements, in particular the conditions for a member to act on behalf of another member.

Article 6

Tasks of the Administrative Board

1. The Administrative Board shall ensure that the Agency performs the work entrusted to it, under the conditions set out in this Regulation, and shall take any necessary decision to that end, without prejudice to the competences entrusted to the Security Accreditation Board for the activities under Chapter III.

2. The Administrative Board shall also:

- (a) adopt, by 30 June of the first year of the multiannual financial framework provided for under Article 312 of the Treaty on the Functioning of the European Union, the multiannual work programme of the Agency for the period covered by that multiannual financial framework after incorporating, without any change, the section drafted by the Security Accreditation Board in accordance with point (a) of Article 11(4) and after having received the Commission's opinion. The European Parliament shall be consulted on this multiannual work programme, provided that the purpose of the consultation is an exchange of views and the outcome is not binding on the Agency;
- (b) adopt, by 15 November each year, the Agency's work programme for the following year having incorporated, without any change, the section drafted by the Security Accreditation Board, in accordance with point (b) of Article 11(4) and after having received the Commission's opinion;
- (c) perform the budgetary functions laid down in Article 13(5), (6), (10) and (11) and Article 14(5);
- (d) oversee the operation of the Galileo Security Monitoring Centre as referred to in point (a)(ii) of Article 14(1) of Regulation (EU) No 1285/2013;
- (e) adopt arrangements to implement Regulation (EC) No 1049/2001 of the European Parliament and of the Council (**), in accordance with Article 21 of this Regulation;
- (f) approve the arrangements referred to in Article 23(2), after consulting the Security Accreditation Board on those provisions of those arrangements concerning security accreditation;
- (g) adopt technical procedures necessary to perform its tasks;
- (h) adopt the annual report on the activities and prospects of the Agency, having incorporated without any change the section drafted by the Security Accreditation Board in accordance with point (c) of Article 11(4) and forward it, by 1 July, to the European Parliament, the Council, the Commission and the Court of Auditors;
- (i) ensure adequate follow-up to the findings and recommendations stemming from the evaluations and audits referred to in Article 26, as well as those arising from the investigations conducted by the European Anti-Fraud Office (OLAF) and all internal or external audit reports, and forward to the budgetary authority all information relevant to the outcome of the evaluation procedures;
- (j) be consulted by the Executive Director on the delegation agreements referred to in Article 14(2) of Regulation (EU) No 1285/2013 before they are signed;
- (k) approve, on the basis of a proposal from the Executive Director, the working arrangements between the Agency and ESA referred to in Article 14(4) of Regulation (EU) No 1285/2013;
- (l) approve, on the basis of a proposal from the Executive Director, an anti-fraud strategy;

(m) approve, where necessary and on the basis of proposals from the Executive Director, the Agency's organisational structures.

(n) adopt and publish its rules of procedure.

3. With regard to the Agency's staff, the Administrative Board shall exercise the powers conferred by the Staff Regulations of Officials of the European Union (***) ("Staff Regulations") on the appointing authority and by the Conditions of Employment of Other Servants on the authority empowered to conclude employment contracts ("the powers of the appointing authority").

The Administrative Board shall adopt, in accordance with the procedure provided for in Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants delegating the relevant powers of the appointing authority to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall report back to the Administrative Board on the exercise of those delegated powers. The Executive Director shall be authorised to sub-delegate those powers.

In application of the second subparagraph of this paragraph, where exceptional circumstances so require, the Administrative Board may, by way of a decision, temporarily suspend the delegation of the powers of the appointing authority to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

However, by way of derogation from the second subparagraph, the Administrative Board shall be required to delegate to the Chairperson of the Security Accreditation Board the powers referred to in the first subparagraph with regard to the recruitment, assessment and reclassification of staff involved in the activities covered by Chapter III and the disciplinary measures to be taken with regard to such staff.

The Administrative Board shall adopt the implementing measures of the Staff Regulations and the Conditions of Employment of Other Servants in accordance with the procedure laid down in Article 110 of the Staff Regulations. It shall first consult the Security Accreditation Board and duly take into account its observations with regard to recruitment, assessment, reclassification of the staff involved in the activities under Chapter III and the relevant disciplinary measures to be taken.

It shall also adopt a decision laying down rules on the secondment of national experts to the Agency. Before adopting that decision, the Administrative Board shall consult the Security Accreditation Board with regard to the secondment of national experts involved in the security accreditation activities referred to in Chapter III and shall duly take account of its observations.

4. The Administrative Board shall appoint the Executive Director and may extend or end his/her term of office pursuant to Article 15b(3) and (4).

5. The Administrative Board shall exercise disciplinary authority over the Executive Director in relation to his/her performance, in particular as regards security matters falling within the competence of the Agency, except in respect of activities undertaken in accordance with Chapter III.

Article 7

Executive Director

The Agency shall be managed by its Executive Director, who shall perform his/her duties under the supervision of the Administrative Board, without prejudice to the powers granted to the Security Accreditation Board and the Chairperson of the Security Accreditation Board in accordance with Articles 11 and 11a respectively.

Without prejudice to the powers of the Commission and the Administrative Board, the Executive Director shall be independent in the performance of his/her duties and shall neither seek nor take instructions from any government or from any other body.

Article 8

Tasks of the Executive Director

The Executive Director shall perform the following tasks:

- (a) representing the Agency, except in respect of activities and decisions undertaken in accordance with Chapters II and III and signing the delegation agreements referred to in Article 14(2) of Regulation (EU) No 1285/2013, in accordance with point (j) of Article 6(2) of this Regulation;
- (b) preparing the working arrangements between the Agency and ESA referred to in Article 14(4) of Regulation (EU) No 1285/2013 submitting them to the Administrative Board in accordance with point (k) of Article 6(2) of this Regulation and signing them after receiving the approval of the Administrative Board;
- (c) preparing the work of the Administrative Board and participating, without having the right to vote, in the work of the Administrative Board, subject to the second subparagraph of Article 5(5);
- (d) implementing the decisions of the Administrative Board;
- (e) preparing the multiannual and the annual work programmes of the Agency and submitting them to the Administrative Board for approval, with the exception of the parts prepared and adopted by the Security Accreditation Board in accordance with points (a) and (b) of Article 11(4);
- (f) implementing the multiannual and the annual work programmes, with the exception of the parts implemented by the Chairperson of the Security Accreditation Board in accordance with point (b) of Article 11a(1);
- (g) preparing a progress report on the implementation of the annual work programme and, where relevant, of the multiannual work programme for each meeting of the Administrative Board, incorporating, without any change, the section prepared by the Chairperson of the Security Accreditation Board, in accordance with point (d) of Article 11a(1);
- (h) preparing the annual report on the activities and prospects of the Agency with the exception of the section prepared and approved by the Security Accreditation Board in accordance with point (c) of Article 11(4) concerning the activities covered by Chapter III, and submitting it to the Administrative Board for approval;
- (i) taking all necessary measures, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with this Regulation;
- (j) drawing up a draft statement of the Agency's estimated revenue and expenditure in accordance with Article 13, and implementing the budget in accordance with Article 14;
- (k) ensuring that the Agency, as the operator of the Galileo Security Monitoring Centre, is able to respond to instructions provided under Council Joint Action 2004/552/CFSP (****) and to fulfil its role referred to in Article 6 of Decision No 1104/2011/EU of the European Parliament and of the Council (*****);
- (l) ensuring the circulation of all relevant information, in particular as regards security, between the bodies of the Agency referred to in Article 3(1) of this Regulation;

- (m) communicating to the Commission the view of the Agency on the technical and operational specifications necessary to implement systems evolutions referred to in point (d) of Article 12(3) of Regulation (EU) No 1285/2013, including for the definition of acceptance and review procedures, and research activities in support of those evolutions;
- (n) preparing, in close cooperation with the Chairperson of the Security Accreditation Board for matters relating to security accreditation activities covered by Chapter III of this Regulation, the organisational structures of the Agency and submitting them for approval to the Administrative Board;
- (o) exercising, with regard to the Agency's staff, the powers referred to in the first subparagraph of Article 6(3), to the extent that those powers shall be delegated to him/her in accordance with the second subparagraph thereof;
- (p) adopting, after approval by the Administrative Board, the measures necessary to establish local offices in Member States or in third countries in accordance with Article 4(3);
- (q) ensuring that the secretariat and all the resources necessary for its proper functioning are provided to the Security Accreditation Board, the bodies referred to in Article 11(11) and to the Chairperson of the Security Accreditation Board;
- (r) preparing an action plan for ensuring the follow up of the findings and recommendations of the evaluations and audits referred to in Article 26, with the exception of the section of the action plan concerning the activities covered by Chapter III, and submitting, after having incorporated, without any change, the section drafted by the Security Accreditation Board, a twice-yearly progress report to the Commission, which shall also be submitted to the Administrative Board for information;
- (s) taking the following measures to protect the financial interests of the Union:
 - (i) preventive measures against fraud, corruption or any other illegal activity and making use of effective supervisory measures;
 - (ii) recovering sums unduly paid where irregularities are detected and, where appropriate, applying effective, proportionate and dissuasive administrative and financial penalties;
- (t) drawing up an anti-fraud strategy for the Agency that is proportionate to the risk of fraud, having regard to a cost-benefit analysis of the measures to be implemented and taking into account findings and recommendations arising from OLAF investigations and submitting it to the Administrative Board for approval.

(*) Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems and repealing Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council (OJ L 347, 20.12.2013, p. 1).

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

(***) Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (OJ L 56, 4.3.1968, p. 1).

(****) Council Joint Action 2004/552/CFSP of 12 July 2004 on aspects of the operation of the European satellite radio-navigation system affecting the security of the European Union (OJ L 246, 20.7.2004, p. 30).

(*****) Decision No 1104/2011/EU of the European Parliament and of the Council of 25 October 2011 on the rules for access to the public regulated service provided by the global navigation satellite system established under the Galileo programme (OJ L 287, 4.11.2011, p. 1).;

- (2) the following Article is inserted:

'Article 8a

Work programmes and annual report

1. The multiannual work programme of the Agency, referred to in point (a) of Article 6(2) shall lay down the actions to be performed by the Agency during the period covered by the multiannual financial framework provided for in Article 312 of the Treaty on the Functioning of the European Union, including actions associated with international relations and the communication for which it is responsible. That programme shall set out overall strategic programming, including objectives, milestones, expected results and performance indicators, and resource programming, including the human and financial resources assigned to each activity. It shall take into account the evaluations and audits referred to in Article 26 of this Regulation. For information purposes, the multiannual work programme shall also include a description of the transfer of tasks entrusted to the Agency by the Commission, including the programme management tasks referred to in Article 14(2) of Regulation (EU) No 1285/2013.

2. The annual work programme referred to in point (b) of Article 6(2) of this Regulation shall be based on the multiannual work programme. It shall lay down the actions to be performed by the Agency during the year ahead, including actions associated with international relations and the communication for which it is responsible. The annual work programme shall comprise detailed objectives and expected results, including performance indicators. It shall clearly indicate which tasks have been added, changed or deleted in comparison to the previous financial year and changes in performance indicators and their targets values. The programme shall also set out the human and financial resources assigned to each activity. For information purposes, it shall include the tasks entrusted to the Agency by the Commission by means of a delegation agreement, as required, pursuant to Article 14(2) of Regulation (EU) No 1285/2013.

3. The Executive Director shall, following adoption by the Administrative Board, forward the multiannual and the annual work programmes to the European Parliament, the Council, the Commission and the Member States and shall publish an executive summary thereof.

4. The annual report referred to in Article 8(h) of this Regulation shall include information on:

- (a) the implementation of the multiannual and the annual work programmes, including with regard to the performance indicators;
- (b) the implementation of the budget and staff policy plan;
- (c) the Agency's management and internal control systems and on progress made in implementing the project management systems and techniques referred to in Article 11(e) of Regulation (EU) No 1285/2013;
- (d) any measures to improve the Agency's environmental performance;
- (e) internal and external audit findings and the follow-up to the audit recommendations and to the discharge recommendation;
- (f) the statement of assurance of the Executive Director.

An executive summary of the annual report shall be made public.;

- (3) in Article 9, paragraph 1 is replaced by the following:

'1. In accordance with Article 16 of Regulation (EU) No 1285/2013, whenever the security of the Union or of the Member States may be affected by the operation of the systems, the procedures set out in Joint Action 2004/552/CFSP shall apply.;

- (4) Articles 10 and 11 are replaced by the following:

'Article 10

General principles

The security accreditation activities for European GNSS systems referred to in this Chapter shall be carried out in accordance with the following principles:

- (a) security accreditation activities and decisions shall be undertaken in a context of collective responsibility for the security of the Union and of the Member States;
- (b) efforts shall be made for decisions to be reached by consensus;
- (c) security accreditation activities shall be carried out using a risk assessment and management approach, considering risks to the security of the European GNSS systems as well as the impact on cost or schedule of any measure to mitigate the risks, taking into account the objective not to lower the general level of security of the systems;
- (d) security accreditation decisions shall be prepared and taken by professionals who are duly qualified in the field of accrediting complex systems, who have an appropriate level of security clearance, and who shall act objectively;
- (e) efforts shall be made to consult all relevant parties with an interest in security issues;

- (f) security accreditation activities shall be executed by all relevant stakeholders according to a security accreditation strategy without prejudice to the role of the European Commission defined in Regulation (EU) No 1285/2013;
- (g) security accreditation decisions shall, following the process defined in the relevant security accreditation strategy, be based on local security accreditation decisions taken by the respective national security accreditation authorities of the Member States;
- (h) a permanent, transparent and fully understandable monitoring process shall ensure that the security risks for European GNSS systems are known, that security measures are defined to reduce such risks to an acceptable level in view of the security needs of the Union and of its Member States and for the smooth running of the programmes and that those measures are applied in accordance with the concept of defence in depth. The effectiveness of such measures shall be continuously evaluated. The process relating to security risk assessment and management shall be conducted as an iterative process jointly by the stakeholders of the programmes;
- (i) security accreditation decisions shall be taken in a strictly independent manner, including with regard to the Commission and other bodies responsible for the implementation of the programmes and for service provision, as well as with regard to the Executive Director and the Administrative Board of the Agency;
- (j) security accreditation activities shall be carried out with due regard for the need for adequate coordination between the Commission and the authorities responsible for implementing security provisions;
- (k) EU classified information shall be handled and protected by all stakeholders involved in the implementation of the programmes in accordance with the basic principles and minimum standards set out in the Council's and the Commission's respective security rules on the protection of EU classified information.

Article 11

Security Accreditation Board

1. A Security Accreditation Board for European GNSS systems (the "Security Accreditation Board") is hereby set up to perform the tasks set out in this Article.
2. The Security Accreditation Board shall perform its tasks without prejudice to the responsibility entrusted to the Commission by Regulation (EU) No 1285/2013, in particular for matters relating to security, and without prejudice to the competences of the Member States as regards security accreditation.
3. As security accreditation authority, the Security Accreditation Board shall, with regard to security accreditation for the European GNSS systems, be responsible for:
 - (a) defining and approving a security accreditation strategy setting out:
 - (i) the scope of the activities necessary to perform and maintain the accreditation of the European GNSS systems and their potential interconnection with other systems;
 - (ii) a security accreditation process for the European GNSS systems with a degree of detail commensurate with the required level of assurance and clearly stating the approval conditions; that process shall be performed in accordance with the relevant requirements, in particular those referred to in Article 13 of Regulation (EU) No 1285/2013;
 - (iii) the role of relevant stakeholders involved in the accreditation process;
 - (iv) an accreditation schedule compliant with the phases of the programmes, in particular as regards the deployment of infrastructure, service provision and evolution;
 - (v) the principles of the security accreditation for networks connected to the systems and PRS equipment connected to the system established under the Galileo programme to be performed by national entities of the Member States competent in security matters;

- (b) taking security accreditation decisions, in particular on the approval of satellite launches, the authorisation to operate the systems in their different configurations and for the various services up to and including the signal in space, and the authorisation to operate the ground stations. As regards the networks and PRS equipment connected to the system established under the Galileo programme, the Security Accreditation Board shall take decisions only on the authorisation of bodies to develop and manufacture PRS receivers or PRS security modules, taking into account the advice provided by national entities competent in security matters and the overall security risks;
- (c) examining and, except as regards documents which the Commission is to adopt under Article 13 of Regulation (EU) No 1285/2013 and Article 8 of Decision No 1104/2011/EU, approving all documentation relating to security accreditation;
- (d) advising, within its field of competence, the Commission in the elaboration of draft texts for acts referred to in Article 13 of Regulation (EU) No 1285/2013 and Article 8 of Decision No 1104/2011/EU, including for the establishment of security operating procedures (SecOps), and providing a statement with its concluding position;
- (e) examining and approving the security risk assessment developed in accordance with the monitoring process referred to in Article 10(h), taking into account compliance with the documents referred to in point (c) of this paragraph and those developed in accordance with Article 13 of Regulation (EU) No 1285/2013 and Article 8 of Decision No 1104/2011/EU; cooperating with the Commission to define risk mitigation measures;
- (f) checking the implementation of security measures in relation to the security accreditation of the European GNSS systems by undertaking or sponsoring security assessments, inspections or reviews, in accordance with Article 12(b) of this Regulation;
- (g) endorsing the selection of approved products and measures which protect against electronic eavesdropping (TEMPEST) and of approved cryptographic products used to provide security for the European GNSS systems;
- (h) approving or, where relevant, participating in the joint approval of, together with the relevant entity competent in security matters, the interconnection of the European GNSS systems with other systems;
- (i) agreeing with the relevant Member State the template for access control referred to in Article 12(c);
- (j) on the basis of the risk reports referred to in paragraph 11 of this Article, informing the Commission of its risk assessment and providing advice to the Commission on residual risk treatment options for a given security accreditation decision;
- (k) assisting, in close liaison with the Commission, the Council in the implementation of Joint Action 2004/552/CFSP upon a specific request of the Council;
- (l) carrying out the consultations which are necessary to perform its tasks.

4. The Security Accreditation Board shall also:

- (a) prepare and approve that part of the multiannual work programme referred to in Article 8a(1) concerning the operational activities covered by this Chapter and the financial and human resources needed to accomplish those activities, and submit it to the Administrative Board in good time so that it can be incorporated in the multiannual work programme;
- (b) prepare and approve that part of the annual work programme referred to in Article 8a(2) concerning the operational activities covered by this Chapter and the financial and human resources needed to accomplish those activities, and submit it to the Administrative Board in good time so that it can be incorporated in the annual work programme;

(c) prepare and approve that part of the annual report referred to in point (h) of Article 6(2) concerning the Agency's activities and prospects covered by this Chapter and the financial and human resources needed to accomplish those activities and prospects, and submit it to the Administrative Board in good time so that it can be incorporated in the annual report;

(d) adopt and publish its rules of procedure.

5. The Commission shall keep the Security Accreditation Board continuously informed of the impact of any decisions envisaged by the Security Accreditation Board on the proper conduct of the programmes and of the implementation of residual risk treatment plans. The Security Accreditation Board shall take note of any such opinion of the Commission.

6. The decisions of the Security Accreditation Board shall be addressed to the Commission.

7. The Security Accreditation Board shall be composed of one representative of each Member State, a representative of the Commission and a representative of the HR. The Member States, the Commission and the HR shall endeavour to limit the turnover of their respective representatives on the Security Accreditation Board. The term of office of the members of the Security Accreditation Board shall be four years and shall be renewable. A representative of ESA shall be invited to attend the meetings of the Security Accreditation Board as an observer. On an exceptional basis, representatives of third countries or international organisations may also be invited to attend meetings as observers for matters directly relating to those third countries or international organisations. Arrangements for such participation of representatives of third countries or international organisations and the conditions therefor shall be established in the agreements referred to in Article 23(1) and shall comply with the rules of procedure of the Security Accreditation Board.

8. The Security Accreditation Board shall elect a Chairperson and Deputy Chairperson from among its members by a two-thirds majority of all members with the right to vote. The Deputy Chairperson shall automatically take the place of the Chairperson when the Chairperson is prevented from attending to his/her duties.

The Security Accreditation Board shall have the power to dismiss the Chairperson, the Deputy Chairperson or both of them. It shall adopt the decision to dismiss by a two-thirds majority.

The term of office of the Chairperson and of the Deputy Chairperson of the Security Accreditation Board shall be two years renewable once. The term of office of either person shall end if he or she ceases to be a member of the Security Accreditation Board.

9. The Security Accreditation Board shall have access to all the human and material resources required to provide appropriate administrative support functions and to enable it, together with the bodies referred to in paragraph 11, to perform its tasks independently, in particular when handling files, initiating and monitoring the implementation of security procedures and performing system security audits, preparing decisions and organising its meetings. It shall also have access to any information needed for the performance of its tasks in the possession of the Agency, without prejudice to the principles of autonomy and independence referred to in Article 10(i).

10. The Security Accreditation Board and the Agency staff under its supervision shall perform their work in a manner ensuring autonomy and independence in relation to the other activities of the Agency, in particular operational activities associated with the exploitation of the systems, in accordance with the objectives of the programmes. To that end, an effective organisational division shall be established within the Agency between the staff involved in activities covered by this Chapter and the other staff of the Agency. The Security Accreditation Board shall immediately inform the Executive Director, the Administrative Board and the Commission of any circumstances that could hamper its autonomy or independence. In the event that no remedy is found within the Agency, the Commission shall examine the situation, in consultation with the relevant parties. On the basis of the outcome of that examination, the Commission shall take appropriate mitigation measures to be implemented by the Agency, and shall inform the European Parliament and the Council thereof.

11. The Security Accreditation Board shall set up special subordinate bodies, acting on its instructions, to deal with specific issues. In particular, while ensuring necessary continuity of work, it shall set up a panel to conduct security analysis reviews and tests to produce the relevant risk reports in order to assist it in preparing its decisions. The Security Accreditation Board may set up and disband expert groups to contribute to the work of the panel.

12. Without prejudice to the competence of the Member States and of the task of the Agency referred to in point (a)(i) of Article 14(1) of Regulation (EU) No 1285/2013, during the deployment phase of the Galileo programme, a group of experts of the Member States shall be set up under the supervision of the Security Accreditation Board to perform the tasks of the Crypto Distribution Authority (CDA) relating to the management of EU cryptographic material in particular for:

- (i) the management of flights keys and other keys necessary for the functioning of the system established under the Galileo programme;
- (ii) the verification of the establishment and the enforcement of procedures for accounting, secure handling, storage and distribution of PRS keys.

13. If consensus according to the general principles referred to in Article 10 of this Regulation cannot be reached, the Security Accreditation Board shall take decisions on the basis of majority voting, as provided for in Article 16 of the Treaty on European Union and without prejudice to Article 9 of this Regulation. The representative of the Commission and the representative of the HR shall not vote. The Chairperson of the Security Accreditation Board shall sign, on behalf of the Security Accreditation Board, the decisions adopted by the Security Accreditation Board.

14. The Commission shall keep the European Parliament and the Council informed, without undue delay, of the impact of the adoption of the security accreditation decisions on the proper conduct of the programmes. If the Commission considers that a decision taken by the Security Accreditation Board may have a significant effect on the proper conduct of the programmes, for example in terms of costs, schedule or performance, it shall immediately inform the European Parliament and the Council.

15. Taking into account the views of the European Parliament and of the Council, which should be expressed within one month, the Commission may adopt any adequate measures in accordance with Regulation (EU) No 1285/2013.

16. The Administrative Board shall be periodically kept informed of the evolution of the work of the Security Accreditation Board.

17. The timetable for the work of the Security Accreditation Board shall respect the annual work programme referred to in Article 27 of Regulation (EU) No 1285/2013.;

- (5) the following Article is inserted:

'Article 11a

Tasks of the Chairperson of the Security Accreditation Board

1. The Chairperson of the Security Accreditation Board shall perform the following tasks:

- (a) managing security accreditation activities under the supervision of the Security Accreditation Board;
- (b) implementing the part of the Agency's multiannual and annual work programmes covered by this Chapter under the supervision of the Security Accreditation Board;
- (c) cooperating with the Executive Director to help to draw up the draft establishment plan referred to in Article 13(3) and the organisational structures of the Agency;

- (d) preparing the section of the progress report referred to in Article 8(g) concerning the operational activities covered by this Chapter, and submitting it to the Security Accreditation Board and the Executive Director in good time so that it can be incorporated in the progress report;
- (e) preparing the section of the annual report and of the action plan referred to in Article 8(h) and (r) respectively, concerning the operational activities covered by this Chapter, and submitting it to the Executive Director in good time;
- (f) representing the Agency for the activities and decisions covered by this Chapter;
- (g) exercising, with regard to the Agency's staff involved in the activities concerned by this Chapter, the powers referred to in first subparagraph of Article 6(3), delegated to him/her in accordance with the fourth subparagraph of Article 6(3).

2. For activities covered by this Chapter, the European Parliament and the Council may call upon the Chairperson of the Security Accreditation Board for an exchange of views on the work and prospects of the Agency before those institutions, including with regard to the multiannual and the annual work programmes.;

- (6) in Article 12, point (b) is replaced by the following:

'(b) permit duly authorised persons appointed by the Security Accreditation Board, in agreement with and under the supervision of national entities competent in security matters, to have access to any information and to any areas and/or sites related to the security of systems falling within their jurisdiction, in accordance with their national laws and regulations, and without any discrimination on ground of nationality of nationals of Member States, including for the purposes of security audits and tests as decided by the Security Accreditation Board and of the security risk monitoring process referred to in Article 10(h). These audits and tests shall be performed in accordance with the following principles:

- (i) the importance of security and effective risk management within the entities inspected shall be emphasised;
- (ii) countermeasures to mitigate the specific impact of loss of confidentiality, integrity or availability of classified information shall be recommended.;

- (7) Article 13 is amended as follows:

- (a) paragraph 3 is replaced by the following:

'3. The Executive Director shall, in close collaboration with the Chairperson of the Security Accreditation Board for activities covered by Chapter III, draw up a draft estimate of expenditure and revenue of the Agency for the next financial year, making clear the distinction between those elements of the draft statement of estimates which relate to security accreditation activities and the other activities of the Agency. The Chairperson of the Security Accreditation Board may write a statement on that draft and the Executive Director shall forward both the draft estimate and the statement to the Administrative Board and the Security Accreditation Board, accompanied by a draft establishment plan.;

- (b) paragraphs 5 and 6 are replaced by the following:

'5. Each year, the Administrative Board, based on the draft estimate of expenditure and revenue and in close cooperation with the Security Accreditation Board for activities covered by Chapter III, shall draw up the estimate of the Agency's revenue and expenditure for the next financial year.

6. The Administrative Board shall, by 31 March, forward the statement of estimates, which shall include a draft establishment plan together with the provisional annual work programme, to the Commission and to the third countries or international organisations with which the Union has concluded agreements in accordance with Article 23(1).;

(8) in Article 14, paragraph 10 is replaced by the following:

‘10. The European Parliament, upon a recommendation from the Council acting by a qualified majority, shall, before 30 April of the year N + 2, grant discharge to the Executive Director in respect of the implementation of the budget for year N, with the exception of the part of the budget implementation covering tasks which are, where appropriate, entrusted to the Agency under Article 14(2) of Regulation (EU) No 1285/2013 to which the procedure referred to in Articles 164 and 165 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council shall apply (*).

(*) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).’;

(9) the following Chapter is inserted:

‘CHAPTER IVa

HUMAN RESOURCES

Article 15a

Staff

1. The Staff Regulations of Officials of the European Union, the Conditions of Employment of Other Servants and the rules adopted jointly by the institutions of the Union for the purposes of the application of those Staff Regulations and Conditions of Employment shall apply to the staff employed by the Agency.

2. The staff of the Agency shall consist of servants recruited by the Agency as necessary to perform its tasks. They shall have security clearances appropriate to the classification of the information they are handling.

3. The Agency's internal rules, such as the rules of procedure of the Administrative Board, the rules of procedure of the Security Accreditation Board, the financial rules applicable to the Agency, the rules for the application of the staff regulations and the rules for access to documents, shall ensure the autonomy and independence of staff performing the security accreditation activities vis-à-vis staff performing the other activities of the Agency, pursuant to Article 10(i).

Article 15b

Appointment and Term of Office of the Executive Director

1. The Executive Director shall be recruited as a temporary member of staff of the Agency in accordance with Article 2(a) of the Conditions of Employment of Other Servants.

2. The Executive Director shall be appointed by the Administrative Board on the grounds of merit and documented administrative and managerial skills, as well as relevant competence and experience, from a list of candidates proposed by the Commission, after an open and transparent competition, following the publication of a call for expressions of interest in the *Official Journal of the European Union* or elsewhere.

The candidate selected by the Administrative Board may be invited at the earliest opportunity to make a statement before the European Parliament and to answer questions from its Members.

The Chairperson of the Administrative Board shall represent the Agency for the purpose of concluding the Executive Director's contract.

The Administrative Board shall take its decision to appoint the Executive Director by a two-thirds majority of its members.

3. The term of office of the Executive Director shall be five years. At the end of that term of office, the Commission shall carry out an assessment of the Executive Director's performance taking into account the future tasks and challenges of the Agency.

On the basis of a proposal from the Commission, taking into account the assessment referred to in the first subparagraph, the Administrative Board may extend the term of office of the Executive Director once for a period of up to four years.

Any decision to extend the term of office of the Executive Director shall be adopted by a two-thirds majority of members of the Administrative Board.

An Executive Director whose term of office has been extended may not thereafter take part in a selection procedure for the same post.

The Administrative Board shall inform the European Parliament of its intention to extend the Executive Director's term of office. Before the extension, the Executive Director may be invited to make a statement before the relevant committees of the European Parliament and answer Members' questions.

4. The Administrative Board may dismiss the Executive Director, on the basis of a proposal of the Commission or of one third of its members, by means of a decision adopted by a two-thirds majority of its members.

5. The European Parliament and the Council may call upon the Executive Director for an exchange of views on the work and prospects of the Agency before those institutions, including with regard to the multiannual and the annual work programme. That exchange of views shall not touch upon matters relating to the security accreditation activities covered by Chapter III.

Article 15c

Seconded national experts

The Agency may also use national experts. These experts shall have security clearances appropriate to the classification of the information they are handling. The Staff Regulations and the Conditions of Employments of Other Servants shall not apply to such staff.;

(10) Articles 16 and 17 are replaced by the following:

'Article 16

Prevention of fraud

1. In order to combat fraud, corruption and any other illegal activities, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council (*) shall apply to the Agency without restriction. To that end, the Agency shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) (**) and shall issue the appropriate provisions to the staff of the Agency and to seconded national experts using the model decision in the Annex to that Agreement.

2. The Court of Auditors shall have the authority to supervise beneficiaries of the Agency's funding as well as contractors and sub-contractors who have received Union funds through the Agency, on the basis of documents provided to it or using on-the-spot checks.

3. With regard to grants financed or contracts awarded by the Agency, OLAF may carry out investigations, including on-the-spot checks and inspections in accordance with Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96 (***), in order to combat fraud, corruption and any other illegal activity detrimental to the Union's financial interests.

4. Without prejudice to paragraphs 1, 2 and 3 of this Article, the cooperation agreements concluded by the Agency with third countries or international organisations, contracts and grant agreements concluded by the Agency with third parties, and any financing decision taken by the Agency shall provide expressly that the Court of Auditors and OLAF may carry out checks and investigations in accordance with their respective powers.

Article 17

Privileges and immunities

Protocol No 7 on the Privileges and Immunities of the European Union annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union shall apply to the Agency and to its staff referred to in Article 15a.

(*) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

(**) OJ L 136, 31.5.1999, p. 15.

(***) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).;

(11) Article 18 is deleted;

(12) Articles 22 and 23 are replaced by the following:

'Article 22

Security rules on the protection of classified or sensitive information

1. The Agency shall apply the Commission's security rules regarding the protection of EU classified information.
2. The Agency may establish, in its internal rules, provisions for the handling of non-classified but sensitive information. Such provisions shall cover, inter alia, the exchange, handling and storage thereof.

Article 22a

Conflicts of interest

1. Members of the Administrative Board and of the Security Accreditation Board, the Executive Director, as well as seconded national experts and observers, shall make a declaration of commitments and a declaration of interests indicating the absence or existence of any direct or indirect interests which might be considered prejudicial to their independence. Those declarations shall be accurate and complete. They shall be made in writing upon their entry into service and shall be renewed annually. They shall be updated whenever necessary, in particular in the event of relevant changes in the personal circumstances of the persons concerned.
2. Before any meeting which they are to attend, Members of the Administrative Board and of the Security Accreditation Board, the Executive Director, as well as seconded national experts and observers and external experts participating in ad hoc working groups shall accurately and completely declare the absence or existence of any interest which might be considered prejudicial to their independence in relation to any items on the agenda, and shall abstain from participating in the discussion of and voting upon such points.
3. The Administrative Board and the Security Accreditation Board shall lay down, in their rules of procedure, the practical arrangements for the rule on declaration of interest referred to in paragraphs 1 and 2 and for the prevention and the management of conflict of interest.

Article 23

Participation of third countries and international organisations

1. The Agency shall be open to the participation of third countries and international organisations. Such participation and the conditions therefor shall be established in an agreement between the Union and that third country or international organisation, in accordance with the procedure laid down in Article 218 of the Treaty on the Functioning of the European Union.

2. In accordance with the relevant provisions of those agreements, practical arrangements shall be developed for the participation of third countries or international organisations in the work of the Agency, including arrangements relating to their participation in the initiatives undertaken by the Agency, to financial contributions and to staff.

Article 23a

Joint procurement with the Member States

For the performance of its tasks, the Agency shall be authorised to award contracts jointly with the Member States in accordance with Commission Delegated Regulation (EU) No 1268/2012 (*).

(*) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).;

(13) Article 26 is replaced by the following:

'Article 26

Revision, evaluation and audit

1. By 31 December 2016, and every five years thereafter, the Commission shall evaluate the Agency concerning, in particular, its impact, effectiveness, smooth running, working methods, requirements and use of the resources entrusted to it. The evaluation shall include, in particular, an assessment of any change in the scope or nature of the Agency's tasks and the financial impact thereof. It shall address the application of the Agency's policy on conflicts of interest and it shall also reflect any circumstances that may have impaired the independence and autonomy of the Security Accreditation Board.

2. The Commission shall submit a report on the evaluation and its conclusions to the European Parliament, the Council, the Administrative Board and the Security Accreditation Board of the Agency. The results of the evaluation shall be made available to the public.

3. One evaluation in two shall include an inspection of the Agency's balance sheet in terms of its objectives and tasks. If the Commission considers that the continuation of the Agency is no longer justified with regard to the objectives and tasks assigned to it, the Commission may, where appropriate, propose that this Regulation be repealed.

4. External audits on the performance of the Agency may be carried out at the request of the Administrative Board or the Commission.'

Article 2

Entry into force

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

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

Done at Strasbourg, 16 April 2014.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
D. KOURKOULAS

**REGULATION (EU) No 513/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 April 2014**

**establishing, as part of the Internal Security Fund, the instrument for financial support for police
cooperation, preventing and combating crime, and crisis management and repealing Council
Decision 2007/125/JHA**

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 82(1), 84 and 87(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⁾,

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

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

Whereas:

- (1) The Union's objective of ensuring a high level of security within an area of freedom, security and justice pursuant to Article 67(3) of the Treaty on the Functioning of the European Union (TFEU) should be achieved, inter alia, through measures to prevent and combat crime as well as through measures for coordination and cooperation between law enforcement authorities and other national authorities of Member States, including with Europol or other relevant Union bodies, and with relevant third countries and international organisations.
- (2) To achieve this objective, enhanced actions at Union level should be taken to protect people and goods from increasingly transnational threats and to support the work carried out by Member States' competent authorities. Terrorism, organised crime, itinerant crime, drug trafficking, corruption, cybercrime, trafficking in human beings and arms, inter alia, continue to challenge the internal security of the Union.
- (3) The Internal Security Strategy for the European Union ('Internal Security Strategy'), adopted by the Council in February 2010, constitutes a shared agenda for tackling these common security challenges. The Commission Communication of 22 November 2010 entitled 'The EU Internal Security Strategy in Action: Five steps toward a more secure Europe' translates the strategy's principles and guidelines into concrete actions by identifying five strategic objectives: to disrupt international crime networks, to prevent terrorism and address radicalisation and recruitment, to raise levels of security for citizens and businesses in cyberspace, to strengthen security through border management and to increase Europe's resilience in the face of crises and disasters.
- (4) Solidarity among Member States, clarity about the division of tasks, respect for fundamental rights and freedoms and the rule of law, a strong focus on the global perspective and on the link and the necessary coherence with external security should be key principles guiding the implementation of the Internal Security Strategy.
- (5) To promote the implementation of the Internal Security Strategy and to ensure that it becomes an operational reality, Member States should be provided with adequate Union financial support by setting up and managing an Internal Security Fund ('the Fund').

⁽¹⁾ OJ C 299, 4.10.2012, p. 108.

⁽²⁾ OJ C 277, 13.9.2012, p. 23.

⁽³⁾ Position of the European Parliament of 13 March 2014 (not yet published in the Official Journal) and decision of the Council of 14 April 2014.

- (6) The Fund should reflect the need for increased flexibility and simplification while respecting requirements in terms of predictability, and ensuring a fair and transparent distribution of resources to meet the general and specific objectives laid down in this Regulation.
- (7) Efficiency of measures and quality of spending constitute guiding principles in the implementation of the Fund. Furthermore, the Fund should also be implemented in the most effective and user-friendly manner possible.
- (8) In times of austerity for Union policies, overcoming economic problems requires renewed flexibility, innovative organisational measures, better use of existing structures, and coordination between the Union's institutions, agencies and national authorities and with third countries.
- (9) There is a need to maximise the impact of Union funding by mobilising, pooling and leveraging public and private financial resources.
- (10) The EU policy cycle established by the Council on 8-9 November 2010 aims at tackling the most important serious and organised criminal threats to the Union in a coherent and methodical manner through optimum cooperation between the relevant services. In order to support an effective implementation of this multiannual cycle, funding under the instrument established by this Regulation (the 'Instrument') should make use of all possible methods of implementation as set out in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽¹⁾, including, where appropriate, by indirect management, to ensure the timely and efficient delivery of the activities and projects.
- (11) Due to the legal particularities applicable to Title V TFEU, it is not possible to establish the Fund as a single financial instrument. The Fund should therefore be established as a comprehensive framework for Union financial support in the field of internal security comprising the Instrument and the instrument for financial support for external borders and visa established by Regulation (EU) No 515/2014 of the European Parliament and of the Council ⁽²⁾. That comprehensive framework should be complemented by Regulation (EU) No 514/2014 of the European Parliament and of the Council ⁽³⁾.
- (12) Cross-border crime such as human trafficking and exploitation of illegal immigration by criminal organisations may be tackled effectively through police cooperation.
- (13) The global resources for this Regulation and for Regulation (EU) No 515/2014 jointly lay down the financial envelope for the entire duration of the Fund, which is to constitute the prime reference amount within the meaning of point 17 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management ⁽⁴⁾, for the European Parliament and the Council during the annual budgetary procedure.
- (14) The European Parliament resolution of 23 October 2013 on organised crime, corruption and money laundering recognised that the fight against organised crime is a European challenge and called for more cooperation between Member States in the law enforcement field, as tackling organised crime effectively is fundamental to protecting the lawful economy from typical criminal activities such as the laundering of the proceeds of crime.

⁽¹⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

⁽²⁾ Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (see page 143 of this Official Journal).

⁽³⁾ Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (see page 112 of this Official Journal).

⁽⁴⁾ OJ C 373, 20.12.2013, p. 1.

- (15) Within the comprehensive framework of the Fund, the financial assistance provided under the Instrument should support police cooperation, exchange of and access to information, crime prevention, the fight against cross-border, serious and organised crime including terrorism, corruption, drug trafficking, trafficking in human beings and arms, exploitation of illegal immigration, child sexual exploitation, distribution of child abuse images and child pornography, cybercrime, laundering of the proceeds of crime, the protection of people and critical infrastructure against security-related incidents and the effective management of security-related risks and crises, taking into account common policies (strategies, policy cycles, programmes and action plans), legislation and practical cooperation.
- (16) Financial assistance in these areas should in particular support actions promoting cross-border joint operations, access to and exchange of information, exchange of best practices, facilitated and secure communication and coordination, training and exchange of staff, analytical, monitoring and evaluation activities, comprehensive threat and risk assessments in accordance with the competencies set out in the TFEU, awareness raising activities, testing and validation of new technology, forensic science research, the acquisition of technical interoperable equipment and cooperation between Member States and relevant Union bodies, including Europol. Financial assistance in these areas should only support actions which are consistent with priorities and initiatives identified at Union level, in particular those that have been endorsed by the European Parliament and the Council.
- (17) Within the comprehensive framework of the Union's anti-drugs strategy that advocates a balanced approach based on a simultaneous reduction in supply and demand, the financial assistance provided under this Instrument should support all actions aimed at preventing and combating trafficking in drugs (supply reduction), and in particular measures targeting the production, manufacture, extraction, sale, transport, importation and exportation of illegal drugs, including possession and purchase, with a view to engaging in drug trafficking activities.
- (18) Measures in and in relation to third countries supported through the Instrument should be adopted in synergy and coherence with other actions outside the Union supported through Union external assistance instruments, both geographic and thematic. In particular, in implementing such actions, full coherence should be sought with the principles and general objectives of Union external action and foreign policy related to the country or region in question, democratic principles and values, fundamental liberties and rights, the rule of law and the sovereignty of third countries. The measures should not be intended to support directly development-oriented actions and should complement, when appropriate, the financial assistance provided through external aid instruments. Coherence should also be sought with Union humanitarian policy, in particular as regards the implementation of emergency measures.
- (19) The Instrument should be implemented in full respect for the rights and principles enshrined in the Charter of Fundamental Rights of the European Union and for the Union's international obligations.
- (20) Pursuant to Article 3 of the Treaty on European Union (TEU), the Instrument should support activities which ensure the protection of children against violence, abuse, exploitation and neglect. The Instrument should also support safeguards and assistance for child witnesses and victims, in particular those who are unaccompanied or otherwise in need of guardianship.
- (21) The Instrument should complement and reinforce the activities undertaken to develop cooperation between Europol or other relevant Union bodies and Member States in order to achieve the objectives of the Instrument in the field of police cooperation, preventing and combating crime, and crisis management. This means, inter alia, that, when drawing up their national programmes, Member States should take into account the information database, analytical tools and operational and technical guidelines developed by Europol, in particular the Europol information system (EIS), the Europol Secure Information Exchange Network Application (SIENA) and the EU Serious and Organised Crime Threat Assessment (SOCTA).
- (22) In order to ensure a uniform implementation of the Fund, the Union budget allocated to the Instrument should be implemented by direct and indirect management in respect of actions of particular interest to the Union ('Union actions'), emergency assistance and technical assistance, and by shared management in respect of national programmes and actions requiring administrative flexibility.

- (23) For the resources implemented under shared management, it is necessary to ensure that the Member States' national programmes are consistent with Union priorities and objectives.
- (24) The resources allocated to Member States for implementation through their national programmes should be established in this Regulation and distributed on the basis of clear, objective and measurable criteria. Those criteria should relate to the public goods to be protected by Member States and the degree of their financial capacity to ensure a high level of internal security, such as the size of their population, their territorial size and their gross domestic product. Moreover, since SOCTA of 2013 points out the prevalent importance of sea and air ports as entry points for criminal organisations for trafficking in human beings and illegal commodities, specific vulnerabilities represented by crime routes at these external crossings should be reflected in the distribution of available resources for actions undertaken by Member States through criteria relating to the number of passengers and weight of cargo processed through international air and seaports.
- (25) To reinforce solidarity and responsibility sharing for common Union policies, strategies and programmes, Member States should be encouraged to use a part of the global resources available for the national programmes to address the strategic Union priorities set out in Annex I to this Regulation. For projects addressing those priorities, the Union contribution to their total eligible cost should be increased to 90 %, in accordance with Regulation (EU) No 514/2014.
- (26) The ceiling for resources which remain at the disposal of the Union should be complementary to the resources allocated to Member States for the implementation of their national programmes. That will ensure that the Union is able, in a given budget year, to support actions which are of particular interest to the Union, such as studies, testing and validation of new technologies, transnational projects, networking and exchange of best practices, monitoring of the implementation of relevant Union law and Union policies and actions in relation to and in third countries. The actions supported should be in line with the priorities identified in relevant Union strategies, programmes, action plans and risk and threat assessments.
- (27) In order to contribute to the achievement of the general objective of the Instrument, Member States should ensure that their national programmes include actions addressing all the specific objectives of the Instrument and that the allocation of resources between the objectives is proportionate to the challenges and needs and ensures that the objectives can be met. Where a national programme does not address one of the specific objectives or the allocation is below the minimum percentages set in this Regulation, the Member State concerned should provide a justification within the programme.
- (28) In order to strengthen the Union's capacity to react immediately to security-related incidents or newly emerging threats to the Union, it should be possible to provide emergency assistance in accordance with the framework set out in Regulation (EU) No 514/2014.
- (29) Funding from the Union budget should concentrate on activities where Union intervention can bring added value compared with action by Member States alone. As the Union is in a better position than Member States to address cross-border situations and to provide a platform for common approaches, activities eligible for support under this Regulation should contribute in particular to strengthening national and Union capabilities as well as cross-border cooperation and coordination, networking, mutual trust and the exchange of information and best practices.
- (30) In order to supplement or amend provisions in this Regulation regarding the definition of strategic Union priorities, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending, adding or deleting strategic Union priorities listed in this Regulation. 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.

- (31) In the application of this Regulation, including the preparation of delegated acts, the Commission should consult experts from all Member States.
- (32) The Commission should monitor the implementation of the Instrument, in accordance with the relevant provisions of Regulation (EU) No 514/2014, with the aid of key indicators for evaluating results and impacts. The indicators, including relevant baselines, should provide the minimum basis for evaluating the extent to which the objectives of the Instrument have been achieved.
- (33) In order to measure the achievements of the Fund, common indicators should be established in relation to each specific objective of the Instrument. The measurement of the achievement of the specific objectives by means of common indicators does not render the implementation of actions related to those indicators mandatory.
- (34) Council Decision 2007/125/JHA ⁽¹⁾ should be repealed, subject to the transitional provisions set out in this Regulation.
- (35) Since the objectives of this Regulation, namely strengthening coordination and cooperation between law enforcement authorities, preventing and combating crime, protecting people and critical infrastructure against security-related incidents and enhancing the capacity of Member States and the Union to manage effectively security-related risks and crises, cannot be sufficiently achieved by the Member States but can rather 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 Regulation does not go beyond what is necessary in order to achieve those objectives.
- (36) 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 Regulation and is not bound by it or subject to its application.
- (37) In accordance with Article 3 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, Ireland has notified its wish to take part in the adoption and application of this Regulation.
- (38) 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, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (39) It is appropriate to align the period of application of this Regulation with that of Council Regulation (EU, Euratom) No 1311/2013 ⁽²⁾. Therefore, this Regulation should apply as from 1 January 2014,

⁽¹⁾ Council Decision 2007/125/JHA of 12 February 2007 establishing for the period 2007 to 2013, as part of the General Programme on Security and Safeguarding Liberties, the Specific Programme 'Prevention of and Fight against Crime' (OJ L 58, 24.2.2007, p. 7).

⁽²⁾ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose and scope

1. This Regulation establishes the instrument for financial support for police cooperation, preventing and combating crime, and crisis management ('the Instrument'), as part of the Internal Security Fund ('the Fund').

Jointly with Regulation (EU) No 515/2014, this Regulation establishes the Fund for the period from 1 January 2014 to 31 December 2020.

2. This Regulation lays down:

(a) the objectives, eligible actions and strategic priorities for financial support to be provided under the Instrument;

(b) the general framework for the implementation of the eligible actions;

(c) the resources made available under the Instrument from 1 January 2014 to 31 December 2020 and their distribution.

3. This Regulation provides for the application of the rules set out in Regulation (EU) No 514/2014.

4. The Instrument shall not apply to matters that are covered by the Justice programme, as set out in Regulation (EU) No 1382/2013 of the European Parliament and of the Council ⁽¹⁾. However the Instrument may cover actions which aim at encouraging cooperation between judicial authorities and law enforcement authorities.

5. Synergies, consistency and complementarity shall be sought with other relevant financial instruments of the Union, such as the Union Civil Protection Mechanism, established by Decision No 1313/2013/EU of the European Parliament and of the Council ⁽²⁾, Horizon 2020, established by Regulation (EU) No 1291/2013 of the European Parliament and of the Council ⁽³⁾, the third multiannual programme of Union action in the field of health, established by Regulation (EU) No 282/2014 of the European Parliament and of the Council ⁽⁴⁾, the European Union Solidarity Fund and the external aid instruments, namely the Instrument for Pre-accession Assistance (IPA II) established by Regulation (EU) No 231/2014 of the European Parliament and of the Council ⁽⁵⁾, the European Neighbourhood Instrument established by Regulation (EU) No 232/2014 of the European Parliament and of the Council ⁽⁶⁾, the Development Cooperation Instrument established by

⁽¹⁾ Regulation (EU) No 1382/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020 (OJ L 354, 28.12.2013, p. 73).

⁽²⁾ Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).

⁽³⁾ Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

⁽⁴⁾ Regulation (EU) No 282/2014 of the European Parliament and of the Council of 11 March 2014 on the establishment of a third Programme of the Union's action in the field of health (2014-2020) and repealing Decision No 1350/2007/EC (OJ L 86, 21.3.2014, p. 1).

⁽⁵⁾ Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (OJ L 77, 15.3.2014, p. 11).

⁽⁶⁾ Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27).

Regulation (EU) No 233/2014 of the European Parliament and of the Council ⁽¹⁾, the Partnership Instrument for cooperation with third countries established by Regulation (EU) No 234/2014 of the European Parliament and of the Council ⁽²⁾, the European Instrument for Democracy and Human Rights established by Regulation (EU) No 235/2014 of the European Parliament and of the Council ⁽³⁾ and the Instrument contributing to Stability and Peace established by Regulation (EU) No 230/2014 of the European Parliament and of the Council ⁽⁴⁾. Actions financed under this Regulation shall not receive financial support for the same purpose from other Union financial instruments.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) 'police cooperation' means the specific measures and types of cooperation involving all the Member States' competent authorities as referred to in Article 87 TFEU;
- (b) 'exchange of and access to information' means the secure collection, storage, processing, analysis and exchange of information relevant to the authorities as referred to in Article 87 TFEU in relation to the prevention, detection, investigation, and prosecution of criminal offences, in particular cross-border, serious and organised crime;
- (c) 'crime prevention' means all measures that are intended to reduce or otherwise contribute to reducing crime and citizens' feeling of insecurity, as referred to in Article 2(2) of Council Decision 2009/902/JHA ⁽⁵⁾;
- (d) 'organised crime' means punishable conduct relating to participation in a criminal organisation, as defined in Council Framework Decision 2008/841/JHA ⁽⁶⁾;
- (e) 'terrorism' means any of the intentional acts and offences as defined in Council Framework Decision 2002/475/JHA ⁽⁷⁾;
- (f) 'risk and crisis management' means any measure relating to the assessment, prevention, preparedness and consequence management of terrorism, organised crime and other security-related risks;
- (g) 'prevention and preparedness' means any measure aimed at preventing and/or reducing risks linked to possible terrorist attacks or other security-related incidents;
- (h) 'consequence management' means the effective coordination of actions taken at national and/or Union level in order to react to and to reduce the impact of the effects of a terrorist attack or any other security-related incident;
- (i) 'critical infrastructure' means an asset, network, system or part thereof which is essential for the maintenance of vital societal functions, health, safety, security, economic or social well-being of people, and the disruption, breach or destruction of which would have a significant impact in a Member State or in the Union as a result of the failure to maintain those functions;

⁽¹⁾ Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020 (OJ L 77, 15.3.2014, p. 44).

⁽²⁾ Regulation (EU) No 234/2014 of the European Parliament and of the Council of 11 March 2014 establishing a Partnership Instrument for cooperation with third countries (OJ L 77, 15.3.2014, p. 77).

⁽³⁾ Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide (OJ L 77, 15.3.2014, p. 85).

⁽⁴⁾ Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument contributing to Stability and Peace (OJ L 77, 15.3.2014, p. 1).

⁽⁵⁾ Council Decision 2009/902/JHA of 30 November 2009 setting-up a European Crime Prevention Network (EUCPN) and repealing Decision 2001/427/JHA (OJ L 321, 8.12.2009, p. 44).

⁽⁶⁾ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

⁽⁷⁾ Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

- (j) 'emergency situation' means any security-related incident or newly emerging threat which has or may have a significant adverse impact on the security of people in one or more Member States.

Article 3

Objectives

1. The general objective of the Instrument shall be to contribute to ensuring a high level of security in the Union.
2. Within the general objective set out in paragraph 1, the Instrument shall contribute — in accordance with the priorities identified in relevant Union strategies, policy cycles, programmes, threat and risk assessments — to the following specific objectives:

- (a) crime prevention, combating cross-border, serious and organised crime including terrorism, and reinforcing coordination and cooperation between law enforcement authorities and other national authorities of Member States, including with Europol or other relevant Union bodies, and with relevant third countries and international organisations;
- (b) enhancing the capacity of Member States and the Union for managing effectively security-related risks and crises, and preparing for and protecting people and critical infrastructure against terrorist attacks and other security-related incidents.

The achievement of the specific objectives of the Instrument shall be evaluated in accordance with Article 55(2) of Regulation (EU) No 514/2014 using common indicators, as set out in Annex II to this Regulation and programme-specific indicators included in national programmes.

3. To achieve the objectives referred to in paragraphs 1 and 2, the Instrument shall contribute to the following operational objectives:

- (a) promote and develop measures strengthening Member States' capability to prevent crime and combat cross-border, serious and organised crime including terrorism, in particular through public-private partnerships, exchange of information and best practices, access to data, interoperable technologies, comparable statistics, applied criminology, public communication and awareness raising;
- (b) promote and develop administrative and operational coordination, cooperation, mutual understanding and exchange of information among Member States' law enforcement authorities, other national authorities, Europol or other relevant Union bodies and, where appropriate, with third countries and international organisations;
- (c) promote and develop training schemes, including regarding technical and professional skills and knowledge of obligations relating to respect for human rights and fundamental freedoms, in implementation of European training policies, including through specific Union law enforcement exchange programmes, in order to foster a genuine European judicial and law enforcement culture;
- (d) promote and develop measures, safeguards, mechanisms and best practices for early identification, protection and support of witnesses and victims of crime, including victims of terrorism, and in particular for child witnesses and victims, especially those who are unaccompanied or otherwise in need of guardianship;
- (e) measures strengthening Member States' administrative and operational capability to protect critical infrastructure in all sectors of economic activity, including through public-private partnerships and improved coordination, cooperation, exchange and dissemination of know-how and experience within the Union and with relevant third countries;
- (f) secure links and effective coordination between existing sector-specific early warning and crisis cooperation actors at Union and national level, including situation centres in order to enable the quick production of comprehensive and accurate overviews in crisis situations, coordinate response measures and share open, privileged and classified information;

(g) measures strengthening the administrative and operational capacity of the Member States and the Union to develop comprehensive threat and risk assessments, which are evidence based and consistent with priorities and initiatives identified at Union level, in particular those that have been endorsed by the European Parliament and the Council, in order to enable the Union to develop integrated approaches based on common and shared appreciations in crisis situations and to enhance mutual understanding of Member States' and partner countries' various definitions of threat levels.

4. The Instrument shall also contribute to the financing of technical assistance at the initiative of the Member States and the Commission.

5. Actions funded under the Instrument shall be implemented in full respect for fundamental rights and human dignity. In particular, actions shall comply with the provisions of the Charter of Fundamental Rights of the European Union, Union data protection law and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

In particular, wherever possible, special attention shall be given by Member States when implementing actions to the assistance and protection of vulnerable persons, in particular children and unaccompanied minors.

Article 4

Eligible actions under national programmes

1. Within the objectives referred to in Article 3 of this Regulation, in the light of the agreed conclusions of the policy dialogue as provided for in Article 13 of Regulation (EU) No 514/2014 and in accordance with the objectives of the national programme referred to in Article 7 of this Regulation, the Instrument shall support actions in Member States, and in particular those from the following list:

- (a) actions improving police cooperation and coordination between law enforcement authorities, including with and between relevant Union bodies, in particular Europol and Eurojust, joint investigation teams and any other form of cross-border joint operation, access to and exchange of information and interoperable technologies;
- (b) projects promoting networking, public-private partnerships, mutual confidence, understanding and learning, the identification, exchange and dissemination of know-how, experience and best practices, information sharing, shared situation awareness and foresight, contingency planning and interoperability;
- (c) analytical, monitoring and evaluation activities, including studies and threat, risk and impact assessments, which are evidence based and consistent with priorities and initiatives identified at Union level, in particular those that have been endorsed by the European Parliament and the Council;
- (d) awareness raising, dissemination and communication activities;
- (e) acquisition, maintenance of Union IT systems and national IT systems contributing to the achievement of the objectives of this Regulation, and/or further upgrading of IT systems and technical equipment, including testing compatibility of systems, secure facilities, infrastructures, related buildings and systems, especially information and communication technology (ICT) systems and their components, including for the purpose of European cooperation on cyber security and cyber crime, notably with the European Cybercrime Centre;
- (f) exchange, training and education of staff and experts of relevant authorities, including language training and joint exercises or programmes;
- (g) measures deploying, transferring, testing and validating new methodology or technology, including pilot projects and follow-up measures to Union funded security research projects.

2. Within the objectives referred to in Article 3, the Instrument may also support the following actions in relation to and in third countries:

- (a) actions improving police cooperation and coordination between law enforcement authorities, including joint investigation teams and any other form of cross-border joint operation, access to and exchange of information and interoperable technologies;
- (b) networking, mutual confidence, understanding and learning, the identification, exchange and dissemination of know-how, experience and best practices, information sharing, shared situation awareness and foresight, contingency planning and interoperability;
- (c) exchange, training and education of staff and experts of relevant authorities.

The Commission and the Member States, together with the European External Action Service, shall ensure coordination as regards actions in and in relation to third countries, as set out in Article 3(5) of Regulation (EU) No 514/2014.

CHAPTER II

FINANCIAL AND IMPLEMENTATION FRAMEWORK

Article 5

Global resources and implementation

1. The global resources for the implementation of the Instrument shall be EUR 1 004 million in current prices.
2. Annual appropriations shall be authorised by the European Parliament and the Council within the limits of the multiannual financial framework.
3. The global resources shall be implemented through the following means:
 - (a) national programmes, in accordance with Article 7;
 - (b) Union actions, in accordance with Article 8;
 - (c) technical assistance, in accordance with Article 9;
 - (d) emergency assistance, in accordance with Article 10.
4. The budget allocated under the Instrument to Union actions referred to in Article 8 of this Regulation, to the technical assistance referred to in Article 9 of this Regulation and to the emergency assistance referred to in Article 10 of this Regulation shall be implemented under direct management and indirect management in accordance, respectively, with points (a) and (c) of Article 58(1) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽¹⁾.

The budget allocated to the national programmes referred to in Article 7 of this Regulation shall be implemented under shared management in accordance with point (b) of Article 58(1) of Regulation (EU, Euratom) No 966/2012.

5. Without prejudice to the prerogatives of the European Parliament and the Council, the global resources shall be used as follows:

- (a) EUR 662 million for the national programmes of Member States;
- (b) EUR 342 million for Union actions, emergency assistance and technical assistance at the initiative of the Commission.

⁽¹⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

6. Each Member State shall allocate the amounts for national programmes indicated in Annex III as follows:

- (a) at least 20 % for actions relating to the specific objective referred to in point (a) of the first subparagraph of Article 3(2); and
- (b) at least 10 % for actions relating to the specific objective referred to in point (b) of the first subparagraph of Article 3(2).

Member States may depart from those minimum percentages provided that an explanation is included in the national programmes as to why allocating resources below that level does not jeopardise the achievement of the relevant objective. That explanation will be assessed by the Commission in the context of its approval of national programmes as referred to in Article 7(2).

7. Jointly with the global resources established for Regulation (EU) No 515/2014, the global resources available for the Instrument, as established in paragraph 1 of this Article, constitute the financial envelope for the Fund and serve as the prime reference, within the meaning of point 17 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, for the European Parliament and the Council during the annual budgetary procedure.

Article 6

Resources for eligible actions in the Member States

1. EUR 662 million shall be allocated to the Member States as follows:

- (a) 30 % in proportion to the size of their total population;
- (b) 10 % in proportion to the size of their territory;
- (c) 15 % in proportion to the number of passengers and 10 % to the tons of cargo processed through their international air and sea ports;
- (d) 35 % in inverse proportion to their gross domestic product (purchasing power standard per inhabitant).

2. The reference figures for the data referred to in paragraph 1 shall be the latest statistics produced by the Commission (Eurostat), on the basis of data provided by Member States in accordance with Union law. The reference date is 30 June 2013. The allocations for national programmes calculated on the basis of the criteria referred to in paragraph 1 are set out in Annex III.

Article 7

National programmes

1. The national programme to be prepared under the Instrument and the one to be prepared under Regulation (EU) No 515/2014 shall be proposed to the Commission as one single national programme for the Fund, in accordance with Article 14 of Regulation (EU) No 514/2014.

2. Under the national programmes to be examined and approved by the Commission pursuant to Article 14 of Regulation (EU) No 514/2014, Member States shall, within the objectives referred to in Article 3 of this Regulation, pursue in particular the strategic Union priorities listed in Annex I to this Regulation, taking account of the outcome of the policy dialogue referred to in Article 13 of Regulation (EU) No 514/2014. Member States shall not use more than 8 % of their total allocation under the national programme for the maintenance of Union IT systems and national IT systems contributing to the achievement of the objectives of this Regulation and not more than 8 % for actions in relation to or in third countries which implement the strategic Union priorities listed in Annex I to this Regulation.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 11 to amend, add or delete strategic Union priorities listed in Annex I to this Regulation.

Article 8

Union actions

1. At the Commission's initiative, the Instrument may be used to finance transnational actions or actions of particular interest to the Union ('Union actions') concerning the general, specific and operational objectives referred to in Article 3.

2. To be eligible for funding, Union actions shall be consistent with the priorities and initiatives identified at Union level, in particular those that have been endorsed by the European Parliament and the Council, in relevant Union strategies, policy cycles, programmes, threat and risk assessments, and support in particular:

- (a) preparatory, monitoring, administrative and technical activities, and the development of an evaluation mechanism required to implement the policies on police cooperation, preventing and combating crime, and crisis management;
- (b) transnational projects involving two or more Member States or at least one Member State and one third-country;
- (c) analytical, monitoring and evaluation activities, including threat, risk and impact assessments, which are evidence based and consistent with priorities and initiatives identified at Union level, in particular those that have been endorsed by the European Parliament and the Council and projects monitoring the implementation of Union law and Union policy objectives in the Member States;
- (d) projects promoting networking, public-private partnerships, mutual confidence, understanding and learning, identification and dissemination of best practices and innovative approaches at Union level, training and exchange programmes;
- (e) projects supporting the development of methodological, notably statistical, tools and methods and common indicators;
- (f) the acquisition, maintenance and/or further upgrading of technical equipment, expertise, secure facilities, infrastructures, related buildings and systems, especially ICT systems and their components at the Union level, including for the purpose of European cooperation on cyber security and cybercrime, notably the European Cybercrime Centre;
- (g) projects enhancing awareness of Union policies and objectives among stakeholders and the general public, including corporate communication on the political priorities of the Union;
- (h) particularly innovative projects developing new methods and/or deploying new technologies with a potential for transferability to other Member States, especially projects aiming at testing and validating the outcome of Union funded security research projects;
- (i) studies and pilot projects.

3. Within the objectives referred to in Article 3, the Instrument shall also support actions in relation to and in third countries, and in particular the following:

- (a) actions improving police cooperation and coordination between law enforcement authorities and, where applicable, international organisations, including joint investigation teams and any other form of cross-border joint operation, access to and exchange of information and interoperable technologies;

- (b) networking, mutual confidence, understanding and learning, identification, exchange and dissemination of know-how, experience and best practice, information sharing, shared situation awareness and foresight, contingency planning and interoperability;
 - (c) acquisition, maintenance, and/or further upgrading of technical equipment, including ICT systems and their components;
 - (d) exchange, training and education of staff and experts of relevant authorities, including language training;
 - (e) awareness raising, dissemination and communication activities;
 - (f) threat, risk and impact assessments;
 - (g) studies and pilot projects.
4. Union actions shall be implemented in accordance with Article 6 of Regulation (EU) No 514/2014.

Article 9

Technical assistance

1. At the initiative of and/or on behalf of the Commission, the Instrument may contribute up to EUR 800 000 annually for technical assistance to the Fund, in accordance with Article 9 of Regulation (EU) No 514/2014.
2. At the initiative of a Member State, the Instrument may finance technical assistance activities, in accordance with Article 20 of Regulation (EU) No 514/2014. The amount set aside for technical assistance shall not exceed, for the period 2014-2020, 5 % of the total amount allocated to a Member State plus EUR 200 000.

Article 10

Emergency assistance

1. The Instrument shall provide financial assistance to address urgent and specific needs in the event of an emergency situation, as defined in point (j) of Article 2.
2. Emergency assistance shall be implemented in accordance with Articles 6 and 7 of Regulation (EU) No 514/2014.

CHAPTER III

FINAL PROVISIONS

Article 11

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 7(3) shall be conferred on the Commission for a period of seven years from 21 May 2014. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the seven-year period. The delegation of power shall be tacitly extended for a period of three years, unless the European Parliament or the Council opposes such extension not later than three months before the end of the seven-year period.
3. The delegation of power referred to in Article 7(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

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

Article 12

Applicability of Regulation (EU) No 514/2014

The provisions of Regulation (EU) No 514/2014 shall apply to the Instrument.

Article 13

Repeal

Decision 2007/125/JHA is repealed with effect from 1 January 2014.

Article 14

Transitional provisions

1. This Regulation shall not affect the continuation or modification, including the total or partial cancellation of the projects until their closure or the financial assistance approved by the Commission on the basis of Decision 2007/125/JHA, or any other legislation applying to that assistance on 31 December 2013.

2. When adopting decisions on co-financing under the Instrument, the Commission shall take account of measures adopted on the basis of Decision 2007/125/JHA before 20 May 2014 which have financial repercussions during the period covered by that co-financing.

3. Sums committed for co-financing approved by the Commission between 1 January 2011 and 31 December 2014 for which the documents required for closure of the operations have not been sent to the Commission by the deadline for submitting the final report shall be automatically decommitted by the Commission by 31 December 2017, giving rise to the repayment of amounts unduly paid.

Amounts relating to operations which have been suspended due to legal proceedings or administrative appeals having suspensive effect shall be disregarded in calculating the amount to be automatically decommitted.

4. The Commission shall submit to the European Parliament and the Council, by 31 December 2015, an *ex-post* evaluation of Decision 2007/125/JHA concerning the period 2007-2013.

Article 15

Review

The European Parliament and the Council shall, on the basis of a proposal of the Commission, review this Regulation by 30 June 2020.

*Article 16***Entry into force and application**

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

It shall apply from 1 January 2014.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 16 April 2014.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

D. KOURKOULAS

ANNEX I

List of strategic Union priorities referred to in Article 7(2)

- Measures preventing all types of crime and fighting cross-border, serious and organised crime, in particular projects implementing relevant policy cycles, drug trafficking, trafficking in human beings, sexual exploitation of children and projects identifying and dismantling criminal networks, enhancing capacities to fight corruption, protecting the economy against criminal infiltration and reducing financial incentives by seizing, freezing and confiscating criminal assets.
- Measures preventing and combating cybercrime and raising the levels of security for citizens and business in cyberspace, in particular projects building capacities in law enforcement and the judiciary, projects ensuring work with industry to empower and protect citizens, and projects improving capabilities for dealing with cyber attacks.
- Measures preventing and combating terrorism and addressing radicalisation and recruitment, in particular projects empowering communities to develop local approaches and prevention policies, projects enabling competent authorities to cut off terrorists from access to funding and materials and follow their transactions, projects protecting the transport of passengers and cargo, and projects enhancing the security of explosives and chemical, biological, radiological and nuclear materials.
- Measures designed to raise Member States' administrative and operational capability to protect critical infrastructure in all economic sectors including those covered by Council Directive 2008/114/EC ⁽¹⁾, in particular projects promoting public-private partnerships in order to build trust and facilitate cooperation, coordination, contingency planning and the exchange and dissemination of information and best practices among public and private actors.
- Measures increasing the Union's resilience to crisis and disaster, in particular projects promoting the development of a coherent Union policy on risk management linking threat and risk assessments to decision making, as well as projects supporting an effective and coordinated response to crisis linking up existing sector-specific capabilities, expertise centres and situation awareness centres, including those for health, civil protection and terrorism.
- Measures seeking to achieve a closer partnership between the Union and third countries, in particular countries situated on its external borders, and the drawing up and implementation of operational programmes of action for achievement of the above strategic Union priorities.

⁽¹⁾ Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p. 75).

ANNEX II

List of common indicators for the measurement of the specific objectives

- (a) Preventing and combating cross-border, serious and organised crime including terrorism, and reinforcing coordination and cooperation between law enforcement authorities of Member States and with relevant third countries.

- (i) Number of joint investigation teams (JITs) and European Multidisciplinary Platform against Criminal Threats (EMPACT) operational projects supported by the Instrument, including the participating Member States and authorities.

For the purposes of annual implementation reports, as referred to in Article 54 of Regulation (EU) No 514/2014, this indicator shall be further broken down in sub-categories such as:

- leader (Member State),
- partners (Member States),
- participating authorities,
- participating EU Agency (Eurojust, Europol), if applicable.

- (ii) Number of law enforcement officials trained on cross-border-related topics with the help of the Instrument, and the duration of their training (person days).

For the purposes of annual implementation reports, as referred to in Article 54 of Regulation (EU) No 514/2014, this indicator shall be further broken down in sub-categories such as:

- by type of crime (referred to in Article 83 TFEU): terrorism, trafficking in human beings and sexual exploitation of women and children; illicit drug trafficking; illicit arms trafficking; money laundering; corruption; counterfeiting of means of payment; computer crime; organised crime; or
- by horizontal area of law enforcement: information exchange; operational cooperation;

- (iii) Number and financial value of projects in the area of crime prevention

For the purposes of annual implementation reports, as referred to in Article 54 of Regulation (EU) No 514/2014, this indicator shall be further broken down by type of crime (referred to in Article 83 TFEU): terrorism, trafficking in human beings and sexual exploitation of women and children; illicit drug trafficking; illicit arms trafficking; money laundering; corruption; counterfeiting of means of payment; computer crime; organised crime;

- (iv) Number of projects supported by the Instrument, aiming to improve law enforcement information exchange which are related to Europol data systems, repositories or communication tools.

For the purposes of annual implementation reports, as referred to in Article 54 of Regulation (EU) No 514/2014, this indicator shall be further broken down by type of crime (referred to in Article 83 TFEU): data loaders, extending access to SIENA, projects aiming to improving input to analysis work files etc.

- (b) Enhancing the capacity of Member States and the Union for managing effectively security-related risks and crises, and preparing for and protecting people and critical infrastructure against terrorist attacks and other security-related incidents.

- (i) Number and tools put in place and/or further upgraded with the help of the Instrument to facilitate the protection of critical infrastructure by Member States in all sectors of the economy;

- (ii) Number of projects relating to the assessment and management of risks in the field of internal security supported by the Instrument;

- (iii) Number of expert meetings, workshops, seminars, conferences, publications, websites and online consultations organised with the help of the Instrument.

For the purposes of annual implementation reports, as referred to in Article 54 of Regulation (EU) No 514/2014, this indicator shall be further broken down in sub-categories such as:

- relating to critical infrastructure protection; or
 - relating to risk and crisis management.
-

Figures for national programmes

ISF POLICE — Amounts of national programmes

MS	Population (individuals)		Territor (km ²)		# passengers				# tons of cargo				GDP/capita (EUR)			Allocations
	(2013)		(2012)		air (2012)	sea (2011)	Total		air (2012)	sea (2011)	Total		(2012)			
	30 %		10 %		15 %				10 %				35 %			2014-2020
	Number	allocation	Number	allocation	Numbers			allocation	Numbers			allocation	Number	clef	allocation	
AT	8 488 511	3 845 782	83 879	1 321 372	8 196 234	0	8 196 234	3 169 093	219 775	0	219 775	4 651	36 400	16,66	3 822 008	12 162 906
BE	11 183 350	5 066 698	30 528	480 917	8 573 821	0	8 573 821	3 315 088	1 068 434	232 789 000	233 857 434	4 948 770	34 000	17,84	4 091 797	17 903 270
BG	7 282 041	3 299 182	110 900	1 747 038	1 705 825	0	1 705 825	659 561	18 536	25 185 000	25 203 536	533 344	5 400	112,33	25 763 168	32 002 293
CH																
CY	862 011	390 540	9 251	145 734	1 587 211	107 000	1 694 211	655 071	28 934	6 564 000	6 592 934	139 516	20 500	29,59	6 786 396	8 117 257
CZ	10 516 125	4 764 407	78 866	1 242 401	3 689 113	0	3 689 113	1 426 404	58 642	0	58 642	1 241	14 500	41,83	9 594 559	17 029 012
DE	82 020 688	37 160 068	357 137	5 626 095	66 232 970	1 146 000	67 378 970	26 052 237	4 448 191	296 037 000	300 485 191	6 358 712	32 299	18,78	4 307 288	79 504 401
DK																
EE	1 286 479	582 849	45 227	712 475	466 960	61 000	527 960	204 137	23 760	48 479 000	48 502 760	1 026 390	12 700	47,76	10 954 418	13 480 269
ES	46 006 414	20 843 540	505 991	7 971 031	24 450 017	3 591 000	28 041 017	10 842 125	592 192	398 332 000	398 924 192	8 441 827	22 700	26,72	6 128 683	54 227 207
FI	5 426 674	2 458 594	338 432	5 331 428	3 725 547	250 000	3 975 547	1 537 155	195 622	115 452 000	115 647 622	2 447 275	35 600	17,04	3 907 896	15 682 348
FR	65 633 194	29 735 595	632 834	9 969 228	48 440 037	906 000	49 346 037	19 079 761	1 767 360	322 251 000	324 018 360	6 856 709	31 100	19,50	4 473 348	70 114 640
GR	11 290 067	5 115 047	131 957	2 078 760	5 992 242	66 000	6 058 242	2 342 434	72 187	135 314 000	135 386 187	2 864 972	17 200	35,27	8 088 437	20 489 650
HR	4 398 150	1 992 614	87 661	1 380 951	4 526 664	5 000	4 531 664	1 752 179	6 915	21 862 000	21 868 915	462 779	10 300	58,89	13 506 904	19 095 426
HU	9 906 000	4 487 985	93 024	1 465 432	1 327 200	0	1 327 200	513 165	61 855	0	61 855	1 309	9 800	61,90	14 196 032	20 663 922
IE	4 582 769	2 076 257	69 797	1 099 534	3 139 829	0	3 139 829	1 214 022	113 409	45 078 000	45 191 409	956 317	35 700	16,99	3 896 950	9 243 080
IS																
IT	59 394 207	26 908 977	301 336	4 747 041	21 435 519	1 754 000	23 189 519	8 966 282	844 974	499 885 000	500 729 974	10 596 188	25 700	23,60	5 413 273	56 631 761
LI																
LT	2 971 905	1 346 443	65 300	1 028 692	504 461	0	504 461	195 051	15 425	42 661 000	42 676 425	903 096	11 000	55,15	12 647 374	16 120 656

MS	Population (individuals)		Territor (km ²)		# passengers				# tons of cargo				GDP/capita (EUR)			Allocations
	(2013)		(2012)		air (2012)	sea (2011)	Total		air (2012)	sea (2011)	Total		(2012)			
	30 %		10 %		15 %				10 %				35 %			2014-2020
	Number	allocation	Number	allocation	Numbers			allocation	Numbers			allocation	Number	clef	allocation	
LU	537 039	243 309	2 586	40 738	365 944	0	365 944	141 493	615 287	0	615 287	13 020	83 600	7,26	1 664 128	2 102 689
LV	2 017 526	914 055	64 562	1 017 066	1 465 671	676 000	2 141 671	828 082	31 460	67 016 000	67 047 460	1 418 824	10 900	55,65	12 763 405	16 941 431
MT	421 230	190 841	316	4 978	335 863	0	335 863	129 862	16 513	5 578 000	5 594 513	118 388	16 300	37,21	8 535 037	8 979 107
NL	16 779 575	7 602 108	41 540	654 399	23 172 904	0	23 172 904	8 959 858	1 563 499	491 695 000	493 258 499	10 438 081	35 800	16,94	3 886 065	31 540 510
NO																
PL	38 533 299	17 457 791	312 679	4 925 731	4 219 070	9 000	4 228 070	1 634 793	68 306	57 738 000	57 806 306	1 223 267	9 900	61,27	14 052 637	39 294 220
PT	10 487 289	4 751 342	92 212	1 452 643	5 534 972	0	5 534 972	2 140 110	116 259	67 507 000	67 623 259	1 431 008	15 600	38,88	8 918 020	18 693 124
RO	21 305 097	9 652 429	238 391	3 755 444	1 239 298	0	1 239 298	479 177	28 523	38 918 000	38 946 523	824 166	6 200	97,84	22 438 889	37 150 105
SE	9 555 893	4 329 367	438 576	6 909 023	5 757 921	1 320 000	7 077 921	2 736 695	144 369	181 636 000	181 780 369	3 846 742	43 000	14,11	3 235 375	21 057 201
SI	2 058 821	932 764	20 273	319 367	513 394	0	513 394	198 505	9 015	16 198 000	16 207 015	342 964	17 200	35,27	8 088 437	9 882 037
SK	5 410 836	2 451 419	49 036	772 480	330 166	0	330 166	127 659	20 894	0	20 894	442	13 200	45,95	10 539 478	13 891 478
UK																
Total	438 355 190	198 600 000	4 202 290	66 200 000	246 928 853	9 891 000	256 819 853	99 300 000	12 150 336	3 116 175 000	3 128 325 336	66 200 000	606 599	1 010	231 700 000	662 000 000
Budget allocation share	198 600 000		66 200 000		99 300 000				66 200 000				231 700 000			662 000 000

**REGULATION (EU) No 514/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 April 2014**

**laying down general provisions on the Asylum, Migration and Integration Fund and on the
instrument for financial support for police cooperation, preventing and combating crime, and
crisis management**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2), Article 79(2) and (4), Article 82(1), Article 84 and Article 87(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⁾,

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

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

Whereas:

- (1) The Union's home affairs policy is to create an area of freedom, security and justice: an area without internal borders where people may enter, move, live and work freely, confident that their rights are fully respected and their security assured, bearing in mind common challenges such as the development of a comprehensive Union immigration policy to enhance the competitiveness and social cohesion of the Union, the creation of a Common European Asylum System, the prevention of threats of serious and organised crime, and the fight against illegal immigration, human trafficking, cybercrime and terrorism.
- (2) It is necessary to adopt an integrated approach to questions arising from the pressure of migration and asylum applications and regarding the management of the external borders of the Union, ensuring full respect for international and human rights law, including as regards actions implemented in third countries, showing solidarity amongst all Member States and demonstrating an awareness of the need to respect national responsibilities in the process of ensuring a clear definition of tasks.
- (3) Union funding to support the development of the area of freedom, security and justice should bring added value for the Union and constitute a tangible sign of the solidarity and responsibility-sharing which are indispensable in responding to the common challenges.
- (4) The existence of a common framework should ensure the necessary coherence, simplification and uniform implementation of that funding across the policy areas concerned.
- (5) The spending of funds in that area should be coordinated in order to assure complementarity, efficiency and visibility, as well as to achieve budgetary synergies.

⁽¹⁾ OJ C 299, 4.10.2012, p. 108.

⁽²⁾ OJ C 277, 13.9.2012, p. 23.

⁽³⁾ Position of the European Parliament of 13 March 2014 (not yet published in the Official Journal) and decision of the Council of 14 April 2014.

- (6) A common framework should lay down the principles of assistance and identify the responsibilities of the Member States and the Commission in ensuring the application of those principles, including the prevention and detection of irregularities and fraud.
- (7) Such Union funding would be more efficient and better targeted if co-financing of eligible actions were based on strategic multiannual programming, drawn up by each Member State in dialogue with the Commission.
- (8) Measures in and in relation to third countries supported through the Specific Regulations as defined in this Regulation ('Specific Regulations') should be taken in synergy and coherence with other actions outside the Union supported through Union external assistance instruments, both geographic and thematic. In particular, in implementing such actions, full coherence should be sought with the principles and general objectives of the Union's external action and foreign policy related to the country or region in question. Those measures should not be intended to support actions that are directly oriented towards development and they should complement, when appropriate, the financial assistance provided through external aid instruments. The principle of policy coherence for development, as set out in paragraph 35 of the European consensus on Development, should be respected. It is also important to ensure that the implementation of emergency assistance is consistent with, and, where relevant, complementary to the Union humanitarian policy and respects humanitarian principles as set out in the European Consensus on Humanitarian Aid.
- (9) External action should be consistent and coherent, as set out in Article 18(4) of the Treaty on European Union (TEU).
- (10) Prior to the preparation of multiannual programmes as a means of achieving the objectives of such Union funding, Member States and the Commission should engage in a policy dialogue and thereby establish a coherent strategy for each individual Member State. Following the completion of the policy dialogue, each Member State should submit to the Commission a national programme describing how it aims to achieve the objectives of the relevant Specific Regulation for the period 2014-20. The Commission should examine whether the national programme is consistent with those objectives and with the outcome of the policy dialogue. Moreover, the Commission should examine whether the distribution of Union funding between the objectives complies with the minimum percentage set per objective in the relevant Specific Regulation. It should be possible for Member States to depart from those minimum percentages, in which case they should state the reasons for the deviation in their national programme. In the event that the reasons given by the Member State concerned were not deemed adequate, the Commission might not approve the national programme. The Commission should regularly inform the European Parliament of the outcome of the policy dialogues, of the full programming process including the preparation of national programmes, covering also compliance with the minimum percentage set per objective in the relevant Specific Regulations as defined in this Regulation, and of the implementation of the national programmes.
- (11) The strategy should be subject to a mid-term review, to ensure appropriate funding in the period 2018-20.
- (12) Member States should establish, in a manner consistent with the principle of proportionality and the need to minimise administrative burden, a partnership with the authorities and bodies concerned to develop and implement their national programmes throughout the entire multiannual period. Member States should ensure that there is no conflict of interest among the partners at the different stages of the programming cycle. Each Member State should set up a committee to monitor the national programme and assist it in reviewing the implementation and the progress made in achieving the programme objectives. Each Member State should be responsible for establishing the practical arrangements for setting up the monitoring committee.
- (13) Eligibility of expenditure under the national programmes should be determined by national law, subject to common principles set out in this Regulation. The starting and closing dates for the eligibility of expenditure should be defined so as to provide for uniform and equitable rules applying to the national programmes.
- (14) Technical assistance should enable the Member States to support the implementation of their national programmes and assist beneficiaries in complying with their obligations and Union law. Where appropriate, technical assistance could cover the costs incurred by the competent authorities in third countries.

- (15) To ensure an adequate framework for providing rapidly emergency assistance, this Regulation should allow support for actions the expenditure of which was incurred before the application for such assistance was made, but not before 1 January 2014, in accordance with the provision in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁽¹⁾, which allows such flexibility in duly substantiated exceptional cases. The support may constitute 100 % of the eligible expenditure in duly justified cases where this is essential for the action to be carried out, particularly where the beneficiary is an international or non-governmental organisation. Actions supported with emergency assistance should arise directly from the emergency situation and should not replace long-term investments by Member States.
- (16) The decisions taken relevant to the contribution from the Union budget should be properly documented to maintain an adequate audit trail.
- (17) The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU, Euratom) No 966/2012.
- (18) In the context of the protection of the financial interests of the Union, the on-the-spot checks and audits carried out by the Member States, the Commission, the Court of Auditors and the European Anti-Fraud Office established by Commission Decision 1999/352/EC, ECSC, Euratom⁽²⁾ ('OLAF') can be announced as well as unannounced, in accordance with the applicable law.
- (19) The new structure of the funding in the field of home affairs aims to simplify the applicable rules and to reduce the administrative burden for the beneficiaries. Nevertheless, the control mechanism should remain efficient, and therefore it is important to recall the applicable rules on the protection of the financial interests of the Union, providing for on-the-spot checks and audits which may be announced as well as unannounced.
- (20) Member States should adopt adequate measures to guarantee the proper functioning of the management and control system and the quality of implementation of their national programmes. To this end, it is necessary to establish the general principles and necessary functions which these systems should fulfil.
- (21) The obligations on the Member States as regards management and control systems and the prevention, detection and correction of irregularities and infringements of Union law should be specified in order to guarantee the efficient and correct implementation of their national programmes.
- (22) In accordance with the principles of subsidiarity and proportionality, Member States should have the primary responsibility, through their management and control systems, for the implementation and control of national programmes. The support provided under the Specific Regulations should be implemented in close cooperation between the Commission and the Member States in accordance with the principle of subsidiarity.
- (23) Member States should make full use of the knowledge, expertise and experience gained by public and/or private bodies in implementing earlier funds in the field of home affairs.
- (24) Only Responsible Authorities designated by the Member States offer reasonable assurance that the necessary controls have been carried out before granting support from the Union budget to beneficiaries. It should therefore be explicitly laid down that only expenditure effected by designated Responsible Authorities can be reimbursed from the Union budget.
- (25) The powers and responsibilities of the Commission to verify the effective functioning of the management and control systems and to require Member State action should be laid down.

⁽¹⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

⁽²⁾ Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 20).

- (26) Union budget commitments should be effected annually. In order to ensure effective programme management, it is necessary to lay down common rules for the payment of the annual balance and the final balance.
- (27) The pre-financing payment at the start of programmes ensures that Member States have the means to provide support to beneficiaries in the implementation of the programme once the programme is approved. Therefore, provisions should be made for initial pre-financing amounts. Initial pre-financing should be totally cleared at closure of the programme. The Responsible Authorities should ensure that beneficiaries receive the full amount due promptly.
- (28) In addition, annual pre-financing should be provided to ensure that Member States have sufficient means to implement their national programmes. Annual pre-financing should be cleared each year with the payment of the annual balance.
- (29) The triennial revision of Regulation (EU, Euratom) No 966/2012 introduces changes in the shared management method which have to be taken into account.
- (30) With a view to strengthening accountability for expenditure co-financed by the Union budget in any given year, an appropriate framework should be created for the annual clearance of accounts. Under such framework, the Responsible Authority should submit to the Commission, in respect of a national programme, the documents referred to in the provisions on shared management with Member States of Regulation (EU, Euratom) No 966/2012.
- (31) To support the assurance underlying the annual clearance of accounts across the Union, common provisions should be laid down on the nature and level of the controls to be carried out by Member States.
- (32) In order to ensure the sound financial management of Union resources, it may be necessary for the Commission to make financial corrections. To ensure legal certainty for the Member States, it is important to define the circumstances under which breaches of applicable Union or national law can lead to financial corrections by the Commission. In order to ensure that any financial corrections which the Commission may impose on Member States are related to the protection of the Union's financial interests, they should be confined to cases where the breach of Union or national law directly or indirectly concerns the eligibility, regularity, management or control of actions and the corresponding expenditure. To ensure proportionality, it is important that the Commission considers the nature and the gravity of the breach in deciding the amount of financial correction. In this regard, it is appropriate to set out the criteria for applying financial corrections by the Commission and the procedure that may lead to a decision on the financial correction.
- (33) In order to establish the financial relationship between the Responsible Authorities and the Union budget, the Commission should clear the accounts of those authorities annually. The decision on the clearance of accounts should cover the completeness, the accuracy and veracity of the accounts but not the conformity of the expenditure with Union law.
- (34) As the Commission is responsible for the proper application of Union law under Article 17 TEU, it should decide whether the expenditure incurred by the Member States complies with Union law. Member States should be given the right to justify their decisions to make payments. In order to give Member States legal and financial assurances as to expenditure effected in the past, a maximum period should be set for the Commission to decide which financial consequences should follow from non-compliance.
- (35) It is important to ensure sound financial management and effective implementation, while also ensuring transparency, legal certainty, accessibility of funding and equal treatment of beneficiaries.
- (36) With a view to simplifying the use of funding and reducing the risk of error, while providing for differentiation where needed to reflect the specificities of policy, it is appropriate to define the forms of support and the harmonised conditions for the eligibility of expenditure grants, including simplified costs options. In accordance with the principle of subsidiarity, Member States should adopt national rules on the eligibility of expenditure.

- (37) In order to encourage financial discipline, it is appropriate to define the arrangements for decommitment of any part of the budget commitment in a national programme, in particular where an amount may be excluded from the decommitment, notably when delays in the implementation result from legal proceedings or an administrative appeal having suspensive effect or from reasons of force majeure.
- (38) To ensure the appropriate application of the general rules on decommitment, the rules established should detail how the deadlines for decommitment are established and how the respective amounts are calculated.
- (39) It is important to bring the achievements of Union funding to the attention of the general public. Citizens have a right to know how the Union's financial resources are spent. The responsibility to ensure that the appropriate information is communicated to the public should lie with the Commission, the Responsible Authorities and the beneficiaries. To ensure more efficiency in communication to the public at large and stronger synergies between the communication activities undertaken at the initiative of the Commission, the budget allocated to communication actions under this Union funding should also contribute to covering corporate communication of the political priorities of the Union, provided that those are related to the general objectives of Union funding in the field of home affairs.
- (40) For the purpose of ensuring a wide dissemination of information about Union funding in the field of home affairs, and to inform potential beneficiaries about funding opportunities, detailed rules relating to information and communication measures, as well as certain technical characteristics of such measures, should be defined on the basis of this Regulation and each Member State should, at least, establish a website or website portal with the necessary information. Member States should undertake more direct forms of communication campaigns in order to properly inform the potential beneficiaries by, inter alia, organising regular public events, so-called information days and training sessions.
- (41) The effectiveness of actions supported also depends on their evaluation and the dissemination of their results. The responsibilities of the Member States and the Commission in this regard and the arrangements to ensure the reliability of evaluation and the quality of the related information should be formalised.
- (42) In order to amend provisions of this Regulation on the common principles on the eligibility of expenditure, 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. 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.
- (43) In the application of this Regulation, including the preparation of delegated acts, the Commission should consult experts from all Member States.
- (44) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽¹⁾.
- (45) The examination procedure should be used for implementing acts that lay down common obligations on Member States, in particular on the provision of information to the Commission, and the advisory procedure should be used for the adoption of implementing acts relating to the model forms for the provision of information to the Commission, given their purely technical nature.
- (46) Since the objective of this Regulation, namely to lay down general provisions for the implementation of the Specific Regulations, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

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

- (47) Insofar as this Regulation lays down general rules necessary for enabling the implementation of Specific Regulations which provide for its applicability to these Specific Regulations and which constitute acts building upon the Schengen *acquis* in relation to countries to which these Specific Regulations are applicable on the basis of relevant Protocols annexed to the TEU and to the TFEU or on the basis of the relevant Agreements, this Regulation should be applied together with these Specific Regulations. To that extent, this implies that this Regulation can establish a link with and can have a direct impact on the provisions of the Specific Regulations developing the Schengen *acquis*, thus affecting the latter's legal framework.
- (48) In accordance with Article 3 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, those Member States have notified their wish to take part in the adoption and application of this Regulation.
- (49) 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 Regulation and is not bound by it or subject to its application.
- (50) It is appropriate to align the period of application of this Regulation with that of Council Regulation (EU, Euratom) No 1311/2013 ⁽¹⁾. Therefore, this Regulation should apply as from 1 January 2014,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose and scope

This Regulation lays down general rules for the implementation of the Specific Regulations with regard to:

- (a) the financing of expenditure;
- (b) partnership, programming, reporting, monitoring and evaluation;
- (c) the management and control systems to be put in place by the Member States; and
- (d) the clearance of accounts.

Article 2

Definitions

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

- (a) 'Specific Regulations' means

- Regulation (EU) No 516/2014 of the European Parliament and of the Council ⁽²⁾;
- Regulation (EU) No 513/2014 of the European Parliament and of the Council ⁽³⁾; and
- any other regulation which provides for the application of this Regulation;

- (b) 'programming' means the process of organisation, decision-making and financing in several stages intended to implement, on a multiannual basis, the joint action by the Union and the Member States to achieve the objectives of the Specific Regulations;

⁽¹⁾ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

⁽²⁾ Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC (see page 168 of this Official Journal).

⁽³⁾ Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA (see page 93 of this Official Journal).

- (c) 'action' means a project or group of projects selected by the Responsible Authority of the national programme concerned, or under its responsibility, contributing to the general and specific objectives pursued by the Specific Regulations;
- (d) 'Union action' means a transnational action or action of particular interest to the Union as defined in the Specific Regulations;
- (e) 'project' means the specific practical means deployed to implement all or a part of an action by a beneficiary of a Union contribution;
- (f) 'emergency assistance' means a project or group of projects addressing an emergency situation as defined in the Specific Regulations;
- (g) 'beneficiary' means the recipient of a Union contribution under a project, whether a public or private body, international organisation or the International Committee of the Red Cross ('ICRC'), or the International Federation of National Red Cross and Red Crescent Societies.

CHAPTER II

PRINCIPLES OF ASSISTANCE

Article 3

General principles

1. The Specific Regulations shall provide support, through national programmes, Union actions and emergency assistance, which complements national, regional and local intervention, pursuing the objectives of the Union and resulting in added value for the Union.
2. The Commission and the Member States shall ensure that the support provided under the Specific Regulations and by the Member States is consistent with the relevant activities, policies and priorities of the Union and is complementary to other Union instruments, while taking into account the specific context of each Member State.
3. The support provided under the Specific Regulations shall be implemented in close cooperation between the Commission and the Member States.
4. In accordance with their respective responsibilities, the Commission and the Member States, together with the European External Action Service ('EEAS') as regards actions in and in relation to third countries, shall ensure coordination between this Regulation and the Specific Regulations, and with other relevant Union policies, strategies and instruments, including those in the framework of the Union's external action.
5. The Commission and the Member States, together with the EEAS where appropriate, shall ensure that actions in and in relation to third countries are carried out in synergy and in coherence with other actions outside the Union supported through Union instruments. They shall, in particular, ensure that those actions:
 - (a) are coherent with the Union's external policy, respect the principle of policy coherence for development and are consistent with the strategic programming documents for the region or country in question;
 - (b) focus on non-development-oriented measures;
 - (c) serve the interests of the Union's internal policies and are consistent with activities undertaken inside the Union.
6. The Commission and the Member States shall apply the principle of sound financial management in accordance with Regulation (EU, Euratom) No 966/2012, in particular in accordance with the principles of economy, efficiency and effectiveness as provided for in Article 30 of that Regulation.
7. The Commission and the Member States shall ensure the effectiveness of the support provided under the Specific Regulations, including through monitoring, reporting and evaluation.

8. The Commission and the Member States shall carry out their respective roles in relation to this Regulation and the Specific Regulations with the aim of reducing the administrative burden for beneficiaries, the Member States and the Commission, taking into account the principle of proportionality.

Article 4

Compliance with Union and national law

Actions financed by the Specific Regulations shall comply with applicable Union and national law.

Article 5

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Regulation and the Specific Regulations are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks, by the recovery of the amounts wrongly paid if irregularities are detected, and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.

2. Member States shall prevent, detect and correct irregularities and shall recover amounts unduly paid together with any interest on late payments. They shall notify those to the Commission and shall keep it informed of any significant progress in the related administrative and legal proceedings.

3. When amounts unduly paid to a beneficiary, as a result of fault or negligence on the part of a Member State cannot be recovered, that Member State shall be responsible for reimbursing the relevant amounts to the Union budget.

4. Member States shall offer effective prevention against fraud, especially as regards areas with a higher level of risk. Such prevention shall act as a deterrent, having regard to the benefits as well as the proportionality of the measures.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 58 concerning the obligations of Member States specified in paragraphs 2 and 3 of this Article.

6. The Commission shall set out, by way of implementing acts, the frequency of the reporting of irregularities and the reporting format to be used. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 59(2).

7. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds in accordance with this Regulation and the Specific Regulations.

8. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽¹⁾ and Council Regulation (Euratom, EC) No 2185/96 ⁽²⁾, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement, grant decision or a contract funded in accordance with this Regulation and the Specific Regulations.

9. Without prejudice to paragraphs 1, 7 and 8, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions resulting from the implementation of this Regulation and the Specific Regulations shall contain provisions expressly empowering the Commission, the Court of Auditors and OLAF to conduct such audits and investigations, in accordance with their respective competences.

⁽¹⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

⁽²⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

CHAPTER III

FINANCIAL FRAMEWORK FOR UNION ACTIONS, EMERGENCY AND TECHNICAL ASSISTANCE*Article 6***Implementation framework**

1. The Commission shall establish the overall amount made available for Union actions, emergency assistance and technical assistance at the initiative of the Commission under the annual appropriations of the Union budget.
2. The Commission shall adopt, by way of implementing acts, the work programme for Union actions and emergency assistance. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59(3).
3. To ensure a timely availability of resources, the Commission may separately adopt a work programme for emergency assistance.
4. Union actions, emergency assistance and technical assistance at the initiative of the Commission may be implemented either directly, by the Commission or through executive agencies, or indirectly, by entities and persons other than Member States in accordance with Article 60 of Regulation (EU, Euratom) No 966/2012.

*Article 7***Emergency assistance**

1. In response to an emergency situation as defined in the Specific Regulations, the Commission may decide to provide emergency assistance. In such cases, it shall inform the European Parliament and the Council in a timely manner.
2. Within the limits of the available resources, the emergency assistance may amount to 100 % of the eligible expenditure.
3. Emergency assistance may consist of assistance in Member States and in third countries in accordance with the objectives and actions defined in the Specific Regulations.
4. Emergency assistance may support expenditure which was incurred prior to the date of submission of the grant application or the request for assistance, but not prior to 1 January 2014, when necessary for the implementation of the action.
5. Emergency assistance may take the form of grants awarded directly to Union agencies.

*Article 8***Union actions and emergency assistance in or in relation to third countries**

1. The Commission may decide to finance Union actions and emergency assistance in or in relation to third countries in accordance with the objectives and actions defined in the Specific Regulations.
2. Where such actions are implemented directly, the following entities shall be allowed to submit grant applications:
 - (a) Member States;
 - (b) third countries, in duly justified cases where a grant is necessary to achieve the objectives of this Regulation and the Specific Regulations;
 - (c) joint bodies set up by third countries and the Union or by Member States;
 - (d) international organisations, including regional organisations, UN bodies, departments and missions, international financial institutions and development banks and institutions of international jurisdiction in so far as they contribute to the objectives of the Specific Regulation(s) concerned;
 - (e) the ICRC and International Federation of National Red Cross and Red Crescent Societies;
 - (f) non-governmental organisations established and registered in the Union and in the countries associated with the implementation, application and development of the Schengen *acquis*;

- (g) Union agencies for emergency assistance.

Article 9

Technical assistance at the initiative of the Commission

1. At the initiative of or on behalf of the Commission, the Specific Regulations may support the preparatory, monitoring, administrative and technical assistance, evaluation, audit and control measures and activities necessary for the implementation of this Regulation and the Specific Regulations.
2. The measures and activities referred to in paragraph 1 may include:
 - (a) assistance for project preparation and appraisal;
 - (b) support for institutional strengthening and administrative capacity building for the effective management of this Regulation and the Specific Regulations;
 - (c) measures related to the analysis, management, monitoring, information exchange and implementation of this Regulation and the Specific Regulations, as well as measures relating to the implementation of control systems and technical and administrative assistance;
 - (d) evaluations, expert reports, statistics and studies, including those of a general nature concerning the operation of the Specific Regulations;
 - (e) actions to disseminate information, support networking, carry out communication activities, raise awareness and promote cooperation and exchanges of experience, including with third countries. To bring about greater efficiency in communication to the public at large and stronger synergies between the communication activities undertaken at the initiative of the Commission, the resources allocated to communication actions under this Regulation shall also contribute to covering the corporate communication of the political priorities of the Union, provided that those are related to the general objectives of this Regulation and the Specific Regulations;
 - (f) the installation, updating, operation and interconnection of computerised systems for management, monitoring, audit, control and evaluation;
 - (g) the design of a common framework for evaluation and monitoring, as well as a system of indicators, taking into account, where appropriate, national indicators;
 - (h) actions to improve evaluation methods and the exchange of information on evaluation practices;
 - (i) conferences, seminars, workshops and other common information and training measures on the implementation of this Regulation and the Specific Regulations for competent authorities and beneficiaries;
 - (j) actions related to fraud detection and prevention;
 - (k) actions related to audit.
3. The measures and activities referred to in paragraph 1 may also concern the preceding and subsequent financial frameworks.

CHAPTER IV

NATIONAL PROGRAMMES

SECTION 1

Programming and Implementation framework

Article 10

Programming

The objectives of the Specific Regulations shall be pursued within the framework of the multiannual programming for the period 2014-20, subject to a mid-term review in accordance with Article 15.

*Article 11***Subsidiary and proportionate intervention**

1. Member States and their competent authorities as specified in Article 25 shall be responsible for implementing programmes and carrying out their tasks under this Regulation and the Specific Regulations at the appropriate level, in accordance with the institutional, legal and financial framework of the Member State concerned and subject to compliance with this Regulation and the Specific Regulations.
2. Arrangements for the implementation and use of the support provided under the Specific Regulations, and in particular the financial and administrative resources required in relation to reporting, evaluation, management and control, shall take into account the principle of proportionality having regard to the level of support allocated, thereby reducing the administrative burden and facilitating efficient implementation.

*Article 12***Partnership**

1. Each Member State shall, in accordance with its national rules and practices and subject to any applicable security requirements, organise a partnership with relevant authorities and bodies to perform the role set out in paragraph 3. The partnership shall be drawn from relevant public authorities at national, regional and local level, where applicable. It shall also, where deemed appropriate, include relevant international organisations, non-governmental organisations and social partners.
2. The partnership shall be conducted in full compliance with the respective institutional, legal and financial jurisdiction of each partner category.
3. The Member State shall involve the partnership in the preparation, implementation, monitoring and evaluation of national programmes. The composition of the partnership may vary at different stages of the programme.
4. Each Member State shall set up a monitoring committee to support the implementation of national programmes.
5. The Commission may provide guidance on the monitoring of national programmes and, where necessary and in agreement with the Member State concerned, may participate in the work of the monitoring committee in an advisory capacity.

*Article 13***Policy dialogue**

1. In order to facilitate the preparation of the national programmes, each Member State and the Commission shall hold a dialogue at the level of senior officials, taking into account the relevant indicative timeframes laid down in Article 14. The dialogue shall focus on the overall results to be achieved by means of the national programmes in order to address the needs and priorities of the Member States in the areas of intervention covered by the Specific Regulations, taking account of the baseline situation in the Member State concerned and the objectives of the Specific Regulations. The dialogue shall also serve as an opportunity for an exchange of views on Union actions. The outcome of the dialogue shall serve as a guide for the preparation and approval of the national programmes and shall include an indication of the expected date of submission of the Member State's national programmes to the Commission, which shall allow the timely adoption of the programme. That outcome shall be recorded in agreed minutes.
2. In the case of actions to be implemented in and in relation to third countries, such actions shall not be directly development-oriented and the policy dialogue shall seek full coherence with the principles and general objectives of the Union's external action and foreign policy as regards the country or region concerned.
3. After the conclusion of the policy dialogues, the Commission shall inform the European Parliament of the overall outcome.
4. If deemed appropriate by a Member State and by the Commission, the policy dialogue may be repeated after the mid-term review referred to in Article 15, in order to reassess the needs of that Member State and the priorities of the Union.

*Article 14***Preparation and approval of national programmes**

1. Each Member State shall propose, on the basis of the outcome of the policy dialogue referred to in Article 13(1), a multiannual national programme in accordance with the Specific Regulations.
2. Each proposed national programme shall cover the financial years of the period from 1 January 2014 to 31 December 2020, and shall consist of the following elements:
 - (a) a description of the baseline situation in the Member State, completed with the necessary factual information to assess the requirements correctly;
 - (b) an analysis of requirements in the Member State and the national objectives designed to meet those requirements during the period covered by the programme;
 - (c) an appropriate strategy identifying the objectives to be pursued with the support of the Union budget, with targets for their achievement, an indicative time-table and examples of actions envisaged to meet those objectives;
 - (d) a description of how the objectives of the Specific Regulations are covered;
 - (e) the mechanisms that ensure coordination between the instruments established by the Specific Regulations and other Union and national instruments;
 - (f) information on the monitoring and evaluation framework to be put in place and the indicators to be used to measure progress in the implementation of the objectives pursued in relation to the baseline situation in the Member State;
 - (g) implementing provisions for the national programme containing the identification of the competent authorities, and a summary description of the envisaged management and control system;
 - (h) a summary description of the approach chosen for the implementation of the partnership principle laid down in Article 12;
 - (i) a draft financing plan indicatively broken down by each financial year of the period, including an indication of technical assistance expenditure;
 - (j) the mechanisms and methods to be used to publicise the national programme.
3. Member States shall submit the proposed national programmes to the Commission not later than three months after the conclusion of the policy dialogue referred to in Article 13.
4. The Commission shall adopt, by way of implementing acts, the model according to which the national programmes shall be drawn up. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59(3).
5. Before approving a proposed national programme, the Commission shall examine:
 - (a) its consistency with the objectives of the Specific Regulations and the outcome of the policy dialogue referred to in Article 13(1);
 - (b) the distribution of Union funding between objectives in the light of the requirements of the Specific Regulations and, where relevant, the justification for any deviation from the minimum shares set in the Specific Regulations;
 - (c) the relevance of the objectives, targets, indicators, the time-table and examples of actions envisaged in the proposed national programme in the light of the strategy proposed by Member States;
 - (d) the relevance of the implementing provisions referred to in point (g) of paragraph 2 in the light of the actions envisaged;
 - (e) the compliance of the proposed programme with Union law;

- (f) the complementarity with support provided by other Union funds, including the European Social Fund;
 - (g) where applicable under a Specific Regulation, for objectives and examples of actions in or in relation to third countries, coherence with the principles and general objectives of the Union's external action and foreign policy related to the country or region concerned.
6. The Commission shall make observations within three months of the date of submission of the proposed national programme. Where the Commission considers that a proposed national programme is inconsistent with the objectives of the Specific Regulation, in the light of the national strategy, or that the Union funding to be allocated to those objectives is insufficient or that the programme does not comply with Union law, it shall invite the Member State concerned to provide all necessary additional information and, where appropriate, to modify the proposed national programme.
7. The Commission shall approve each national programme not later than six months following the formal submission by the Member State, provided that any observations made by the Commission have been adequately taken into account.
8. Without prejudice to paragraph 7, the Commission shall inform the European Parliament of the overall outcome of the application of paragraphs 5 and 6, including compliance with or derogation from the minimum percentages set per objective in the relevant Specific Regulations.
9. In the light of new or unforeseen circumstances, at the initiative of the Commission or the Member State concerned, an approved national programme may be re-examined and, if necessary, revised for the rest of the programming period.

Article 15

Mid-term review

1. In 2018 the Commission and each Member State shall review the situation, in the light of the interim evaluation reports submitted by the Member States in accordance with point (a) of Article 57(1), and in the light of developments in Union policies and in the Member State concerned.
2. Following the review- referred to in paragraph 1, and in the light of its outcome, national programmes may be revised.
3. The rules laid down in Article 14 on the preparation and approval of national programmes shall apply *mutatis mutandis* to the preparation and approval of the revised national programmes.
4. After the completion of the mid-term review, and as part of the interim evaluation referred to in point (a) of Article 57(2), the Commission shall report on the mid-term review to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

Article 16

Financing structure

1. Financial contributions provided under the national programmes shall take the form of grants.
2. Actions supported under the national programmes shall be co-financed by public or private sources, shall be of a non-profit nature and shall not be subject to funding from other sources covered by the Union budget.
3. The contribution from the Union budget shall not exceed 75 % of the total eligible expenditure of a project.
4. The contribution from the Union budget may be increased to 90 % under specific actions or strategic priorities as defined in the Specific Regulations.
5. The contribution from the Union budget may be increased to 90 % in exceptional duly justified circumstances, for example when, due to economic pressure on the national budget, projects would otherwise not be implemented and the objectives of the national programme would not be achieved.
6. The contribution from the Union budget to the technical assistance at the initiative of Member States may amount to 100 % of the total eligible expenditure.

*Article 17***General principles of eligibility**

1. The eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in this Regulation or in the Specific Regulations.
2. In accordance with the Specific Regulations, for expenditure to be eligible, it must be:
 - (a) within the scope of the Specific Regulations and their objectives;
 - (b) needed to carry out the activities covered by the project concerned;
 - (c) reasonable and comply with the principles of sound financial management, in particular value for money and cost-effectiveness.
3. Expenditure shall be eligible for support under the Specific Regulations if:
 - (a) it has been incurred by a beneficiary between 1 January 2014 and 31 December 2022; and
 - (b) it has been disbursed by the designated Responsible Authority between 1 January 2014 and 30 June 2023.
4. By way of derogation from paragraph 3, expenditure paid in 2014 shall also be eligible where it has been paid by the Responsible Authority before its formal designation in accordance with Article 26, provided that the management and controls systems applied before the formal designation are essentially the same as the ones in force after the formal designation of the Responsible Authority.
5. Expenditure included in payment requests from the beneficiary to the Responsible Authority shall be supported by invoices or accounting documents of equivalent probative value, except for forms of support under points (b), (c) and (d) of Article 18(1). For such forms of support, by way of derogation from paragraph 3 of this Article, the amounts included in the payment request shall be the cost reimbursed to the beneficiary by the Responsible Authority.
6. Net revenue directly generated by a project during its implementation which has not been taken into account at the time of approval of the project shall be deducted from the eligible expenditure of the project at the latest in the final payment request submitted by the beneficiary.

*Article 18***Eligible expenditure**

1. Eligible expenditure may be reimbursed in the following ways:
 - (a) reimbursement of eligible costs actually incurred and paid, together with, where applicable, depreciation;
 - (b) standard scales of unit costs;
 - (c) lump sums;
 - (d) flat-rate financing determined by the application of a percentage to one or more defined categories of costs.
2. The options referred to in paragraph 1 may be combined where each option covers different categories of costs, or where they are used for different projects forming a part of an action or for successive phases of an action.
3. Where a project is implemented exclusively through the public procurement of works, goods or services, only point (a) of paragraph 1 shall apply. Where the public procurement within a project is limited to certain categories of costs, all the options referred to in paragraph 1 may apply.
4. The amounts referred to in points (b), (c) and (d) of paragraph 1 shall be established in one of the following ways:
 - (a) a fair, equitable and verifiable calculation method based on:
 - (i) statistical data or other objective information;

- (ii) the verified historical data of individual beneficiaries; or
 - (iii) the application of the usual cost accounting practices of individual beneficiaries;
- (b) in accordance with the rules for application of corresponding scale of unit costs, lump sums and flat rates applicable in Union policies for a similar type of project and beneficiary;
- (c) in accordance with the rules for application of corresponding scale of unit costs, lump sums and flat rates applied under schemes for grants funded entirely by the Member State concerned for a similar type of project and beneficiary.
5. The document setting out the conditions for support for each project shall set out the method to be applied for determining the costs of the project and the conditions for the payment of the grant.
6. Where the implementation of a project gives rise to indirect costs, they may be calculated as a flat rate in one of the following ways:
- (a) a flat rate of up to 25 % of eligible direct costs, provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method or a method applied under schemes for grants funded entirely by the Member State concerned for a similar type of project and beneficiary;
 - (b) a flat rate of up to 15 % of eligible direct staff costs without there being a requirement for the Member State concerned to perform a calculation to determine the applicable rate;
 - (c) a flat rate applied to eligible direct costs based on existing methods and corresponding rates, applicable in Union policies for a similar type of project and beneficiary.
7. For the purposes of determining staff costs relating to the implementation of a project, the hourly rate applicable may be calculated by dividing the latest documented annual gross employment costs by 1 720 hours.
8. In addition to the methods laid down in paragraph 4, where the contribution from the Union budget does not exceed 100 000 EUR, the amounts referred to in points (b), (c) and (d) of paragraph 1 may be established on a case-by-case basis by reference to a draft budget agreed *ex ante* by the Responsible Authority.
9. Depreciation costs may be considered as eligible where the following conditions are met:
- (a) the eligibility rules of the national programme allow for it;
 - (b) the amount of the expenditure is duly justified by supporting documents having equivalent probative value to invoices for eligible costs where reimbursed in the form referred to in point (a) of paragraph 1;
 - (c) the costs relate exclusively to the period of support for the project;
 - (d) support from the Union budget has not contributed towards the acquisition of the depreciated assets.
10. Without prejudice to Article 43, for the purpose of paragraph 8 of this Article the Member States whose currency is not the euro may use the euro conversion rate fixed on the date of project approval or project agreement signature based on the monthly accounting exchange rate published electronically by the Commission. The euro conversion rate shall not be subject to modification in course of the project.

Article 19

Ineligible expenditure

The following costs shall not be eligible for a contribution from the Union budget under the Specific Regulations:

- (a) interest on debt;
- (b) the purchase of land not built upon;

- (c) the purchase of land built upon, where the land is necessary for the implementation of the project, in an amount exceeding 10 % of the total eligible expenditure for the project concerned;
- (d) value added tax (VAT), except where it is non-recoverable under national VAT law.

Article 20

Technical assistance at the initiative of the Member States

1. At the initiative of a Member State for each national programme, the Specific Regulations may support actions for preparation, management, monitoring, evaluation, information and communication, networking, control and audit, as well as measures for the reinforcement of the administrative capacity for the implementation of this Regulation and the Specific Regulations.
2. The measures referred to in paragraph 1 may include:
 - (a) expenditure relating to the preparation, selection, appraisal, management and monitoring of the programme, actions or projects;
 - (b) expenditure relating to audits and on-the-spot controls of actions or projects;
 - (c) expenditure relating to evaluations of the programme, actions or projects;
 - (d) expenditure relating to information, dissemination and transparency in relation to the programme, actions or projects, including expenditure resulting from the application of Article 53 and expenditure on campaigns to inform and raise awareness about the programme's purpose, organised, inter alia, at a local level;
 - (e) expenditure on the acquisition, installation and maintenance of computerised systems for the management, monitoring and evaluation of this Regulation and the Specific Regulations;
 - (f) expenditure on meetings of monitoring committees and sub-committees relating to the implementation of actions; including the costs of experts and other participants in those committees and including third-country participants, where their presence is essential to the effective implementation of programmes, actions or projects;
 - (g) expenditure for the reinforcement of the administrative capacity for the implementation of this Regulation and the Specific Regulations.
3. The appropriations may be used by the Member States to support actions for the reduction of administrative burden for the beneficiaries and competent authorities referred to in Article 25, including electronic data exchange systems, and actions to reinforce the capacity of Member State authorities and beneficiaries to administer and to use the support provided for under the Specific Regulations.
4. The actions may also concern the preceding and subsequent financial frameworks.
5. When one or more competent authorities are common to more than one national programme, the appropriations for the technical assistance expenditure on each of the programmes concerned may be merged, either partly or entirely.

SECTION 2

Management and Control

Article 21

General principles of management and control systems

For the implementation of its national programme, each Member State shall set up management and control systems, which shall provide for:

- (a) a description of the functions of each authority involved in management and control, and the allocation of functions within each authority;
- (b) compliance with the principle of separation of functions between and within such authorities;

- (c) procedures for ensuring the correctness and regularity of expenditure declared;
- (d) computerised systems for accounting, for the storage and transmission of financial data and data on indicators, for monitoring and for reporting;
- (e) systems for reporting and monitoring where the Responsible Authority entrusts the execution of tasks to another body;
- (f) arrangements for auditing the functioning of the management and control systems;
- (g) systems and procedures to ensure an adequate audit trail;
- (h) the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments.

Article 22

Responsibilities under shared management

In accordance with the principle of shared management, Member States and the Commission shall be responsible for the management and control of national programmes in accordance with their respective responsibilities laid down in this Regulation and the Specific Regulations.

Article 23

Responsibilities of beneficiaries

Beneficiaries shall fully cooperate with the Commission and competent authorities when they carry out their functions and tasks in relation to this Regulation and the Specific Regulations.

Article 24

Responsibilities of Member States

1. Member States shall fulfil the management, control and audit obligations and assume the resulting responsibilities, which are laid down in the rules on shared management set out in Regulation (EU, Euratom) No 966/2012 and this Regulation.
2. Member States shall ensure that their management and control systems for national programmes are set up in accordance with this Regulation and that those systems function effectively.
3. Member States shall allocate adequate resources for each competent authority to carry out their functions throughout the programming period.
4. Member States shall set up transparent rules and procedures for the selection and implementation of projects in accordance with this Regulation and the Specific Regulations.
5. All official exchanges of information between the Member State and the Commission shall be carried out using an electronic data exchange system. The Commission shall establish, by way of implementing acts, the terms and conditions with which that electronic data exchange system is to comply. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59(3).

Article 25

Competent authorities

1. For the purposes of this Regulation and the Specific Regulations, the competent authorities are:
 - (a) a Responsible Authority: a public sector body of the Member State concerned, which is the designated body within the meaning of Article 59(3) of Regulation (EU, Euratom) No 966/2012 and which shall be solely responsible for the proper management and control of the national programme and shall handle all communication with the Commission;

- (b) an Audit Authority: a national public authority or body, which is functionally independent of the Responsible Authority and which shall be responsible for issuing annually the opinion referred to in the second subparagraph of Article 59(5) of Regulation (EU, Euratom) No 966/2012;
 - (c) where appropriate, one or more Delegated Authorities: any public or private body which carries out certain tasks of the responsible authority under the responsibility of the Responsible Authority.
2. Each Member State shall lay down rules governing the relations between the authorities referred to in paragraph 1 and their relations with the Commission.

Article 26

Designation of Responsible Authorities

1. Member States shall notify the Commission of the formal designation, in accordance with Article 59(3) of Regulation (EU, Euratom) No 966/2012, at ministerial level of the Responsible Authorities in Member States responsible for the management and control of expenditure under this Regulation, as soon as possible after the approval of the national programme.
2. The designation referred to in paragraph 1 shall be made subject to the body complying with the designation criteria on internal environment, control activities, information and communication, and monitoring laid down in or on the basis of this Regulation.
3. The designation of a Responsible Authority shall be based on an opinion of an audit body, which may be the Audit Authority, that assesses the Responsible Authority's compliance with the designation criteria. That body may be the autonomous public institution responsible for monitoring, evaluating and auditing the administration. The audit body shall function independently of the Responsible Authority and shall carry out its work in accordance with internationally accepted audit standards. In accordance with Article 59(3) of Regulation (EU, Euratom) No 966/2012, Member States may base their decision on designation on whether the management and control systems are essentially the same as those in place for the previous period and whether they have functioned effectively. If the existing audit and control results show that the designated bodies no longer comply with the designation criteria, Member States shall take the necessary measures to ensure that deficiencies in the implementation of the tasks of those bodies are remedied, including by ending the designation.
4. To ensure the sound operation of this system, the Commission shall be empowered to adopt delegated acts in accordance with Article 58 concerning:
- (a) minimum conditions for the designation of the Responsible Authorities with regard to the internal environment, control activities, information and communication, and monitoring, as well as rules on the procedure for making and ending the designation;
 - (b) rules relating to supervision and the procedure for reviewing the designation of Responsible Authorities;
 - (c) the obligations of the Responsible Authorities as regards public intervention, as well as on the content of their management and control responsibilities.

Article 27

General principles on controls by Responsible Authorities

1. Responsible Authorities shall carry out a systematic administrative control and shall supplement such a control by on-the-spot controls, including, where appropriate, unannounced on-the-spot controls of the expenditure related to the final payment requests from the beneficiaries that are declared in the annual accounts with a view to obtaining a sufficient level of assurance.
2. As regards on-the-spot controls, the Responsible Authority shall draw its control sample from the entire population of beneficiaries comprising, where appropriate, a random part and a risk-based part, in order to obtain a representative error rate and a minimum confidence level, while targeting also the highest errors.
3. The Responsible Authority shall draw up a control report on each on-the-spot control.

4. Where problems detected appear to be systemic in nature and may therefore entail a risk to other projects, the Responsible Authority shall ensure that a further examination is carried out, including additional controls where necessary, to establish the scale of such problems and whether the error rate is above the acceptable level. The necessary preventive and corrective measures shall be taken by the Responsible Authority and shall be communicated to the Commission in the summary referred to in point (b) of the first subparagraph of Article 59(5) of Regulation (EU, Euratom) No 966/2012.

5. The Commission shall adopt, by way of implementing acts, the necessary rules aiming at achieving a uniform application of this Article. Those rules may in particular relate to the following:

- (a) the rules concerning administrative and on-the-spot controls including unannounced on-the-spot controls, to be conducted by the Responsible Authority with regard to compliance with obligations, commitments and eligibility rules resulting from the application of this Regulation and the Specific Regulations, including the rules relating to the period of time for which supporting documents should be kept;
- (b) the rules on the minimum level of on-the-spot controls necessary for an effective management of the risks, as well as the conditions under which Member States have to increase such controls, or may reduce them where the management and control systems function properly and the error rates are at an acceptable level;
- (c) the rules and methods on the reporting of the controls and verification carried out and their results.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59(3).

Article 28

Payment to beneficiaries

Responsible Authorities shall ensure that the beneficiaries receive the total amount of the public support as quickly as possible and in full. No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce those amounts for the beneficiaries.

Article 29

Functions of the audit authority

- 1. To support the opinion given in accordance with Article 59 of Regulation (EU, Euratom) No 966/2012, the audit authority shall ensure that audits are carried out on the management and control systems, and on an appropriate sample of the expenditure included in the annual accounts. The Commission shall be empowered to adopt delegated acts in accordance with Article 58 of this Regulation on the status of the Audit Authorities and the conditions which their audits shall fulfil.
- 2. Where audits are carried out by a body other than the Audit Authority, the Audit Authority shall ensure that any such body has the necessary specialist expertise and functional independence.
- 3. The Audit Authority shall ensure that audit work meets internationally accepted auditing standards.

Article 30

Cooperation with audit authorities

- 1. The Commission shall cooperate with audit authorities to coordinate their respective audit plans and methods and shall as soon as possible exchange the results of audits carried out on management and control systems in order to make the best possible and proportionate use of control resources, and to avoid unjustified duplication of work.
- 2. The Commission and the audit authorities shall meet on a regular basis to exchange views on issues relating to the improvement of the management and control systems.

Article 31

Controls and audits by the Commission

- 1. The Commission shall rely on available information, including the designation procedure, the request for payment of the annual balance as referred to in Article 44, annual implementation reports and audits carried out by national and Union bodies, to assess whether the Member States have set up management and control systems that comply with this Regulation, and whether those systems function effectively during the implementation of national programmes.

2. Without prejudice to audits carried out by Member States, Commission officials or authorised Commission representatives may carry out on-the-spot audits or controls subject to giving at least 12 working days notice to the competent national authority, except in urgent cases. The Commission shall respect the principle of proportionality by taking into account the need to avoid unjustified duplication of audits or controls carried out by Member States, the level of risk to the Union budget and the need to minimise the administrative burden on beneficiaries. Officials or authorised representatives of the Member State may take part in such audits or controls.

3. The scope of the audits or controls may include, in particular:

- (a) the verification of the effective functioning of management and control systems in a national programme or a part thereof;
- (b) the compliance of administrative practices with Union rules;
- (c) the existence of the required supporting documents and their correlation with the actions supported under the national programmes;
- (d) the terms on which the actions have been undertaken and controlled;
- (e) an assessment of the sound financial management of actions and/or the national programme.

4. Commission officials or authorised Commission representatives, duly empowered to carry out on-the-spot audits or controls, shall have access to all necessary records, documents and metadata, irrespective of the medium in which they are stored, relating to projects and technical assistance or to management and control systems. Member States shall provide copies of such records, documents and metadata to the Commission upon request. The powers set out in this paragraph shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national legislation. Commission officials and authorised representatives shall not take part, inter alia, in home visits or the formal questioning of persons within the framework of national legislation. However, they shall have access to the information thus obtained without prejudice to the competences of national courts and in full respect for the fundamental rights of the legal subjects concerned.

5. At the request of the Commission and with the agreement of the Member State concerned, additional controls or inquiries into the actions covered by this Regulation shall be undertaken by the competent bodies of that Member State. Commission agents or persons delegated by the Commission may take part in such controls. In order to improve controls, the Commission may, with the agreement of the Member States concerned, request the assistance of the authorities of those Member States for certain controls or inquiries.

6. The Commission may require a Member State to take the actions necessary to ensure the effective functioning of its management and control systems or the correctness of expenditure in accordance with the applicable rules.

SECTION 3

Financial Management

Article 32

Budget commitments

1. The budget commitments of the Union in respect of each national programme shall be made in annual instalments during the period from 1 January 2014 to 31 December 2020.

2. The decision of the Commission approving a national programme shall constitute a financing decision within the meaning of Article 84 of Regulation (EU, Euratom) No 966/2012 and, once notified to the Member State concerned, a legal commitment within the meaning of that Regulation.

3. For each national programme, the budget commitment for the first instalment shall follow the approval of the national programme by the Commission.

4. The budget commitments for subsequent instalments shall be made by the Commission before 1 May of each year, on the basis of the decision referred to in paragraph 2 of this Article, except where Article 16 of Regulation (EU, Euratom) No 966/2012 applies.

*Article 33***Common rules for payments**

1. Payments by the Commission of the contribution from the Union budget to the national programme shall be made in accordance with budget appropriations and shall be subject to available funding. Each payment shall be posted to the earliest open budget commitment concerned.
2. Payments shall take the form of initial pre-financing, annual pre-financing, payments of the annual balance and the payment of the final balance.
3. Article 90 of Regulation (EU, Euratom) No 966/2012 shall apply.

*Article 34***Accumulation of initial pre-financing and annual balances**

1. The total of the initial pre-financing payment and the payments of the annual balance shall not exceed 95 % of the contribution from the Union budget to the national programme concerned.
2. When the ceiling of 95 % is reached, the Member States may continue transmitting requests for payment to the Commission.

*Article 35***Pre-financing arrangements**

1. Following the Commission decision approving the national programme, an initial pre-financing amount for the whole programming period shall be paid within four months by the Commission to the designated Responsible Authority. That initial pre-financing amount shall represent 4 % of the total contribution from the Union budget to the national programme concerned. It may be split into two instalments, depending on budget availability.
2. An annual pre-financing amount of 3 % of the total contribution from the Union budget to the national programme concerned shall be paid before 1 February 2015. For the years in the period 2016-22, it shall be 5 % of the total contribution from the Union budget to the national programme concerned.
3. If a national programme is approved in 2015 or later, the initial pre-financing and annual pre-financing shall be paid not later than 60 days after the approval of the national programme, depending on budget availability.
4. In the case of amendments to the total contribution from the Union budget to a national programme, the initial as well as the annual pre-financing amounts shall be revised accordingly and reflected in the financing decision.
5. Pre-financing shall be used for making payments to beneficiaries implementing the national programme as well as for competent authorities for expenditure relating to technical assistance. It shall be made available without delay to the Responsible Authority for those purposes.

*Article 36***Clearance of pre-financing**

1. The amount paid as initial pre-financing shall be totally cleared from the Commission accounts in accordance with Article 40, at the latest when the national programme is closed.
2. The amount paid as annual pre-financing shall be cleared from the Commission accounts in accordance with Article 39.
3. The total amount paid as pre-financing shall be reimbursed to the Commission if no payment request in accordance with Article 44 is sent within 36 months of the date on which the Commission pays the first instalment of the initial pre-financing amount.
4. Interest generated on the initial pre-financing shall be posted to the national programme concerned and shall be deducted from the amount of public expenditure indicated on the final payment request.

*Article 37***Internal assignment of revenue**

1. The following shall be regarded as internal assigned revenue within the meaning of Article 21 of Regulation (EU, Euratom) No 966/2012:

- (i) sums which, under Articles 45 and 47 of this Regulation, are paid to the Union budget, including interest;
- (ii) sums which, following the closure of programmes under the preceding multiannual financial framework, are paid to the Union budget, including interest.

2. The sums referred to in paragraph 1 shall be paid to the Union budget and, in the event of reuse, shall be used in the first instance to finance expenditure under the Specific Regulations.

*Article 38***Definition of the financial year**

For the purpose of this Regulation, the financial year, as referred to in Article 59 of Regulation (EU, Euratom) No 966/2012, shall cover expenditure paid and revenue received and entered into the accounts of the Responsible Authority in the period commencing on 16 October of year 'N-1' and ending on 15 October of year 'N'.

*Article 39***Payment of the annual balance**

1. The Commission shall pay the annual balance, on the basis of the financial plan in force, the annual accounts for the corresponding financial year of the national programme and the corresponding clearance decision.

2. The annual accounts shall cover the payments made by the Responsible Authority, including the payments relating to technical assistance, during the financial year for which the control requirements referred to in Article 27 have been met.

3. Depending on budget availability, the annual balance shall be paid not later than six months after the information and documents referred to in Article 44(1) and Article 54 are considered admissible by the Commission and the latest annual accounts have been cleared.

*Article 40***Closure of the programme**

1. Member States shall submit the following documents by 31 December 2023:

- (a) the information required for the last annual accounts, in accordance with Article 44(1);
- (b) a request for payment of the final balance; and
- (c) the final implementation report for the national programme as referred to in Article 54(1).

2. The payments made by the Responsible Authority from 16 October 2022 to 30 June 2023 shall be included in the last annual accounts.

3. After receiving the documents listed in paragraph 1, the Commission shall pay the final balance, on the basis of the financial plan in force, the last annual accounts and the corresponding clearance decision.

4. Depending on budget availability, the final balance shall be paid not later than three months after the date of clearance of accounts of the final financial year, or one month after the date of acceptance of the final implementation report, whichever date is later. The amounts still committed after the balance is paid shall, without prejudice to Article 52, be decommitted by the Commission within a period of six months.

*Article 41***Interruption of the payment deadline**

1. The payment deadline following a request for payment may be interrupted by the authorising officer by delegation within the meaning of Regulation (EU, Euratom) No 966/2012 for a maximum period of six months, when at least one of the following conditions is met:

- (a) further to information provided by a national or Union audit body, there is clear evidence to suggest a significant deficiency in the functioning of the management and control system;
- (b) the authorising officer by delegation has to carry out additional verifications following information brought to his attention alerting him that expenditure in a payment request is linked to an irregularity having serious financial consequences;
- (c) one or more documents required under Article 44(1) were not submitted.

The Member State concerned may agree to an extension of the interruption period for an additional three months.

2. The authorising officer by delegation shall limit the interruption to the part of the expenditure covered by the payment request affected by the elements referred to in the first subparagraph of paragraph 1, unless it is not possible to identify the part of expenditure affected. The authorising officer by delegation shall inform the Member State and the Responsible Authority immediately in writing of the reason for the interruption and shall ask them to remedy the situation. The interruption shall be ended by the authorising officer by delegation as soon as the necessary measures have been taken.

*Article 42***Suspension of payments**

1. All or part of the annual balance may be suspended by the Commission where:

- (a) there is a serious deficiency in the effective functioning of the management and control system of the national programme which has put at risk the Union contribution to the national programme, and for which corrective measures have not been taken;
- (b) expenditure in the annual accounts is linked to an irregularity having serious financial consequences which has not been corrected; or
- (c) the Member State has failed to take the necessary action to remedy the situation giving rise to an interruption under Article 41.

2. The Commission may decide to suspend all or part of an annual balance after having given the Member State concerned the opportunity to present its observations.

3. The Commission shall end the suspension of all or part of an annual balance where the Member State concerned has taken the necessary measures to enable the suspension to be lifted.

*Article 43***Use of the euro**

1. Amounts set out in national programmes submitted by Member States, forecasts of expenditure, statements of expenditure, requests for payments, annual accounts and expenditure mentioned in the annual and final implementation reports shall be denominated in euro.

2. Member States whose currency is not the euro on the date of a payment request shall convert the amounts of expenditure incurred in national currency into euro. Those amounts shall be converted into euro using the monthly accounting exchange rate of the Commission in the month during which the expenditure was registered in the accounts of the Responsible Authority of the national programme concerned. The exchange rate shall be published electronically by the Commission each month.

3. In cases where the euro becomes the currency of a Member State, the conversion procedure set out in paragraph 2 shall continue to apply to all expenditure recorded in the accounts by the Responsible Authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.

SECTION 4

Clearance of accounts and financial corrections

Article 44

Request for payment of the annual balance

1. By 15 February of the year following the financial year, each Member State shall submit to the Commission the documents and information required under Article 59(5) of Regulation (EU, Euratom) No 966/2012. The documents submitted shall serve as the request for payment of the annual balance. The deadline of 15 February may be exceptionally extended by the Commission to 1 March at the latest upon communication from the Member State concerned. Member States may, at the appropriate level, publish that information.

2. The Commission may ask a Member State to provide further information for the purpose of the annual clearance of the accounts. If a Member State does not provide the requested information by the deadline for its submission set by the Commission, the Commission may take its decision on the clearance of the accounts on the basis of the information in its possession.

3. The Commission shall adopt, by way of implementing acts, the models according to which the documents referred to in paragraph 1 shall be drawn up. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 59(2).

Article 45

Annual clearance of accounts

1. By 31 May of the year following the financial year, the Commission shall decide on the clearance of the annual accounts for each national programme. The clearance decision shall cover the completeness, accuracy and veracity of the annual accounts submitted and shall be without prejudice to any subsequent financial corrections.

2. The Commission shall, by way of implementing acts, lay down the arrangements for the implementation of the annual clearance of accounts procedure, as regards the measures to be taken in connection with the adoption of the decision and its implementation, including on the exchange of information between the Commission and the Member States and the deadlines to be respected. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59(3).

Article 46

Financial corrections by Member States

Member States shall make the financial corrections required in connection with individual or systemic irregularities detected under the national programmes. Financial corrections shall consist of cancelling all or part of the contribution from the Union budget concerned. The Member States shall take into account the nature and gravity of the irregularities and the financial loss to the Union budget and shall apply a proportionate correction. Amounts cancelled and amounts recovered, as well as the interest thereon, shall be reallocated to the national programme concerned, excluding the amounts resulting from irregularities identified by the Court of Auditors and the Commission services, including OLAF. After the closure of the national programme, the Member State concerned shall refund the sums recovered to the Union budget.

Article 47

Conformity clearance and financial corrections by the Commission

1. The Commission shall make financial corrections by cancelling all or part of the Union contribution to a national programme and effecting recovery from the Member State concerned in order to exclude from Union financing any expenditure which is in breach of applicable law, including in relation to deficiencies in the management and control systems of Member States which have been detected by the Commission or the Court of Auditors.

2. A breach of applicable law shall lead to a financial correction only in relation to expenditure which has been declared to the Commission and where one of the following conditions is met:

- (a) the breach has affected the selection of a project under the national programme, or, in cases where, due to the nature of the breach, it is not possible to establish that impact, there is a substantiated risk that the breach has had such an effect;
- (b) the breach has affected the amount of expenditure declared for reimbursement by the Union budget, or in cases where, due to the nature of the breach, it is not possible to quantify its financial impact, but there is a substantiated risk that the breach has had such an effect.

3. When deciding on a financial correction under paragraph 1, the Commission shall respect the principle of proportionality by taking account of the nature and gravity of the breach of applicable law and its financial implications for the Union budget.

4. Before the adoption of any decision to refuse financing, the findings from the Commission and the Member State's replies shall be notified in writing, following which the two parties shall attempt to reach agreement on the action to be taken.

5. Financing may not be refused for:

- (a) expenditure which is incurred by the Responsible Authority more than 36 months before the Commission notifies the Member State in writing of its findings;
- (b) expenditure on multiannual actions within the scope of the national programmes, where the final obligation on the beneficiary occurs more than 36 months before the Commission notifies the Member State in writing of its findings;
- (c) expenditure on actions in national programmes, other than those referred to in point (b), for which the payment or, as the case may be, the final payment, by the Responsible Authority, is made more than 36 months before the Commission notifies the Member State in writing of its findings.

6. The Commission shall, by way of implementing acts, lay down the arrangements for the implementation of the conformity clearance as regards the measures to be taken in connection with the adoption of the decision and its implementation, including the information exchange between the Commission and the Member States and the deadlines to be respected. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59(3).

Article 48

Obligations of Member States

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under point (h) of Article 21 of this Regulation and to recover State aid within the meaning of Article 107(1) TFEU and under Article 14 of Council Regulation (EC) No 659/1999 ⁽¹⁾.

Article 49

Repayment

1. Any repayment due to be made to the Union budget shall be made before the due date indicated in the order for recovery drawn up in accordance with Article 80 of Regulation (EU, Euratom) No 966/2012. That due date shall be the last day of the second month following the issuing of the order.

2. Any delay in making repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 83, 27.3.1999, p. 1).

SECTION 5

Decommitment*Article 50***Principles**

1. National programmes shall be submitted to a decommitment procedure established on the basis that amounts linked to a commitment which are not covered by the initial and annual pre-financing referred to in Article 35 and a request for payment in accordance with Article 44 by 31 December of the second year following that of the budget commitment shall be decommitted. For the purpose of the decommitment, the Commission shall calculate the amount by adding one sixth of the annual budget commitment related to the 2014 total amount contribution to each of the 2015-20 budget commitments.
2. By way of derogation from paragraph 1, the deadlines for decommitment shall not apply to the annual budget commitment related to the 2014 total annual contribution.
3. If the first annual budget commitment is related to the 2015 total annual contribution, by way of derogation from paragraph 1 the deadlines for decommitment shall not apply to the annual budget commitment related to the total annual contribution of 2015. In such cases, the Commission shall calculate the amount under paragraph 1 by adding one fifth of the annual budget commitment related to the 2015 total amount contribution to each of the 2016-20 budget commitments.
4. The commitment related to the last year of the period shall be decommitted in accordance with the rules followed for the closure of the programmes.
5. Any commitment still open on the latest date for expenditure to be eligible, as referred to in Article 17(3), and for which a payment request has not been made by the Responsible Authority within six months after that date shall be automatically decommitted.

*Article 51***Exceptions to decommitment**

1. The amount concerned by decommitment shall be reduced by the amounts that the Responsible Authority has not been able to declare to the Commission because of:
 - (a) actions suspended by legal proceedings or by an administrative appeal having suspensive effect; or
 - (b) reasons of force majeure seriously affecting the implementation of all or part of the national programme. Responsible Authorities claiming force majeure shall demonstrate the direct consequences of the force majeure on the implementation of all or part of the national programme.

The reduction may be requested once if the suspension or force majeure lasted up to one year. If the suspension or force majeure lasted more than one year, the reduction may be requested several times, corresponding to the duration of the force majeure or the number of years between the date of the legal or administrative decision suspending the implementation of the action and the date of the final legal or administrative decision.

2. The Member State shall send to the Commission information on the exceptions referred to in paragraph 1 by 31 January, in order for the amount to be declared by the end of the preceding year.
3. The part of the budget commitments for which a payment request has been made, but payment of which has been reduced or suspended by the Commission on 31 December of year $N + 2$, shall be disregarded in calculating the automatic decommitment.

*Article 52***Procedure**

1. Whenever there is a risk of application of decommitment under Article 50, the Commission shall inform the Member States as soon as possible.

2. On the basis of the information in its possession on 31 January, the Commission shall inform the Responsible Authority of the amount of the decommitment resulting from the information in its possession.
3. The Member State concerned shall have two months to agree to the amount to be decommitted or to submit its observations.
4. The Commission shall carry out the automatic decommitment no later than nine months after the last time-limit resulting from the application of paragraphs 1 to 3.
5. In the event of automatic decommitment, the contribution from the Union budget to the national programme concerned shall be reduced, for the year in question, by the amount automatically decommitted. The Union contribution in the financing plan will be reduced pro rata, unless the Member State produces a revised financing plan.

CHAPTER V

INFORMATION, COMMUNICATION, MONITORING, EVALUATION AND REPORTING

Article 53

Information and publicity

1. Member States and Responsible Authorities shall be responsible for:
 - (a) a website or a website portal providing information on and access to the national programmes in that Member State;
 - (b) informing potential beneficiaries about funding opportunities under the national programmes;
 - (c) publicising to Union citizens the role and achievements of the Specific Regulations, through information and communication actions on the results and impact of the national programmes.
2. Member States shall ensure transparency of the implementation of the national programmes and shall maintain a list of actions supported by each national programme which shall be accessible through the website or the website portal. The list of actions shall include updated information on the final beneficiaries, the names of the projects and the amount of Union funding allocated to them.
3. As a rule, information shall be made public, except where it is restricted due to its confidential nature, particularly concerning security, public order, criminal investigations and the protection of personal data.
4. The Commission shall be empowered to adopt by delegated acts in accordance with Article 58 to lay down rules concerning the information and publicity measures for the public and information measures for beneficiaries.
5. The Commission shall, by way of implementing acts, define the technical characteristics of information and publicity measures. Those implementing acts shall be adopted by the Commission in accordance with the examination procedure referred to in Article 59(3).

Article 54

Implementation reports

1. By 31 March 2016 and by 31 March of each subsequent year until and including 2022, the Responsible Authority shall submit to the Commission an annual report on the implementation of each national programme in the previous financial year and may, at the appropriate level, publish that information. The report submitted in 2016 shall cover the financial years 2014 and 2015. The Member State shall submit a final report on the implementation of the national programmes by 31 December 2023.
2. Annual implementation reports shall set out information on:
 - (a) the implementation of the national programme by reference to the financial data and the indicators;
 - (b) any significant issues which affect the performance of the national programme.

3. In the light of the mid-term review as referred to in Article 15, the annual implementation report submitted in 2017 shall set out and assess:

- (a) the information referred to in paragraph 2;
- (b) the progress towards achieving the objectives in the national programmes pursued with the contribution from the Union budget;
- (c) the involvement of relevant partners as referred to in Article 12.

4. The annual implementation report submitted in 2020 and the final implementation report shall, in addition to the information and assessment set out in paragraph 2, include information on and assess the progress towards achieving the objectives of the national programme, bearing in mind the outcome of the policy dialogue referred to in Article 13(1).

5. The annual implementation reports referred to in paragraphs 1 to 4 shall be admissible if they contain all the information required by those paragraphs. The Commission shall inform the Member State concerned within 15 working days from the date of receipt of the annual implementation report if it is not admissible, failing which it shall be deemed admissible.

6. The Commission shall inform the Member State concerned of its observations on the annual implementation report within two months from the date of receipt of the annual implementation report. If the Commission does not provide observations within this deadline, the reports shall be deemed to be accepted.

7. The Commission may make observations on issues in the Responsible Authority's annual implementation report which affect the implementation of the national programme. Where such observations are made, the Responsible Authority shall provide necessary information with regard to those observations and, where appropriate, inform the Commission of the measures taken. The Commission shall be informed not later than three months after it has made such observations.

8. The Commission shall adopt, by way of implementing acts, the models according to which the annual and final implementation reports shall be drawn up. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 59(2).

Article 55

The common monitoring and evaluation framework

1. The Commission shall carry out regular monitoring of this Regulation and the Specific Regulations, where appropriate, in cooperation with the Member States.

2. The implementation of the Specific Regulations shall be evaluated by the Commission in partnership with the Member States in accordance with Article 57.

3. A common monitoring and evaluation framework shall be established with a view to measuring the relevance, effectiveness, efficiency, added value and sustainability of the actions and the simplification and the reduction of administrative burden, in the light of the objectives of this Regulation and the Specific Regulations and the performance of this Regulation and the Specific Regulations as instruments contributing to the development of the area of freedom, security and justice.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 58 to develop further the common monitoring and evaluation framework.

5. Member States shall provide the Commission with the necessary information to permit the monitoring and evaluation of this Regulation and the Specific Regulations.

6. The Commission shall also consider the complementarity between the actions implemented under the Specific Regulations and those pursued under other relevant Union policies, instruments and initiatives.

7. The Commission shall pay particular attention to the monitoring and evaluation of actions and programmes related to third countries, in accordance with Article 8.

Article 56

Evaluation of national programmes by Member States

1. Member States shall carry out the evaluations referred to in Article 57(1). The evaluation to be carried out in 2017 shall contribute to improving the quality of the design and the implementation of national programmes, in accordance with the common monitoring and evaluation framework.

2. Member States shall ensure that procedures are in place to produce and collect the data necessary for the evaluations referred to in paragraph 1, including data related to indicators in the common monitoring and evaluation framework.

3. The evaluations referred to in Article 57(1) shall be carried out by experts who are functionally independent of the Responsible Authorities, the Audit Authorities and the Delegated Authorities. Those experts may be affiliated to an autonomous public institution responsible for the monitoring, evaluation and audit of the administration. The Commission shall provide guidance on how to carry out evaluations.

4. The evaluations referred to in Article 57(1) shall be made public in their entirety, except where information is restricted due to its confidential nature, particularly concerning security, public order, criminal investigations and the protection of personal data.

Article 57

Evaluation reports by the Member States and the Commission

1. In accordance with the common monitoring and evaluation framework, the Member States shall submit to the Commission:

- (a) an interim evaluation report on the implementation of actions and progress towards achieving the objectives of their national programmes by 31 December 2017;
- (b) an *ex-post* evaluation report on the effects of actions under their national programmes by 31 December 2023.

2. On the basis of the reports referred to in paragraph 1, the Commission shall submit to the European Parliament, to the Council, to the European Economic and Social Committee and to the Committee of the Regions:

- (a) an interim evaluation report on the implementation of this Regulation and the Specific Regulations at the level of the Union by 30 June 2018. That interim evaluation report shall include an assessment of the mid-term review carried out in accordance with this Regulation and the Specific Regulations;
- (b) an *ex-post* evaluation report on the effects of this Regulation and the Specific Regulations, following the closure of the national programmes, by 30 June 2024.

3. The *ex-post* evaluation of the Commission shall also examine the impact of the Specific Regulations on the development of the area of freedom, security and justice in terms of their contribution to the following objectives:

- (a) the development of a common culture of border security, law enforcement cooperation and crisis management;
- (b) the effective management of migration flows into the Union;
- (c) the development of the Common European Asylum System;

- (d) the fair and equal treatment of third-country nationals;
- (e) solidarity and cooperation between Member States in addressing migration and internal security issues;
- (f) a common approach by the Union on migration and security towards third countries.

4. All evaluation reports pursuant to this Article shall be published in their entirety, except where information is restricted due to its confidential nature, particularly concerning security, public order, criminal investigations and protection of personal data.

CHAPTER VI

FINAL PROVISIONS

Article 58

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 5(5), 26(4), 29(1), 53(4) and 55(4) shall be conferred on the Commission for a period of seven years from 21 May 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the seven-year period. The delegation of powers shall be tacitly extended for a period of three years, unless the European Parliament or the Council opposes such extension not later than three months before the end of the seven-year period.
3. The delegation of powers referred to in Articles 5(5), 26(4), 29(1), 53(4) and 55(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 5(5), 26(4), 29(1), 53(4) and 55(4) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 59

Committee Procedure

1. The Commission shall be assisted by the Asylum, Migration and Integration and Internal Security Funds Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act, except for Articles 14(4), 24(5), 45(2), 47(6) and 53(5) of this Regulation.

Article 60

Review

The European Parliament and the Council shall, on the basis of a proposal from the Commission, review this Regulation by 30 June 2020.

*Article 61***Entry into force and application**

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

It shall apply from 1 January 2014.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 16 April 2014.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

D. KOURKOULAS

**REGULATION (EU) No 515/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 April 2014**

**establishing, as part of the Internal Security Fund, the instrument for financial support for external
borders and visa and repealing Decision No 574/2007/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(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⁾,

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

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

Whereas:

- (1) The Union's objective of ensuring a high level of security within an area of freedom, security and justice pursuant to Article 67(3) of the Treaty on the Functioning of the Union (TFEU) should be achieved, inter alia, through common measures on the crossing of internal borders by persons and on border controls at external borders and the common visa policy as part of a convergent multi-layer system, which would allow the exchange of data and a complete situation awareness and which aims to facilitate legitimate travel and to tackle illegal immigration.
- (2) The Union needs a more coherent approach to the internal and external aspects of migration management and internal security, and should establish a correlation between the fight against illegal immigration and the improvement of the security of the external borders of the Union, and better cooperation and dialogue with third countries for the purposes of dealing with illegal immigration and promoting legal migration.
- (3) It is necessary to develop an integrated approach to issues arising from the pressure of migration and asylum applications and for the management of the external borders of the Union, and to provide a budget and adequate resources to cope with emergencies in a spirit of respect for human rights and solidarity between all Member States, while remaining aware of national responsibilities and ensuring a clear division of tasks.
- (4) The Internal Security Strategy for the European Union (the 'Internal Security Strategy'), adopted by the Council in February 2010, constitutes a shared agenda for tackling these common security challenges. The Commission Communication of November 2010, entitled 'The EU Internal Security Strategy in Action', translates the strategy's principles and guidelines into concrete actions by identifying five strategic objectives: to disrupt international crime networks, to prevent terrorism and address radicalisation and recruitment, to raise levels of security for citizens and businesses in cyberspace, to strengthen security through border management and to increase Europe's resilience in the face of crises and disasters.
- (5) According to the Internal Security Strategy, freedom, security and justice are objectives that should be pursued in parallel, and in order to achieve freedom and justice, security should always be pursued in accordance with the principles of the Treaties, the rule of law and the Union's fundamental rights obligations.
- (6) Solidarity among Member States, clarity about the division of tasks, respect for fundamental freedoms and human rights and the rule of law, a strong focus on the global perspective and the link with external security, and consistency and coherence with the Union foreign policy objectives, as laid down in Article 21 of the Treaty on European Union (TEU), should be key principles guiding the implementation of the Internal Security Strategy.
- (7) To promote the implementation of the Internal Security Strategy and to ensure that it becomes an operational reality, Member States should be provided with adequate Union financial support by setting up an Internal Security Fund ('the Fund').

⁽¹⁾ OJ C 299, 4.10.2012, p. 108.

⁽²⁾ OJ C 277, 13.9.2012, p. 23.

⁽³⁾ Position of the European Parliament of 13 March 2014 (not yet published in the Official Journal) and decision of the Council of 14 April 2014.

- (8) Due to the legal particularities applicable to Title V TFEU, it is not legally possible to establish the Fund as a single financial instrument. The Fund should therefore be established as a comprehensive framework for Union financial support in the field of internal security comprising the instrument for financial support for external borders and visa ('the Instrument') established by this Regulation as well as the instrument for financial support for police cooperation, preventing and combating crime, and crisis management established by Regulation (EU) No 513/2014 of the European Parliament and of the Council ⁽¹⁾. This comprehensive framework should be complemented by Regulation (EU) No 514/2014 of the European Parliament and of the Council ⁽²⁾ to which this Regulation should refer as regards rules on programming, financial management, management and control, clearance of accounts, closure of programmes and reporting and evaluation.
- (9) The new two-pillar structure of funding in the field of home affairs should contribute to the simplification, rationalisation, consolidation and transparency of funding in that field. Synergies, consistency and complementarity should be sought with other funds and programmes, including with a view to allocating funding to common objectives. However, overlap between the different funding instruments should be avoided.
- (10) The Fund should reflect the need for increased flexibility and simplification while respecting requirements in terms of predictability, and ensuring a fair and transparent distribution of resources to meet the general and specific objectives laid down in this Regulation.
- (11) Efficiency of measures and quality of spending constitute guiding principles in the implementation of the Fund. Furthermore, the Fund should also be implemented in the most effective and user-friendly manner possible.
- (12) The Fund should take special account of those Member States which are facing disproportionate burdens from migratory flows due to their geographical location.
- (13) Solidarity and responsibility-sharing between Member States and the Union is a fundamental component of the common policy for the management of the external borders.
- (14) The Fund should express solidarity through financial assistance to those Member States that fully apply the Schengen provisions on external borders as well as to those which are preparing for full participation in Schengen, and should be used by the Member States in the interests of the Union's common policy for the management of the external borders.
- (15) In order to contribute to the achievement of the general objective of the Fund, Member States should ensure that their national programmes address the specific objectives of the Instrument and that the allocation of resources between objectives is proportionate to the challenges and needs and ensures that the objectives can be met. Where a national programme does not address one of the specific objectives or the allocation is below the minimum percentages for some objectives of the national programmes set in this Regulation, the Member State concerned should provide a justification within the programme.
- (16) In order to measure the achievements of the Fund, common indicators should be established in relation to each specific objective of the Instrument. The measurement of the achievement of the specific objectives by means of common indicators does not render the implementation of actions related to those indicators mandatory.
- (17) Participation by a Member State should not coincide with its participation in a temporary financial instrument of the Union which supports the beneficiary Member States to finance, inter alia, actions at new external borders of the Union for the implementation of the Schengen *acquis* on borders and visas and external border control.
- (18) The Instrument should build on the capacity-building process developed with the assistance of the External Borders Fund for the period 2007-2013, established by Decision No 574/2007/EC of the European Parliament and of the Council ⁽³⁾, and should extend it to take into account new developments.

⁽¹⁾ Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA (see page 93 of this Official Journal).

⁽²⁾ Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (see page 112 of this Official Journal).

⁽³⁾ Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' (OJ L 144, 6.6.2007, p. 22).

- (19) When executing tasks at external borders and consulates in accordance with the Schengen *acquis* on borders and visas, Member States carry out activities in the interests of and on behalf of all other Member States in the Schengen area, thus performing a public service for the Union. The Instrument should contribute to supporting operating costs related to border control and visa policy and enable Member States to maintain capabilities which are crucial for that service for all. Such support consists of full reimbursement of a choice of specific costs related to the objectives under the Instrument and should form an integral part of the national programmes.
- (20) The Instrument should complement and reinforce the activities undertaken to develop operational cooperation under the aegis of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ('the Frontex Agency') as established by Council Regulation (EC) No 2007/2004 ⁽¹⁾, including the new activities resulting from the amendments introduced by Regulation (EU) No 1168/2011 of the European Parliament and of the Council ⁽²⁾, and thereby further reinforce solidarity between those Member States controlling external borders in the interests and on behalf of the Schengen area as a whole. This means, inter alia, that, when drawing up their national programmes, Member States should take into account the analytical tools and operational and technical guidelines developed by the Frontex Agency as well as the training curricula developed, namely the common core curricula for the training of border guards, including its components with regard to fundamental rights and access to international protection. In order to develop complementarity between its mission and the responsibilities of the Member States for the control and surveillance of external borders as well as to ensure consistency and to avoid cost inefficiency, the Frontex Agency should be consulted by the Commission on draft national programmes submitted by the Member States, and in particular on the activities financed under the operating support.
- (21) The Instrument should be implemented in full compliance with the rights and principles enshrined in the Charter of Fundamental Rights of the European Union and with the Union's international obligations, and without prejudice to the application of special provisions concerning the right to asylum and to international protection.
- (22) Uniform and high-quality external border control is essential for strengthening the area of freedom, security and justice. In accordance with common Union standards, the Instrument should support measures relating to the management of external borders, to be implemented in accordance with the four-tier access control model which comprises measures in third countries, cooperation with neighbouring countries, border control measures and control measures within the area of free movement in order to prevent illegal immigration and cross-border crime inside the Schengen area.
- (23) Pursuant to Article 3 TEU, the Instrument should support activities which ensure the protection of children at risk of harm at the external borders. In particular, when implementing actions in relation to the identification, immediate assistance and referral to protection services, Member States should, wherever possible, give special attention to vulnerable persons, in particular children and unaccompanied minors.
- (24) To ensure a uniform and high-quality external border control and to facilitate legitimate travel across external borders within the framework of the Internal Security Strategy, the Instrument should contribute to the development of a European common integrated border management system. That system includes all the measures involving policy, law, systematic cooperation, burden sharing, assessment of the situation and changing circumstances regarding crossing points for irregular migrants, personnel, equipment and technology taken at different levels by the competent authorities of the Member States, acting in cooperation with the Frontex Agency, with third countries and, where necessary, with other actors, in particular Europol and the Agency for the Operational Management of Large-Scale IT-Systems, utilising, inter alia, the four-tier border security model and integrated risk analysis of the Union.

⁽¹⁾ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

⁽²⁾ Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 304, 22.11.2011, p. 1).

- (25) In accordance with Protocol No 5 to the 2003 Act of Accession on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation, the Instrument should bear any additional cost incurred in implementing the specific provisions of the Union *acquis* covering such transit, i.e. Council Regulation (EC) No 693/2003 ⁽¹⁾ and Council Regulation (EC) No 694/2003 ⁽²⁾. The need for continued financial support for foregone fees, however, should be dependent upon the visa regime of the Union in force with the Russian Federation.
- (26) The Instrument should include support for national measures and cooperation between Member States in the area of visa policy and other pre-frontier activities that take place prior to external border controls and should make full use of the Visa Information System (VIS). The efficient management of activities organised by the services of the Member States in third countries is in the interests of the common visa policy as part of a multi-layered system aimed at facilitating legitimate travel and tackling illegal immigration into the Union, and constitutes an integral part of the common integrated border management system.
- (27) Moreover, the Instrument should support measures in the territory of the Schengen countries as part of the development of a common integrated border management system which strengthens the overall functioning of the Schengen area.
- (28) The Instrument should also support the development by the Union of IT systems, based on existing and/or new IT systems, which would equip Member States with the tools to manage the movement of third-country nationals across borders more efficiently and to ensure a better identification and verification of travellers, thereby facilitating travel and enhancing border security. To that end, a programme, in keeping with the Information Management Strategy for EU internal security, should be established with the aim of covering costs for the development of both the central and national components of such systems, ensuring technical consistency, interoperability with other Union IT systems, cost savings and a smooth implementation in the Member States. Those IT systems should comply with fundamental rights, including the protection of personal data.
- (29) Member States should devote the necessary funding to the European Border Surveillance System (Eurosur), established by Regulation (EU) No 1052/2013 of the European Parliament and the Council ⁽³⁾, in order to ensure the good functioning of that system.
- (30) To address immediately unforeseen migratory pressure and risks to border security, it should be possible to provide emergency assistance in accordance with the framework set out in Regulation (EU) No 514/2014.
- (31) Moreover, in the interests of enhanced solidarity in the Schengen area as a whole, where weaknesses or possible risks are identified, in particular following a Schengen evaluation, the Member State concerned should follow the matter up adequately by using resources under its national programme by priority, where applicable, complementing emergency assistance measures.
- (32) To reinforce solidarity and responsibility-sharing, Member States should be encouraged to use part of the resources available under their national programmes for specific priorities defined by the Union, such as the purchase of technical equipment needed by the Frontex Agency and the development of consular cooperation for the Union. There is a need to maximise the impact of Union funding by mobilising, pooling and leveraging public and private financial resources. Utmost transparency, accountability and democratic scrutiny should be ensured for innovative financial instruments and mechanisms that involve the Union budget.
- (33) To safeguard the application of the Schengen *acquis* throughout the Schengen area, the implementation of Council Regulation (EU) No 1053/2013 ⁽⁴⁾ should also be supported under the Instrument, as an essential tool to facilitate the implementation of Union policies in the area of freedom, justice and security by ensuring a high level of external border protection and the absence of border controls within the Schengen area.
- (34) In light of the experience gained with the External Borders Fund and the development of the SIS II and VIS, it is considered appropriate to allow for a certain degree of flexibility regarding possible transfers of resources between

⁽¹⁾ Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (OJ L 99, 17.4.2003, p. 8).

⁽²⁾ Council Regulation (EC) No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003 (OJ L 99, 17.4.2003, p. 15).

⁽³⁾ Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur) (OJ L 295, 6.11.2013, p. 11).

⁽⁴⁾ Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L 295, 6.11.2013, p. 27).

the different means of implementation of the objectives pursued under the Instrument, without prejudice to the principle of ensuring from the start a critical mass and financial stability for the programmes and the operating support for Member States and without prejudice to the scrutiny by the European Parliament and the Council.

- (35) In the same vein, the scope of the actions and the ceiling for resources which remain available to the Union ('Union actions') should be increased to enhance the capacity of the Union to carry out, in a given budget year, multiple activities for the management of external borders and the common visa policy in the interests of the Union as a whole, when and insofar as the needs arise. Such Union actions include studies and pilot projects to further the management of external borders and the common visa policy and their application, the training of border guards in the protection of human rights, measures or arrangements in third countries addressing migratory pressures from those countries in the interests of an optimal management of migration flows into the Union and of an efficient organisation of the related tasks at external borders and consulates.
- (36) Measures in, and in relation to, third countries supported through the Instrument should be taken in synergy and coherence with other actions outside the Union, supported through geographic and thematic Union external assistance instruments. In particular, in implementing such actions, full coherence should be sought with the principles and general objectives of the Union's external action and foreign policy related to the country or region in question. They should not be intended to support actions which are directly development-oriented and they should complement, when appropriate, the financial assistance provided through external aid instruments. Coherence will also be sought with the Union's humanitarian policy, in particular as regards the implementation of emergency measures.
- (37) Funding from the Union budget should concentrate on activities where Union intervention can bring added value compared with action by Member States alone. As the Union is in a better position than Member States to provide a framework for expressing Union solidarity in border control, visa policy and the management of migration flows, and to provide a platform for the development of common IT systems underpinning those policies, financial support provided under this Regulation will contribute in particular to strengthening national and Union capabilities in those areas.
- (38) This Regulation should establish the allocation of basic amounts to Member States. The basic amount for each Member State should be calculated on the basis of the External Borders Fund allocations for each Member State in the years 2010-2012 and by dividing the figure obtained by the total of the appropriations available for shared management for those three years. The calculations were made in accordance with the distribution criteria laid down in Decision No 574/2007/EC.
- (39) The Commission should monitor the implementation of the Instrument, in accordance with the relevant provisions of Regulation (EU) No 514/2014, with the aid of key indicators for evaluating results and impacts. The indicators, including relevant baselines, should provide the minimum basis for evaluating the extent to which the objectives of the Instrument have been achieved.
- (40) In order to supplement or amend provisions in this Regulation regarding the definition of specific actions under the national programmes, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. 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.
- (41) In the application of this Regulation, including the preparation of delegated acts, the Commission should consult experts from all Member States.
- (42) In order to ensure a uniform, efficient and timely application of the provisions on operating support laid down in this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽¹⁾.
- (43) Since the objective of this Regulation, namely to provide for solidarity and responsibility sharing between Member States and the Union in the management of external borders and visa policy, cannot be sufficiently achieved by the Member States but can rather 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 Regulation does not go beyond what is necessary in order to achieve that objective.
- (44) Decision No 574/2007/EC should be repealed, subject to the transitional provisions set out in this Regulation.

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

- (45) As regards Iceland and Norway, this Regulation constitutes a development of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁾ which falls within the areas referred to in Article 1, Points A and B of Council Decision 1999/437/EC ⁽²⁾.
- (46) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽³⁾ which fall within the area referred to in Article 1, Points A and B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽⁴⁾.
- (47) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen ⁽⁵⁾ which fall within the area referred to in Article 1, Points A and B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ⁽⁶⁾.
- (48) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to TEU and TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement this Regulation in its national law.
- (49) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC ⁽⁷⁾; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (50) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽⁸⁾. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (51) It is appropriate to align the period of application of this Regulation with that of Council Regulation (EU, Euratom) No 1311/2013 ⁽⁹⁾. Therefore, this Regulation should apply as from 1 January 2014,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose and scope

1. This Regulation establishes the Instrument for financial support for the management of external borders and the common visa policy ('the Instrument') as part of the Internal Security Fund ('the Fund').

Jointly with Regulation (EU) 513/2014, this Regulation establishes the Fund for the period from 1 January 2014 to 31 December 2020.

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

⁽²⁾ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen (OJ L 176, 10.7.1999, p. 31).

⁽³⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁴⁾ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

⁽⁵⁾ OJ L 160, 18.6.2011, p. 21.

⁽⁶⁾ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

⁽⁷⁾ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

⁽⁸⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

⁽⁹⁾ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

2. This Regulation lays down:

- (a) the objectives of financial support and the eligible actions;
- (b) the general framework for the implementation of the eligible actions;
- (c) the resources made available under the Instrument from 1 January 2014 to 31 December 2020 and their distribution;
- (d) the scope and purpose of the different specific means through which the expenditure for the management of the external borders and the common visa policy is financed.

3. This Regulation provides for the application of the rules set out in Regulation (EU) No 514/2014.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

- (a) 'external borders' means the land borders of the Member States, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports to which the provisions of Union law on the crossing of external borders apply, whether the borders are temporary or not;
- (b) 'common Union standards' means the application of operational measures in a common and unfragmented manner to obtain a high and uniform level of security in the field of border control and visas in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council ⁽¹⁾, Regulation (EC) No 810/2009 of the European Parliament and of the Council ⁽²⁾, Regulation (EC) No 767/2008 of the European Parliament and of the Council ⁽³⁾, Regulation (EC) No 2007/2004, Regulation (EC) No 1931/2006 of the European Parliament and of the Council ⁽⁴⁾, the Schengen catalogue for external border control, the Practical Handbook for border guards, the Handbook on visas, the Eurosur Handbook and any other Regulations and guidelines to be adopted at the Union level on border control and visas;
- (c) 'temporary external borders' means:
 - (i) the common border between a Member State fully implementing the Schengen *acquis* and a Member State bound to apply the Schengen *acquis* in full, in conformity with its Act of Accession, but for which the relevant Council Decision authorising it to fully apply that *acquis* has not entered into force;
 - (ii) the common border between two Member States bound to apply the Schengen *acquis* in full, in conformity with their respective Acts of Accession, but for which the relevant Council Decision authorising them to fully apply that *acquis* has not yet entered into force;
- (d) 'border crossing point' means any crossing point authorised by the competent authorities for the crossing of external borders as notified in accordance with Article 34(2) of Regulation (EC) No 562/2006;
- (e) 'Schengen evaluation and monitoring mechanism' means the verification of the correct application of the Schengen *acquis* as laid down in Regulation (EU) No 1053/2013;
- (f) 'emergency situation' means a situation resulting from an urgent and exceptional pressure where a large or disproportionate number of third-country nationals are crossing or are expected to cross the external border of one or more Member States or any other duly substantiated emergency situation requiring urgent action at the external borders;

⁽¹⁾ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

⁽²⁾ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

⁽³⁾ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

⁽⁴⁾ Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405, 30.12.2006, p. 1).

- (g) 'external borders section' means the whole or a part of the external land or sea border of a Member State as defined by national law or as determined by the national coordination centre or any other responsible national authority for the purpose of the implementation of Regulation (EU) No 1052/2013.

Article 3

Objectives

1. The general objective of the Instrument shall be to contribute to ensuring a high level of security in the Union while facilitating legitimate travel, through a uniform and high level of control of the external borders and the effective processing of Schengen visas, in compliance with the Union's commitment to fundamental freedoms and human rights.

2. Within the general objective set out in paragraph 1, the Instrument shall contribute — in accordance with the priorities identified in relevant Union strategies, programmes, threat assessments and risk assessments — to meeting the following specific objectives:

- (a) supporting a common visa policy to facilitate legitimate travel, provide a high quality of service to visa applicants, ensure equal treatment of third-country nationals and tackle illegal immigration;
- (b) supporting integrated border management, including promoting further harmonisation of border management-related measures in accordance with common Union standards and through the sharing of information between Member States and between Member States and the Frontex Agency, to ensure, on one hand, a uniform and high level of control and protection of the external borders, including by the tackling of illegal immigration and, on the other hand, the smooth crossing of the external borders in conformity with the Schengen *acquis*, while guaranteeing access to international protection for those needing it, in accordance with the obligations contracted by the Member States in the field of human rights, including the principle of *non-refoulement*.

The achievement of the specific objectives of the Instrument shall be evaluated in accordance with Article 55(2) of Regulation (EU) No 514/2014 using common indicators, as set out in Annex IV to this Regulation and programme-specific indicators included in national programmes.

3. To achieve the objectives referred to in paragraphs 1 and 2, the Instrument shall contribute to the following operational objectives:

- (a) promoting the development, implementation and enforcement of policies with a view to ensuring the absence of any controls on persons, whatever their nationality, when crossing the internal borders, and to carrying out checks on persons and monitoring efficiently the crossing of external borders;
- (b) gradually establishing an integrated management system for external borders, based on solidarity and responsibility, in particular by means of:
 - (i) the reinforcement of external border checks and surveillance systems and of inter-agency cooperation between border guards, customs, migration, asylum and law enforcement authorities of Member States at the external borders, including in the maritime border area;
 - (ii) measures within the territory relating to the management of external borders and the necessary flanking measures on document security, identity management and the interoperability of acquired technical equipment;
 - (iii) any measures also contributing to the prevention and fight against cross-border crime at external borders relating to the movement of persons, including trafficking in human beings and human smuggling;
- (c) promoting the development and implementation of the common policy on visas and other short-stay residence permits, and of different forms of consular cooperation in order to ensure better consular coverage and harmonised practices on visa issuing;
- (d) setting up and running IT systems, their communication infrastructure and equipment that support the common visa policy, border checks and border surveillance at the external borders and fully respect personal data protection law;
- (e) reinforcing situational awareness at the external borders and the reaction capabilities of Member States;

- (f) ensuring the efficient and uniform application of the Union's *acquis* on borders and visas, including the effective functioning of the Schengen evaluation and monitoring mechanism;
- (g) reinforcing actions by the Member States contributing to enhancing the cooperation between Member States operating in third countries as regards the flows of third-country nationals into the territory of Member States, including prevention and tackling of illegal immigration, as well as the cooperation with third countries in that respect in full coherence with the objectives and principles of Union external action and humanitarian policy.

4. Actions funded under the Instrument shall be implemented in full compliance with fundamental rights and respect for human dignity. In particular, actions shall comply with the provisions of the Charter of Fundamental Rights of the European Union, Union data protection law, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the principle of fair treatment of third-country nationals, the right to asylum and international protection, the principle of *non-refoulement* and the international obligations of the Union and Member States arising from international instruments to which they are signatory such as the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967.

In particular, wherever possible, special attention shall be given by Member States when implementing actions to the identification, immediate assistance and referral to protection services of vulnerable persons, in particular children and unaccompanied minors.

5. When implementing actions funded under the Instrument which are related to maritime border surveillance, Member States shall pay special attention to their obligations under international maritime law to render assistance to persons in distress. In that regard, equipment and systems supported under the Instrument may be used to address search and rescue situations which may arise during a border surveillance operation at sea, thereby contributing to ensuring the protection and saving the lives of migrants.

6. The Instrument shall also contribute to the financing of technical assistance at the initiative of the Member States and the Commission.

Article 4

Eligible actions

1. Within the objectives referred to in Article 3 of this Regulation, and in the light of the outcome of the policy dialogue as provided for in Article 13 of Regulation (EU) No 514/2014 and in accordance with the objectives of the national programme referred to in Article 9 of this Regulation, the Instrument shall support actions in or by Member States, in particular the following:

- (a) infrastructures, buildings and systems required at border crossing points and for surveillance between border crossing points to prevent and tackle unauthorised border crossings, illegal immigration and cross-border criminality as well as to guarantee smooth travel flows;
- (b) operating equipment, means of transport and communication systems required for effective and secure border control and the detection of persons;
- (c) IT and communication systems for the efficient management of migration flows across borders, including investment in existing and future systems;
- (d) infrastructures, buildings, communication and IT systems and operating equipment required for the processing of visa applications and consular cooperation, as well as other actions aimed at improving the quality of service for visa applicants;
- (e) training in the use of the equipment and systems referred to in points (b), (c) and (d) and the promotion of quality management standards and training of border guards, including where appropriate in third countries, with respect to the performance of their surveillance, advisory and control tasks in compliance with international human rights law, including the identification of victims of human trafficking and people smuggling;
- (f) secondment of immigration liaisons officers and document advisers in third countries and the exchange and secondment of border guards between Member States or between a Member State and a third country;

(g) studies, training, pilot projects and other actions gradually establishing an integrated management system for external borders as referred to in Article 3(3), including actions aiming to foster interagency cooperation either within Member States or between Member States and actions relating to the interoperability and harmonisation of border management systems;

(h) studies, pilot projects and actions aiming to implement the recommendations, operational standards and best practices resulting from the operational cooperation between Member States and Union agencies.

2. Within the objectives referred to in Article 3 of this Regulation, and in the light of the outcome of the policy dialogue as provided for in Article 13 of Regulation (EU) No 514/2014 and in accordance with the objectives of the national programme referred to in Article 9 of this Regulation, the Instrument shall support actions in relation to and in third countries and in particular the following:

(a) information systems, tools or equipment for sharing information between Member States and third countries;

(b) actions relating to operational cooperation between Member States and third countries, including joint operations;

(c) projects in third countries aimed at improving surveillance systems to ensure cooperation with Eurosur;

(d) studies, seminars, workshops, conferences, training, equipment and pilot projects to provide ad hoc technical and operational expertise to third countries;

(e) studies, seminars, workshops, conferences, training, equipment and pilot projects implementing specific recommendations, operational standards and best practices resulting from operational cooperation between Member States and Union agencies in third countries.

The Commission and the Member States, together with the European External Action Service, shall ensure coordination as regards actions in and in relation to third countries, as set out in Article 3(5) of Regulation (EU) No 514/2014.

3. The actions referred to in point (a) of paragraph 1 shall not be eligible at temporary external borders.

4. The actions related to the temporary and exceptional reintroduction of border control at internal borders as referred to in the Schengen Borders Code shall not be eligible.

5. The actions of which the exclusive aim or effect is the control of goods shall not be eligible.

CHAPTER II

FINANCIAL AND IMPLEMENTATION FRAMEWORK

Article 5

Global resources and implementation

1. The global resources for the implementation of the Instrument shall be EUR 2 760 million in current prices.

2. Annual appropriations shall be authorised by the European Parliament and the Council within the limits of the multiannual financial framework.

3. The global resources shall be implemented through the following means:

(a) national programmes, in accordance with Articles 9 and 12;

(b) operating support, within the framework of the national programmes and under the conditions laid down in Article 10;

(c) the Special Transit Scheme, in accordance with Article 11;

(d) Union actions, in accordance with Article 13;

(e) emergency assistance, in accordance with Article 14;

- (f) the implementation of a programme for setting up IT systems supporting the management of migration flows across the external borders under the conditions laid down in Article 15;
- (g) technical assistance in accordance with Article 16.

4. The budget allocated under the Instrument to Union actions referred to in Article 13 of this Regulation, to the emergency assistance referred to in Article 14 of this Regulation and to the technical assistance referred to in Article 16(1) of this Regulation shall be implemented under direct management in accordance with point (a) of Article 58(1) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁽¹⁾ and, where appropriate, under indirect management in accordance with point (c) of Article 58(1) of Regulation (EU, Euratom) No 966/2012.

The budget allocated to the national programmes referred to in Article 9, to the operating support referred to in Article 10 and to the functioning of the Special Transit Scheme referred to in Article 11 shall be implemented under shared management in accordance with point (b) of Article 58(1) of Regulation (EU, Euratom) No 966/2012.

The budget allocated to countries associated with the implementation, application and development of the Schengen *acquis* referred to in paragraph 7 of this Article shall be implemented under indirect management in accordance with point (c)(i) of Article 58(1) of Regulation (EU, Euratom) No 966/2012.

The method(s) of implementation of the budget for the programme on the development of IT systems, based on existing and/or new IT systems, shall be set out in the relevant Union legislative acts subject to their adoption.

5. The global resources shall be used as follows:

- (a) EUR 1 551 million for the national programmes of Member States;
- (b) EUR 791 million for developing IT systems, based on existing and/or new IT systems, supporting the management of migration flows across the external borders, subject to the adoption of the relevant Union legislative acts;

Where that amount is not allocated or spent, the Commission shall, by means of a delegated act in accordance with Article 17, re-allocate it to one or more of the activities referred to in points (b) and (c) of Article 6(1) and point (d) of this paragraph. That delegated act shall include an assessment of the evolution of the relevant IT systems including the implementation of the budget and expected unspent amounts. That re-allocation may take place following the adoption of the relevant legislative acts or on the occasion of the mid-term review referred to in Article 8.

- (c) EUR 154 million for the Special Transit Scheme;
- (d) EUR 264 million for Union actions, emergency assistance and technical assistance at the initiative of the Commission, of which at least 30 % shall be used for Union actions.

6. Jointly with the global resources established for Regulation (EU) No 513/2014, the global resources available for the Instrument, as established in paragraph 1, constitute the financial envelope for the Fund and serve as the prime reference, within the meaning of point 17 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management⁽²⁾, for the European Parliament and the Council during the annual budgetary procedure.

7. The countries associated with the implementation, application and development of the Schengen *acquis* shall participate in the Instrument in accordance with this Regulation.

Arrangements shall be concluded on the financial contributions by those countries to the Instrument and the supplementary rules necessary for such participation, including provisions ensuring the protection of the Union's financial interests and the power of audit of the Court of Auditors.

The financial contributions from those countries shall be added to the global resources available from the Union budget referred to in paragraph 1.

Article 6

Resources for eligible actions in the Member States

- 1. EUR 1 551 million shall be allocated to the Member States indicatively as follows:
 - (a) EUR 1 276 million, as indicated in Annex I;
 - (b) EUR 147 million, based on the results of the mechanism referred to in Article 7;

⁽¹⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

⁽²⁾ OJ C 373, 20.12.2013, p. 1.

(c) in the framework of the mid-term review referred to in Article 8 and for the period as of budget year 2018, EUR 128 million, the remainder of the available appropriations under this Article or another amount, as determined pursuant to paragraph 4, based on the results of the risk analysis and the mid-term review.

2. Each Member State shall allocate the basic amounts for national programmes indicated in Annex I as follows:

(a) at least 10 % for actions relating to point (a) of Article 9(2);

(b) at least 25 % for actions relating to point (b) of Article 9(2);

(c) at least 5 % for actions relating to points (c), (d), (e) and (f) of Article 9(2).

Member States may depart from those minimum percentages provided that an explanation is included in the national programme as to why allocating resources below those minima does not jeopardise the achievement of the relevant objective. That explanation will be assessed by the Commission in the context of its approval of national programmes as referred to in Article 9(2).

3. Member States shall devote the necessary funding to Eurosur in order to ensure its good functioning.

4. To address properly the objectives of the Instrument in the event of unforeseen or new circumstances and/or to ensure the effective implementation of funding available under the Instrument, the Commission shall be empowered to adopt delegated acts in accordance with Article 17 to adjust the indicative amount laid down in point (c) of paragraph 1 of this Article.

5. Member States which accede to the Union in the period 2012-2020 shall not benefit from allocations for national programmes under the Instrument as long as they benefit from a temporary instrument of the Union which supports the beneficiary Member States to finance actions at new external borders for the implementation of the Schengen *acquis* on borders and visas and external border control.

Article 7

Resources for specific actions

1. Member States may, in addition to their allocation calculated in accordance with point (a) of Article 6(1), receive an additional amount, provided that it is earmarked as such in the national programme and is to be used to achieve specific actions listed in Annex II.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 17 for the revision of the specific actions listed in Annex II, if deemed appropriate, including in the context of the mid-term review. On the basis of the new specific actions, Member States may receive an additional amount as laid down in paragraph 1 of this Article, subject to available resources.

3. The additional amounts under this Article shall be allocated to the Member States concerned in the individual financing decision approving or revising their national programme in accordance with the procedure laid down in Article 14 of Regulation (EU) No 514/2014.

Article 8

Resources in the framework of the mid-term review

1. In order to allocate the amount indicated in point (c) of Article 6(1), by 1 June 2017 the Commission shall take into account the burden of Member States in border management, including search and rescue activities which may arise during border surveillance operations at sea and assessment reports drawn up as part of the Schengen evaluation and monitoring mechanism, and threat levels at the external borders for the period 2017-2020, as well as factors that affected security at the external borders in 2014-2016. That amount shall be distributed between Member States on the basis of the weighing of the following categories of borders, taking into account paragraph 6 of this Article:

(a) 45 % for external maritime borders;

(b) 38 % for external land borders;

(c) 17 % for airports.

2. For the external maritime and land borders the calculation of the amount shall be based on the length of sections of the external border multiplied by a threat level (minimum, normal, medium, high) for each border section, as follows:

- (a) coefficient 0,5 for minimum threat;
- (b) coefficient 1 for normal threat;
- (c) coefficient 3 for medium threat;
- (d) coefficient 5 for high threat.

3. For the airports, the allocation shall be calculated for each Member State as follows:

- (a) 50 % on the basis of the number of persons crossing the external borders;
- (b) 50 % on the basis of the number of third-country nationals refused entry at the external borders.

4. In accordance with the Frontex Agency's risk analysis report and in consultation with the Frontex Agency, and, where relevant, other Union agencies, the Commission shall determine threat levels for each external border section of the Member States for the period 2017-2020. The threat levels shall be based on the following factors:

- (a) burden in border management at the external borders;
- (b) factors that affected security at the external borders of the Member States in the period 2014-2016;
- (c) changes in Union policies, for example visa policies;
- (d) possible future trends in migratory flows and risks of unlawful activities related to the irregular crossing of persons of the external borders; and
- (e) likely political, economic and social developments in third countries, and in particular, neighbouring countries.

Before issuing its report determining the threat levels, the Commission shall hold an exchange of views with the Member States.

5. For the purpose of the distribution of resources under paragraph 1:

- (a) the line between the areas referred to in Article 1 of Council Regulation (EC) No 866/2004 ⁽¹⁾, but not the maritime border north of that line, shall be taken into account even though it does not constitute an external land border for as long as Article 1 of Protocol No 10 on Cyprus to the 2003 Act of Accession remains applicable;
- (b) the expression 'external maritime borders' shall mean the outer limit of the territorial sea of the Member States as defined in accordance with Articles 4 to 16 of the United Nations Convention on the Law of the Sea. However, in cases where long range operations are required on a regular basis in order to prevent unauthorised border crossings, that expression shall mean the outer limit of high threat areas. Those outer limits shall be determined by taking into account the relevant data on these operations in 2014-2016 as provided by the Member States in question.

6. Moreover, following invitation from the Commission by 1 June 2017, Member States may receive an additional allocation, provided that it is earmarked as such in the national programme and is to be used to achieve specific actions to be established in the light of the priorities of the Union at that time.

7. The additional amounts under this Article shall be allocated to the Member States concerned in an individual financing decision approving or revising their national programme in accordance with the procedure laid down in Article 14 of Regulation (EU) No 514/2014.

⁽¹⁾ Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 to the Act of Accession (OJ L 161, 30.4.2004, p. 128).

*Article 9***National programmes**

1. The national programme to be prepared, taking into account the outcome of the policy dialogue referred to in Article 13 of Regulation (EU) No 514/2014, under the Instrument and the one to be prepared under Regulation (EU) No 513/2014 shall be proposed to the Commission as one single national programme for the Fund and in accordance with Article 14 of Regulation (EU) No 514/2014.
2. Under the national programmes to be examined and approved by the Commission pursuant to Article 14 of Regulation (EU) No 514/2014, Member States shall, within the objectives referred to in Article 3 of this Regulation and taking into account the outcome of the policy dialogue referred to in Article 13 of Regulation (EU) No 514/2014, pursue in particular objectives from the following:
 - (a) developing Eurosur in accordance with Union law and guidelines;
 - (b) supporting and expanding the existing capacity at national level in visa policy and in the management of the external borders, as well as supporting and expanding measures within the area of free movement relating to the management of external borders, bearing in mind in particular, new technology, developments and/or standards in relation to the management of migration flows;
 - (c) supporting the further development of the management of migration flows by consular and other services of the Member States in third countries, including the setting up of consular cooperation mechanisms with a view to facilitating legitimate travel in accordance with Union law or the law of the Member State concerned and preventing illegal immigration into the Union;
 - (d) reinforcing integrated border management by testing and introducing new tools, interoperable systems and working methods which aim to enhance information exchange within the Member State or to improve inter-agency cooperation;
 - (e) developing projects with a view to ensuring a uniform and high level of control of the external border in accordance with common Union standards and aiming at increased interoperability of border management systems between Member States;
 - (f) supporting actions, after consulting the Frontex Agency, aimed at promoting further harmonisation of border management and in particular technological capabilities, in accordance with common Union standards;
 - (g) ensuring the correct and uniform application of the Union *acquis* on border control and visas in response to weaknesses identified at Union level, as shown by results established in the framework of the Schengen evaluation and monitoring mechanism;
 - (h) building the capacity to face upcoming challenges, including present and future threats and pressures at the external borders, taking into account in particular the analyses carried out by relevant Union agencies.
3. In pursuit of the objectives referred to in paragraph 2, Member States may support actions in, and in relation to, third countries under their national programmes, including through information-sharing and operational cooperation.
4. The Commission shall consult the Frontex Agency on draft national programmes, in particular on the activities financed under the operating support, submitted by the Member States in order to develop complementarity between the mission of the Frontex Agency and the responsibilities of the Member States for the control and surveillance of external borders as well as to ensure consistency and to avoid cost inefficiency.

*Article 10***Operating support under the national programmes of the Member States**

1. A Member State may use up to 40 % of the amount allocated under the Instrument to its national programme to finance operating support to the public authorities responsible for accomplishing the tasks and services which constitute a public service for the Union.
2. Operating support shall be provided when the following conditions are met by the Member State concerned:

- (a) compliance with the Union *acquis* on borders and visas;
- (b) compliance with the objectives of the national programme;
- (c) compliance with common Union standards in order to enhance coordination between Member States and avoid duplication, fragmentation and cost inefficiency in the border control domain.

3. To that end, before the approval of the national programme, the Commission shall assess the baseline situation in Member States which have indicated their intention to request operating support, taking into account, where relevant, the Schengen evaluation reports.

The findings of the Commission shall be the subject of an exchange of views with the Member State concerned.

Following the exchange of views, the acceptance by the Commission of budget support within the national programme of a Member State may be made conditional upon the programming and completion of a number of actions aiming to ensure that the conditions laid down in paragraph 2 are fully met by the time the budget support is provided.

4. Operating support shall be concentrated on specific tasks and/or services and shall be focused on the objectives as laid down in Annex III. It shall entail full reimbursement of the expenditure incurred to accomplish the tasks and/or services defined in the national programme, within the financial limits set by the programme and the ceiling laid down in paragraph 1.

5. Operating support shall be the subject of monitoring and exchange of information between the Commission and the Member State concerned in relation to the baseline situation in that Member State, the objectives and targets to be accomplished and the indicators to measure progress.

6. The Commission shall set out, by means of implementing acts, reporting procedures on the application of this provision and any other practical arrangements to be made between Member States and the Commission to comply with this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).

Article 11

Operating support for the Special Transit Scheme

1. The Instrument shall provide support to compensate for foregone fees from visas issued for the purpose of transit and additional costs incurred in implementing the Facilitated Transit Document (FTD) and the Facilitated Rail Transit Document (FRTD) scheme in accordance with Regulation (EC) No 693/2003 and Regulation (EC) No 694/2003.

2. The resources allocated to Lithuania pursuant to paragraph 1 shall not exceed EUR 154 million for the period 2014-2020 and shall be made available as additional specific operating support for Lithuania.

3. For the purpose of paragraph 1, additional costs means costs which result directly from the specific requirements of implementing the operation of the Special Transit Scheme and which are not generated as a result of the issuing of visas for the purpose of transit or other purposes.

The following types of additional cost shall be eligible for financing:

- (a) investment in infrastructures;
- (b) training of staff implementing the special transit scheme;
- (c) additional operational costs, including salaries of staff specifically implementing the special transit scheme.

4. The foregone fees referred to in paragraph 1 of this Article shall be calculated on the basis of the level of visa fees and the visa fee waivers established by the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation ⁽¹⁾, within the financial framework set out in paragraph 2 of this Article.

⁽¹⁾ OJ L 129, 17.5.2007, p. 27.

5. The Commission and Lithuania shall review the application of this Article in the event of changes which have an impact on the existence and/or functioning of the Special Transit Scheme.

6. The Commission shall set out, by means of implementing acts, reporting procedures on the application of this provision and any financial and other practical arrangements to be made between Lithuania and the Commission to comply with this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).

7. To ensure the smooth functioning of the Special Transit Scheme the Commission may make specific interim payment arrangements which derogate from the provisions of Regulation (EU) No 514/2014.

Article 12

Programming in line with the outcomes of the Schengen evaluation and monitoring mechanism

Following a Schengen evaluation report, as adopted in accordance with Regulation (EU) No 1053/2013, the Member State concerned shall examine, together with the Commission and the Frontex Agency, how to address the findings, including any deficiencies, and implement the recommendations within the framework of its national programme.

Where necessary, a Member State shall revise its national programme in accordance with Article 14(9) of Regulation (EU) No 514/2014 to take into account those findings and recommendations.

The financing of corrective actions shall be a priority. In dialogue with the Commission and the Frontex Agency, the Member State concerned shall reallocate resources under its programme, including those programmed for operating support, and/or introduce or amend actions aiming to remedy the weaknesses in accordance with the findings and recommendations of the Schengen evaluation report.

Article 13

Union actions

1. At the Commission's initiative, the Instrument may be used to finance transnational actions or actions of particular interest to the Union ('Union actions') concerning the general, specific and operational objectives referred to in Article 3.

2. To be eligible for funding, Union actions shall in particular pursue the following objectives:

- (a) to support preparatory, monitoring, administrative and technical activities, required to implement external borders and visa policies, including to strengthen the governance of the Schengen area by developing and implementing the evaluation mechanism as established by Regulation (EU) No 1053/2013 to verify the application of the Schengen *acquis* and the Schengen Borders Code, in particular mission expenditure for experts of the Commission and the Member States participating in on site visits;
- (b) to improve the knowledge and understanding of the situation prevailing in the Member States and third countries through the analysis, evaluation and close monitoring of policies;
- (c) to support the development of statistical tools, including common statistical tools, methods and common indicators;
- (d) to support and monitor the implementation of Union law and Union policy objectives in the Member States, and assess their effectiveness and impact, including with regard to respect for human rights and fundamental freedoms, as far as the scope of the Instrument is concerned;
- (e) to promote networking, mutual learning, identification and dissemination of best practices and innovative approaches amongst different stakeholders at European level;
- (f) to promote projects aiming at harmonisation and interoperability of border management-related measures in accordance with common Union standards with a view to developing an integrated European border management system;
- (g) to enhance awareness of Union policies and objectives among stakeholders and the general public, including corporate communication on the political priorities of the Union;
- (h) to boost the capacity of European networks to assess, promote, support and further develop Union policies and objectives;

- (i) to support particularly innovative projects developing new methods and/or technologies with a potential for transferability to other Member States, especially projects which aim to test and validate research projects;
 - (j) to support actions in relation to and in third countries as referred to in Article 4(2).
3. Union actions shall be implemented in accordance with Article 6 of Regulation (EU) No 514/2014.

Article 14

Emergency assistance

1. The Instrument shall provide financial assistance to address urgent and specific needs in the event of an emergency situation as defined in point (f) of Article 2.
2. Emergency assistance shall be implemented in accordance with Articles 6 and 7 of Regulation (EU) No 514/2014.

Article 15

Establishing a programme on the development of IT systems

The programme on the development of the IT systems, based on existing and/or new IT systems, shall be implemented subject to adoption of the Union legislative acts defining those IT systems and their communication infrastructure with the aim, in particular, of improving the management and control of travel flows at the external borders by reinforcing checks while speeding up border crossings for regular travellers. Where appropriate, synergies with existing IT systems shall be sought in order to avoid double-spending.

The breakdown of the amount referred to in point (b) of Article 5(5) shall be made either in the relevant Union legislative acts or, following the adoption of those legislative acts, through a delegated act in accordance with Article 17.

The Commission shall inform the European Parliament and the Council of progress in developing those IT systems at least once a year and whenever appropriate.

Article 16

Technical assistance

1. At the initiative and/or on behalf of the Commission, the Instrument may contribute up to EUR 1,7 million annually for technical assistance to the Fund in accordance with Article 9 of Regulation (EU) No 514/2014.
2. At the initiative of a Member State, the Instrument may finance technical assistance activities, in accordance with Article 20 of Regulation (EU) No 514/2014. The amount set aside for technical assistance shall not exceed, for the period 2014–2020, 5 % of the total amount allocated to a Member State plus EUR 500 000.

CHAPTER III

FINAL PROVISIONS

Article 17

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in point (b) of Article 5(5) and Articles 6(4), 7(2) and 15 shall be conferred on the Commission for a period of seven years from 21 May 2014. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the seven year period. The delegation of power shall be tacitly extended for a period of three years, unless the European Parliament or the Council opposes such extension not later than three months before the end of the seven-year period.
3. The delegation of power referred to in point (b) of Article 5(5) and Articles 6(4), 7(2) and 15 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to point (b) of Article 5(5) and Articles 6(4), 7(2) and 15 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 18

Committee procedure

1. The Commission shall be assisted by the 'Asylum, Migration and Integration and Internal Security Funds Committee' established by Article 59(1) of Regulation EU No 514/2014.

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

Article 19

Applicability of Regulation (EU) No 514/2014

The provisions of Regulation (EU) No 514/2014 shall apply to the Instrument.

Article 20

Repeal

Decision No 574/2007/EC shall be repealed with effect from 1 January 2014.

Article 21

Transitional provisions

1. This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of the projects and annual programmes until their closure or the financial assistance approved by the Commission on the basis of Decision No 574/2007/EC or any other legislation applying to that assistance on 31 December 2013.

2. When adopting decisions on co-financing under the Instrument, the Commission shall take account of measures adopted on the basis of Decision No 574/2007/EC before 20 May 2014 which have financial repercussions during the period covered by that co-financing.

3. Sums committed for co-financing approved by the Commission between 1 January 2011 and 31 December 2014 for which the documents required for closure of the actions have not been sent to the Commission by the deadline for submitting the final report shall be automatically decommitted by the Commission by 31 December 2017, giving rise to the repayment of amounts unduly paid.

4. Amounts relating to actions which have been suspended due to legal proceedings or administrative appeals having suspensive effect shall be disregarded in calculating the amount to be automatically decommitted.

5. Member States shall submit to the Commission by 30 June 2015 the evaluation report on the results and impact of actions co-financed under the Decision No 574/2007/EC concerning the period 2011–2013.

6. The Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions by 31 December 2015 the *ex-post* evaluation report under Decision No 574/2007/EC concerning the period 2011–2013.

Article 22

Review

The European Parliament and the Council shall, on the basis of a proposal of the Commission, review this Regulation by 30 June 2020.

*Article 23***Entry into force and application**

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

It shall apply from 1 January 2014.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 16 April 2014.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

D. KOURKOULAS

ANNEX I

Amounts constituting the basis for the national programmes of Member States (in EUR)

Member State/associated state	Minimum amount	Fixed part distributed on basis of 2010-2012 average	% 2010-2012 with Croatia	TOTAL
AT	5 000 000	9 162 727	0,828 %	14 162 727
BE	5 000 000	12 519 321	1,131 %	17 519 321
BG	5 000 000	35 366 130	3,196 %	40 366 130
CH	5 000 000	13 920 284	1,258 %	18 920 284
CY	15 000 000	19 507 030	1,763 %	34 507 030
CZ	5 000 000	9 381 484	0,848 %	14 381 484
DE	5 000 000	46 753 437	4,225 %	51 753 437
DK	5 000 000	5 322 133	0,481 %	10 322 133
EE	5 000 000	16 781 752	1,516 %	21 781 752
ES	5 000 000	190 366 875	17,201 %	195 366 875
FI	5 000 000	31 934 528	2,886 %	36 934 528
FR	5 000 000	79 999 342	7,229 %	84 999 342
GR	5 000 000	161 814 388	14,621 %	166 814 388
HR	4 285 714	31 324 057	2,830 %	35 609 771
HU	5 000 000	35 829 197	3,237 %	40 829 197
IE				
IS	5 000 000	326 980	0,030 %	5 326 980
IT	5 000 000	151 306 897	13,672 %	156 306 897
LI	5 000 000	0	0,000 %	5 000 000
LT	5 000 000	19 704 873	1,780 %	24 704 873
LU	5 000 000	400 129	0,036 %	5 400 129
LV	5 000 000	10 521 704	0,951 %	15 521 704
MT	15 000 000	38 098 597	3,442 %	53 098 597
NL	5 000 000	25 609 543	2,314 %	30 609 543
NO	5 000 000	9 317 819	0,842 %	14 317 819
PL	5 000 000	44 113 133	3,986 %	49 113 133
PT	5 000 000	13 900 023	1,256 %	18 900 023
RO	5 000 000	56 151 568	5,074 %	61 151 568

Member State/associated state	Minimum amount	Fixed part distributed on basis of 2010-2012 average	% 2010-2012 with Croatia	TOTAL
SE	5 000 000	6 518 706	0,589 %	11 518 706
SI	5 000 000	25 669 103	2,319 %	30 669 103
SK	5 000 000	5 092 525	0,460 %	10 092 525
UK				
TOTAL	169 285 714	1 106 714 286	100,00 %	1 276 000 000

*ANNEX II***List of specific actions**

1. Setting up consular cooperation mechanisms between at least two Member States resulting in economies of scale as regards the processing of applications and the issuing of visas at consulates in accordance with the principles on cooperation laid down in the Visa Code, including common visa application centres.
 2. Purchasing means of transport and operating equipment that are considered necessary for the deployment during joint operations by the Frontex Agency and which shall be put at the disposal of the Frontex Agency in accordance with the second and third subparagraph of Article 7(5) of Regulation (EC) No 2007/2004.
-

ANNEX III

Objectives for operating support within the national programmes

Objective 1: promoting the development and implementation of policies ensuring the absence of any controls on persons, whatever their nationality, when crossing the internal borders, carrying out checks on persons and monitoring efficiently the crossing of external borders

- operations
- staff costs, including for training
- service costs, such as maintenance and repair
- upgrading/replacement of equipment
- real estate (depreciation, refurbishment)

Objective 2: promoting the development and implementation of the common policy on visas and other short-stay residence permits, including consular cooperation

- operations staff costs, including for training
- service costs, maintenance and repair
- upgrading/replacement of equipment
- real estate (depreciation, refurbishment)

Objective 3: setting up and running secure IT systems, their communication infrastructure and equipment supporting the management of migration flows, including surveillance, across the external borders of the Union

- operational management of SIS, VIS and new systems to be set up
 - staff costs, including for training
 - service costs, such as maintenance and repair
 - communication infrastructure and security as well as data protection related matters
 - upgrading/replacement of equipment
 - rental of secure premises and/or refurbishment
-

ANNEX IV

List of common indicators for the measurement of the specific objectives

- (a) Supporting a common visa policy to facilitate legitimate travel, ensure equal treatment of third-country nationals and tackle illegal immigration

- (i) Number of consular cooperation activities developed with the help of the Instrument

For the purposes of annual implementation reports, as referred to in Article 54 of Regulation (EU) No 514/2014, this indicator shall be further broken down in sub-categories such as:

- co-locations,
- common application centres,
- representations,
- others.

- (ii) Number of staff trained and number of training courses in aspects related to the common visa policy with the help of the Instrument

- (iii) Number of specialised posts in third countries supported by the Instrument

For the purposes of annual implementation reports, as referred to in Article 54 of Regulation (EU) No 514/2014, this indicator shall be further broken down in sub-categories such as:

- immigration liaison officers,
- others.

- (iv) Percentage and number of consulates developed or upgraded with the help of the Instrument out of the total number of consulates

- (b) Supporting borders management, including through sharing information between Member States and between Member States and the Frontex Agency, to ensure, on one hand, a high level of protection of the external borders, including by the tackling of illegal immigration and, on the other hand, the smooth crossing of the external borders in conformity with the Schengen *acquis*

- (i) Number of staff trained and number of training courses in aspects related to border management with the help of the Instrument

- (ii) Number of border control (checks and surveillance) infrastructure and means developed or upgraded with the help of the Instrument

For the purposes of annual implementation reports, as referred to in Article 54 of Regulation (EU) No 514/2014, this indicator shall be further broken down in sub-categories such as:

- infrastructure,
- fleet (air, land, sea borders),
- equipment,
- others.

- (iii) Number of border crossings of the external borders through ABC gates supported from the Instrument out of the total number of border crossings
- (iv) Number of national border surveillance infrastructure established/further developed in the framework of Eurosur

For the purposes of annual implementation reports, as referred to in Article 54 of Regulation (EU) No 514/2014, this indicator shall be further broken down in sub-categories such as:

- National Coordination Centres,
- Regional Coordination Centres,
- Local Coordination Centres,
- other types of coordination centres.

- (v) Number of incidents reported by Member States to the European Situational Picture

For the purposes of annual implementation reports, as referred to in Article 54 of Regulation (EU) No 514/2014, this indicator shall be further broken down in sub-categories such as:

- illegal immigration, including incidents relating to a risk to the lives of migrants,
 - cross-border crime,
 - crisis situations.
-

**REGULATION (EU) No 516/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 April 2014**

**establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC
and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of
the Council and Council Decision 2007/435/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2) and Article 79(2) and (4) thereof,

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

- (1) The Union's objective to constitute an area of freedom, security and justice should be achieved, inter alia, through common measures framing a policy on asylum and immigration, based on solidarity between Member States, which is fair towards third countries and their nationals. The European Council of 2 December 2009 recognised that financial resources within the Union should be made increasingly flexible and coherent, in terms of both scope and applicability, to support policy developments in the field of asylum and migration.
- (2) In order to contribute to the development of the common Union policy on asylum and immigration and to the strengthening of the area of freedom, security and justice in the light of the application of the principles of solidarity and responsibility-sharing between the Member States and cooperation with third countries, this Regulation should establish the Asylum, Migration and Integration Fund ('the Fund').
- (3) The Fund should reflect the need for increased flexibility and simplification, while respecting requirements in terms of predictability, and ensuring a fair and transparent distribution of resources to meet the general and specific objectives laid down in this Regulation.
- (4) Efficiency of measures and quality of spending constitute guiding principles in the implementation of the Fund. Furthermore, the Fund should also be implemented in the most effective and user-friendly manner possible.
- (5) The new two-pillar structure of funding in the field of home affairs should contribute to the simplification, rationalisation, consolidation and transparency of funding in that field. Synergies, consistency and complementarity should be sought between different funds and programmes, including with a view to allocating funding to common objectives. However, any overlap between the different funding instruments should be avoided.
- (6) The Fund should create a flexible framework allowing Member States to receive financial resources under their national programmes to support the policy areas under the Fund according to their specific situation and needs, and in the light of the general and specific objectives of the Fund, for which the financial support would be the most effective and appropriate.
- (7) The Fund should express solidarity through financial assistance to Member States. It should enhance the effective management of migration flows to the Union in areas where the Union adds maximum value, in particular by sharing responsibility between Member States and by sharing responsibility and strengthening cooperation with third countries.

⁽¹⁾ OJ C 299, 4.10.2012, p. 108.

⁽²⁾ OJ C 277, 13.9.2012, p. 23.

⁽³⁾ Position of the European Parliament of 13 March 2014 (not yet published in the Official Journal) and decision of the Council of 14 April 2014.

- (8) In order to contribute to the achievement of the general objective of the Fund, Member States should ensure that their national programmes include actions addressing the specific objectives of this Regulation, and that the allocation of resources between objectives ensures that the objectives can be met. In the unusual event that a Member State wishes to derogate from the minimum percentages laid down in this Regulation, the Member State concerned should provide a detailed justification within its national programme.
- (9) To ensure a uniform and high-quality asylum policy and apply higher standards of international protection, the Fund should contribute to the effective functioning of the Common European Asylum System, which encompasses measures relating to policy, legislation, and capacity-building, while acting in cooperation with other Member States, Union agencies and third countries.
- (10) It is appropriate to support and improve the efforts made by Member States to fully and properly implement the Union asylum *acquis*, in particular to grant appropriate reception conditions to displaced persons and applicants for, and beneficiaries of, international protection, to ensure the correct determination of status, in accordance with Directive 2011/95/EU of the European Parliament and of the Council ⁽¹⁾, to apply fair and effective asylum procedures and to promote good practice in the field of asylum, so as to protect the rights of persons requiring international protection and enable Member States' asylum systems to work efficiently.
- (11) The Fund should offer adequate support to joint efforts by Member States to identify, share and promote best practices and establish effective cooperation structures in order to enhance the quality of decision-making in the framework of the Common European Asylum System.
- (12) The Fund should complement and reinforce the activities undertaken by the European Asylum Support Office ('EASO') established by Regulation (EU) No 439/2010 of the European Parliament and of the Council ⁽²⁾, with a view to coordinating practical cooperation between Member States on asylum, supporting Member States subject to particular pressure on their asylum systems and contributing to the implementation of the Common European Asylum System. The Commission may make use of the possibility offered by Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽³⁾ to entrust EASO with the implementation of specific, ad hoc tasks, such as the coordination of Member States' actions on resettlement in accordance with Regulation (EU) No 439/2010.
- (13) The Fund should support the efforts by the Union and the Member States relating to the enhancement of the Member States' capacity to develop, monitor and evaluate their asylum policies in the light of their obligations under existing Union law.
- (14) The Fund should support the efforts made by Member States to provide international protection and a durable solution in their territories to refugees and displaced persons identified as eligible for resettlement by the United Nations High Commissioner for Refugees ('UNHCR'), such as the assessment of the resettlement needs and transfer of the persons concerned to their territories, with a view to granting them a secure legal status and to promoting their effective integration.
- (15) The Fund should provide support for new approaches concerning access to asylum procedures in a safer manner, in particular by targeting main countries of transit such as protection programmes for particular groups or certain procedures for examination of applications for asylum.
- (16) It is in the nature of the Fund that it should be able to provide support to voluntary burden-sharing operations agreed between Member States and consisting of the transfer of beneficiaries of international protection, and of applicants for international protection, from one Member State to another.
- (17) Partnerships and cooperation with third countries to ensure the adequate management of inflows of persons applying for asylum or other forms of international protection are an essential component of Union asylum policy. With the aim of providing access to international protection and durable solutions at the earliest possible stage, including in the framework of Regional Protection Programmes, the Fund should include a strong Union resettlement component.

⁽¹⁾ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

⁽²⁾ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ L 132, 29.5.2010, p. 11).

⁽³⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

- (18) To improve and reinforce the integration process in European societies, the Fund should facilitate legal migration to the Union in accordance with the economic and social needs of Member States and anticipate the preparation of the integration process already in the country of origin of the third-country nationals coming to the Union.
- (19) In order to be efficient and achieve the greatest added value, the Fund should pursue a more targeted approach, in support of consistent strategies specifically designed to promote the integration of third-country nationals at national, local and/or regional level, where appropriate. Those strategies should be implemented mainly by local or regional authorities and non-state actors, while not excluding national authorities, in particular where the specific administrative organisation of a Member State would so require, or where, in a Member State, integration actions fall within a competence shared between the State and decentralised administration. The implementing organisations should choose the measures most appropriate to their particular situation from a range of measures available.
- (20) The implementation of the Fund should be consistent with the Union's Common Basic Principles on Integration, as specified in the Common Programme for Integration.
- (21) The scope of the integration measures should also include beneficiaries of international protection in order to ensure a comprehensive approach to integration, taking into account the specificities of those target groups. Where integration measures are combined with reception measures, actions should, where appropriate, also allow applicants for international protection to be included.
- (22) To ensure the consistency of the Union's response to the integration of third-country nationals, actions financed under the Fund should be specific and complementary to actions financed under the European Social Fund. In this context, the authorities of the Member States responsible for the implementation of the Fund should be required to establish cooperation and coordination mechanisms with the authorities designated by Member States for the purpose of the management of the interventions of the European Social Fund.
- (23) For practical reasons, some actions may concern a group of people which can be more efficiently addressed as a whole, without distinguishing between its members. It would therefore be appropriate to provide for the possibility for those Member States that would so wish to provide in their national programmes that integration actions may include immediate relatives of third-country nationals, to the extent that it is necessary for the effective implementation of such actions. The term 'immediate relative' would be understood as meaning spouses, partners, and any person having direct family links in descending or ascending line with the third-country national targeted by the integration action, and who would otherwise not be covered by the scope of the Fund.
- (24) The Fund should support Member States in setting up strategies organising legal migration, enhancing their capacity to develop, implement, monitor and evaluate in general all immigration and integration strategies, policies and measures for third-country nationals, including Union legal instruments. The Fund should also support the exchange of information, best practices and cooperation between different departments of administration as well as with other Member States.
- (25) The Union should continue and expand the use of Mobility Partnerships as the main strategic, comprehensive and long-term cooperation framework for migration management with third countries. The Fund should support activities in the framework of Mobility Partnerships taking place either in the Union or in third countries and aimed at pursuing Union needs and priorities, in particular actions ensuring the continuity of funding encompassing both the Union and third countries.
- (26) It is appropriate to continue supporting and encouraging efforts by the Member States to improve the management of the return of third-country nationals in all its dimensions, with a view to the continuous, fair and effective implementation of common standards on return, in particular as set out in Directive 2008/115/EC of the European Parliament and of the Council⁽¹⁾. The Fund should promote the development of return strategies at national level within the concept of integrated return management, and also measures supporting their effective implementation in third countries.
- (27) As regards the voluntary return of persons, including persons who wish to be returned even though they are under no obligation to leave the territory, incentives for such returnees, such as preferential treatment in the form of enhanced return assistance, should be envisaged. This kind of voluntary return is in the interests of both returnees and the authorities in terms of its cost-effectiveness. Member States should be encouraged to give preference to voluntary return.

⁽¹⁾ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

- (28) However, from a policy point of view, voluntary and enforced return are interlinked and have a mutually reinforcing effect, and Member States should therefore be encouraged in their return management to reinforce the complementarities of the two forms. There is a need to carry out removals in order to safeguard the integrity of the immigration and asylum policy of the Union and the immigration and asylum systems of the Member States. Thus, the possibility of removals is a prerequisite for ensuring that this policy is not undermined and for enforcing the rule of law, which itself is essential to the creation of an area of freedom, security and justice. The Fund should therefore support actions of Member States to facilitate removals in accordance with the standards laid down in Union law, where applicable, and with full respect for the fundamental rights and dignity of returnees.
- (29) It is essential for the Fund to support specific measures for returnees in the country of return, in order to ensure their effective return to their town or region of origin under good conditions and to enhance their durable reintegration into their community.
- (30) Union readmission agreements are an integral component of the Union return policy and a central tool for the efficient management of migration flows, as they facilitate the swift return of irregular migrants. Those agreements are an important element in the framework of the dialogue and cooperation with third countries of origin and transit of irregular migrants, and their implementation in third countries should be supported in the interests of effective return strategies at national and Union level.
- (31) The Fund should complement and reinforce the activities undertaken by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, established by Council Regulation (EC) No 2007/2004 ⁽¹⁾, part of the tasks of which are to provide Member States with the necessary support for organising joint return operations and identifying best practices on the acquisition of travel documents and the removal of illegally staying third-country nationals in the territories of the Member States, as well as to assist Member States in circumstances requiring increased technical and operational assistance at the external borders, taking into account that some situations may involve humanitarian emergencies and rescue at sea.
- (32) In addition to supporting the return of persons as provided for in this Regulation, the Fund should also support other measures to combat illegal immigration or the circumventing of existing legal migration rules, thereby safeguarding the integrity of Member States' immigration systems.
- (33) The Fund should be implemented in full respect for the rights and principles enshrined in the Charter of Fundamental Rights of the European Union and for the fundamental rights enshrined in the relevant international instruments, including the relevant case-law of the European Court of Human Rights. Eligible actions should take account of the human rights-based approach to the protection of migrants, refugees and asylum seekers and should, in particular, ensure that special attention is paid to, and a dedicated response is provided for, the specific situation of vulnerable persons, in particular women, unaccompanied minors and other minors at risk.
- (34) The terms 'vulnerable persons' and 'family members' are defined differently in different acts relevant for this Regulation. They should therefore be understood in the meaning of the relevant act, bearing in mind the context in which they are used. In the context of resettlement, Member States that resettle should closely consult the UNHCR in relation to the term 'family members' in their resettlement practices and actual resettlement processes.
- (35) Measures on and in relation to third countries supported through the Fund should be adopted in synergy and in coherence with other actions outside the Union supported through Union external assistance instruments, both geographic and thematic. In particular, in implementing such actions, full coherence should be sought with the principles and general objectives of Union's external action and foreign policy related to the country or region in question. The measures should not be intended to support actions that are directly oriented towards development and should complement, when appropriate, the financial assistance provided through external aid instruments. The principle of policy coherence for development, as set out in paragraph 35 of the European Consensus on Development, should be respected. It is also important to ensure that the implementation of emergency assistance is consistent with and, where relevant, complementary to the Union's humanitarian policy and respects humanitarian principles as set out in the European Consensus on Humanitarian Aid.
- (36) A large part of the available resources under the Fund should be allocated proportionately to the responsibility borne by each Member State through its efforts in managing migration flows on the basis of objective criteria. For

⁽¹⁾ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

that purpose, the latest available statistical data collected by Eurostat under Regulation (EC) No 862/2007 of the European Parliament and of the Council ⁽¹⁾ relating to the migration flows, such as the number of first asylum applications, the number of positive decisions granting refugee or subsidiary protection status, the number of resettled refugees, the number of legally residing third-country nationals, the number of third-country nationals who have obtained an authorisation issued by a Member State to reside, the number of return decisions issued by national authorities and the number of effected returns, should be used.

- (37) The allocation of basic amounts to Member States is laid down by this Regulation. The basic amount is composed of a minimum amount and an amount calculated on the basis of the average of 2011, 2012 and 2013 allocations for each Member State under the European Refugee Fund, established by Decision No 573/2007/EC of the European Parliament and of the Council ⁽²⁾, the European Fund for the Integration of third-country nationals established by Council Decision 2007/435/EC ⁽³⁾ and the European Return Fund established by Decision No 575/2007/EC of the European Parliament and of the Council ⁽⁴⁾. The calculation of allocations was made in accordance with the distribution criteria laid down in Decision No 573/2007/EC, Decision 2007/435/EC and Decision No 575/2007/EC. In the light of the European Council conclusions of 7-8 February 2013, which underlined that particular emphasis should be given to insular societies who face disproportional migration challenges, it is appropriate to increase the minimum amounts for Cyprus and Malta.
- (38) Whilst it is appropriate for an amount to be allocated to each Member State on the basis of the latest available statistical data, part of the available resources under the Fund should also be distributed for the implementation of specific actions which require cooperative effort amongst Member States and generate significant added value for the Union, as well as for the implementation of a Union Resettlement Programme and the transfer of beneficiaries of international protection from one Member State to another.
- (39) For that purpose, this Regulation should establish a list of specific actions eligible for resources from the Fund. Additional amounts should be allocated to those Member States which make a commitment to implement such actions.
- (40) In the light of the progressive establishment of a Union Resettlement Programme, the Fund should provide targeted assistance in the form of financial incentives (lump sums) for each resettled person. The Commission, in cooperation with the EASO and in accordance with their respective competences, should monitor the effective implementation of resettlement operations supported under the Fund.
- (41) With a view to increasing the impact of the Union's resettlement efforts in providing protection to persons in need of international protection and maximising the strategic impact of resettlement through a better targeting of those persons who are in greatest need of resettlement, common priorities with respect to resettlement should be formulated at Union level. Those common priorities should be amended only where there is a clear justification for doing so, or in the light of any recommendations from the UNHCR, on the basis of the general categories specified in this Regulation.
- (42) Given their particular vulnerability, some categories of persons in need of international protection should always be included in the common Union resettlement priorities.

⁽¹⁾ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).

⁽²⁾ Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC (OJ L 144, 6.6.2007, p. 1).

⁽³⁾ Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' (OJ L 168, 28.6.2007, p. 18).

⁽⁴⁾ Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows' (OJ L 144, 6.6.2007, p. 45).

- (43) Taking into account the resettlement needs set out in the common Union resettlement priorities, it is also necessary that additional financial incentives are provided for the resettlement of persons with respect to specific geographic regions and nationalities, as well as to the specific categories of persons to be resettled, where resettlement is determined to be the most appropriate response to their special needs.
- (44) To enhance the solidarity and better share the responsibility between the Member States, in particular towards those most affected by asylum flows, a similar mechanism based on financial incentives should also be established for the transfer of beneficiaries of international protection from one Member State to another. Such a mechanism should reduce the pressure on Member States receiving higher numbers of asylum seekers and beneficiaries of international protection, either in absolute or proportionate terms.
- (45) The support provided by the Fund will be more efficient and bring greater added value if a limited number of compulsory objectives are identified in this Regulation, to be pursued in the programmes drawn up by each Member State and taking into account its specific situation and needs.
- (46) It is important for enhanced solidarity that the Fund provides, in coordination and in synergy with the humanitarian assistance managed by the Commission where appropriate, additional support to address emergency situations of heavy migratory pressure in Member States or third countries, or in the event of mass influx of displaced persons, pursuant to Council Directive 2001/55/EC ⁽¹⁾, through emergency assistance. Emergency assistance should also include support to ad hoc humanitarian admission programmes aimed at allowing temporary stay on the territory of a Member State in the event of an urgent humanitarian crisis in third countries. However, such other humanitarian admission programmes are without prejudice to, and should not undermine, the Union's resettlement programme that explicitly aims as from the start to provide a durable solution to persons in need of international protection transferred to the Union from third countries. To that end, Member States should not be entitled to receive additional lump sums in respect of persons granted temporary stay on the territory of a Member State under such other humanitarian admission programmes.
- (47) This Regulation should provide financial assistance for the activities of the European Migration Network established by Council Decision 2008/381/EC ⁽²⁾, in accordance with its objectives and tasks.
- (48) Decision 2008/381/EC should therefore be amended to align procedures and to facilitate the provision of appropriate and timely financial support to the National Contact Points that are referred to in that Decision.
- (49) In the light of the purpose of financial incentives allocated to the Member States for resettlement and/or the transfer of beneficiaries of international protection from one Member State to another in the form of lump sums, and because they represent a small fraction of the actual costs, this Regulation should provide for certain derogations from the rules on the eligibility of expenditure.
- (50) In order to supplement or amend provisions of this Regulation on lump sums for resettlement and transfer of beneficiaries of international protection from one Member State to another and on the definition of specific actions and of common Union resettlement priorities, 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. 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.
- (51) In the application of this Regulation, including the preparation of delegated acts, the Commission should consult experts from all Member States.
- (52) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽³⁾.

⁽¹⁾ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).

⁽²⁾ Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network (OJ L 131, 21.5.2008, p. 7).

⁽³⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (53) Funding from the Union budget should concentrate on activities where the Union intervention can bring additional value compared to the action of Member States alone. As the Union is in a better position than Member States to provide a framework for expressing Union solidarity in the management of migration flows, financial support provided under this Regulation should contribute, in particular, to strengthening national and Union capabilities in this area.
- (54) There is a need to maximise the impact of Union funding by mobilising, pooling and leveraging public and private financial resources.
- (55) The Commission should monitor the implementation of the Fund in accordance with Regulation (EU) No 514/2014 of the European Parliament and of the Council ⁽¹⁾, with the aid of common indicators for evaluating results and impacts. Those indicators, including relevant baselines, should provide the minimum basis for evaluating the extent to which the objectives of the Fund have been achieved.
- (56) In order to measure the achievements of the Fund, common indicators should be established in relation to each of its specific objectives. The common indicators should not affect the optional or mandatory nature of the implementation of related actions as laid down in this Regulation.
- (57) For the purpose of its management and implementation, the Fund should form part of a coherent framework consisting of this Regulation and Regulation (EU) No 513/2014 of the European Parliament and of the Council ⁽²⁾. For the purposes of the Fund, the partnership provided for in Regulation (EU) No 514/2014 should include relevant international organisations, non-governmental organisations and social partners. Each Member State should be responsible for establishing the composition of the partnership and the practical arrangements concerning its implementation.
- (58) Since the objective of this Regulation, namely contributing to the efficient management of migration flows and to the implementation, strengthening and development of the common policy on asylum, subsidiary protection and temporary protection and the common immigration policy, cannot be sufficiently achieved by the Member States but can rather 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 (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (59) Pursuant to Articles 8 and 10 TFEU, the Fund should take account of the mainstreaming of equality between women and men and anti-discrimination principles.
- (60) Decisions No 573/2007/EC, No 575/2007/EC and 2007/435/EC should be repealed, subject to the transitional provisions set out in this Regulation.
- (61) In accordance with Article 3 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 have notified their wish to take part in the adoption and application of this Regulation.
- (62) 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 Regulation and is not bound by it or subject to its application.
- (63) It is appropriate to align the period of application of this Regulation with that of Council Regulation (EU, Euratom) No 1311/2013 ⁽³⁾. Therefore, this Regulation should apply as from 1 January 2014,

⁽¹⁾ Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (see page 112 of this Official Journal).

⁽²⁾ Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA (see page 93 of this Official Journal).

⁽³⁾ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose and scope

1. This Regulation establishes the Asylum, Migration and Integration Fund ('the Fund') for the period from 1 January 2014 to 31 December 2020.
2. This Regulation lays down:
 - (a) the objectives of financial support and the eligible actions;
 - (b) the general framework for the implementation of eligible actions;
 - (c) the available financial resources and their distribution;
 - (d) the principles and mechanism for the establishment of common Union resettlement priorities; and
 - (e) the financial assistance provided for the activities of the European Migration Network.
3. This Regulation provides for the application of the rules set out in Regulation (EU) No 514/2014, without prejudice to Article 4 of this Regulation.

Article 2

Definitions

For the purpose of this Regulation, the following definitions apply:

- (a) 'resettlement' means the process whereby, on a request from the United Nations High Commissioner for Refugees ('UNHCR') based on a person's need for international protection, third-country nationals are transferred from a third country and established in a Member State where they are permitted to reside with one of the following statuses:
 - (i) 'refugee status' within the meaning of point (e) of Article 2 of Directive 2011/95/EU;
 - (ii) 'subsidiary protection status' within the meaning of point (g) of Article 2 of Directive 2011/95/EU; or
 - (iii) any other status which offers similar rights and benefits under national and Union law as those referred to in points (i) and (ii);
- (b) 'other humanitarian admission programmes' means an ad hoc process whereby a Member State admits a number of third-country nationals to stay on its territory for a temporary period of time in order to protect them from urgent humanitarian crises due to events such as political developments or conflicts;
- (c) 'international protection' means refugee status and subsidiary protection status within the meaning of Directive 2011/95/EU;
- (d) 'return' means the process of a third-country national going back, whether in voluntary compliance with an obligation to return or enforced, as defined in Article 3 of Directive 2008/115/EC;
- (e) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU. Reference to third-country nationals shall be understood to include stateless persons and persons with undetermined nationality;
- (f) 'removal' means the enforcement of the obligation to return, namely the physical transportation out of the Member State, as defined in Article 3 of Directive 2008/115/EC;
- (g) 'voluntary departure' means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision, as defined in Article 3 of Directive 2008/115/EC;

- (h) 'unaccompanied minor' means a third-country national below the age of 18 years, who arrives or arrived on the territory of a Member State unaccompanied by an adult responsible for him/her whether by law or the national practice of the Member State concerned, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she entered the territory of a Member State;
- (i) 'vulnerable person' means any third-country national who complies with the definition under Union law relevant to the policy area of action supported under the Fund;
- (j) 'family member' means any third-country national who complies with the definition under Union law relevant to the policy area of action supported under the Fund;
- (k) 'emergency situation' means a situation resulting from:
 - (i) heavy migratory pressure in one or more Member States characterised by a large and disproportionate inflow of third-country nationals, which places significant and urgent demands on their reception and detention facilities, asylum systems and procedures;
 - (ii) the implementation of temporary protection mechanisms within the meaning of Directive 2001/55/EC; or
 - (iii) heavy migratory pressure in third countries where refugees are stranded due to events such as political developments or conflicts.

Article 3

Objectives

1. The general objective of the Fund shall be to contribute to the efficient management of migration flows and to the implementation, strengthening and development of the common policy on asylum, subsidiary protection and temporary protection and the common immigration policy, while fully respecting the rights and principles enshrined in the Charter of Fundamental Rights of the European Union.
2. Within its general objective, the Fund shall contribute to the following common specific objectives:
 - (a) to strengthen and develop all aspects of the Common European Asylum System, including its external dimension;
 - (b) to support legal migration to the Member States in accordance with their economic and social needs, such as labour market needs, while safeguarding the integrity of the immigration systems of Member States, and to promote the effective integration of third-country nationals;
 - (c) to enhance fair and effective return strategies in the Member States which contribute to combating illegal immigration, with an emphasis on sustainability of return and effective readmission in the countries of origin and transit;
 - (d) to enhance solidarity and responsibility-sharing between the Member States, in particular towards those most affected by migration and asylum flows, including through practical cooperation.

The achievement of the specific objectives of the Fund shall be evaluated in accordance with Article 55(2) of Regulation (EU) No 514/2014 using common indicators as set out in Annex IV to this Regulation and programme-specific indicators included in national programmes.

3. Measures taken to achieve the objectives referred to in paragraphs 1 and 2 shall be fully coherent with measures supported through the external financing instruments of the Union and with the principles and general objectives of the Union's external action.

4. The objectives referred to in paragraphs 1 and 2 of this Article shall be achieved with due regard to the principles and objectives of the Union's humanitarian policy. Consistency with the measures funded by the Union's external financing instruments shall be ensured in accordance with Article 24.

*Article 4***Partnership**

For the purposes of the Fund, the partnership referred to in Article 12 of Regulation (EU) No 514/2014 shall include relevant international organisations, non-governmental organisations and social partners.

CHAPTER II

COMMON EUROPEAN ASYLUM SYSTEM*Article 5***Reception and asylum systems**

1. Within the specific objective laid down in point (a) of the first subparagraph of Article 3(2) of this Regulation, in the light of the outcome of the policy dialogue as provided for in Article 13 of Regulation (EU) No 514/2014, and in accordance with the objectives of the national programmes laid down in Article 19 of this Regulation, the Fund shall support actions focusing on one or more of the following categories of third-country nationals:

- (a) those who enjoy refugee status or subsidiary protection status within the meaning of Directive 2011/95/EU;
- (b) those who have applied for one of the forms of international protection referred to in point (a) and have not yet received a final decision;
- (c) those who enjoy temporary protection within the meaning of Directive 2001/55/EC;
- (d) those who are being or have been resettled in or transferred from a Member State.

As regards reception conditions and asylum procedures, the Fund shall support, in particular, the following actions focusing on the categories of persons referred to in the first subparagraph of this paragraph:

- (a) the provision of material aid, including assistance at the border, education, training, support services, health and psychological care;
- (b) the provision of support services such as translation and interpretation, education, training, including language training, and other initiatives which are consistent with the status of the person concerned;
- (c) the setting-up and improvement of administrative structures, systems and training for staff and relevant authorities to ensure effective and easy access to asylum procedures for asylum seekers and efficient and high-quality asylum procedures, in particular, where necessary, to support the development of the Union *acquis*;
- (d) the provision of social assistance, information or help with administrative and/or judicial formalities and information or counselling on the possible outcomes of the asylum procedure, including on aspects such as return procedures;
- (e) the provision of legal assistance and representation;
- (f) the identification of vulnerable groups and specific assistance for vulnerable persons, in particular in accordance with points (a) to (e);
- (g) the establishment, development and improvement of alternative measures to detention.

Where deemed appropriate, and where the national programme of a Member State provides for them, the Fund may also support integration-related measures, such as those referred to in Article 9(1), concerning the reception of persons referred to in the first subparagraph of this paragraph.

2. Within the specific objective defined in point (a) of the first subparagraph of Article 3(2), and in line with the objectives of the national programmes defined in Article 19, as regards accommodation infrastructure and reception systems, the Fund shall support, in particular, the following actions:

- (a) the improvement and maintenance of existing accommodation infrastructure and services;
- (b) the strengthening and improvement of administrative structures and systems;
- (c) information for local communities;
- (d) the training of the staff of authorities, including local authorities, who will be interacting with the persons referred to in paragraph 1 in the context of their reception;
- (e) the establishment, running and development of new accommodation infrastructure and services, as well as administrative structures and systems, in particular, where necessary, to address the structural needs of Member States.

3. Within the specific objectives laid down in points (a) and (d) of the first subparagraph of Article 3(2), and in accordance with the objectives of the national programmes defined in Article 19, the Fund shall also support actions similar to those listed in paragraph 1 of this Article, where such actions are related to persons who are temporarily staying:

- in transit and processing centres for refugees, in particular to support resettlement operations in cooperation with the UNHCR, or
- on the territory of a Member State in the context of other humanitarian admission programmes.

Article 6

Member States' capacity to develop, monitor and evaluate their asylum policies and procedures

Within the specific objective laid down in point (a) of the first subparagraph of Article 3(2) of this Regulation, in the light of the outcome of the policy dialogue as provided for in Article 13 of Regulation (EU) No 514/2014, and in accordance with the objectives of the national programmes defined in Article 19 of this Regulation, as regards actions relating to the enhancement of Member States' capacity to develop, monitor and evaluate their asylum policies and procedures, the Fund shall support, in particular, the following actions:

- (a) actions enhancing the capacity of Member States — including in relation to the mechanism for early warning, preparedness and crisis management established in Regulation (EU) No 604/2013 of the European Parliament and of the Council⁽¹⁾ — to collect, analyse and disseminate qualitative and quantitative data and statistics on asylum procedures, reception capacities, resettlement and the transfer of applicants for and/or beneficiaries of international protection from one Member State to another;
- (b) actions enhancing the capacity of Member States to collect, analyse and disseminate country-of-origin information;
- (c) actions directly contributing to the evaluation of asylum policies, such as national impact assessments, surveys amongst target groups and other relevant stakeholders, and to the development of indicators and benchmarking.

Article 7

Resettlement, transfer of applicants for, and beneficiaries of, international protection and other ad hoc humanitarian admission

1. Within the specific objective laid down in points (a) and (d) of the first subparagraph of Article 3(2) of this Regulation, in the light of the outcome of the policy dialogue as provided for in Article 13 of Regulation (EU) No 514/2014, and in accordance with the objectives of the national programmes defined in Article 19 of this Regulation, the Fund shall support, in particular, the following actions related to resettlement of any third country national who is being resettled or has been resettled in a Member State, and other humanitarian admission programmes:

⁽¹⁾ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

- (a) the establishment and development of national resettlement programmes and strategies and other humanitarian admission programmes, including needs analysis, improvement of indicators and evaluation;
- (b) the establishment of appropriate infrastructure and services to ensure the smooth and effective implementation of resettlement actions and actions concerning other humanitarian admission programmes, including language assistance;
- (c) the setting up of structures, systems and training of staff to conduct missions to the third countries and/or other Member States, to carry out interviews and to conduct medical and security screening;
- (d) the assessment of potential resettlement cases and/or cases of other humanitarian admission by the competent Member States' authorities, such as conducting missions to the third country, carrying out interviews and conducting medical and security screening;
- (e) pre-departure health assessment and medical treatment, pre-departure material provisions, pre-departure information and integration measures and travel arrangements, including the provision of medical escort services;
- (f) information and assistance upon arrival or shortly thereafter, including interpretation services;
- (g) actions for family reunification purposes for persons being resettled in a Member State;
- (h) the strengthening of infrastructure and services relevant to migration and asylum in the countries designated for the implementation of Regional Protection Programmes;
- (i) creating conditions conducive to the integration, autonomy and self-reliance of resettled refugees on a long-term basis.

2. Within the specific objective laid down in point (d) of the first subparagraph of Article 3(2) of this Regulation, in the light of the outcome of the policy dialogue as provided for in Article 13 of the Regulation (EU) No 514/2014, and in accordance with the objectives of the national programmes defined in Article 19 of this Regulation, the Fund shall also support actions similar to those listed in paragraph 1 of this Article, where deemed appropriate in the light of policy developments within the implementation period of the Fund or where the national programme of a Member State makes such provisions, in relation to the transfer of applicants for and/or beneficiaries of international protection. Such operations shall be carried out with their consent from the Member State which granted them international protection or is responsible for examining their application to another interested Member State where they will be granted equivalent protection or where their application for international protection will be examined.

CHAPTER III

INTEGRATION OF THIRD-COUNTRY NATIONALS AND LEGAL MIGRATION

Article 8

Immigration and pre-departure measures

Within the specific objective laid down in point (b) of the first subparagraph of Article 3(2) of this Regulation, in the light of the outcome of the policy dialogue as provided for in Article 13 of Regulation (EU) No 514/2014, and in accordance with the objectives of the national programmes defined in Article 19 of this Regulation, the Fund shall support actions taking place in a third country which focus on third-country nationals who comply with specific pre-departure measures and/or conditions set out in national law and in accordance with Union law where applicable, including those relating to the ability to integrate in the society of a Member State. In this context, the Fund shall support, in particular, the following actions:

- (a) information packages and campaigns to raise awareness and promote intercultural dialogue, including via user-friendly communication and information technology and websites;
- (b) the assessment of skills and qualifications, as well as enhancement of transparency and compatibility of skills and qualifications in a third country with those of a Member State;
- (c) training enhancing employability in a Member State;

- (d) comprehensive civic orientation courses and language tuition;
- (e) assistance in the context of applications for family reunification within the meaning of Council Directive 2003/86/EC ⁽¹⁾.

Article 9

Integration measures

1. Within the specific objective laid down in point (b) of the first subparagraph of Article 3(2) of this Regulation, in the light of the outcome of the policy dialogue as provided for in Article 13 of Regulation (EU) No 514/2014, and in accordance with the objectives of the national programmes defined in Article 19 of this Regulation, the Fund shall support actions which take place in the framework of consistent strategies, taking into account the integration needs of third-country nationals at local and/or regional level. In this context, the Fund shall support, in particular, the following actions focusing on third-country nationals who are residing legally in a Member State or, where appropriate, who are in the process of acquiring legal residence in a Member State:

- (a) setting up and developing such integration strategies with the participation of local or regional actors, where appropriate, including needs analysis, the improvement of integration indicators, and evaluation, including participatory assessments, in order to identify best practices;
- (b) providing advice and assistance in areas such as housing, means of subsistence, administrative and legal guidance, health, psychological and social care, child care and family reunification;
- (c) actions introducing third-country nationals to the receiving society and actions enabling them to adapt to it, to inform them about their rights and obligations, to participate in civil and cultural life and to share the values enshrined in the Charter of Fundamental Rights of the European Union;
- (d) measures focusing on education and training, including language training and preparatory actions to facilitate access to the labour market;
- (e) actions designed to promote self-empowerment and to enable third-country nationals to provide for themselves;
- (f) actions that promote meaningful contact and constructive dialogue between third-country nationals and the receiving society, and actions to promote acceptance by the receiving society, including through the involvement of the media;
- (g) actions promoting both equality of access and equality of outcomes in relation to third-country nationals' dealings with public and private services, including adaptation of those services to dealing with third-country nationals;
- (h) capacity-building of beneficiaries, as defined in point (g) of Article 2 of Regulation (EU) No 514/2014, including through exchanges of experience and best practices, and networking.

2. The actions referred to in paragraph 1 shall, wherever necessary, take into account the specific needs of different categories of third-country nationals, including beneficiaries of international protection, resettled or transferred persons and, in particular, vulnerable persons.

3. National programmes may allow for the inclusion in the actions referred to in paragraph 1 of immediate relatives of persons covered by the target group referred to in that paragraph, to the extent that it is necessary for the effective implementation of such actions.

4. For the purpose of programming and implementation of the actions referred to in paragraph 1 of this Article, the partnership referred to in Article 12 of Regulation (EU) No 514/2014 shall include the authorities designated by Member States for the purpose of the management of the interventions of the European Social Fund.

Article 10

Practical cooperation and capacity-building measures

Within the specific objective laid down in point (b) of the first subparagraph of Article 3(2) of this Regulation, in the light of the outcome of the policy dialogue as provided for in Article 13 of the Regulation (EU) No 514/2014, and in accordance with the objectives of the national programmes defined in Article 19 of this Regulation, the Fund shall support actions focusing on one or more of the following:

⁽¹⁾ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

- (a) building up strategies promoting legal migration with a view to facilitating the development and implementation of flexible admission procedures;
- (b) supporting cooperation between third countries and the recruitment agencies, the employment services and the immigration services of Member States, as well as supporting Member States in their implementation of Union migration law, consultation processes with relevant stakeholders and expert advice or information exchanges on approaches which target specific nationalities or categories of third-country nationals with respect to the needs of the labour markets;
- (c) reinforcing the capacity of Member States to develop, implement, monitor and evaluate their immigration strategies, policies and measures across the different levels and departments of administrations, in particular enhancing their capacity to collect, analyse and disseminate detailed and systematic data and statistics on migration procedures and flows and residence permits, and develop monitoring tools, evaluation schemes, indicators and benchmarking for measuring the achievement of those strategies;
- (d) training of beneficiaries as defined in point (g) of Article 2 of Regulation (EU) No 514/2014 and of staff providing public and private services, including educational institutions, promoting the exchange of experiences and best practices, cooperation and networking, and intercultural capacities, as well as improving the quality of services provided;
- (e) building sustainable organisational structures for integration and diversity management, in particular through cooperation between different stakeholders enabling officials at various levels of national administrations to swiftly acquire information about experiences and best practices elsewhere and, where possible, to pool resources between relevant authorities as well as between governmental and non-governmental bodies to provide services to third-country nationals more effectively, inter alia, through one-stop-shops (i.e. coordinated integration-support centres);
- (f) contributing to a dynamic two-way process of mutual interaction, underlying integration strategies at local and regional level by developing platforms for the consultation of third-country nationals, exchanges of information among stakeholders and intercultural and religious dialogue platforms between third-country nationals' communities, between those communities and the receiving society and/or between those communities and policy and decision-making authorities;
- (g) actions to promote and reinforce the practical cooperation between the relevant authorities of Member States, with a focus on, inter alia, exchanges of information, best practices and strategies, and the development and implementation of joint actions, including with a view to safeguarding the integrity of the immigration systems of Member States.

CHAPTER IV

RETURN

Article 11

Measures accompanying return procedures

Within the specific objective laid down in point (c) of the first subparagraph of Article 3(2) of this Regulation, in the light of the outcome of the policy dialogue as provided for in Article 13 of Regulation (EU) No 514/2014, and in accordance with the objectives of the national programmes defined in Article 19 of this Regulation, as regards measures accompanying return procedures, the Fund shall focus on one or more of the following categories of third-country nationals:

- (a) third-country nationals who have not yet received a final negative decision in relation to their request to stay, their legal residence and/or international protection in a Member State, and who may choose to make use of voluntary return;
- (b) third-country nationals enjoying the right to stay, legal residence and/or international protection within the meaning of Directive 2011/95/EU, or temporary protection within the meaning of Directive 2001/55/EC in a Member State, and who have chosen to make use of voluntary return;
- (c) third-country nationals who are present in a Member State and do not or no longer fulfil the conditions for entry and/or stay in a Member State, including those third-country nationals whose removal has been postponed in accordance with Article 9 and Article 14(1) of Directive 2008/115/EC.

In this context, the Fund shall support, in particular, the following actions focusing on the categories of persons referred to in the first subparagraph:

- (a) the introduction, development and improvement of alternative measures to detention;
- (b) the provision of social assistance, information or help with administrative and/or judicial formalities and information or counselling;
- (c) the provision of legal aid and language assistance;
- (d) specific assistance for vulnerable persons;
- (e) the introduction and improvement of independent and effective systems for monitoring enforced return, as laid down in Article 8(6) of Directive 2008/115/EC;
- (f) the establishment, maintenance and improvement of accommodation, reception or detention infrastructure, services and conditions;
- (g) the setting-up of administrative structures and systems, including IT tools;
- (h) the training of staff to ensure smooth and effective return procedures, including their management and implementation.

Article 12

Return measures

Within the specific objective laid down in point (c) of the first subparagraph of Article 3(2) of this Regulation, in the light of the outcome of the policy dialogue as provided for in Article 13 of Regulation (EU) No 514/2014, and in accordance with the objectives of the national programmes defined in Article 19 of this Regulation, as regards return measures the Fund shall support actions focusing on the persons referred to in Article 11 of this Regulation. In this context, the Fund shall support, in particular, the following actions:

- (a) measures necessary for the preparation of return operations, such as those leading to the identification of third-country nationals, to the issuing of travel documents and to family tracing;
- (b) cooperation with the consular authorities and immigration services of third countries with a view to obtaining travel documents, facilitating repatriation and ensuring readmission;
- (c) assisted voluntary return measures, including medical examinations and assistance, travel arrangements, financial contributions and pre- and post-return counselling and assistance;
- (d) removal operations, including related measures, in accordance with the standards laid down in Union law, with the exception of coercive equipment;
- (e) measures to launch the progress of reintegration for the returnee's personal development, such as cash-incentives, training, placement and employment assistance and start-up support for economic activities;
- (f) facilities and services in third countries ensuring appropriate temporary accommodation and reception upon arrival;
- (g) specific assistance for vulnerable persons.

Article 13

Practical cooperation and capacity-building measures

Within the specific objective laid down in point (c) of the first subparagraph of Article 3(2) of this Regulation, in the light of the outcome of the policy dialogue as provided for in Article 13 of Regulation (EU) No 514/2014, and in accordance with the objectives of the national programmes defined in Article 19 of this Regulation, as regards practical cooperation and capacity-building measures the Fund shall support, in particular, the following actions:

- (a) actions to promote, develop and reinforce operational cooperation and information exchange between the return services and other authorities of Member States involved in return, including as regards cooperation with the consular authorities and immigration services of third countries and joint return operations;

- (b) actions to support cooperation between third countries and the return services of Member States, including measures aiming to strengthen third countries' capacities to conduct readmission and reintegration activities, in particular in the framework of readmission agreements;
- (c) actions enhancing the capacity to develop effective and sustainable return policies, in particular by exchanging information on the situation in countries of return, best practices, sharing experiences and pooling resources between Member States;
- (d) actions enhancing the capacity to collect, analyse and disseminate detailed and systematic data and statistics on return procedures and measures, reception and detention capacities, enforced and voluntary returns, monitoring and reintegration;
- (e) actions directly contributing to the evaluation of return policies, such as national impact assessments, surveys amongst target groups, the development of indicators and benchmarking;
- (f) information measures and campaigns in third countries aimed at raising awareness of the appropriate legal channels for immigration and the risks of illegal immigration.

CHAPTER V

FINANCIAL AND IMPLEMENTATION FRAMEWORK

Article 14

Global resources and implementation

1. The global resources for the implementation of this Regulation shall be EUR 3 137 million in current prices.
2. The annual appropriations for the Fund shall be authorised by the European Parliament and the Council within the limits of the multiannual financial framework.
3. The global resources shall be implemented through the following means:
 - (a) national programmes, in accordance with Article 19;
 - (b) Union actions, in accordance with Article 20;
 - (c) emergency assistance, in accordance with Article 21;
 - (d) the European Migration Network, in accordance with Article 22;
 - (e) technical assistance, in accordance with Article 23.
4. The budget allocated under this Regulation to Union actions referred to in Article 20 of this Regulation, to the emergency assistance referred to in Article 21 of this Regulation, to the European Migration Network referred to in Article 22 of this Regulation and to the technical assistance referred to in Article 23 of this Regulation shall be implemented under direct management in accordance with point (a) of Article 58(1) of Regulation (EU, Euratom) No 966/2012 and, where appropriate, under indirect management in accordance with point (c) of Article 58(1) of Regulation (EU, Euratom) No 966/2012. The budget allocated to national programmes referred to in Article 19 of this Regulation shall be implemented under shared management in accordance with point (b) of Article 58(1) of Regulation (EU, Euratom) No 966/2012.
5. The Commission shall remain responsible for the implementation of the Union budget in accordance with Article 317 TFEU and shall inform the European Parliament and the Council of the operations carried out by entities other than Member States.
6. Without prejudice to the prerogatives of the European Parliament and of the Council, the prime reference financial envelope shall be used indicatively as follows:
 - (a) EUR 2 752 million for national programmes of Member States;
 - (b) EUR 385 million for Union actions, emergency assistance, the European Migration Network and technical assistance of the Commission, of which at least 30 % shall be used for Union actions and the European Migration Network.

*Article 15***Resources for eligible actions in the Member States**

1. The amount of EUR 2 752 million shall be allocated to the Member States indicatively as follows:
 - (a) EUR 2 392 million shall be allocated as indicated in Annex I. Member States shall allocate at least 20 % of those resources to the specific objective referred to in point (a) of the first subparagraph of Article 3(2), and at least 20 % to the specific objective referred to in point (b) of the first subparagraph of Article 3(2). Member States may depart from those minimum percentages only where a detailed explanation is included in the national programme as to why allocating resources below this level does not jeopardise the achievement of the objective. As far as the specific objective referred to in point (a) of the first subparagraph of Article 3(2) is concerned, those Member States faced with structural deficiencies in the area of accommodation, infrastructure and services shall not fall below the minimum percentage laid down in this Regulation;
 - (b) EUR 360 million shall be allocated on the basis of the distribution mechanism for specific actions as referred to in Article 16, for the Union Resettlement Programme as referred to Article 17, and for the transfer of beneficiaries of international protection from one Member State to another as referred to in Article 18.
2. The amount referred to in point (b) of paragraph 1 shall support:
 - (a) specific actions listed in Annex II;
 - (b) the Union Resettlement Programme in accordance with Article 17 and/or transfers of beneficiaries of international protection from one Member State to another in accordance with Article 18.
3. In the event that an amount remains available under point (b) of paragraph 1 of this Article or that another amount is available, it will be allocated in the framework of the mid-term review laid down in Article 15 of Regulation (EU) No 514/2014 pro-rata to the basic amounts for national programmes established in Annex I to this Regulation.

*Article 16***Resources for specific actions**

1. An additional amount as referred to in point (a) of Article 15(2) may be allocated to the Member States, provided that it is earmarked as such in the programme and that it is used to implement the specific actions listed in Annex II.
2. To take into account new policy developments, the Commission shall be empowered to adopt delegated acts in accordance with Article 26 of this Regulation to revise Annex II in the context of the mid-term review referred to in Article 15 of Regulation (EU) No 514/2014. On the basis of the revised list of specific actions, Member States may receive an additional amount as laid down in paragraph 1 of this Article, subject to available resources.
3. The additional amounts referred to in paragraphs 1 and 2 of this Article shall be allocated to the Member States in the individual financing decisions approving or revising their national programmes in the context of the mid-term review according to the procedure laid down in Articles 14 and 15 of Regulation (EU) No 514/2014. Those amounts shall only be used for the implementation of the specific actions listed in Annex II to this Regulation.

*Article 17***Resources for the Union Resettlement Programme**

1. Member States shall, in addition to their allocation calculated in accordance with point (a) of Article 15(1), receive every two years an additional amount as set out in point (b) of Article 15(2) based on a lump sum of EUR 6 000 for each resettled person.
2. The lump sum referred to in paragraph 1 shall be increased to EUR 10 000 for each person resettled in accordance with the common Union resettlement priorities established pursuant to paragraph 3 and listed in Annex III and for each vulnerable person as laid down in paragraph 5.
3. The common Union resettlement priorities shall be based on the following general categories of persons:
 - (a) persons from a country or region designated for the implementation of a Regional Protection Programme;

(b) persons from a country or region which has been identified in the UNHCR resettlement forecast and where Union common action would have a significant impact on addressing the protection needs;

(c) persons belonging to a specific category falling within the UNHCR resettlement criteria.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 26 to amend Annex III, on the basis of the general categories set out in paragraph 3 of this Article, where there is a clear justification for doing so or in the light of any recommendations from the UNHCR.

5. The following vulnerable groups of persons shall also qualify for the lump sum provided for in paragraph 2:

(a) women and children at risk;

(b) unaccompanied minors;

(c) persons having medical needs that can be addressed only through resettlement;

(d) persons in need of emergency resettlement or urgent resettlement for legal or physical protection needs, including victims of violence or torture.

6. Where a Member State resettles a person belonging to more than one of the categories referred to in paragraphs 1 and 2, it shall receive the lump sum for that person only once.

7. Where appropriate, Member States may also be eligible for lump sums for family members of persons referred to in paragraphs 1, 3 and 5, provided that those family members have been resettled in accordance with this Regulation.

8. The Commission shall establish, by way of implementing acts, the timetable and other implementation conditions related to the allocation mechanism of resources for the Union Resettlement Programme. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 27(2).

9. The additional amounts referred to in paragraphs 1 and 2 of this Article shall be allocated to the Member States every two years, for the first time in the individual financing decisions approving their national programme in accordance with the procedure laid down in Article 14 of Regulation (EU) No 514/2014, and later in a financing decision to be annexed to the decisions approving their national programme. Those amounts shall not be transferred to other actions under the national programme.

10. To effectively pursue the objectives of the Union Resettlement Programme and within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 26 to adjust, if deemed appropriate, the lump sums referred to in paragraphs 1 and 2 of this Article, in particular taking into account the current rates of inflation, relevant developments in the field of resettlement, as well as factors which can optimise the use of the financial incentive brought by the lump sums.

Article 18

Resources for the transfer of beneficiaries of international protection

1. With a view to implementing the principle of solidarity and fair sharing of responsibility and in the light of Union policy developments within the implementation period of the Fund, Member States shall receive, in addition to their allocation calculated in accordance with point (a) of Article 15(1), an additional amount as set out in point (b) of Article 15(2) based on a lump sum of EUR 6 000 for each beneficiary of international protection transferred from another Member State.

2. Member States may also be eligible for lump sums for family members of persons referred to in paragraph 1, where appropriate, provided that those family members have been transferred in accordance with this Regulation.

3. The additional amounts referred to in paragraph 1 of this Article shall be allocated to the Member States for the first time in the individual financing decisions approving their national programme in accordance with the procedure laid down in Article 14 of Regulation (EU) No 514/2014 and later in a financing decision to be annexed to the decision approving their national programme. Those amounts shall not be transferred to other actions under the national programme.

4. To effectively pursue the objectives of solidarity and responsibility sharing between the Member States referred to in Article 80 TFEU, and within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 26 of this Regulation to adjust the lump sum referred to in paragraph 1 of this Article, in particular taking into account the current rates of inflation, relevant developments in the field of transfer of beneficiaries of international protection from one Member State to another, as well as factors which can optimise the use of the financial incentive brought by the lump sums.

Article 19

National programmes

1. Under the national programmes to be examined and approved in accordance with Article 14 of Regulation (EU) No 514/2014, Member States shall, within the objectives laid down in Article 3 of this Regulation, and taking account of the outcome of the policy dialogue referred to in Article 13 of Regulation (EU) No 514/2014, pursue in particular the following objectives:

- (a) strengthening the establishment of the Common European Asylum System by ensuring the efficient and uniform application of the Union *acquis* on asylum and the proper functioning of Regulation (EU) No 604/2013. Such actions may also include the establishment and development of the Union Resettlement Programme;
- (b) setting up and developing integration strategies, encompassing different aspects of the two-way dynamic process, to be implemented at national/local/regional level where appropriate, taking into account the integration needs of third-country nationals at local/regional level, addressing specific needs of different categories of migrants and developing effective partnerships between relevant stakeholders;
- (c) developing a return programme, which includes a component on assisted voluntary return and, where appropriate, on reintegration.

2. Member States shall ensure that all actions supported under the Fund shall be implemented in full compliance with fundamental rights and respect for human dignity. In particular, such actions shall fully respect the rights and principles enshrined in the Charter of Fundamental Rights of the European Union.

3. Subject to the requirement to pursue the above objectives and taking into account their individual circumstances, Member States shall aim to achieve a fair and transparent distribution of resources among the specific objectives set out in Article 3(2).

Article 20

Union actions

1. At the Commission's initiative, the Fund may be used to finance transnational actions or actions of particular interest to the Union ('Union actions'), concerning the general and specific objectives referred to in Article 3.

2. To be eligible for funding, Union actions shall, in particular, support:

- (a) the furthering of Union cooperation in implementing Union law and in sharing best practices in the field of asylum, notably on resettlement and the transfer of applicants for and/or beneficiaries of international protection from one Member State to another, including through networking and exchanging information, on legal migration, on integration of third-country nationals, including arrival support and coordination activities to promote resettlement with the local communities that are to welcome resettled refugees, and on return;
- (b) the setting-up of transnational cooperation networks and pilot projects, including innovative projects, based on transnational partnerships between bodies located in two or more Member States designed to stimulate innovation and to facilitate exchanges of experiences and best practices;
- (c) studies and research on possible new forms of Union cooperation in the field of asylum, immigration, integration and return and relevant Union law, the dissemination and exchange of information on best practices and on all other aspects of asylum, immigration, integration and return policies, including corporate communication on the political priorities of the Union;

- (d) the development and application by Member States of common statistical tools, methods and indicators for measuring policy developments in the field of asylum, legal migration and integration and return;
- (e) preparatory, monitoring, administrative and technical support and the development of an evaluation mechanism required to implement the policies on asylum and immigration;
- (f) cooperation with third countries on the basis of the Union's Global Approach to Migration and Mobility, in particular in the framework of the implementation of readmission agreements, Mobility Partnerships and Regional Protection Programmes;
- (g) information measures and campaigns in third countries aimed at raising awareness of appropriate legal channels for immigration and the risks of illegal immigration.

3. Union actions shall be implemented in accordance with Article 6 of Regulation (EU) No 514/2014.

4. The Commission shall ensure a fair and transparent distribution of resources among the objectives referred to in Article 3(2).

Article 21

Emergency assistance

1. The Fund shall provide financial assistance to address urgent and specific needs in the event of an emergency situation, as defined in point (k) of Article 2. Measures implemented in third countries in accordance with this Article shall be consistent with and, where relevant, complementary to the Union humanitarian policy and respect humanitarian principles as set out in the Consensus on Humanitarian Aid.
2. Emergency assistance shall be implemented in accordance with Articles 6 and 7 of Regulation (EU) No 514/2014.

Article 22

European Migration Network

1. The Fund shall support the European Migration Network and provide the financial assistance necessary for its activities and its future development.
2. The amount made available for the European Migration Network under the annual appropriations of the Fund and the work programme laying down the priorities for its activities shall be adopted by the Commission, after approval by the Steering Board, in accordance with the procedure referred to in point (a) of Article 4(5) of Decision 2008/381/EC. The decision of the Commission shall constitute a financing decision pursuant to Article 84 of Regulation (EU, Euratom) No 966/2012.
3. Financial assistance provided for the activities of the European Migration Network shall take the form of grants to the National Contact Points referred to in Article 3 of Decision 2008/381/EC and public contracts as appropriate, in accordance with Regulation (EU, Euratom) No 966/2012. The assistance shall ensure appropriate and timely financial support to those National Contact Points. Costs incurred for the implementation of actions of those National Contact Points supported through grants awarded in 2014 may be eligible from 1 January 2014.
4. Decision 2008/381/EC is amended as follows:
 - (a) point (a) of Article 4(5) is replaced by the following:

‘(a) prepare and approve the draft work programme of activities, notably with regard to the objectives, thematic priorities and indicative amounts of the budget for each National Contact Point to ensure the proper functioning of the EMN, on the basis of a draft from the Chair;’
 - (b) Article 6 is amended as follows:
 - (i) paragraph 4 is replaced by the following:

‘4. The Commission shall monitor the execution of the work programme of activities and regularly report on its execution and on the development of the EMN to the Steering Board.’;
 - (ii) paragraphs 5 to 8 are deleted;

(c) Article 11 is deleted;

(d) Article 12 is deleted.

Article 23

Technical assistance

1. At the initiative and/or on behalf of the Commission, up to EUR 2,5 million of the Fund shall be annually used for technical assistance in accordance with Article 9 of Regulation (EU) No 514/2014.

2. At the initiative of a Member State, the Fund may finance technical assistance activities, in accordance with Article 20 of Regulation (EU) No 514/2014. The amount set aside for technical assistance shall not exceed, for the period 2014-2020, 5,5 % of the total amount allocated to a Member State plus EUR 1 000 000.

Article 24

Coordination

The Commission and the Member States, together with the European External Action Service where appropriate, shall ensure that actions in and in relation to third countries are taken in synergy and in coherence with other actions outside the Union supported through Union instruments. They shall, in particular, ensure that those actions:

- (a) are coherent with the Union's external policy, respect the principle of policy coherence for development and are consistent with the strategic programming documents for the region or country in question;
- (b) focus on non-development-oriented measures;
- (c) serve the interests of the Union's internal policies and are consistent with activities undertaken inside the Union.

CHAPTER VI

FINAL PROVISIONS

Article 25

Specific provisions concerning lump sums for resettlement and transfer of beneficiaries of international protection from one Member State to another

By way of derogation from the rules on the eligibility of expenditure laid down in Article 18 of Regulation (EU) No 514/2014, in particular as regards the lump sums and flat rates, the lump sums allocated to the Member States for resettlement and/or the transfer of beneficiaries of international protection from one Member State to another pursuant to this Regulation shall be:

- (a) exempt from the obligation that they are to be based on statistical or historic data; and
- (b) granted provided that the person in respect of whom the lump sum is allocated was effectively resettled and/or transferred in accordance with this Regulation.

Article 26

Exercise of the delegation

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

2. The power to adopt delegated acts referred to in Article 16(2), Article 17(4) and (10) and Article 18(4) shall be conferred on the Commission for a period of seven years from 21 May 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the seven-year period. The delegation of powers shall be tacitly extended for a period of three years, unless the European Parliament or the Council opposes such extension not later than three months before the end of the seven-year period.

3. The delegation of power referred to in Article 16(2), Article 17(4) and (10) and Article 18(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to Article 16(2), Article 17(4) and (10) and Article 18(4) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 27

Committee procedure

1. The Commission shall be assisted by the 'Asylum, Migration and Integration and Internal Security Funds Committee' established by Article 59(1) of Regulation (EU) No 514/2014.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 28

Review

The European Parliament and the Council shall, on the basis of a proposal of the Commission, review this Regulation by 30 June 2020.

Article 29

Applicability of Regulation (EU) No 514/2014

The provisions of Regulation (EU) No 514/2014 shall apply to the Fund, without prejudice to Article 4 of this Regulation.

Article 30

Repeal

Decisions No 573/2007/EC, No 575/2007/EC and 2007/435/EC are repealed with effect from 1 January 2014.

Article 31

Transitional provisions

1. This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of the projects and annual programmes concerned, until their closure, or of the financial assistance approved by the Commission on the basis of Decisions No 573/2007/EC, No 575/2007/EC and 2007/435/EC or any other legislation applying to that assistance on 31 December 2013. This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of financial support approved by the Commission on the basis of Decision 2008/381/EC or any other legislation applying to that assistance on 31 December 2013.

2. When adopting decisions on co-financing under this Regulation, the Commission shall take account of measures adopted on the basis of Decisions No 573/2007/EC, No 575/2007/EC, 2007/435/EC and 2008/381/EC before 20 May 2014 which have financial repercussions during the period covered by that co-financing.

3. Sums committed for co-financing approved by the Commission between 1 January 2011 and 31 December 2014 for which the documents required for closure of the actions have not been sent to the Commission by the deadline for submitting the final report shall be automatically decommitted by the Commission by 31 December 2017, giving rise to the repayment of amounts unduly paid.

4. Amounts relating to actions which have been suspended due to legal proceedings or administrative appeals having suspensive effect shall be disregarded in calculating the amount to be automatically decommitted.

5. By 30 June 2015, Member States shall submit to the Commission evaluation reports on the results and impact of actions co-financed under Decisions No 573/2007/EC, No 575/2007/EC and 2007/435/EC concerning the period 2011-2013.

6. By 31 December 2015, the Commission shall submit to the European Parliament, to the Council, to the European Economic and Social Committee and to the Committee of the Regions *ex-post* evaluation reports under Decisions No 573/2007/EC, No 575/2007/EC and 2007/435/EC concerning the period 2011-2013.

Article 32

Entry into force and application

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

It shall apply from 1 January 2014.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 16 April 2014.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

D. KOURKOULAS

ANNEX I

Multiannual breakdowns per Member State for the period 2014-2020 (in EUR)

Member State	Minimum amount	% average 2011-2013 allocations ERF+IF+RF	Average amount 2011-2013	TOTAL
AT	5 000 000	2,65 %	59 533 977	64 533 977
BE	5 000 000	3,75 %	84 250 977	89 250 977
BG	5 000 000	0,22 %	5 006 777	10 006 777
CY	10 000 000	0,99 %	22 308 677	32 308 677
CZ	5 000 000	0,94 %	21 185 177	26 185 177
DE	5 000 000	9,05 %	203 416 877	208 416 877
EE	5 000 000	0,23 %	5 156 577	10 156 577
ES	5 000 000	11,22 %	252 101 877	257 101 877
FI	5 000 000	0,82 %	18 488 777	23 488 777
FR	5 000 000	11,60 %	260 565 577	265 565 577
GR	5 000 000	11,32 %	254 348 877	259 348 877
HR	5 000 000	0,54 %	12 133 800	17 133 800
HU	5 000 000	0,83 %	18 713 477	23 713 477
IE	5 000 000	0,65 %	14 519 077	19 519 077
IT	5 000 000	13,59 %	305 355 777	310 355 777
LT	5 000 000	0,21 %	4 632 277	9 632 277
LU	5 000 000	0,10 %	2 160 577	7 160 577
LV	5 000 000	0,39 %	8 751 777	13 751 777
MT	10 000 000	0,32 %	7 178 877	17 178 877
NL	5 000 000	3,98 %	89 419 077	94 419 077
PL	5 000 000	2,60 %	58 410 477	63 410 477
PT	5 000 000	1,24 %	27 776 377	32 776 377
RO	5 000 000	0,75 %	16 915 877	21 915 877
SE	5 000 000	5,05 %	113 536 877	118 536 877
SI	5 000 000	0,43 %	9 725 477	14 725 477
SK	5 000 000	0,27 %	5 980 477	10 980 477
UK	5 000 000	16,26 %	365 425 577	370 425 577
MS Totals	145 000 000	100,00 %	2 247 000 000	2 392 000 000

ANNEX II**List of specific actions referred to in Article 16**

1. Establishment and development in the Union of transit and processing centres for refugees, in particular to support resettlement operations in cooperation with the UNHCR.
 2. New approaches, in cooperation with the UNHCR, concerning access to asylum procedures targeting main countries of transit, such as protection programmes for particular groups or certain procedures for examination of applications for asylum.
 3. Joint initiatives amongst Member States in the field of integration, such as benchmarking exercises, peer reviews or testing of European modules, for example on the acquisition of language skills or the organisation of introductory programmes and with the aim of improving the coordination of policies between Member States, regions and local authorities.
 4. Joint initiatives aimed at the identification and implementation of new approaches concerning the procedures at first encounter and standards of protection of and assistance for unaccompanied minors.
 5. Joint return operations, including joint actions on the implementation of Union readmission agreements.
 6. Joint reintegration projects in the countries of origin with a view to sustainable return, as well as joint actions to strengthen third countries' capacities to implement Union readmission agreements.
 7. Joint initiatives aimed at restoring family unity and reintegration of unaccompanied minors in their countries of origin.
 8. Joint initiatives among Member States in the field of legal migration, including the setting up of joint migration centres in third countries, as well as joint projects to promote cooperation between Member States with a view to encouraging the use of exclusively legal migration channels and informing about the risks of illegal immigration.
-

ANNEX III

List of common Union resettlement priorities

1. The Regional Protection Programme in Eastern Europe (Belarus, Moldova, Ukraine).
 2. The Regional Protection Programme in the Horn of Africa (Djibouti, Kenya, Yemen).
 3. The Regional Protection Programme in North Africa (Egypt, Libya, Tunisia).
 4. Refugees in the region of Eastern Africa/Great Lakes.
 5. Iraqi refugees in Syria, Lebanon, Jordan.
 6. Iraqi refugees in Turkey.
 7. Syrian refugees in the region.
-

ANNEX IV

List of common indicators for the measurement of the specific objectives

(a) To strengthen and develop all aspects of the Common European Asylum System, including its external dimension.

(i) Number of target group persons provided with assistance through projects in the field of reception and asylum systems supported under the Fund.

For the purposes of annual implementation reports, as referred to in Article 54 of Regulation (EU) No 514/2014, this indicator shall be further broken down in sub-categories such as:

— number of target group persons benefiting from information and assistance throughout the asylum procedures,

— number of target group persons benefiting from legal assistance and representation,

— number of vulnerable persons and unaccompanied minors benefiting from specific assistance;

(ii) Capacity (i.e. number of places) of new reception accommodation infrastructure set up in line with the common requirements for reception conditions set out in the Union *acquis* and of existing reception accommodation infrastructure improved in accordance with the same requirements as a result of the projects supported under the Fund and percentage in the total reception accommodation capacity;

(iii) Number of persons trained in asylum-related topics with the assistance of the Fund, and that number as a percentage of the total number of staff trained in those topics;

(iv) Number of country-of-origin information products and fact-finding missions conducted with the assistance of the Fund;

(v) Number of projects supported under the Fund to develop, monitor and evaluate asylum policies in Member States;

(vi) Number of persons resettled with support of the Fund.

(b) To support legal migration to the Member States in accordance with their economic and social needs, such as labour market needs, while reducing the abuse of legal migration, and to promote the effective integration of third-country nationals.

(i) Number of target group persons who participated in pre-departure measures supported under the Fund;

(ii) Number of target group persons assisted by the Fund through integration measures in the framework of national, local and regional strategies.

For the purposes of annual implementation reports, as referred to in Article 54 of Regulation (EU) No 514/2014, this indicator shall be further broken down in sub-categories such as:

— number of target group persons assisted through measures focusing on education and training, including language training and preparatory actions to facilitate access to the labour market,

— number of target group persons supported through the provision of advice and assistance in the area of housing,

— number of target group persons assisted through the provision of health and psychological care,

— number of target group persons assisted through measures related to democratic participation;

(iii) Number of local, regional and national policy frameworks/measures/tools in place for the integration of third-country nationals and involving civil society and migrant communities, as well as all other relevant stakeholders, as a result of the measures supported under the Fund;

- (iv) Number of cooperation projects with other Member States on the integration of third-country nationals supported under the Fund;
 - (v) Number of projects supported under the Fund to develop, monitor and evaluate integration policies in Member States.
- (c) To enhance fair and effective return strategies in the Member States supporting the fight against illegal immigration with an emphasis on sustainability of return and effective readmission in the countries of origin and transit.
- (i) Number of persons trained on return-related topics with the assistance of the Fund;
 - (ii) Number of returnees who received pre or post return reintegration assistance co-financed by the Fund;
 - (iii) Number of returnees whose return was co-financed by the Fund, persons who returned voluntarily and persons who were removed;
 - (iv) Number of monitored removal operations co-financed by the Fund;
 - (v) Number of projects supported under the Fund to develop, monitor and evaluate return policies in Member States.
- (d) To enhance the solidarity and responsibility sharing between the Member States, in particular towards those most affected by migration and asylum flows.
- (i) Number of applicants and beneficiaries of international protection transferred from one Member State to another with support of the Fund;
 - (ii) Number of cooperation projects with other Member States on enhancing solidarity and responsibility sharing between the Member States supported under the Fund.
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REGULATION (EU) No 517/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 April 2014
on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) The Fourth Assessment Report of the Intergovernmental Panel on Climate Change ('IPCC') of the United Nations Framework Convention on Climate Change ('UNFCCC'), to which the Union is party ⁽³⁾, stated that, on the basis of existing scientific data, developed countries would need to reduce greenhouse gas emissions by 80 % to 95 % below 1990 levels by 2050 to limit global climate change to a temperature increase of 2 °C and thus prevent undesirable climate effects.
- (2) To reach this target, the Commission adopted a Roadmap for moving to a competitive low carbon economy in 2050, which was noted by the Council in its Conclusions of 17 May 2011, and endorsed by the European Parliament in its Resolution of 15 March 2012. In that Roadmap, the Commission laid out a cost-effective way of achieving the necessary overall emission reductions in the Union by 2050. That roadmap establishes the sectoral contributions needed in six areas. Non-CO₂ emissions, including fluorinated greenhouse gases but excluding non-CO₂ emissions from agriculture, should be reduced by 72 % to 73 % by 2030 and by 70 % to 78 % by 2050, compared to 1990 levels. If based on the reference year 2005, a reduction in non-CO₂ emissions, except those from agriculture, of 60 % to 61 % by 2030 is required. Fluorinated greenhouse gas emissions were estimated at 90 million tonnes (Mt) of CO₂ equivalent in 2005. A 60 % reduction means that emissions would have to be reduced to approximately 35 Mt of CO₂ equivalent by 2030. Given estimated emissions of 104 Mt of CO₂ equivalent in 2030 based on the full application of current Union legislation, a further decrease of approximately 70 Mt of CO₂ equivalent is required.
- (3) The Commission report of 26 September 2011 on the application, effects and adequacy of Regulation (EC) No 842/2006 of the European Parliament and of the Council ⁽⁴⁾ concluded that the current containment measures, if fully applied, have the potential to reduce emissions of fluorinated greenhouse gases. Those measures should therefore be maintained and clarified on the basis of the experience gained in implementing them. Certain measures should also be extended to other appliances in which substantial quantities of fluorinated greenhouse gases are used, such as refrigerated trucks and trailers. The obligation to establish and maintain records of equipment that contains such gases should also cover electrical switchgear. Given the importance of containment measures at the end of life of products and equipment containing fluorinated greenhouse gases, Member States should take account of the value of producer responsibility schemes and encourage their establishment, based on existing best practices.
- (4) That report also concluded that more can be done to reduce emissions of fluorinated greenhouse gases in the Union, in particular by avoiding the use of such gases where there are safe and energy-efficient alternative technologies with no impact or a lower impact on the climate. A decrease of up to two thirds of the 2010 emissions by 2030 is cost-effective because proven and tested alternatives are available in many sectors.

⁽¹⁾ OJ C 271, 19.9.2013, p. 138.

⁽²⁾ Position of the European Parliament of 12 March 2014 (not yet published in the Official Journal) and decision of the Council of 14 April 2014.

⁽³⁾ Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change (OJ L 33, 7.2.1994, p. 11).

⁽⁴⁾ Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases (OJ L 161, 14.6.2006, p. 1).

- (5) The European Parliament Resolution of 14 September 2011 on a comprehensive approach to non-CO₂ climate-relevant anthropogenic emissions welcomed the Union's commitment to support action on hydrofluorocarbons under the Montreal Protocol on substances that deplete the ozone layer ('Montreal Protocol') as a prime example of a non-market based approach to reducing greenhouse gas emissions. That Resolution also called for the exploration of ways to promote an immediate phase down of hydrofluorocarbons at international level through the Montreal Protocol.
- (6) To encourage the use of technologies with no impact or lower impact on the climate, the training of natural persons who carry out activities involving fluorinated greenhouse gases should cover information on technologies that serve to replace and reduce the use of fluorinated greenhouse gases. Given that some alternatives to fluorinated greenhouse gases used in products and equipment to replace and reduce the use of fluorinated greenhouse gases can be toxic, flammable or highly pressurised, the Commission should examine existing Union legislation covering the training of natural persons for the safe-handling of alternative refrigerants and, if appropriate, should submit a legislative proposal to the European Parliament and to the Council to amend the relevant Union legislation.
- (7) Certification and training programmes should be established or adapted taking account of those established under Regulation (EC) No 842/2006 and may be integrated into the vocational training systems.
- (8) To ensure coherence with monitoring and reporting requirements under the UNFCCC and with Decision 4/CMP.7 of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to the UNFCCC, adopted by the seventh Conference of the Parties of the UNFCCC meeting in Durban on 11 December 2011, global warming potentials should be calculated in terms of the 100-year global warming potential of one kilogram of a gas relative to one kilogram of CO₂. The calculation should, where possible, be based on the Fourth Assessment Report adopted by the IPCC.
- (9) Effective monitoring of fluorinated greenhouse gas emissions is critical for tracking progress towards the achievement of emission reduction targets and for assessing the impact of this Regulation. The use of consistent, high-quality data to report on fluorinated greenhouse gas emissions is essential to ensuring the quality of emissions reporting. The establishment of reporting systems by Member States of emissions of fluorinated greenhouse gases would provide coherence with Regulation (EU) No 525/2013 of the European Parliament and of the Council⁽¹⁾. Data on leakage of fluorinated greenhouse gases from equipment collected by companies under this Regulation could significantly improve those emission reporting systems. In that way, it should be possible to check the consistency of the data used to derive emissions and to improve approximations based on calculations, leading to a better estimation of emissions of fluorinated greenhouse gases in the national greenhouse gases inventories.
- (10) Given that there are suitable alternatives available, the current ban on using sulphur hexafluoride in magnesium die-casting and the recycling of magnesium die-casting alloys should be extended to facilities that use less than 850 kg of sulphur hexafluoride per year. Similarly, with an appropriate transitional period, the use of refrigerants with a very high global warming potential of 2 500 or more to service or maintain refrigeration equipment with a charge size of 40 tonnes of CO₂ equivalent or more should be banned.
- (11) Where suitable alternatives to the use of specific fluorinated greenhouse gases are available, bans on the placing on the market of new equipment for refrigeration, air-conditioning and fire protection that contains, or whose functioning relies upon, those substances should be introduced. Where alternatives are not available or cannot be used for technical or safety reasons, or where the use of such alternatives would entail disproportionate costs, it should be possible for the Commission to authorise an exemption to allow the placing on the market of such products and equipment for a limited period. In the light of future technical developments, the Commission should further assess bans on the placing on the market of new equipment for medium-voltage secondary switchgear and new small single split air-conditioning systems.

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

- (12) Equipment containing fluorinated greenhouse gases should be allowed to be placed on the market if the overall greenhouse gas emissions of that equipment, taking into account realistic leakage and recovery rates, are lower, during its lifecycle, than those that would result from equivalent equipment without fluorinated greenhouse gases, which has the maximum allowed energy consumption set out in relevant implementing measures adopted under Directive 2009/125/EC of the European Parliament and of the Council ⁽¹⁾. The regular and timely review of those implementing measures, in accordance with that Directive would help to ensure that those implementing measures continue to be effective and appropriate.
- (13) Gradually reducing the quantities of hydrofluorocarbons that can be placed on the market has been identified as the most effective and cost-efficient way of reducing emissions of those substances in the long term.
- (14) To implement the gradual reduction of the quantities of hydrofluorocarbons that can be placed on the Union market, the Commission should allocate quotas to individual producers and importers for the placing of hydrofluorocarbons on the market in order that the overall quantitative limit for the placing hydrofluorocarbons on the market is not exceeded. To protect the integrity of the gradual reduction of the quantities of hydrofluorocarbons placed on the market, hydrofluorocarbons contained in equipment should be accounted for under the Union quota system. Where hydrofluorocarbons contained in equipment have not been placed on the market prior to the charging of the equipment, a declaration of conformity should be required to prove that those hydrofluorocarbons are accounted for under the Union quota system.
- (15) Initially, the calculation of reference values and the allocation of quotas to individual producers and importers should be based on the quantities of hydrofluorocarbons that they reported as having been placed on the market during the reference period from 2009 to 2012. However, in order not to exclude small undertakings, eleven per cent of the overall quantitative limit should be reserved for importers and producers who have not placed on the market 1 tonne or more of fluorinated greenhouse gases in the reference period.
- (16) By regularly recalculating the reference values and quotas, the Commission should ensure that undertakings are allowed to continue their activities on the basis of the average volumes they placed on the market in recent years.
- (17) The manufacturing process for some fluorinated gases can result in significant emissions of other fluorinated greenhouse gases produced as by-products. Such by-product emissions should be destroyed or recovered for subsequent use as a condition for the placing of fluorinated greenhouse gases on the market.
- (18) The Commission should ensure that a central electronic registry is in place to manage quotas, for the placing of hydrofluorocarbons on the market, and the reporting, including the reporting on equipment placed on the market, in particular where the equipment is pre-charged with hydrofluorocarbons that have not been placed on the market prior to the charging, thus requiring verification, through a declaration of conformity and subsequent third party verification, that the quantities of hydrofluorocarbons are accounted for under the Union quota system.
- (19) To maintain the flexibility of the market in bulk hydrofluorocarbons, it should be possible to transfer quotas allocated on the basis of reference values to another producer or importer in the Union or to another producer or importer which is represented in the Union by an only representative.
- (20) To enable the monitoring of the effectiveness of this Regulation, the scope of the current reporting obligations should be extended to cover other fluorinated substances that have significant global warming potential or that are likely to replace the fluorinated greenhouse gases listed in Annex I. For the same reason the destruction of fluorinated greenhouse gases and the importation into the Union of those gases when contained in products and equipment should also be reported. De minimis thresholds should be set to avoid disproportionate administrative burden, in particular for small and medium-sized enterprises and micro-enterprises.
- (21) The Commission should continuously monitor the effects of reducing the quantities of hydrofluorocarbons placed on the market, including its effects on the supply for equipment where the use of hydrofluorocarbons would result in lower life-cycle emissions than if an alternative technology was used. The Commission should produce a report on the availability of hydrofluorocarbons on the Union market by the end of 2020. A comprehensive review

⁽¹⁾ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10).

should be carried out by the Commission by the end of 2022 in time to adapt the provisions of this Regulation, in the light of its implementation and of new developments and international commitments, and to propose, if appropriate, further reduction measures.

- (22) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾.
- (23) In order to amend certain non-essential elements of this Regulation, 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. 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.
- (24) Since it is adopted pursuant to Article 192(1) TFEU, this Regulation does not prevent Member States from maintaining or introducing more stringent protective measures that are compatible with the TFEU. Pursuant to Article 193 TFEU, Member States are to notify the Commission of any such measures.
- (25) This Regulation amends and complements the subject matter of Regulation (EC) No 842/2006, which should therefore be repealed. However, in order to ensure a smooth transition from the old regime to the new regime, it is appropriate to provide that Commission Regulations (EC) No 1493/2007 ⁽²⁾, (EC) No 1494/2007 ⁽³⁾, (EC) No 1497/2007 ⁽⁴⁾, (EC) No 1516/2007 ⁽⁵⁾, (EC) No 303/2008 ⁽⁶⁾, (EC) No 304/2008 ⁽⁷⁾, (EC) No 305/2008 ⁽⁸⁾, (EC) No 306/2008 ⁽⁹⁾, (EC) No 307/2008 ⁽¹⁰⁾ and (EC) No 308/2008 ⁽¹¹⁾ should remain in force and continue to apply unless and until repealed by delegated or implementing acts adopted by the Commission pursuant to this Regulation.
- (26) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the transboundary nature of the environmental problem addressed and the effects of this Regulation on the intra-Union and external trade, be better achieved at Union level, the Union may adopt measures, in

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

⁽²⁾ Commission Regulation (EC) No 1493/2007 of 17 December 2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, the format for the report to be submitted by producers, importers and exporters of certain fluorinated greenhouse gases (OJ L 332, 18.12.2007, p. 7).

⁽³⁾ Commission Regulation (EC) No 1494/2007 of 17 December 2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, the form of labels and additional labelling requirements as regards products and equipment containing certain fluorinated greenhouse gases (OJ L 332, 18.12.2007, p. 25).

⁽⁴⁾ Commission Regulation (EC) No 1497/2007 of 18 December 2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, standard leakage checking requirements for stationary fire protection systems containing certain fluorinated greenhouse gases (OJ L 333, 19.12.2007, p. 4).

⁽⁵⁾ Commission Regulation (EC) No 1516/2007 of 19 December 2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, standard leakage checking requirements for stationary refrigeration, air conditioning and heat pump equipment containing certain fluorinated greenhouse gases (OJ L 335, 20.12.2007, p. 10).

⁽⁶⁾ Commission Regulation (EC) No 303/2008 of 2 April 2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of companies and personnel as regards stationary refrigeration, air conditioning and heat pump equipment containing certain fluorinated greenhouse gases (OJ L 92, 3.4.2008, p. 3).

⁽⁷⁾ Commission Regulation (EC) No 304/2008 of 2 April 2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of companies and personnel as regards stationary fire protection systems and fire extinguishers containing certain fluorinated greenhouse gases (OJ L 92, 3.4.2008, p. 12).

⁽⁸⁾ Commission Regulation (EC) No 305/2008 of 2 April 2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of personnel recovering certain fluorinated greenhouse gases from high-voltage switchgear (OJ L 92, 3.4.2008, p. 17).

⁽⁹⁾ Commission Regulation (EC) No 306/2008 of 2 April 2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of personnel recovering certain fluorinated greenhouse gas-based solvents from equipment (OJ L 92, 3.4.2008, p. 21).

⁽¹⁰⁾ Commission Regulation (EC) No 307/2008 of 2 April 2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements for training programmes and the conditions for mutual recognition of training attestations for personnel as regards air-conditioning systems in certain motor vehicles containing certain fluorinated greenhouse gases (OJ L 92, 3.4.2008, p. 25).

⁽¹¹⁾ Commission Regulation (EC) No 308/2008 of 2 April 2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, the format for notification of the training and certification programmes of the Member States (OJ L 92, 3.4.2008, p. 28).

accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject-matter

The objective of this Regulation is to protect the environment by reducing emissions of fluorinated greenhouse gases. Accordingly, this Regulation:

- (a) establishes rules on containment, use, recovery and destruction of fluorinated greenhouse gases, and on related ancillary measures;
- (b) imposes conditions on the placing on the market of specific products and equipment that contain, or whose functioning relies upon, fluorinated greenhouse gases;
- (c) imposes conditions on specific uses of fluorinated greenhouse gases; and
- (d) establishes quantitative limits for the placing on the market of hydrofluorocarbons.

Article 2

Definitions

For the purposes of this Regulation the following definitions apply:

- (1) 'fluorinated greenhouse gases' means the hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and other greenhouse gases that contain fluorine, listed in Annex I, or mixtures containing any of those substances;
- (2) 'hydrofluorocarbons' or 'HFCs' means the substances listed in section 1 of Annex I, or mixtures containing any of those substances;
- (3) 'perfluorocarbons' or 'PFCs' means the substances listed in section 2 of Annex I, or mixtures containing any of those substances;
- (4) 'sulphur hexafluoride' or 'SF₆' means the substance listed in section 3 of Annex I, or mixtures containing that substance;
- (5) 'mixture' means a fluid composed of two or more substances, at least one of which is a substance listed in Annex I or in Annex II;
- (6) 'global warming potential' or 'GWP' means the climatic warming potential of a greenhouse gas relative to that of carbon dioxide ('CO₂'), calculated in terms of the 100-year warming potential of one kilogram of a greenhouse gas relative to one kilogram of CO₂, as set out in Annexes I, II and IV or in the case of mixtures, calculated in accordance with Annex IV;
- (7) 'tonne(s) of CO₂ equivalent' means a quantity of greenhouse gases, expressed as the product of the weight of the greenhouse gases in metric tonnes and of their global warming potential;
- (8) 'operator' means the natural or legal person exercising actual power over the technical functioning of products and equipment covered by this Regulation; a Member State may, in defined, specific situations, designate the owner as being responsible for the operator's obligations;
- (9) 'use' means the utilisation of fluorinated greenhouse gases in the production, maintenance or servicing, including the refilling, of products and equipment, or in other processes referred to in this Regulation;
- (10) 'placing on the market' means supplying or making available to another party in the Union for the first time, for payment or free of charge, or using for its own account in the case of a producer, and includes customs release for free circulation in the Union;
- (11) 'hermetically sealed equipment' means equipment in which all fluorinated greenhouse gas containing parts are made tight by welding, brazing or a similar permanent connection, which may include capped valves or capped service ports that allow proper repair or disposal, and which have a tested leakage rate of less than 3 grams per year under a pressure of at least a quarter of the maximum allowable pressure;

- (12) 'container' means a product which is designed primarily for transporting or storing fluorinated greenhouse gases;
- (13) 'a non-refillable container' means a container which cannot be refilled without being adapted for that purpose or is placed on the market without provision having been made for its return for refilling;
- (14) 'recovery' means the collection and storage of fluorinated greenhouse gases from products, including containers, and equipment during maintenance or servicing or prior to the disposal of the products or equipment;
- (15) 'recycling' means the reuse of a recovered fluorinated greenhouse gas following a basic cleaning process;
- (16) 'reclamation' means the reprocessing of a recovered fluorinated greenhouse gas in order to match the equivalent performance of a virgin substance, taking into account its intended use;
- (17) 'destruction' means the process of permanently transforming or decomposing all or most of a fluorinated greenhouse gas into one or more stable substances that are not fluorinated greenhouse gases;
- (18) 'decommissioning' means the final shut-down and removal from operation or usage of a product or piece of equipment containing fluorinated greenhouse gases;
- (19) 'repair' means the restoration of damaged or leaking products or equipment that contain, or whose functioning relies upon, fluorinated greenhouse gases, involving a part containing or designed to contain such gases;
- (20) 'installation' means joining two or more pieces of equipment or circuits containing or designed to contain fluorinated greenhouse gases, with a view to assembling a system in the location where it will be operated, that entails joining together gas carrying conductors of a system to complete a circuit irrespective of the need to charge the system after assembly;
- (21) 'maintenance or servicing' means all activities, excluding recovery in accordance with Article 8 and leak checks in accordance with Article 4 and point (b) of Article 10(1) of this Regulation, that entail breaking into the circuits containing or designed to contain fluorinated greenhouse gases, in particular supplying the system with fluorinated greenhouse gases, removing one or more pieces of circuit or equipment, reassembling two or more pieces of circuit or equipment, as well as repairing leaks;
- (22) 'virgin substance' means a substance which has not previously been used;
- (23) 'stationary' means not normally in transit during operation and includes moveable room air-conditioning appliances;
- (24) 'mobile' means normally in transit during operation;
- (25) 'one-component foam' means a foam composition contained in a single aerosol dispenser in unreacted or partly reacted liquid state and that expands and hardens when it leaves the dispenser;
- (26) 'refrigerated truck' means a motor vehicle with a mass of more than 3,5 tonnes that is designed and constructed primarily to carry goods and that is equipped with a refrigeration unit;
- (27) 'refrigerated trailer' means a vehicle that is designed and constructed to be towed by a truck or a tractor, primarily to carry goods and that is equipped with a refrigeration unit;
- (28) 'technical aerosol' means an aerosol dispenser used in maintaining, repairing, cleaning, testing, disinsecting and manufacturing products and equipment, installing equipment, and in other applications;
- (29) 'leakage detection system' means a calibrated mechanical, electrical or electronic device for detecting leakage of fluorinated greenhouse gases which, on detection, alerts the operator;
- (30) 'undertaking' means any natural or legal person who:
 - (a) produces, uses, recovers, collects, recycles, reclaims, or destroys fluorinated greenhouse gases;
 - (b) imports or exports fluorinated greenhouse gases or products and equipment that contain such gases;
 - (c) places on the market fluorinated greenhouse gases or products and equipment that contain, or whose functioning relies upon, such gases;
 - (d) installs, services, maintains, repairs, checks for leaks or decommissions equipment that contains, or whose functioning relies upon, fluorinated greenhouse gases;

- (e) is the operator of equipment that contains, or whose functioning relies upon, fluorinated greenhouse gases;
 - (f) produces, imports, exports, places on the market or destroys gases listed in Annex II;
 - (g) places on the market products or equipment containing gases listed in Annex II;
- (31) 'feedstock' means any fluorinated greenhouse gas, or substance listed in Annex II, that undergoes chemical transformation in a process in which it is entirely converted from its original composition and its emissions are insignificant;
 - (32) 'commercial use' means used for the storage, display or dispensing of products, for sale to end users, in retail and food services;
 - (33) 'fire protection equipment' means the equipment and systems utilised in fire prevention or suppression applications and includes fire extinguishers;
 - (34) 'organic Rankine cycle' means a cycle containing condensable fluorinated greenhouse gas converting heat from a heat source into power for the generation of electric or mechanical energy;
 - (35) 'military equipment' mean arms, munitions and war material intended specifically for military purposes which are necessary for the protection of the essential interests of the security of Member States;
 - (36) 'electrical switchgear' means switching devices and their combination with associated control, measuring, protective and regulating equipment, and assemblies of such devices and equipment with associated interconnections, accessories, enclosures and supporting structures, intended for usage in connection with the generation, transmission, distribution and conversion of electric energy;
 - (37) 'multipack centralised refrigeration systems' means systems with two or more compressors operated in parallel, which are connected to one or more common condensers and to a number of cooling devices such as display cases, cabinets, freezers or to chilled store rooms;
 - (38) 'primary refrigerant circuit of cascade systems' means the primary circuit in indirect medium temperature systems where a combination of two or more separate refrigeration circuits are connected in series such that the primary circuit absorbs the condenser heat from a secondary circuit for the medium temperature;
 - (39) 'single split air conditioning systems' means systems for room air conditioning that consist of one outdoor unit and one indoor unit linked by refrigerant piping, needing installation at the site of usage.

CHAPTER II

CONTAINMENT

Article 3

Prevention of emissions of fluorinated greenhouse gases

1. The intentional release of fluorinated greenhouse gases into the atmosphere shall be prohibited where the release is not technically necessary for the intended use.
2. Operators of equipment that contains fluorinated greenhouse gases shall take precautions to prevent the unintentional release ('leakage') of those gases. They shall take all measures which are technically and economically feasible to minimise leakage of fluorinated greenhouse gases.
3. Where a leakage of fluorinated greenhouse gases is detected, the operators shall ensure that the equipment is repaired without undue delay.

Where the equipment is subject to leak checks under Article 4(1), and a leak in the equipment has been repaired, the operators shall ensure that the equipment is checked by a certified natural person within one month after the repair to verify that the repair has been effective.

4. Natural persons carrying out the tasks referred to in points (a) to (c) of Article 10(1) shall be certified in accordance with Article 10(4) and (7) and shall take precautionary measures to prevent leakage of fluorinated greenhouse gases.

Undertakings carrying out the installation, servicing, maintenance, repair or decommissioning of the equipment listed in points (a) to (d) of the Article 4(2) shall be certified in accordance with Article 10(6) and (7) and shall take precautionary measures to prevent leakage of fluorinated greenhouse gases.

*Article 4***Leak checks**

1. Operators of equipment that contains fluorinated greenhouse gases in quantities of 5 tonnes of CO₂ equivalent or more and not contained in foams shall ensure that the equipment is checked for leaks.

Hermetically sealed equipment that contains fluorinated greenhouse gases in quantities of less than 10 tonnes of CO₂ equivalent, shall not be subject to leak checks under this Article, provided the equipment is labelled as hermetically sealed.

Electrical switchgear shall not be subject to leak checks under this Article provided it complies with one of the following conditions:

- (a) it has a tested leakage rate of less than 0,1 % per year as set out in the technical specification of the manufacturer and is labelled accordingly;
- (b) it is equipped with a pressure or density monitoring device; or
- (c) it contains less than 6 kg of fluorinated greenhouse gases.

2. Paragraph 1 applies to operators of the following equipment that contains fluorinated greenhouse gases:

- (a) stationary refrigeration equipment;
- (b) stationary air-conditioning equipment;
- (c) stationary heat pumps;
- (d) stationary fire protection equipment;
- (e) refrigeration units of refrigerated trucks and trailers;
- (f) electrical switchgear;
- (g) organic Rankine cycles.

As regards the equipment referred to in points (a) to (e) of the first subparagraph, the checks shall be carried out by natural persons certified in accordance with the rules provided for in Article 10.

By way of derogation from the first subparagraph of paragraph 1, until 31 December 2016, equipment that contains less than 3 kg of fluorinated greenhouse gases or hermetically sealed equipment, which is labelled accordingly and contains less than 6 kg of fluorinated greenhouse gases shall not be subject to leak checks.

3. The leak checks pursuant to paragraph 1 shall be carried out with the following frequency:

- (a) for equipment that contains fluorinated greenhouse gases in quantities of 5 tonnes of CO₂ equivalent or more, but of less than 50 tonnes of CO₂ equivalent: at least every 12 months; or where a leakage detection system is installed, at least every 24 months;
- (b) for equipment that contains fluorinated greenhouse gases in quantities of 50 tonnes of CO₂ equivalent or more, but of less than 500 tonnes of CO₂ equivalent: at least every six months or, where a leakage detection system is installed, at least every 12 months;
- (c) for equipment that contains fluorinated greenhouse gases in quantities of 500 tonnes of CO₂ equivalent or more: at least every three months or, where a leakage detection system is installed, at least every six months.

4. Obligations of paragraph 1 for fire protection equipment as referred to in point (d) of paragraph 2 shall be considered to be fulfilled provided the following two conditions are met:

- (a) the existing inspection regime meets ISO 14520 or EN 15004 standards; and
- (b) the fire protection equipment is inspected as often as is required under paragraph 3.

5. The Commission may, by means of implementing acts, specify requirements for the leak checks to be carried out in accordance with paragraph 1 of this Article for each type of equipment referred to in that paragraph, identify those parts of the equipment most likely to leak and repeal acts adopted pursuant to Article 3(7) of Regulation (EC) No 842/2006. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24.

Article 5

Leakage detection systems

1. Operators of the equipment listed in points (a) to (d) of Article 4(2) and containing fluorinated greenhouse gases in quantities of 500 tonnes of CO₂ equivalent or more, shall ensure that the equipment is provided with a leakage detection system which alerts the operator or a service company of any leakage.
2. Operators of the equipment listed in points (f) and (g) of Article 4(2) and containing fluorinated greenhouse gases in quantities of 500 tonnes of CO₂ equivalent or more and installed from 1 January 2017, shall ensure that this equipment is provided with a leakage detection system which alerts the operator or a service company of any leakage.
3. Operators of the equipment listed in points (a) to (d) and (g) of Article 4(2) that is subject to paragraph 1 or 2 of this Article shall ensure that leakage detection systems are checked at least once every 12 months to ensure their proper functioning.
4. Operators of the equipment listed in point (f) of Article 4(2) that is subject to paragraph 2 of this Article shall ensure that leakage detection systems are checked at least once every 6 years to ensure their proper functioning.

Article 6

Record keeping

1. Operators of equipment which is required to be checked for leaks pursuant to Article 4(1), shall establish and maintain records for each piece of such equipment specifying the following information:
 - (a) the quantity and type of fluorinated greenhouse gases installed;
 - (b) the quantities of fluorinated greenhouse gases added during installation, maintenance or servicing or due to leakage;
 - (c) whether the quantities of installed fluorinated greenhouse gases have been recycled or reclaimed, including the name and address of the recycling or reclamation facility and, where applicable, the certificate number;
 - (d) the quantity of fluorinated greenhouse gases recovered;
 - (e) the identity of the undertaking which installed, serviced, maintained and where applicable repaired or decommissioned the equipment, including, where applicable, the number of its certificate;
 - (f) the dates and results of the checks carried out under Article 4(1) to (3);
 - (g) if the equipment was decommissioned, the measures taken to recover and dispose of the fluorinated greenhouse gases.
2. Unless the records referred to in paragraph 1 are stored in a database set up by the competent authorities of the Member States the following rules apply:

- (a) the operators referred to in paragraph 1 shall keep the records referred to in that paragraph for at least five years;
- (b) undertakings carrying out the activities referred to in point (e) of paragraph 1 for operators shall keep copies of the records referred to in paragraph 1 for at least five years.

The records referred to in paragraph 1 shall be made available, on request, to the competent authority of the Member State concerned or to the Commission. To the extent that such records contain environmental information, Directive 2003/4/EC of the European Parliament and of the Council ⁽¹⁾ or Regulation (EC) No 1367/2006 of the European Parliament and of the Council ⁽²⁾ shall apply as appropriate.

3. For the purpose of Article 11(4), undertakings supplying fluorinated greenhouse gases shall establish records of relevant information on the purchasers of fluorinated greenhouse gases including the following details:

- (a) the numbers of certificates of the purchasers; and
- (b) the respective quantities of fluorinated greenhouse gases purchased.

The undertakings supplying fluorinated greenhouse gases shall maintain those records for at least five years.

The undertakings supplying fluorinated greenhouse gases shall make such records available, on request, to the competent authority of the Member State concerned or to the Commission. To the extent that the records contain environmental information, Directive 2003/4/EC or Regulation (EC) No 1367/2006 shall apply as appropriate.

4. The Commission may, by means of an implementing act, determine the format of the records referred to in paragraphs 1 and 3 of this Article and specify how they should be established and maintained. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 24.

Article 7

Emissions of fluorinated greenhouse gases in relation to production

1. Producers of fluorinated compounds shall take all necessary precautions to limit emissions of fluorinated greenhouse gases to the greatest extent possible during:

- (a) production;
- (b) transport; and
- (c) storage.

This Article also applies where fluorinated greenhouse gases are produced as by-products.

2. Without prejudice to Article 11(1), the placing on the market of fluorinated greenhouse gases and gases listed in Annex II shall be prohibited unless, where relevant, producers or importers provide evidence, at the time of such placing, that trifluoromethane, produced as a by-product during the manufacturing process, including during the manufacturing of feedstocks for their production, has been destroyed or recovered for subsequent use, in line with best available techniques.

This requirement shall apply from 11 June 2015.

Article 8

Recovery

1. Operators of stationary equipment or of refrigeration units of refrigerated trucks and trailers that contain fluorinated greenhouse gases not contained in foams shall ensure that the recovery of those gases is carried out by natural persons that hold the relevant certificates provided for by Article 10, so that those gases are recycled, reclaimed or destroyed.

This obligation applies to operators of any of the following equipment:

- (a) the cooling circuits of stationary refrigeration, stationary air-conditioning and stationary heat pump equipment;
- (b) the cooling circuits of refrigeration units of refrigerated trucks and trailers;

⁽¹⁾ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

⁽²⁾ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).

- (c) stationary equipment that contains fluorinated greenhouse gas-based solvents;
- (d) stationary fire protection equipment;
- (e) stationary electrical switchgear.

2. The undertaking that uses a fluorinated greenhouse gas container immediately prior to its disposal shall arrange for the recovery of any residual gases to make sure they are recycled, reclaimed or destroyed.

3. Operators of products and equipment not listed in paragraph 1, including mobile equipment, that contain fluorinated greenhouse gases shall arrange for the recovery of the gases, to the extent that it is technically feasible and does not entail disproportionate costs, by appropriately qualified natural persons, so that they are recycled, reclaimed or destroyed or shall arrange for their destruction without prior recovery.

The recovery of fluorinated greenhouse gases from air-conditioning equipment in road vehicles outside the scope of Directive 2006/40/EC of the European Parliament and of the Council ⁽¹⁾ shall be carried out by appropriately qualified natural persons.

For the recovery of fluorinated greenhouse gases from air-conditioning equipment in motor vehicles falling within the scope of Directive 2006/40/EC only natural persons holding at least a training attestation in accordance with Article 10(2) shall be considered appropriately qualified.

Article 9

Producer responsibility schemes

Without prejudice to existing Union legislation, Member States shall encourage the development of producer responsibility schemes for the recovery of fluorinated greenhouse gases and their recycling, reclamation or destruction.

Member States shall provide information to the Commission on the actions undertaken under the first paragraph.

Article 10

Training and certification

1. Member States shall, on the basis of the minimum requirements referred to in paragraph 5, establish or adapt certification programmes, including evaluation processes. Member States shall ensure that training is available for natural persons carrying out the following tasks:

- (a) installation, servicing, maintenance, repair or decommissioning of the equipment listed in the points (a) to (f) of Article 4(2);
- (b) leak checks of the equipment referred to in points (a) to (e) of Article 4(2), as provided for in Article 4(1);
- (c) recovery of fluorinated greenhouse gases as provided for in Article 8(1).

2. Member States shall ensure that training programmes for natural persons recovering fluorinated greenhouse gases from air-conditioning equipment in motor vehicles falling within the scope of Directive 2006/40/EC are available, on the basis of the minimum requirements referred to in paragraph 5.

3. The certification programmes and training provided for in paragraphs 1 and 2 shall cover the following:

- (a) applicable regulations and technical standards;
- (b) emission prevention;
- (c) recovery of fluorinated greenhouse gases;
- (d) safe handling of equipment of the type and size covered by the certificate;

⁽¹⁾ Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air conditioning systems in motor vehicles and amending Council Directive 70/156/EEC (OJ L 161, 14.6.2006, p. 12).

(e) information on relevant technologies to replace or to reduce the use of fluorinated greenhouse gases and their safe handling.

4. Certificates under the certification programmes provided for in paragraph 1 shall be subject to the condition that the applicant has successfully completed an evaluation process established in accordance with paragraphs 1, 3 and 5.

5. The minimum requirements for certification programmes are those laid down in Regulations (EC) No 303/2008 to (EC) No 306/2008 and under paragraph 12. The minimum requirements for training attestations are those laid down in Regulation (EC) No 307/2008 and under paragraph 12. Those minimum requirements shall specify, for each type of equipment referred to in paragraphs 1 and 2, the required practical skills and theoretical knowledge, where appropriate, differentiating between different activities to be covered, as well as the conditions for mutual recognition of certificates and training attestations.

6. Member States shall establish or adapt certification programmes on the basis of the minimum requirements referred to in paragraph 5 for undertakings carrying out installation, servicing, maintenance, repair or decommissioning of the equipment listed in points (a) to (d) of Article 4(2) for other parties.

7. Existing certificates and training attestations issued in accordance with Regulation (EC) No 842/2006 shall remain valid, in accordance with the conditions under which they were originally issued.

8. Member States shall ensure that all natural persons holding certificates under certification programmes provided for in paragraphs 1 and 7 have access to information regarding each of the following:

(a) technologies referred to point (e) of paragraph 3; and

(b) existing regulatory requirements for working with equipment containing alternative refrigerants to fluorinated greenhouse gases.

9. Member States shall ensure the availability of training for natural persons who wish to update their knowledge in relation to the matters referred to in paragraph 3.

10. By 1 January 2017 Member States shall notify the Commission of certification and training programmes.

Member States shall recognise certificates and training attestations issued in another Member State in accordance with this Article. They shall not restrict the freedom to provide services or the freedom of establishment because a certificate was issued in another Member State.

11. Any undertaking which assigns a task referred to in paragraph 1 to another undertaking shall take reasonable steps to ascertain that the latter holds the necessary certificates for the required tasks pursuant to this Article.

12. In the event that it appears necessary for the purposes of the application of this Article, to provide for a more harmonised approach to training and certification, the Commission shall, by means of implementing acts, adapt and update the minimum requirements as to the skills and knowledge to be covered, specify the modalities of the certification or attestation and the conditions for mutual recognition and repeal acts adopted pursuant to Article 5(1) of Regulation (EC) No 842/2006. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24. When exercising the power conferred on it by this paragraph, the Commission shall take into account relevant existing qualification or certification schemes.

13. The Commission may, by means of implementing acts, determine the format of the notification referred to in paragraph 10 of this Article and may repeal acts adopted pursuant to Article 5(5) of Regulation (EC) No 842/2006. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24.

14. Where the obligations under this Article relating to the provision of certification and training would impose disproportionate burdens on a Member State because of the small size of its population and the consequent lack of demand for such training and certification, compliance may be achieved through the recognition of certificates issued in other Member States.

Member States applying this paragraph shall inform the Commission who shall inform other Member States.

15. Nothing in this Article shall prevent Member States from setting up further certification and training programmes in respect of equipment other than that referred to in paragraph 1.

CHAPTER III

PLACING ON THE MARKET AND CONTROL OF USE

Article 11

Restrictions on the placing on the market

1. The placing on the market of products and equipment listed in Annex III, with an exemption for military equipment, shall be prohibited from the date specified in that Annex, differentiating, where applicable, according to the type or global warming potential of the fluorinated greenhouse gas contained.

2. The prohibition set out in paragraph 1 shall not apply to equipment for which it has been established in ecodesign requirements adopted under Directive 2009/125/EC that due to higher energy efficiency during its operation, its lifecycle CO₂ equivalent emissions would be lower than those of equivalent equipment which meets relevant ecodesign requirements and does not contain hydrofluorocarbons.

3. Following a substantiated request by a competent authority of a Member State and taking into account the objectives of this Regulation, the Commission may, exceptionally, by means of implementing acts, authorise an exemption for up to four years to allow the placing on the market of products and equipment listed in Annex III containing, or whose functioning relies upon, fluorinated greenhouse gases, where it is demonstrated that:

- (a) for a specific product or a piece of equipment, or for a specific category of products or equipment, alternatives are not available, or cannot be used for technical or safety reasons; or
- (b) the use of technically feasible and safe alternatives would entail disproportionate costs.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24.

4. For the purposes of carrying out the installation, servicing, maintenance or repair of the equipment that contains fluorinated greenhouse gases or whose functioning relies upon those gases for which certification or attestation is required under Article 10, fluorinated greenhouse gases shall only be sold to and purchased by undertakings that hold the relevant certificates or attestations in accordance with Article 10 or undertakings that employ persons holding a certificate or a training attestation in accordance with Article 10(2) and (5). This paragraph shall not prevent non-certified undertakings, who do not carry out the activities referred to in the first sentence of this paragraph, from collecting, transporting or delivering fluorinated greenhouse gases.

5. Non-hermetically sealed equipment charged with fluorinated greenhouse gases shall only be sold to the end user where evidence is provided that the installation is to be carried out by an undertaking certified in accordance with Article 10.

6. The Commission shall collect, on the basis of available data from Member States, information on national codes, standards or legislation of Member States with respect to replacement technologies using alternatives to fluorinated greenhouse gases in refrigeration, air-conditioning and heat pump equipment and in foams.

The Commission shall publish a synthesis report on the information collected under the first subparagraph by 1 January 2017.

Article 12

Labelling and product and equipment information

1. Products and equipment that contain, or whose functioning relies upon, fluorinated greenhouse gases shall not be placed on the market unless they are labelled. This only applies to:

- (a) refrigeration equipment;
- (b) air-conditioning equipment;

- (c) heat pumps;
- (d) fire protection equipment;
- (e) electrical switchgear;
- (f) aerosol dispenser that contain fluorinated greenhouse gases, with the exception of metered dose inhalers for the delivery of pharmaceutical ingredients;
- (g) all fluorinated greenhouse gas containers;
- (h) fluorinated greenhouse gas-based solvents;
- (i) organic Rankine cycles.

2. Products or equipment subject to an exemption under Article 11(3) shall be labelled accordingly and shall include a reference that those products or equipment may only be used for the purpose for which an exemption under that Article was granted.

3. The label required pursuant to paragraph 1 shall indicate the following information:

- (a) a reference that the product or equipment contains fluorinated greenhouse gases or that its functioning relies upon such gases;
- (b) the accepted industry designation for the fluorinated greenhouse gases concerned or, if no such designation is available, the chemical name;
- (c) from 1 January 2017, the quantity expressed in weight and in CO₂ equivalent of fluorinated greenhouse gases contained in the product or equipment, or the quantity of fluorinated greenhouse gases for which the equipment is designed, and the global warming potential of those gases.

The label required pursuant to paragraph 1 shall indicate the following information, where applicable:

- (a) a reference that the fluorinated greenhouse gases are contained in hermetically sealed equipment;
- (b) a reference that the electrical switchgear has a tested leakage rate of less than 0,1 % per year as set out in the technical specification of the manufacturer.

4. The label shall be clearly readable and indelible and shall be placed either:

- (a) adjacent to the service ports for charging or recovering the fluorinated greenhouse gas; or
- (b) on that part of the product or equipment that contains the fluorinated greenhouse gas.

The label shall be in the official languages of the Member State in which it is to be placed on the market.

5. Foams and pre-blended polyols that contain fluorinated greenhouse gases shall not be placed on the market unless the fluorinated greenhouse gases are identified with a label using the accepted industry designation or, if no such designation is available, the chemical name. The label shall clearly indicate that the foam or pre-blended polyol contains fluorinated greenhouse gases. In the case of foam boards, this information shall be clearly and indelibly stated on the boards.

6. Reclaimed or recycled fluorinated greenhouse gases shall be labelled with an indication that the substance has been reclaimed or recycled, information on the batch number and the name and address of the reclamation or recycling facility.

7. Fluorinated greenhouse gases placed on the market for destruction shall be labelled with an indication that the contents of the container may only be destroyed.

8. Fluorinated greenhouse gases placed on the market for direct export shall be labelled with an indication that the contents of the container may only be directly exported.

9. Fluorinated greenhouse gases placed on the market for the use in military equipment shall be labelled with an indication that the contents of the container may only be used for that purpose.

10. Fluorinated greenhouse gases placed on the market for the etching of semiconductor material or the cleaning of chemicals vapour deposition chambers within the semiconductor manufacturing sector shall be labelled with an indication that the contents of the container may only be used for that purpose.

11. Fluorinated greenhouse gases placed on the market for feedstock use shall be labelled with an indication that the contents of the container may only be used as feedstock.

12. Fluorinated greenhouse gases placed on the market for producing metered dose inhalers for the delivery of pharmaceutical ingredients shall be labelled with an indication that the contents of the container may only be used for that purpose.

13. The information referred to in paragraphs 3 and 5 shall be included in instruction manuals for the products and equipment concerned.

In the case of products and equipment that contain fluorinated greenhouse gases with a global warming potential of 150 or more this information shall also be included in descriptions used for advertising.

14. The Commission may, by means of implementing acts, determine the format of the labels referred to in paragraph 1 and paragraphs 4 to 12 and may repeal acts adopted pursuant to Article 7(3) of Regulation (EC) No 842/2006. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24.

15. The Commission shall be empowered to adopt delegated acts in accordance with Article 22 amending the labelling requirements set out in paragraphs 4 to 12 where appropriate in view of commercial or technological development.

Article 13

Control of use

1. The use of sulphur hexafluoride in magnesium die-casting and in the recycling of magnesium die-casting alloys shall be prohibited.

As regards installations using a quantity of sulphur hexafluoride below 850 kg per year, in respect of magnesium die-casting and in the recycling of magnesium die-casting alloys, this prohibition shall only apply from 1 January 2018.

2. The use of sulphur hexafluoride to fill vehicle tyres shall be prohibited.

3. From 1 January 2020, the use of fluorinated greenhouse gases, with a global warming potential of 2 500 or more, to service or maintain refrigeration equipment with a charge size of 40 tonnes of CO₂ equivalent or more, shall be prohibited.

This paragraph shall not apply to military equipment or equipment intended for applications designed to cool products to temperatures below – 50 °C.

The prohibition referred to in the first subparagraph shall not apply to the following categories of fluorinated greenhouse gases until 1 January 2030:

- (a) reclaimed fluorinated greenhouse gases with a global warming potential of 2 500 or more used for the maintenance or servicing of existing refrigeration equipment, provided that they have been labelled in accordance with Article 12(6);
- (b) recycled fluorinated greenhouse gases with a global warming potential of 2 500 or more used for the maintenance or servicing of existing refrigeration equipment provided they have been recovered from such equipment. Such recycled gases may only be used by the undertaking which carried out their recovery as part of maintenance or servicing or the undertaking for which the recovery was carried out as part of maintenance or servicing.

The prohibition referred to in the first subparagraph shall not apply to refrigeration equipment for which an exemption has been authorised pursuant to Article 11(3).

*Article 14***Pre-charging of equipment with hydrofluorocarbons**

1. From 1 January 2017 refrigeration, air conditioning and heat pump equipment charged with hydrofluorocarbons shall not be placed on the market unless hydrofluorocarbons charged into the equipment are accounted for within the quota system referred to in Chapter IV.

2. When placing pre-charged equipment as referred to in paragraph 1 on the market, manufacturers and importers of equipment shall ensure that compliance with paragraph 1 is fully documented and shall draw up a declaration of conformity in this respect.

From 1 January 2018, where hydrofluorocarbons contained in the equipment have not been placed on the market prior to the charging of the equipment, importers of that equipment shall ensure that by 31 March every year the accuracy of the documentation and declaration of conformity is verified, for the preceding calendar year, by an independent auditor. The auditor shall be either:

- (a) accredited pursuant to Directive 2003/87/EC of the European Parliament and of the Council ⁽¹⁾; or
- (b) accredited to verify financial statements in accordance with the legislation of the Member State concerned.

Manufacturers and importers of equipment referred to in paragraph 1 shall keep the documentation and declaration of conformity for a period of at least five years after the placing on the market of that equipment. Importers of equipment placing on the market pre-charged equipment where hydrofluorocarbons contained in that equipment have not been placed on the market prior to the charging of the equipment shall ensure they are registered pursuant to point (e) of Article 17(1).

3. By drawing up the declaration of conformity, manufacturers and importers of equipment referred to in paragraph 1 shall assume responsibility for compliance with paragraphs 1 and 2.

4. The Commission shall, by means of implementing acts, determine the detailed arrangements relating to the declaration of conformity and the verification by the independent auditor referred to in the second subparagraph of paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24.

CHAPTER IV

REDUCTION OF THE QUANTITY OF HYDROFLUOROCARBONS PLACED ON THE MARKET*Article 15***Reduction of the quantity of hydrofluorocarbons placed on the market**

1. The Commission shall ensure that the quantity of hydrofluorocarbons that producers and importers are entitled to place on the market in the Union each year does not exceed the maximum quantity for the year in question calculated in accordance with Annex V.

Producers and importers shall ensure that the quantity of hydrofluorocarbons calculated in accordance with Annex V that that each of them places on the market does not exceed their respective quota allocated pursuant to Article 16(5) or transferred pursuant to Article 18.

2. This Article shall not apply to producers or importers of less than 100 tonnes of CO₂ equivalent of hydrofluorocarbons per year.

This Article shall also not apply to the following categories of hydrofluorocarbons:

- (a) hydrofluorocarbons imported into the Union for destruction;
- (b) hydrofluorocarbons used by a producer in feedstock applications or supplied directly by a producer or an importer to undertakings for use in feedstock applications;
- (c) hydrofluorocarbons supplied directly by a producer or an importer to undertakings, for export out of the Union, where those hydrofluorocarbons are not subsequently made available to any other party within the Union, prior to export;

⁽¹⁾ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

- (d) hydrofluorocarbons supplied directly by a producer or an importer for use in military equipment;
- (e) hydrofluorocarbons supplied directly by a producer or an importer to an undertaking using it for the etching of semiconductor material or the cleaning of chemicals vapour deposition chambers within the semiconductor manufacturing sector;
- (f) from 1 January 2018 onwards, hydrofluorocarbons supplied directly by a producer or an importer to an undertaking producing metered dose inhalers for the delivery of pharmaceutical ingredients.

3. This Article and Articles 16, 18, 19 and 25 shall also apply to hydrofluorocarbons contained in pre-blended polyols.

4. Following a substantiated request by a competent authority of a Member State and taking into account the objectives of this Regulation, the Commission may, exceptionally, by means of implementing acts, authorise an exemption for up to four years to exclude from the quota requirement laid down in paragraph 1 hydrofluorocarbons for use in specific applications, or specific categories of products or equipment, where it is demonstrated that:

- (a) for those particular applications, products or equipment, alternatives are not available, or cannot be used for technical or safety reasons; and
- (b) a sufficient supply of hydrofluorocarbons cannot be ensured without entailing disproportionate costs.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24.

Article 16

Allocation of quotas for placing hydrofluorocarbons on the market

1. By 31 October 2014 the Commission shall, by means of implementing acts, determine for each producer or importer, having reported data under Article 6 of Regulation (EC) No 842/2006, a reference value based on the annual average of the quantities of hydrofluorocarbons the producer or importer reported to have placed on the market from 2009 to 2012. The reference values shall be calculated in accordance with Annex V to this Regulation.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24.

2. Producers and importers that have not reported placing on the market hydrofluorocarbons under Article 6 of Regulation (EC) No 842/2006 for the reference period referred to in paragraph 1 may declare their intention to place hydrofluorocarbons on the market in the following year.

The declaration shall be addressed to the Commission, specifying the types of hydrofluorocarbons and the quantities that are expected to be placed on the market.

The Commission shall issue a notice of the time-limit for submitting those declarations. Before submitting a declaration pursuant to paragraphs 2 and 4 of this Article, undertakings shall register in the registry provided for in Article 17.

3. By 31 October 2017 and every three years thereafter, the Commission shall recalculate the reference values for the producers and importers referred to in paragraphs 1 and 2 of this Article on the basis of the annual average of the quantities of hydrofluorocarbons lawfully placed on the market from 1 January 2015 as reported under Article 19 for the years available. The Commission shall determine those reference values by means of implementing acts.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24.

4. Producers and importers for which reference values have been determined may declare additional anticipated quantities following the procedure set out in paragraph 2.

5. The Commission shall allocate quotas for placing hydrofluorocarbons on the market for each producer and importer for each year beginning with the year 2015, applying the allocation mechanism laid down in Annex VI.

Quotas shall only be allocated to producers or importers which are established within the Union, or which have mandated an only representative established within the Union for the purpose of compliance with the requirements of this Regulation. The only representative may be the same as the one mandated pursuant to Article 8 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽¹⁾.

The only representative shall comply with all obligations of producers and importers under this Regulation.

Article 17

Registry

1. By 1 January 2015, the Commission shall set up and ensure the operation of an electronic registry for quotas for placing hydrofluorocarbons on the market ('the registry').

Registration in the registry shall be compulsory for the following:

- (a) producers and importers to which a quota for the placing on the market of hydrofluorocarbons has been allocated in accordance with Article 16(5);
- (b) undertakings to which a quota is transferred in accordance with Article 18;
- (c) producers and importers declaring their intention to submit a declaration pursuant to Article 16(2);
- (d) producers and importers supplying, or undertakings in receipt of hydrofluorocarbons for the purposes listed in points (a) to (f) of the second subparagraph of Article 15(2);
- (e) importers of equipment placing pre-charged equipment on the market where the hydrofluorocarbons contained in the equipment have not been placed on the market prior to the charging of that equipment in accordance with Article 14.

Registration shall be effected by means of application to the Commission in accordance with procedures to be set out by the Commission.

2. The Commission may, to the extent necessary, by means of implementing acts, ensure the smooth functioning of the registry. Those implementing acts shall be adopted in accordance with the examination procedure in Article 24.

3. The Commission shall ensure that registered producers and importers are informed via the registry about the quota allocated and about any changes to it during the allocation period.

4. The competent authorities, including customs authorities, of the Member States shall have access, for information purposes, to the registry.

Article 18

Transfer of quotas and authorisation to use quotas for the placing on the market of hydrofluorocarbons in imported equipment

1. Any producer or importer for whom a reference value has been determined pursuant to Article 16(1) or (3) and who has been allocated a quota in accordance with Article 16(5), may transfer in the registry referred to in Article 17(1) that quota for all or any quantities to another producer or importer in the Union or to another producer or importer which is represented in the Union by an only representative referred to in the second and third subparagraph of Article 16(5).

2. Any producer or importer having received its quota pursuant to Article 16(1) and (3) or to whom a quota has been transferred pursuant to paragraph 1 of this Article may authorise another undertaking to use its quota for the purpose of Article 14.

⁽¹⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

Any producer or importer having received its quota exclusively on the basis of a declaration pursuant to Article 16(2), may only authorise another undertaking to use its quota for the purpose of Article 14 provided that the corresponding quantities of hydrofluorocarbons are physically supplied by the authorising producer or importer.

For the purpose of Articles 15, 16 and 19(1) and (6) the respective quantities of hydrofluorocarbons shall be deemed to be placed on the market by the authorising producer or importer at the moment of the authorisation. The Commission may require from the authorising producer or importer evidence that it is active in the supply of hydrofluorocarbons.

CHAPTER V

REPORTING

Article 19

Reporting on production, import, export, feedstock use and destruction of the substances listed in Annexes I or II

1. By 31 March 2015 and every year thereafter, each producer, importer and exporter that produced, imported or exported one metric tonne or 100 tonnes of CO₂ equivalent or more of fluorinated greenhouse gases and gases listed in Annex II during the preceding calendar year shall report to the Commission the data specified in Annex VII on each of those substances for that calendar year. This paragraph shall also apply to undertakings receiving quotas pursuant to Article 18(1).

2. By 31 March 2015 and every year thereafter, each undertaking that destroyed 1 metric tonne or 1 000 tonnes of CO₂ equivalent or more of fluorinated greenhouse gases and gases listed in Annex II during the preceding calendar year shall report to the Commission the data specified in Annex VII on each of those substances for that calendar year.

3. By 31 March 2015 and every year thereafter, each undertaking that used 1 000 tonnes of CO₂ equivalent or more of fluorinated greenhouse gases as feedstock during the preceding calendar year shall report to the Commission the data specified in Annex VII on each of those substances for that calendar year.

4. By 31 March 2015 and every year thereafter, each undertaking that placed 500 tonnes of CO₂ equivalent or more of fluorinated greenhouse gases and gases listed in Annex II contained in products or equipment on the market during the preceding calendar year shall report to the Commission the data specified in Annex VII on each of those substances for that calendar year.

5. Each importer of equipment that place on the market pre-charged equipment where hydrofluorocarbons contained in this equipment have not been placed on the market prior to the charging of the equipment shall submit to the Commission a verification document issued pursuant to Article 14(2).

6. By 30 June 2015 and every year thereafter, each undertaking which under paragraph 1 reports on the placing on the market 10 000 tonnes of CO₂ equivalent or more of hydrofluorocarbons during the preceding calendar year shall, in addition, ensure that the accuracy of the data is verified by an independent auditor. The auditor shall be either:

(a) accredited pursuant to Directive 2003/87/EC; or

(b) accredited to verify financial statements in accordance with the legislation of the Member State concerned.

The undertaking shall keep the verification report for at least five years. The verification report shall be made available, on request, to the competent authority of the Member State concerned and to the Commission.

7. The Commission may, by means of implementing acts, determine the format and means of submitting the reports referred to in this Article.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24.

8. The Commission shall take appropriate measures to protect the confidentiality of the information submitted to it in accordance with this Article.

*Article 20***Collection of emissions data**

Member States shall establish reporting systems for the relevant sectors referred to in this Regulation, with the objective of acquiring, to the extent possible, emissions data.

CHAPTER VI

FINAL PROVISIONS*Article 21***Review**

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 22 concerning the updating of Annexes I, II and IV on the basis of new Assessment Reports adopted by the Intergovernmental Panel on Climate Change or new reports of the Scientific Assessment Panel (SAP) of the Montreal Protocol on the global warming potential of the listed substances.

2. On the basis of information on the placing on the market of the gases listed in Annexes I and II, reported in accordance with Article 19, and on emissions of fluorinated greenhouse gases made available in accordance with Article 20 and on the basis of any relevant information received from Member States, the Commission shall monitor the application and effects of this Regulation.

No later than 31 December 2020, the Commission shall publish a report on the availability of hydrofluorocarbons on the Union market.

No later than 31 December 2022, it shall publish a comprehensive report on the effects of this Regulation, including in particular:

- (a) a forecast of the continued demand for hydrofluorocarbons up to and beyond 2030;
- (b) an assessment of the need for further action by the Union and its Member States in light of existing and new international commitments regarding the reduction of fluorinated greenhouse gas emissions;
- (c) an overview of European and international standards, national safety legislation and building codes in Member States in relation to the transition to alternative refrigerants;
- (d) a review of the availability of technically feasible and cost-effective alternatives to products and equipment containing fluorinated greenhouse gases for products and equipment not listed in Annex III, taking into account energy efficiency.

3. No later than 1 July 2017, the Commission shall publish a report assessing the prohibition pursuant to point 13 of Annex III, considering in particular, the availability of cost-effective, technically feasible, energy-efficient and reliable alternatives to multipack centralised refrigeration systems referred to in that provision. In light of that report, the Commission shall submit, if appropriate, a legislative proposal to the European Parliament and to the Council with a view to amending the provision pursuant to point 13 of Annex III.

4. No later than 1 July 2020, the Commission shall publish a report assessing whether cost-effective, technically feasible, energy-efficient and reliable alternatives exist, which make the replacement of fluorinated greenhouse gases possible in new medium-voltage secondary switchgear and new small single split air-conditioning systems and shall submit, if appropriate, a legislative proposal to the European Parliament and to the Council to amend the list set out in Annex III.

5. No later than 1 July 2017, the Commission shall publish a report assessing the quota allocation method, including the impact of allocating quotas for free, and the costs of implementing this Regulation in Member States and of a possible international agreement on hydrofluorocarbons, if applicable. In light of that report the Commission shall submit, if appropriate, a legislative proposal to the European Parliament and to the Council with a view to:

- (a) amending the quota allocation method;
- (b) establishing an appropriate method of distributing any possible revenues.

6. No later than 1 January 2017, the Commission shall publish a report examining Union legislation with respect to the training of natural persons for the safe handling of alternative refrigerants to replace or reduce the use of fluorinated greenhouse gases and shall submit, if appropriate, a legislative proposal to the European Parliament and to the Council to amend the relevant Union legislation.

Article 22

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 12(15) and 21(1) shall be conferred on the Commission for period of five years from 10 June 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five year period. The delegation of power shall be tacitly extended for further periods of five years, unless the European Parliament or the Council opposes such extension not later than three months before the end of each such period.
3. The delegation of power referred to in Articles 12(15) and 21(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 12(15) and 21(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 23

Consultation Forum

In implementing this Regulation, the Commission shall ensure a balanced participation of Member States' representatives and representatives of civil society, including environmental organisations, representatives of manufacturers, operators and certified persons. To that end, it shall establish a Consultation Forum for those parties to meet and provide advice and expertise to the Commission in relation to the implementation of this Regulation, in particular with regard to the availability of alternatives to fluorinated greenhouse gases, including the environmental, technical, economic and safety aspects of their use. The rules of procedure of the Consultation Forum shall be established by the Commission and shall be published.

Article 24

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 25

Penalties

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

Member States shall notify those provisions to the Commission by 1 January 2017 at the latest and shall notify it without delay of any subsequent amendment affecting them.

2. In addition to the penalties referred to in paragraph 1, undertakings that have exceeded their quota for placing hydrofluorocarbons on the market, allocated in accordance with Article 16(5) or transferred to them in accordance with Article 18, may only be allocated a reduced quota allocation for the allocation period after the excess has been detected.

The amount of reduction shall be calculated as 200 % of the amount by which the quota was exceeded. If the amount of the reduction is higher than the amount to be allocated in accordance with Article 16(5) as a quota for the allocation period after the excess has been detected, no quota shall be allocated for that allocation period and the quota for the following allocation periods shall be reduced likewise until the full amount has been deducted.

Article 26

Repeal

Regulation (EC) No 842/2006 shall be repealed with effect from 1 January 2015, without prejudice to compliance with the requirements of that Regulation in accordance with the timetable set out therein.

However, Regulations (EC) No 1493/2007, (EC) No 1494/2007, (EC) No 1497/2007, (EC) No 1516/2007, (EC) No 303/2008, (EC) No 304/2008, (EC) No 305/2008, (EC) No 306/2008, (EC) No 307/2008 and (EC) No 308/2008 shall remain in force and continue to apply unless and until repealed by delegated or implementing acts adopted by the Commission pursuant to this Regulation.

References to Regulation (EC) No 842/2006 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex VIII.

Article 27

Entry into force and date of application

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2015.

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

Done at Strasbourg, 16 April 2014.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
D. KOURKOULAS

ANNEX I

FLUORINATED GREENHOUSE GASES REFERRED TO IN POINT 1 OF ARTICLE 2

Substance			GWP ⁽¹⁾
Industrial designation	Chemical name (Common name)	Chemical formula	
Section 1: Hydrofluorocarbons (HFCs)			
HFC-23	trifluoromethane (fluoroform)	CHF ₃	14 800
HFC-32	difluoromethane	CH ₂ F ₂	675
HFC-41	fluoromethane (methyl fluoride)	CH ₃ F	92
HFC-125	pentafluoroethane	CHF ₂ CF ₃	3 500
HFC-134	1,1,2,2-tetrafluoroethane	CHF ₂ CHF ₂	1 100
HFC-134a	1,1,1,2-tetrafluoroethane	CH ₂ FCF ₃	1 430
HFC-143	1,1,2-trifluoroethane	CH ₂ FCHF ₂	353
HFC-143a	1,1,1-trifluoroethane	CH ₃ CF ₃	4 470
HFC-152	1,2-difluoroethane	CH ₂ FCH ₂ F	53
HFC-152a	1,1-difluoroethane	CH ₃ CHF ₂	124
HFC-161	fluoroethane (ethyl fluoride)	CH ₃ CH ₂ F	12
HFC-227ea	1,1,1,2,3,3,3-heptafluoropropane	CF ₃ CHFCF ₃	3 220
HFC-236cb	1,1,1,2,2,3-hexafluoropropane	CH ₂ FCF ₂ CF ₃	1 340
HFC-236ea	1,1,1,2,3,3-hexafluoropropane	CHF ₂ CHFCF ₃	1 370
HFC-236fa	1,1,1,3,3,3-hexafluoropropane	CF ₃ CH ₂ CF ₃	9 810
HFC-245ca	1,1,2,2,3-pentafluoropropane	CH ₂ FCF ₂ CHF ₂	693
HFC-245fa	1,1,1,3,3-pentafluoropropane	CHF ₂ CH ₂ CF ₃	1 030

Substance			GWP ⁽¹⁾
Industrial designation	Chemical name (Common name)	Chemical formula	
HFC-365 mfc	1,1,1,3,3-pentafluorobutane	CF ₃ CH ₂ CF ₂ CH ₃	794
HFC-43-10 mee	1,1,1,2,2,3,4,5,5,5-decafluoropentane	CF ₃ CHFCHF ₂ CF ₃	1 640

Section 2: Perfluorocarbons (PFCs)

PFC-14	tetrafluoromethane (perfluoromethane, carbon tetrafluoride)	CF ₄	7 390
PFC-116	hexafluoroethane (perfluoroethane)	C ₂ F ₆	12 200
PFC-218	octafluoropropane (perfluoropropane)	C ₃ F ₈	8 830
PFC-3-1-10 (R-31-10)	decafluorobutane (perfluorobutane)	C ₄ F ₁₀	8 860
PFC-4-1-12 (R-41-12)	dodecafluoropentane (perfluoropentane)	C ₅ F ₁₂	9 160
PFC-5-1-14 (R-51-14)	tetradecafluorohexane (perfluorohexane)	C ₆ F ₁₄	9 300
PFC-c-318	octafluorocyclobutane (perfluorocyclobutane)	c-C ₄ F ₈	10 300

Section 3: Other perfluorinated compounds

	sulphur hexafluoride	SF ₆	22 800
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⁽¹⁾ Based on the Fourth Assessment Report adopted by the Intergovernmental Panel on Climate Change, unless otherwise indicated.

ANNEX II

OTHER FLUORINATED GREENHOUSE GASES SUBJECT TO REPORTING IN ACCORDANCE WITH ARTICLE 19

Substance		GWP ⁽¹⁾
Common name/industrial designation	Chemical formula	
Section 1: Unsaturated hydro(chloro)fluorocarbons		
HFC-1234yf	CF ₃ CF = CH ₂	4 ^{Fn (2)}
HFC-1234ze	trans — CHF = CHCF ₃	7 ^{Fn 2}
HFC-1336mzz	CF ₃ CH = CHCF ₃	9
HCFC-1233zd	C ₃ H ₂ C _l F ₃	4,5
HCFC-1233xf	C ₃ H ₂ C _l F ₃	1 ^{Fn (3)}
Section 2: Fluorinated ethers and alcohols		
HFE-125	CHF ₂ OCF ₃	14 900
HFE-134 (HG-00)	CHF ₂ OCHF ₂	6 320
HFE-143a	CH ₃ OCF ₃	756
HCFE-235da2 (isofluorane)	CHF ₂ OCHC _l CF ₃	350
HFE-245cb2	CH ₃ OCF ₂ CF ₃	708
HFE-245fa2	CHF ₂ OCH ₂ CF ₃	659
HFE-254cb2	CH ₃ OCF ₂ CHF ₂	359
HFE-347 mcc3 (HFE-7000)	CH ₃ OCF ₂ CF ₂ CF ₃	575
HFE-347pcf2	CHF ₂ CF ₂ OCH ₂ CF ₃	580
HFE-356pcc3	CH ₃ OCF ₂ CF ₂ CHF ₂	110
HFE-449sl (HFE-7100)	C ₄ F ₉ OCH ₃	297
HFE-569sf2 (HFE-7200)	C ₄ F ₉ OC ₂ H ₅	59

Substance		GWP ⁽¹⁾
Common name/industrial designation	Chemical formula	
HFE-43-10pccc124 (H-Galden 1040x) HG-11	$\text{CHF}_2\text{OCF}_2\text{OC}_2\text{F}_4\text{OCHF}_2$	1 870
HFE-236ca12 (HG-10)	$\text{CHF}_2\text{OCF}_2\text{OCHF}_2$	2 800
HFE-338pcc13 (HG-01)	$\text{CHF}_2\text{OCF}_2\text{CF}_2\text{OCHF}_2$	1 500
HFE-347mmy1	$(\text{CF}_3)_2\text{CFOCH}_3$	343
2,2,3,3,3-pentafluoropropanol	$\text{CF}_3\text{CF}_2\text{CH}_2\text{OH}$	42
bis(trifluoromethyl)-methanol	$(\text{CF}_3)_2\text{CHOH}$	195
HFE-227ea	$\text{CF}_3\text{CHFOCF}_3$	1 540
HFE-236ea2 (desfluoran)	$\text{CHF}_2\text{OCHF}_2\text{CF}_3$	989
HFE-236fa	$\text{CF}_3\text{CH}_2\text{OCF}_3$	487
HFE-245fa1	$\text{CHF}_2\text{CH}_2\text{OCF}_3$	286
HFE 263fb2	$\text{CF}_3\text{CH}_2\text{OCH}_3$	11
HFE-329 mcc2	$\text{CHF}_2\text{CF}_2\text{OCF}_2\text{CF}_3$	919
HFE-338 mcf2	$\text{CF}_3\text{CH}_2\text{OCF}_2\text{CF}_3$	552
HFE-338mmz1	$(\text{CF}_3)_2\text{CHOCHF}_2$	380
HFE-347 mcf2	$\text{CHF}_2\text{CH}_2\text{OCF}_2\text{CF}_3$	374
HFE-356 mec3	$\text{CH}_3\text{OCF}_2\text{CHFCF}_3$	101
HFE-356mm1	$(\text{CF}_3)_2\text{CHOCH}_3$	27
HFE-356pcf2	$\text{CHF}_2\text{CH}_2\text{OCF}_2\text{CHF}_2$	265
HFE-356pcf3	$\text{CHF}_2\text{OCH}_2\text{CF}_2\text{CHF}_2$	502
HFE 365 mcf3	$\text{CF}_3\text{CF}_2\text{CH}_2\text{OCH}_3$	11

Substance		GWP ⁽¹⁾
Common name/industrial designation	Chemical formula	
HFE-374pc2	CHF ₂ CF ₂ OCH ₂ CH ₃	557
	- (CF ₂) ₄ CH (OH)-	73

Section 3: Other perfluorinated compounds

perfluoropolymethylisopropyl-ether (PFPMIE)	CF ₃ OCF(CF ₃)CF ₂ OCF ₂ OCF ₃	10 300
nitrogen trifluoride	NF ₃	17 200
trifluoromethyl sulphur pentafluoride	SF ₅ CF ₃	17 700
perfluorocyclopropane	c-C ₃ F ₆	17 340 ^{Fn} ⁽⁴⁾

⁽¹⁾ Based on the Fourth Assessment Report adopted by the Intergovernmental Panel on Climate Change, unless otherwise indicated.

⁽²⁾ GWP according to the Report of the 2010 Assessment of the Scientific Assessment Panel (SAP) of the Montreal Protocol, Tables 1-11, citing two peer-reviewed scientific references. http://ozone.unep.org/Assessment_Panels/SAP/Scientific_Assessment_2010/index.shtml

⁽³⁾ Default value, global warming potential not yet available.

⁽⁴⁾ Minimum value according to the Fourth Assessment Report adopted by the Intergovernmental Panel on Climate Change.

ANNEX III

PLACING ON THE MARKET PROHIBITIONS REFERRED TO IN ARTICLE 11(1)

Products and equipment Where relevant, the GWP of mixtures containing fluorinated greenhouse gases shall be calculated in accordance with Annex IV, as provided for in point 6 of Article 2		Date of prohibition
1. Non-refillable containers for fluorinated greenhouse gases used to service, maintain or fill refrigeration, air-conditioning or heat-pump equipment, fire protection systems or switchgear, or for use as solvents		4 July 2007
2. Non-confined direct evaporation systems that contain HFCs and PFCs as refrigerants		4 July 2007
3. Fire protection equipment	that contain PFCs	4 July 2007
	that contain HFC-23	1 January 2016
4. Windows for domestic use that contain fluorinated greenhouse gases		4 July 2007
5. Other windows that contain fluorinated greenhouse gases		4 July 2008
6. Footwear that contains fluorinated greenhouse gases		4 July 2006
7. Tyres that contain fluorinated greenhouse gases		4 July 2007
8. One-component foams, except when required to meet national safety standards, that contain fluorinated greenhouse gases with GWP of 150 or more		4 July 2008
9. Aerosol generators marketed and intended for sale to the general public for entertainment and decorative purposes, as listed in point 40 of Annex XVII to Regulation (EC) No 1907/2006, and signal horns, that contain HFCs with GWP of 150 or more		4 July 2009
10. Domestic refrigerators and freezers that contain HFCs with GWP of 150 or more		1 January 2015
11. Refrigerators and freezers for commercial use (hermetically sealed equipment)	that contain HFCs with GWP of 2 500 or more	1 January 2020
	that contain HFCs with GWP of 150 or more	1 January 2022
12. Stationary refrigeration equipment, that contains, or whose functioning relies upon, HFCs with GWP of 2 500 or more except equipment intended for application designed to cool products to temperatures below – 50 °C		1 January 2020
13. Multipack centralised refrigeration systems for commercial use with a rated capacity of 40 kW or more that contain, or whose functioning relies upon, fluorinated greenhouse gases with GWP of 150 or more, except in the primary refrigerant circuit of cascade systems where fluorinated greenhouse gases with a GWP of less than 1 500 may be used		1 January 2022

Products and equipment Where relevant, the GWP of mixtures containing fluorinated greenhouse gases shall be calculated in accordance with Annex IV, as provided for in point 6 of Article 2		Date of prohibition
14. Movable room air-conditioning equipment (hermetically sealed equipment which is movable between rooms by the end user) that contain HFCs with GWP of 150 or more		1 January 2020
15. Single split air-conditioning systems containing less than 3 kg of fluorinated greenhouse gases, that contain, or whose functioning relies upon, fluorinated greenhouse gases with GWP of 750 or more		1 January 2025
16. Foams that contain HFCs with GWP of 150 or more except when required to meet national safety standards	Extruded polystyrene (XPS)	1 January 2020
	Other foams	1 January 2023
17. Technical aerosols that contain HFCs with GWP of 150 or more, except when required to meet national safety standards or when used for medical applications		1 January 2018

ANNEX IV

METHOD OF CALCULATING THE TOTAL GWP OF A MIXTURE

The GWP of a mixture is calculated as a weighted average, derived from the sum of the weight fractions of the individual substances multiplied by their GWP, unless otherwise specified, including substances that are not fluorinated greenhouse gases.

$$\Sigma (\text{Substance X \%} \times \text{GWP}) + (\text{Substance Y \%} \times \text{GWP}) + \dots (\text{Substance N \%} \times \text{GWP}),$$

where % is the contribution by weight with a weight tolerance of $\pm 1\%$.

For example: applying the formula to a blend of gases consisting of 60 % dimethyl ether, 10 % HFC-152a and 30 % isobutane:

$$\Sigma (60 \% \times 1) + (10 \% \times 124) + (30 \% \times 3)$$

$$\rightarrow \text{Total GWP} = 13,9$$

The GWP of the following non-fluorinated substances are used to calculate the GWP of mixtures. For other substances not listed in this annex a default value of 0 applies.

Substance			GWP ⁽¹⁾
Common name	Industrial designation	Chemical Formula	
methane		CH ₄	25
nitrous oxide		N ₂ O	298
dimethyl ether		CH ₃ OCH ₃	1
methylene chloride		CH ₂ Cl ₂	9
methyl chloride		CH ₃ Cl	13
chloroform		CHCl ₃	31
ethane	R-170	CH ₃ CH ₃	6
propane	R-290	CH ₃ CH ₂ CH ₃	3
butane	R-600	CH ₃ CH ₂ CH ₂ CH ₃	4
isobutane	R-600a	CH(CH ₃) ₂ CH ₃	3
pentane	R-601	CH ₃ CH ₂ CH ₂ CH ₂ CH ₃	5 ⁽²⁾
isopentane	R-601a	(CH ₃) ₂ CHCH ₂ CH ₃	5 ⁽²⁾
ethoxyethane (diethyl ether)	R-610	CH ₃ CH ₂ OCH ₂ CH ₃	4
methyl formate	R-611	HCOOCH ₃	25
hydrogen	R-702	H ₂	6
ammonia	R-717	NH ₃	0
ethylene	R-1150	C ₂ H ₄	4
propylene	R-1270	C ₃ H ₆	2
cyclopentane		C ₅ H ₁₀	5 ⁽²⁾

⁽¹⁾ Based on the Fourth Assessment Report adopted by the Intergovernmental Panel on Climate Change, unless otherwise indicated.

⁽²⁾ Substance not listed in the Fourth Assessment Report adopted by the Intergovernmental Panel on Climate Change, default value on the basis of the GWPs of other hydrocarbons.

ANNEX V

**CALCULATION OF THE MAXIMUM QUANTITY, REFERENCE VALUES AND QUOTAS FOR PLACING
HYDROFLUOROCARBONS ON THE MARKET**

The maximum quantity referred to in Article 15(1) shall be calculated by applying the following percentages to the annual average of the total quantity placed on the market into the Union during the period from 2009 to 2012. From 2018 onwards, the maximum quantity referred to in Article 15(1) shall be calculated by applying the following percentages to the annual average of the total quantity placed on the market into the Union during period 2009 to 2012, and subsequently subtracting the amounts for exempted uses according to Article 15(2), on the basis of available data.

Years	Percentage to calculate the maximum quantity of hydrofluorocarbons to be placed on the market and corresponding quotas
2015	100 %
2016–17	93 %
2018–20	63 %
2021–23	45 %
2024–26	31 %
2027–29	24 %
2030	21 %

The maximum quantity, reference values and quotas for placing hydrofluorocarbons on the market referred to in Articles 15 and 16 shall be calculated as the aggregated quantities of all types of hydrofluorocarbons, expressed in tonne(s) of CO₂ equivalent.

The calculation of reference values and quotas for placing hydrofluorocarbons on the market referred to in Articles 15 and 16 shall be based on the quantities of hydrofluorocarbons producers and importers have placed on the market in the Union during the reference or allocation period but excluding quantities of hydrofluorocarbons for the usage referred to in Article 15(2) during the same period, on the basis of available data.

Transactions referred to in point (c) of Article 15(2) shall be verified in accordance with Article 19(6) regardless of the quantities involved.

ANNEX VI

ALLOCATION MECHANISM REFERRED TO IN ARTICLE 16

1. Determination of the quantity to be allocated to undertakings for which a reference value has been established under Article 16(1) and (3)

Each undertaking for which a reference value has been established receives a quota corresponding to 89 % of the reference value multiplied by the percentage indicated in Annex V for the respective year.

2. Determination of the quantity to be allocated to undertakings that have submitted a declaration under Article 16(2)

The sum of the quotas allocated under point 1 is subtracted from the maximum quantity for the given year set out in Annex V to determine the quantity to be allocated to undertakings for which no reference value has been established and which have submitted a declaration under Article 16(2) (quantity to be allocated in step 1 of the calculation).

- 2.1. Step 1 of the calculation

Each undertaking receives an allocation corresponding to the quantity requested in its declaration, but no more than a pro-rata share of the quantity to be allocated in step 1.

The pro-rata share is calculated by dividing 100 by the number of undertakings that have submitted a declaration. The sum of the quotas allocated in step 1 is subtracted from the quantity to be allocated in step 1 to determine the quantity to be allocated in step 2.

- 2.2. Step 2 of the calculation

Each undertaking that has not obtained 100 % of the quantity requested in its declaration in step 1 receives an additional allocation corresponding to the difference between the quantity requested and the quantity obtained in step 1. However, this must not exceed the pro-rata share of the quantity to be allocated in step 2.

The pro-rata share is calculated by dividing 100 by the number of undertakings eligible for an allocation in step 2. The sum of the quotas allocated in step 2 is subtracted from the quantity to be allocated in step 2 to determine the quantity to be allocated in step 3.

- 2.3. Step 3 of the calculation

Step 2 is repeated until all requests are satisfied or the remaining quantity to be allocated in the next phase is less than 500 tonnes of CO₂ equivalent.

3. Determination of the quantity to be allocated to undertakings that have submitted a declaration under Article 16(4)

For the allocation of quotas for 2015 to 2017 the sum of the quotas allocated under points 1 and 2 is subtracted from the maximum quantity for the given year set out in Annex V to determine the quantity to be allocated to undertakings for which a reference value has been established and that have submitted a declaration under Article 16(4).

The allocation mechanism set out under points 2.1 and 2.2 applies.

For the allocation of quotas for 2018 and every year thereafter, undertakings that have submitted a declaration under Article 16(4) shall be treated in the same way as undertakings that have submitted a declaration under Article 16(2).

ANNEX VII

DATA TO BE REPORTED PURSUANT TO ARTICLE 19

1. Each producer referred to in Article 19(1) shall report on:
 - (a) the total quantity of each substance listed in Annexes I and II it has produced in the Union, identifying the main categories of application in which the substance is used;
 - (b) the quantities of each substance listed in Annex I and, where applicable, Annex II it has placed on the market in the Union, specifying separately quantities placed on the market for feedstock uses, direct exports, producing metered dose inhalers for the delivery of pharmaceutical ingredients, use in military equipment and use in the etching of semiconductor material or the cleaning of chemical vapour deposition chambers within the semiconductor manufacturing sector;
 - (c) the quantities of each substance listed in Annexes I and II that have been recycled, reclaimed and destroyed, respectively;
 - (d) any stocks held at the beginning and the end of the reporting period;
 - (e) any authorisation to use quota, specifying relevant quantities, for the purpose of Article 14.
2. Each importer referred to in Article 19(1) shall report on:
 - (a) the quantity of each substance listed in Annex I and, where applicable, Annex II it has imported into the Union, identifying the main categories of application in which the substance is used, specifying separately quantities placed on the market for destruction, feedstock uses, direct exports, producing metered dose inhalers for the delivery of pharmaceutical ingredients, use in military equipment and use in the etching of semiconductor material or the cleaning of chemical vapour deposition chambers within the semiconductor manufacturing sector;
 - (b) the quantities of each substance listed in Annexes I and II that have been recycled, reclaimed and destroyed, respectively;
 - (c) any authorisation to use quota, specifying relevant quantities, for the purpose of Article 14;
 - (d) any stocks held at the beginning and the end of the reporting period.
3. Each exporter referred to in Article 19(1) shall report on:
 - (a) the quantities of each substance listed in Annexes I and II that it has exported from the Union other than to be recycled, reclaimed or destroyed;
 - (b) any quantities of each substance listed in Annexes I and II that it has exported from the Union to be recycled, reclaimed and destroyed, respectively.
4. Each undertaking referred to in Article 19(2) shall report on:
 - (a) the quantities of each substance listed in Annexes I and II destroyed, including the quantities of those substances contained in products or equipment;
 - (b) any stocks of each substance listed in Annexes I and II waiting to be destroyed, including the quantities of those substances contained in products or equipment;
 - (c) the technology used for the destruction of the substances listed in Annexes I and II.
5. Each undertaking referred to in Article 19(3) shall report on the quantities of each substance listed in Annex I used as feedstock.

6. Each undertaking referred to in Article 19(4) shall report on:

- (a) the categories of the products or equipment containing substances listed in Annexes I and II;
 - (b) the number of units;
 - (c) any quantities of each substance listed in Annexes I and II contained in the products or equipment.
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ANNEX VIII

CORRELATION TABLE

Regulation (EC) No 842/2006	This Regulation
Article 1	Article 1
Article 2	Article 2
Article 3(1)	Article 3(2) and (3)
Article 3(2), first subparagraph	Article 4(1), (2) and (3)
Article 3(2), second subparagraph	Article 3(3), second subparagraph
Article 3(2), third subparagraph	—
Article 3(3)	Article 5(1)
Article 3(4)	Article 4(3)
Article 3(5)	Article 4(4)
Article 3(6)	Article 6(1) and (2)
Article 3(7)	Article 4(5)
Article 4(1)	Article 8(1)
Article 4(2)	Article 8(2)
Article 4(3)	Article 8(3)
Article 4(4)	—
Article 5(1)	Article 10(5) and (12)
Article 5(2), first sentence	Article 10(1), (2) and (6)
Article 5(2), second sentence	Article 10(10), first subparagraph
Article 5(2), third sentence	Article 10(10), second subparagraph
Article 5(3)	Article 3(4), first subparagraph and Article 10(3)
Article 5(4)	Article 11(4)
Article 5(5)	Article 10(13)
Article 6(1)	Article 19(1) and Annex VII
Article 6(2)	Article 19(7)
Article 6(3)	Article 19(8)
Article 6(4)	Article 20 and Article 6(2)
Article 7(1), first subparagraph, first sentence	Article 12(1) first sentence
Article 7(1), first subparagraph, second and third sentence	Article 12(2), (3) and (4)

Regulation (EC) No 842/2006	This Regulation
Article 7(1), second subparagraph	Article 12(13)
Article 7(2)	Article 12(1), second sentence
Article 7(3), first sentence	Article 12(14)
Article 7(3), second sentence	Article 12(15)
Article 8(1)	Article 13(1)
Article 8(2)	Article 13(2)
Article 9(1)	Article 11(1)
Article 9(2)	—
Article 9(3)	—
Article 10	21(2)
Article 11	—
Article 12	Article 24
Article 13(1)	Article 25(1), first subparagraph
Article 13(2)	Article 25(1), second subparagraph
Article 14	—
Article 15	Article 27
Annex I — Part 1	Annex I
Annex I — Part 2	Annex IV
Annex II	Annex III

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 14 April 2014

on the conclusion, on behalf of the European Union, of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity

(Text with EEA relevance)

(2014/283/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(6)(a)(v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament ⁽¹⁾,

Whereas:

- (1) The Union and its Member States joined the consensus of the 193 Parties to the Convention on Biological Diversity ('CBD') ⁽²⁾ that adopted the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity ('Nagoya Protocol') on 29 October 2010.
- (2) In accordance with Council Decision of 6 May 2011 ⁽³⁾, the Nagoya Protocol was signed by the Union, subject to its conclusion at a later date. Most Member States have signed the Nagoya Protocol.
- (3) The Union is committed to the swift implementation and ratification of the Nagoya Protocol.
- (4) In accordance with Article 34 of the CBD, any protocol to the CBD is subject to ratification, acceptance or approval by States and by regional economic integration organisations.
- (5) The Union and its Member States should endeavour to deposit simultaneously, to the extent possible, their instruments of ratification, acceptance or approval of the Nagoya Protocol.
- (6) The Nagoya Protocol should therefore be approved on behalf of the Union,

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ OJ L 309, 13.12.1993, p. 3.

⁽³⁾ Not yet published in the Official Journal.

HAS ADOPTED THIS DECISION:

Article 1

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity is hereby approved on behalf of the Union.

The text of the Nagoya Protocol is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to deposit, on behalf of the Union, as regards matters falling within the Union's competence, the instrument of approval provided for in Article 33 of the Nagoya Protocol ⁽¹⁾. At the same time, such person(s) shall deposit the declaration set out in the Annex to this Decision, in accordance with Article 34(3) of the Convention on Biological Diversity.

Article 3

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

Done at Luxembourg, 14 April 2014.

For the Council
The President
A. TSAFTARIS

⁽¹⁾ The date of entry into force of the Nagoya Protocol will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

ANNEX

Declaration by the European Union in accordance with article 34, paragraph 3, of the convention on biological diversity

The European Union declares that, in accordance with the Treaty on the Functioning of the European Union, and in particular Article 191 thereof, it is competent for entering into international agreements, and for implementing the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment;
- protecting human health;
- prudent and rational utilisation of natural resources;
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combatting climate change.

Moreover, the European Union adopts measures at Union level for establishing a European Research Area and for the proper functioning of its internal market.

The exercise of Union competence is by its nature subject to continuous development. In order to comply with its obligations under Article 14(2)(a) of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, the Union will keep up-to-date the list of legal instruments to be transmitted to the Access and Benefit-Sharing Clearing-House.

The European Union is responsible for the performance of those obligations resulting from this Protocol which are covered by Union law in force.'

NAGOYA PROTOCOL
on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their
Utilization to the Convention on Biological Diversity

THE PARTIES TO THIS PROTOCOL,

BEING Parties to the Convention on Biological Diversity, hereinafter referred to as 'the Convention',

RECALLING that the fair and equitable sharing of benefits arising from the utilization of genetic resources is one of three core objectives of the Convention, and RECOGNIZING that this Protocol pursues the implementation of this objective within the Convention,

REAFFIRMING the sovereign rights of States over their natural resources and according to the provisions of the Convention,

RECALLING FURTHER Article 15 of the Convention,

RECOGNIZING the important contribution to sustainable development made by technology transfer and cooperation to build research and innovation capacities for adding value to genetic resources in developing countries, in accordance with Articles 16 and 19 of the Convention,

RECOGNIZING that public awareness of the economic value of ecosystems and biodiversity and the fair and equitable sharing of this economic value with the custodians of biodiversity are key incentives for the conservation of biological diversity and the sustainable use of its components,

ACKNOWLEDGING the potential role of access and benefit-sharing to contribute to the conservation and sustainable use of biological diversity, poverty eradication and environmental sustainability and thereby contributing to achieving the Millennium Development Goals,

ACKNOWLEDGING the linkage between access to genetic resources and the fair and equitable sharing of benefits arising from the utilization of such resources,

RECOGNIZING the importance of providing legal certainty with respect to access to genetic resources and the fair and equitable sharing of benefits arising from their utilization,

FURTHER RECOGNIZING the importance of promoting equity and fairness in negotiation of mutually agreed terms between providers and users of genetic resources,

RECOGNIZING ALSO the vital role that women play in access and benefit-sharing and AFFIRMING the need for the full participation of women at all levels of policymaking and implementation for biodiversity conservation,

DETERMINED to further support the effective implementation of the access and benefit-sharing provisions of the Convention,

RECOGNIZING that an innovative solution is required to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in trans-boundary situations or for which it is not possible to grant or obtain prior informed consent,

RECOGNIZING the importance of genetic resources to food security, public health, biodiversity conservation, and the mitigation of and adaptation to climate change,

RECOGNIZING the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions,

RECOGNIZING the interdependence of all countries with regard to genetic resources for food and agriculture as well as their special nature and importance for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change and acknowledging the fundamental role of the International Treaty on Plant Genetic Resources for Food and Agriculture and the FAO Commission on Genetic Resources for Food and Agriculture in this regard,

MINDFUL of the International Health Regulations (2005) of the World Health Organization and the importance of ensuring access to human pathogens for public health preparedness and response purposes,

ACKNOWLEDGING ongoing work in other international forums relating to access and benefit-sharing,

RECALLING the Multilateral System of Access and Benefit-sharing established under the International Treaty on Plant Genetic Resources for Food and Agriculture developed in harmony with the Convention,

RECOGNIZING that international instruments related to access and benefit-sharing should be mutually supportive with a view to achieving the objectives of the Convention,

RECALLING the relevance of Article 8(j) of the Convention as it relates to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising from the utilization of such knowledge,

NOTING the interrelationship between genetic resources and traditional knowledge, their inseparable nature for indigenous and local communities, the importance of the traditional knowledge for the conservation of biological diversity and the sustainable use of its components, and for the sustainable livelihoods of these communities,

RECOGNIZING the diversity of circumstances in which traditional knowledge associated with genetic resources is held or owned by indigenous and local communities,

MINDFUL that it is the right of indigenous and local communities to identify the rightful holders of their traditional knowledge associated with genetic resources, within their communities,

FURTHER RECOGNIZING the unique circumstances where traditional knowledge associated with genetic resources is held in countries, which may be oral, documented or in other forms, reflecting a rich cultural heritage relevant for conservation and sustainable use of biological diversity,

NOTING the United Nations Declaration on the Rights of Indigenous Peoples, and

AFFIRMING that nothing in this Protocol shall be construed as diminishing or extinguishing the existing rights of indigenous and local communities,

HAVE AGREED AS FOLLOWS:

Article 1

Objective

The objective of this Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components.

Article 2

Use of terms

The terms defined in Article 2 of the Convention shall apply to this Protocol. In addition, for the purposes of this Protocol:

- (a) 'Conference of the Parties' means the Conference of the Parties to the Convention;
- (b) 'Convention' means the Convention on Biological Diversity;
- (c) 'Utilization of genetic resources' means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention;
- (d) 'Biotechnology' as defined in Article 2 of the Convention means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;
- (e) 'Derivative' means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

*Article 3***Scope**

This Protocol shall apply to genetic resources within the scope of Article 15 of the Convention and to the benefits arising from the utilization of such resources. This Protocol shall also apply to traditional knowledge associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such knowledge.

*Article 4***Relationship with international agreements and instruments**

1. The provisions of this Protocol shall not affect the rights and obligations of any Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity. This paragraph is not intended to create a hierarchy between this Protocol and other international instruments.
2. Nothing in this Protocol shall prevent the Parties from developing and implementing other relevant international agreements, including other specialized access and benefit-sharing agreements, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.
3. This Protocol shall be implemented in a mutually supportive manner with other international instruments relevant to this Protocol. Due regard should be paid to useful and relevant ongoing work or practices under such international instruments and relevant international organizations, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.
4. This Protocol is the instrument for the implementation of the access and benefit-sharing provisions of the Convention. Where a specialized international access and benefit-sharing instrument applies that is consistent with, and does not run counter to the objectives of the Convention and this Protocol, this Protocol does not apply for the Party or Parties to the specialized instrument in respect of the specific genetic resource covered by and for the purpose of the specialized instrument.

*Article 5***Fair and equitable benefit-sharing**

1. In accordance with Article 15, paragraphs 3 and 7 of the Convention, benefits arising from the utilization of genetic resources as well as subsequent applications and commercialization shall be shared in a fair and equitable way with the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention. Such sharing shall be upon mutually agreed terms.
2. Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.
3. To implement paragraph 1 above, each Party shall take legislative, administrative or policy measures, as appropriate.
4. Benefits may include monetary and non-monetary benefits, including but not limited to those listed in the Annex.
5. Each Party shall take legislative, administrative or policy measures as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms.

*Article 6***Access to genetic resources**

1. In the exercise of sovereign rights over natural resources, and subject to domestic access and benefit-sharing legislation or regulatory requirements, access to genetic resources for their utilization shall be subject to the prior informed consent of the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention, unless otherwise determined by that Party.
2. In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources.
3. Pursuant to paragraph 1 above, each Party requiring prior informed consent shall take the necessary legislative, administrative or policy measures, as appropriate, to:
 - (a) Provide for legal certainty, clarity and transparency of their domestic access and benefit-sharing legislation or regulatory requirements;
 - (b) Provide for fair and non-arbitrary rules and procedures on accessing genetic resources;
 - (c) Provide information on how to apply for prior informed consent;
 - (d) Provide for a clear and transparent written decision by a competent national authority, in a cost-effective manner and within a reasonable period of time;
 - (e) Provide for the issuance at the time of access of a permit or its equivalent as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms, and notify the Access and Benefit-sharing Clearing-House accordingly;
 - (f) Where applicable, and subject to domestic legislation, set out criteria and/or processes for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources; and
 - (g) Establish clear rules and procedures for requiring and establishing mutually agreed terms. Such terms shall be set out in writing and may include, *inter alia*:
 - (i) A dispute settlement clause;
 - (ii) Terms on benefit-sharing, including in relation to intellectual property rights;
 - (iii) Terms on subsequent third-party use, if any; and
 - (iv) Terms on changes of intent, where applicable.

*Article 7***Access to traditional knowledge associated with genetic resources**

In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.

*Article 8***Special considerations**

In the development and implementation of its access and benefit-sharing legislation or regulatory requirements, each Party shall:

- (a) Create conditions to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research;
- (b) Pay due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, as determined nationally or internationally. Parties may take into consideration the need for expeditious access to genetic resources and expeditious fair and equitable sharing of benefits arising out of the use of such genetic resources, including access to affordable treatments by those in need, especially in developing countries;
- (c) Consider the importance of genetic resources for food and agriculture and their special role for food security.

*Article 9***Contribution to conservation and sustainable use**

The Parties shall encourage users and providers to direct benefits arising from the utilization of genetic resources towards the conservation of biological diversity and the sustainable use of its components.

*Article 10***Global multilateral benefit-sharing mechanism**

Parties shall consider the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent. The benefits shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally.

*Article 11***Transboundary cooperation**

1. In instances where the same genetic resources are found in situ within the territory of more than one Party, those Parties shall endeavour to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, with a view to implementing this Protocol.
2. Where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties, those Parties shall endeavour to cooperate, as appropriate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objective of this Protocol.

*Article 12***Traditional knowledge associated with genetic resources**

1. In implementing their obligations under this Protocol, Parties shall in accordance with domestic law take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.
2. Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, including measures as made available through the Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.

3. Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:

- (a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;
- (b) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and
- (c) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

4. Parties, in their implementation of this Protocol, shall, as far as possible, not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention.

Article 13

National focal points and competent national authorities

1. Each Party shall designate a national focal point on access and benefit-sharing. The national focal point shall make information available as follows:

- (a) For applicants seeking access to genetic resources, information on procedures for obtaining prior informed consent and establishing mutually agreed terms, including benefit-sharing;
- (b) For applicants seeking access to traditional knowledge associated with genetic resources, where possible, information on procedures for obtaining prior informed consent or approval and involvement, as appropriate, of indigenous and local communities and establishing mutually agreed terms including benefit-sharing; and
- (c) Information on competent national authorities, relevant indigenous and local communities and relevant stakeholders.

The national focal point shall be responsible for liaison with the Secretariat.

2. Each Party shall designate one or more competent national authorities on access and benefit-sharing. Competent national authorities shall, in accordance with applicable national legislative, administrative or policy measures, be responsible for granting access or, as applicable, issuing written evidence that access requirements have been met and be responsible for advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms.

3. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

4. Each Party shall, no later than the date of entry into force of this Protocol for it, notify the Secretariat of the contact information of its national focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority, it shall convey to the Secretariat, with its notification thereof, relevant information on the respective responsibilities of those authorities. Where applicable, such information shall, at a minimum, specify which competent authority is responsible for the genetic resources sought. Each Party shall forthwith notify the Secretariat of any changes in the designation of its national focal point or in the contact information or responsibilities of its competent national authority or authorities.

5. The Secretariat shall make information received pursuant to paragraph 4 above available through the Access and Benefit-sharing Clearing-House.

*Article 14***The access and benefit-sharing clearing-house and information-sharing**

1. An Access and Benefit-sharing Clearing-House is hereby established as part of the clearing-house mechanism under Article 18, paragraph 3, of the Convention. It shall serve as a means for sharing of information related to access and benefit-sharing. In particular, it shall provide access to information made available by each Party relevant to the implementation of this Protocol.

2. Without prejudice to the protection of confidential information, each Party shall make available to the Access and Benefit-sharing Clearing-House any information required by this Protocol, as well as information required pursuant to the decisions taken by the Conference of the Parties serving as the meeting of the Parties to this Protocol. The information shall include:

- (a) Legislative, administrative and policy measures on access and benefit-sharing;
- (b) Information on the national focal point and competent national authority or authorities; and
- (c) Permits or their equivalent issued at the time of access as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms.

3. Additional information, if available and as appropriate, may include:

- (a) Relevant competent authorities of indigenous and local communities, and information as so decided;
- (b) Model contractual clauses;
- (c) Methods and tools developed to monitor genetic resources; and
- (d) Codes of conduct and best practices.

4. The modalities of the operation of the Access and Benefit-sharing Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first meeting, and kept under review thereafter.

*Article 15***Compliance with domestic legislation or regulatory requirements on access and benefit-sharing**

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures to provide that genetic resources utilized within its jurisdiction have been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the other Party.

2. Parties shall take appropriate, effective and proportionate measures to address situations of non-compliance with measures adopted in accordance with paragraph 1 above.

3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1 above.

*Article 16***Compliance with domestic legislation or regulatory requirements on access and benefit-sharing for traditional knowledge associated with genetic resources**

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures, as appropriate, to provide that traditional knowledge associated with genetic resources utilized within their jurisdiction has been accessed in accordance with prior informed consent or approval and involvement of indigenous and local communities and that mutually agreed terms have been established, as required by domestic access and benefit-sharing legislation or regulatory requirements of the other Party where such indigenous and local communities are located.

2. Each Party shall take appropriate, effective and proportionate measures to address situations of non-compliance with measures adopted in accordance with paragraph 1 above.

3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1 above.

Article 17

Monitoring the utilization of genetic resources

1. To support compliance, each Party shall take measures, as appropriate, to monitor and to enhance transparency about the utilization of genetic resources. Such measures shall include:

(a) The designation of one or more checkpoints, as follows:

(i) Designated checkpoints would collect or receive, as appropriate, relevant information related to prior informed consent, to the source of the genetic resource, to the establishment of mutually agreed terms, and/or to the utilization of genetic resources, as appropriate;

(ii) Each Party shall, as appropriate and depending on the particular characteristics of a designated checkpoint, require users of genetic resources to provide the information specified in the above paragraph at a designated checkpoint. Each Party shall take appropriate, effective and proportionate measures to address situations of non-compliance;

(iii) Such information, including from internationally recognized certificates of compliance where they are available, will, without prejudice to the protection of confidential information, be provided to relevant national authorities, to the Party providing prior informed consent and to the Access and Benefit-sharing Clearing-House, as appropriate;

(iv) Check points must be effective and should have functions relevant to implementation of this subparagraph (a). They should be relevant to the utilization of genetic resources, or to the collection of relevant information at, *inter alia*, any stage of research, development, innovation, pre-commercialization or commercialization.

(b) Encouraging users and providers of genetic resources to include provisions in mutually agreed terms to share information on the implementation of such terms, including through reporting requirements; and

(c) Encouraging the use of cost-effective communication tools and systems.

2. A permit or its equivalent issued in accordance with Article 6, paragraph 3 (e) and made available to the Access and Benefit-sharing Clearing-House, shall constitute an internationally recognized certificate of compliance.

3. An internationally recognized certificate of compliance shall serve as evidence that the genetic resource which it covers has been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the Party providing prior informed consent.

4. The internationally recognized certificate of compliance shall contain the following minimum information when it is not confidential:

(a) Issuing authority;

(b) Date of issuance;

(c) The provider;

(d) Unique identifier of the certificate;

(e) The person or entity to whom prior informed consent was granted;

- (f) Subject-matter or genetic resources covered by the certificate;
- (g) Confirmation that mutually agreed terms were established;
- (h) Confirmation that prior informed consent was obtained; and
- (i) Commercial and/or non-commercial use.

Article 18

Compliance with mutually agreed terms

1. In the implementation of Article 6, paragraph 3 (g) (i) and Article 7, each Party shall encourage providers and users of genetic resources and/or traditional knowledge associated with genetic resources to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including:

- (a) The jurisdiction to which they will subject any dispute resolution processes;
- (b) The applicable law; and/or
- (c) Options for alternative dispute resolution, such as mediation or arbitration.

2. Each Party shall ensure that an opportunity to seek recourse is available under their legal systems, consistent with applicable jurisdictional requirements, in cases of disputes arising from mutually agreed terms.

3. Each Party shall take effective measures, as appropriate, regarding:

- (a) Access to justice; and
- (b) The utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards.

4. The effectiveness of this article shall be reviewed by the Conference of the Parties serving as the meeting of the Parties to this Protocol in accordance with Article 31 of this Protocol.

Article 19

Model contractual clauses

1. Each Party shall encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of sectoral and cross-sectoral model contractual clauses.

Article 20

Codes of conduct, guidelines and best practices and/or standards

1. Each Party shall encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of voluntary codes of conduct, guidelines and best practices and/or standards and consider the adoption of specific codes of conduct, guidelines and best practices and/or standards.

Article 21

Awareness-raising

Each Party shall take measures to raise awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit-sharing issues. Such measures may include, *inter alia*:

- (a) Promotion of this Protocol, including its objective;
- (b) Organization of meetings of indigenous and local communities and relevant stakeholders;

- (c) Establishment and maintenance of a help desk for indigenous and local communities and relevant stakeholders;
- (d) Information dissemination through a national clearing-house;
- (e) Promotion of voluntary codes of conduct, guidelines and best practices and/or standards in consultation with indigenous and local communities and relevant stakeholders;
- (f) Promotion of, as appropriate, domestic, regional and international exchanges of experience;
- (g) Education and training of users and providers of genetic resources and traditional knowledge associated with genetic resources about their access and benefit-sharing obligations;
- (h) Involvement of indigenous and local communities and relevant stakeholders in the implementation of this Protocol; and
- (i) Awareness-raising of community protocols and procedures of indigenous and local communities.

Article 22

Capacity

1. The Parties shall cooperate in the capacity-building, capacity development and strengthening of human resources and institutional capacities to effectively implement this Protocol in developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations. In this context, Parties should facilitate the involvement of indigenous and local communities and relevant stakeholders, including non-governmental organizations and the private sector.
2. The need of developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition for financial resources in accordance with the relevant provisions of the Convention shall be taken fully into account for capacity-building and development to implement this Protocol.
3. As a basis for appropriate measures in relation to the implementation of this Protocol, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition should identify their national capacity needs and priorities through national capacity self-assessments. In doing so, such Parties should support the capacity needs and priorities of indigenous and local communities and relevant stakeholders, as identified by them, emphasizing the capacity needs and priorities of women.
4. In support of the implementation of this Protocol, capacity-building and development may address, *inter alia*, the following key areas:
 - (a) Capacity to implement, and to comply with the obligations of, this Protocol;
 - (b) Capacity to negotiate mutually agreed terms;
 - (c) Capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing; and
 - (d) Capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources.
5. Measures in accordance with paragraphs 1 to 4 above may include, *inter alia*:
 - (a) Legal and institutional development;
 - (b) Promotion of equity and fairness in negotiations, such as training to negotiate mutually agreed terms;

- (c) The monitoring and enforcement of compliance;
- (d) Employment of best available communication tools and Internet-based systems for access and benefit-sharing activities;
- (e) Development and use of valuation methods;
- (f) Bioprospecting, associated research and taxonomic studies;
- (g) Technology transfer, and infrastructure and technical capacity to make such technology transfer sustainable;
- (h) Enhancement of the contribution of access and benefit-sharing activities to the conservation of biological diversity and the sustainable use of its components;
- (i) Special measures to increase the capacity of relevant stakeholders in relation to access and benefit-sharing; and
- (j) Special measures to increase the capacity of indigenous and local communities with emphasis on enhancing the capacity of women within those communities in relation to access to genetic resources and/or traditional knowledge associated with genetic resources.

6. Information on capacity-building and development initiatives at national, regional and international levels, undertaken in accordance with paragraphs 1 to 5 above, should be provided to the Access and Benefit-sharing Clearing-House with a view to promoting synergy and coordination on capacity-building and development for access and benefit-sharing.

Article 23

Technology transfer, collaboration and cooperation

In accordance with Articles 15, 16, 18 and 19 of the Convention, the Parties shall collaborate and cooperate in technical and scientific research and development programmes, including biotechnological research activities, as a means to achieve the objective of this Protocol. The Parties undertake to promote and encourage access to technology by, and transfer of technology to, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, in order to enable the development and strengthening of a sound and viable technological and scientific base for the attainment of the objectives of the Convention and this Protocol. Where possible and appropriate such collaborative activities shall take place in and with a Party or the Parties providing genetic resources that is the country or are the countries of origin of such resources or a Party or Parties that have acquired the genetic resources in accordance with the Convention.

Article 24

Non-parties

The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Access and Benefit-sharing Clearing-House.

Article 25

Financial mechanism and resources

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of Article 20 of the Convention.
2. The financial mechanism of the Convention shall be the financial mechanism for this Protocol.
3. Regarding the capacity-building and development referred to in Article 22 of this Protocol, the Conference of the Parties serving as the meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2 above, for consideration by the Conference of the Parties, shall take into account the need of developing country Parties, in particular the least developed countries and small island developing States among them, and of Parties with economies in transition, for financial resources, as well as the capacity needs and priorities of indigenous and local communities, including women within these communities.

4. In the context of paragraph 1 above, the Parties shall also take into account the needs of the developing country Parties, in particular the least developed countries and small island developing States among them, and of the Parties with economies in transition, in their efforts to identify and implement their capacity-building and development requirements for the purposes of the implementation of this Protocol.

5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, *mutatis mutandis*, to the provisions of this Article.

6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and other resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

Article 26

Conference of the parties serving as the meeting of the parties to this protocol

1. The Conference of the Parties shall serve as the meeting of the Parties to this Protocol.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to it.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:

- (a) Make recommendations on any matters necessary for the implementation of this Protocol;
- (b) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;
- (c) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;
- (d) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 29 of this Protocol and consider such information as well as reports submitted by any subsidiary body;
- (e) Consider and adopt, as required, amendments to this Protocol and its Annex, as well as any additional annexes to this Protocol, that are deemed necessary for the implementation of this Protocol; and
- (f) Exercise such other functions as may be required for the implementation of this Protocol.

5. The rules of procedure of the Conference of the Parties and financial rules of the Convention shall be applied, *mutatis mutandis*, under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the Secretariat and held concurrently with the first meeting of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held concurrently with ordinary meetings of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented as observers at meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Protocol and that has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties serving as a meeting of the Parties to this Protocol as an observer, may be so admitted, unless at least one third of the Parties present object. Except as otherwise provided in this Article, the admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

Article 27

Subsidiary bodies

1. Any subsidiary body established by or under the Convention may serve this Protocol, including upon a decision of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any such decision shall specify the tasks to be undertaken.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of any such subsidiary bodies. When a subsidiary body of the Convention serves as a subsidiary body to this Protocol, decisions under this Protocol shall be taken only by Parties to this Protocol.

3. When a subsidiary body of the Convention exercises its functions with regard to matters concerning this Protocol, any member of the bureau of that subsidiary body representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.

Article 28

Secretariat

1. The Secretariat established by Article 24 of the Convention shall serve as the secretariat to this Protocol.

2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, *mutatis mutandis*, to this Protocol.

3. To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

Article 29

Monitoring and reporting

Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals and in the format to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement this Protocol.

Article 30

Procedures and mechanisms to promote compliance with this protocol

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms under Article 27 of the Convention.

*Article 31***Assessment and review**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall undertake, four years after the entry into force of this Protocol and thereafter at intervals determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, an evaluation of the effectiveness of this Protocol.

*Article 32***Signature**

This Protocol shall be open for signature by Parties to the Convention at the United Nations Headquarters in New York, from 2 February 2011 to 1 February 2012.

*Article 33***Entry into force**

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Convention.
2. This Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the deposit of the fiftieth instrument as referred to in paragraph 1 above, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that State or regional economic integration organization, whichever shall be the later.
3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

*Article 34***Reservations**

No reservations may be made to this Protocol.

*Article 35***Withdrawal**

1. At any time after two years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from this Protocol by giving written notification to the Depositary.
2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

*Article 36***Authentic texts**

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Protocol on the dates indicated.

DONE at Nagoya on this twenty-ninth day of October, two thousand and ten.

ANNEX

MONETARY AND NON-MONETARY BENEFITS

1. Monetary benefits may include, but not be limited to:

- (a) Access fees/fee per sample collected or otherwise acquired;
- (b) Up-front payments;
- (c) Milestone payments;
- (d) Payment of royalties;
- (e) Licence fees in case of commercialization;
- (f) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
- (g) Salaries and preferential terms where mutually agreed;
- (h) Research funding;
- (i) Joint ventures;
- (j) Joint ownership of relevant intellectual property rights.

2. Non-monetary benefits may include, but not be limited to:

- (a) Sharing of research and development results;
- (b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the Party providing genetic resources;
- (c) Participation in product development;
- (d) Collaboration, cooperation and contribution in education and training;
- (e) Admittance to ex situ facilities of genetic resources and to databases;
- (f) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
- (g) Strengthening capacities for technology transfer;
- (h) Institutional capacity-building;
- (i) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
- (j) Training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries;

- (k) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
 - (l) Contributions to the local economy;
 - (m) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in the Party providing genetic resources;
 - (n) Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
 - (o) Food and livelihood security benefits;
 - (p) Social recognition;
 - (q) Joint ownership of relevant intellectual property rights.
-

COUNCIL DECISION**of 14 April 2014****on the conclusion of the Voluntary Partnership Agreement between the European Union and the Republic of Indonesia on forest law enforcement, governance and trade in timber products to the European Union**

(2014/284/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(3) and the first subparagraph of Article 207(4), in conjunction with Article 218(6)(a)(v) and 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In May 2003 the Commission adopted a Communication to the European Parliament and to the Council entitled 'Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan' which called for measures to address illegal logging by developing voluntary partnership Agreements with timber-producing countries (hereinafter 'EU Action Plan'). Council conclusions on the Action Plan were adopted in October 2003 ⁽¹⁾ and European Parliament resolution on the subject was adopted on 11 July 2005 ⁽²⁾.
- (2) In accordance with Council Decision 2013/486/EU ⁽³⁾, the Voluntary Partnership Agreement between the European Union and the Republic of Indonesia on forest law enforcement, governance and trade in timber products to the European Union (hereinafter referred to as 'the Agreement') was signed on 30 September 2013, subject to its conclusion.
- (3) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Voluntary Partnership Agreement between the European Union and the Republic of Indonesia on forest law enforcement, governance and trade in timber products to the European Union is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person(s) empowered on behalf of the Union to make the notification provided for in Article 23 of the Agreement, in order to bind the Union.

Article 3

The Union shall be represented by the Commission in the Joint Implementation Committee set up in accordance with Article 14 of the Agreement.

The Member States may participate in meetings of the Joint Implementation Committee as members of the Union delegation.

⁽¹⁾ OJ C 268, 7.11.2003, p. 1.

⁽²⁾ OJ C 157 E, 6.7.2006, p. 482.

⁽³⁾ Council Decision 2013/486/EU of 23 September 2013 on the signing, on behalf of the European Union, of the Voluntary Partnership Agreement between the European Union and the Republic of Indonesia on forest law enforcement, governance and trade in timber products to the European Union (OJ L 265, 8.10.2013, p. 1).

Article 4

For the purpose of amending the annexes to the Agreement pursuant to Article 22 thereof, the Commission is authorised, in accordance with the procedure referred to in Article 11(3) of Council Regulation (EC) No 2173/2005 ⁽¹⁾, to approve any such amendments on behalf of the Union.

Article 5

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

Done at Luxembourg, 14 April 2014.

For the Council
The President
A. TSAFTARIS

⁽¹⁾ Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (OJ L 347, 30.12.2005, p. 1).

VOLUNTARY PARTNERSHIP AGREEMENT**between the European Union and the Republic of Indonesia on forest law enforcement, governance and trade in timber products into the European Union**

THE EUROPEAN UNION

hereinafter referred to as "the Union"

and

THE REPUBLIC OF INDONESIA

hereinafter referred to as "Indonesia"

hereinafter referred to together as the "Parties",

RECALLING The Framework Agreement on Comprehensive Partnership and Cooperation between the Republic of Indonesia and the European Community signed on 9 November 2009 in Jakarta;

CONSIDERING the close working relationship between the Union and Indonesia, particularly in the context of the 1980 Cooperation Agreement between the European Economic Community and Indonesia, Malaysia, the Philippines, Singapore and Thailand - member countries of the Association of South-East Asian Nations;

RECALLING the commitment made in the Bali Declaration on Forest Law Enforcement and Governance (FLEG) of 13 September 2001 by countries from the East Asian and other regions to take immediate action to intensify national efforts and to strengthen bilateral, regional and multilateral collaboration to address violations of forest law and forest crime, in particular illegal logging, associated illegal trade and corruption, and their negative effects on the rule of law;

NOTING the Communication from the Commission to the Council and the European Parliament on a European Union Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) as a first step towards tackling the urgent issue of illegal logging and associated trade;

REFERRING to the Joint Statement between the Minister of Forestry of the Republic of Indonesia and the European Commissioners for Development and for Environment signed on 8 January 2007 in Brussels;

HAVING REGARD to the 1992 Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the management, conservation and sustainable development of all types of forests, and to the adoption by the United Nations General Assembly of the Non Legally Binding Instrument on all types of forest;

AWARE of the importance of principles set out in the 1992 Rio Declaration on Environment and Development in the context of securing sustainable forest management, and in particular of Principle 10 concerning the importance of public awareness and participation in environmental issues and of Principle 22 concerning the vital role of indigenous people and other local communities in environmental management and development;

RECOGNISING efforts by the Government of the Republic of Indonesia to promote good forestry governance, law enforcement and the trade in legal timber, including through the Sistem Verifikasi Legalitas Kayu (SVLK) as the Indonesian Timber Legality Assurance System (TLAS) which is developed through a multi-stakeholder process following the principles of good governance, credibility and representativeness;

RECOGNISING that the Indonesian TLAS is designed to ensure the legal compliance of all timber products;

RECOGNISING that implementation of a FLEGT Voluntary Partnership Agreement will reinforce sustainable forest management and contribute to combating climate change through reduced emissions from deforestation and forest degradation and the role of conservation, sustainable management of forest and enhancement of forest carbon stocks (REDD+);

HAVING REGARD to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and in particular the requirement that export permits issued by parties to CITES for specimens of species listed in Appendices I, II or III be granted only under certain conditions, including that such specimens were not obtained in contravention of the laws of that party for the protection of fauna and flora;

RESOLVED that the Parties shall seek to minimise any adverse impacts on indigenous and local communities and poor people which may arise as a direct consequence of implementing this Agreement;

CONSIDERING the importance attached by the Parties to development objectives agreed at international level and to the Millennium Development Goals of the United Nations;

CONSIDERING the importance attached by the Parties to the principles and rules which govern the multilateral trading systems, in particular the rights and obligations laid down in the General Agreement on Tariffs and Trade (GATT) 1994 and in other multilateral agreements establishing the World Trade Organisation (WTO) and the need to apply them in a transparent and non-discriminatory manner;

HAVING REGARD to Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community and to 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;

REAFFIRMING the principles of mutual respect, sovereignty, equality and non-discrimination and recognising the benefits to the Parties arising from this Agreement;

PURSUANT to the respective laws and regulations of the Parties;

HEREBY AGREE AS FOLLOWS:

Article 1

Objective

1. The objective of this Agreement, consistent with the Parties' common commitment to the sustainable management of all types of forest, is to provide a legal framework aimed at ensuring that all imports into the Union from Indonesia of timber products covered by this Agreement have been legally produced and in doing so to promote trade in timber products.
2. This Agreement also provides a basis for dialogue and co-operation between the Parties to facilitate and promote the full implementation of this Agreement and enhance forest law enforcement and governance.

Article 2

Definitions

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

- (a) "import into the Union" means the release for free circulation of timber products in the Union within the meaning of Article 79 of Regulation (EEC) No 2913/1992 of 12 October 1992 establishing the Union Customs Code which cannot be qualified as "goods of a non-commercial nature" as defined in Article 1(6) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/1992 establishing the Union Customs Code;

- (b) "export" means the physical leaving or taking out of timber products from any part of the geographical territory of Indonesia;
- (c) "timber products" means the products listed in Annex IA and Annex IB;
- (d) "HS Code" means a four- or six-digit commodity code as set out in the Harmonised Commodity Description and Coding System established by the International Convention on the Harmonised Commodity Description and Coding System of the World Customs Organisation;
- (e) "FLEGT licence" means an Indonesian Verified Legal (V-Legal) document which confirms that a shipment of timber products intended for export to the Union has been legally produced. A FLEGT licence may be in paper or electronic form;
- (f) "licensing authority" means the entities authorised by Indonesia to issue and validate FLEGT licences;
- (g) "competent authorities" means the authorities designated by the Member States of the Union to receive, accept and verify FLEGT licences;
- (h) "shipment" means a quantity of timber products covered by a FLEGT licence that is sent by a consignor or a shipper from Indonesia and is presented for release for free circulation at a customs office in the Union;
- (i) "legally-produced timber" means timber products harvested or imported and produced in accordance with the legislation as set out in Annex II.

Article 3

FLEGT Licensing Scheme

1. A Forest Law Enforcement, Governance and Trade licensing scheme' (hereinafter "FLEGT Licensing Scheme") is hereby established between the Parties to this Agreement. It establishes a set of procedures and requirements aiming at verifying and attesting, by means of FLEGT licences, that timber products shipped to the Union were legally produced. In accordance with Council Regulation 2173/2005 of 20 December 2005, the Union shall only accept such shipments from Indonesia for import into the Union if they are covered by FLEGT licences.
2. The FLEGT Licensing Scheme shall apply to the timber products listed in Annex IA.
3. The timber products listed in Annex IB may not be exported from Indonesia and may not be FLEGT licensed.
4. The Parties agree to take all necessary measures to implement the FLEGT Licensing Scheme in accordance with the provisions of this Agreement.

Article 4

Licensing Authorities

1. The Licensing Authority will verify that timber products have been legally produced in accordance with the legislation identified in Annex II. The Licensing Authority will issue FLEGT licences covering shipments of legally-produced timber products for export to the Union.
2. The Licensing Authority shall not issue FLEGT licences for any timber products that are composed of, or include, timber products imported into Indonesia from a third country in a form in which the laws of that third country forbid export, or for which there is evidence that those timber products were produced in contravention of the laws of the country where the trees were harvested.

3. The Licensing Authority will maintain and make publicly available its procedures for issuing FLEGT licences. The Licensing Authority will also maintain records of all shipments covered by FLEGT licences and consistent with national legislation concerning data protection will make these records available for the purposes of independent monitoring, while respecting the confidentiality of exporters' proprietary information.
4. Indonesia shall establish a Licence Information Unit that will serve as a contact point for communications between the competent authorities and the Licensing Authorities as set out in Annexes III and V.
5. Indonesia shall notify contact details of the Licensing Authority and the Licence Information Unit to the European Commission. The Parties shall make this information available to the public.

Article 5

Competent Authorities

1. The competent authorities shall verify that each shipment is covered by a valid FLEGT licence before releasing that shipment for free circulation in the Union. The release of the shipment may be suspended and the shipment detained if there are doubts regarding the validity of the FLEGT licence.
2. The competent authorities shall maintain and publish annually a record of FLEGT licences received.
3. The competent authorities shall grant persons or bodies designated as independent market monitor access to the relevant documents and data, in accordance with their national legislation on data protection.
4. The competent authorities shall not perform the action described in Article 5(1) in the case of a shipment of timber products derived from species listed under the Appendices of the CITES as these are covered by the provisions for verification set out in the Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein.
5. The European Commission shall notify Indonesia of the contact details of the competent authorities. The Parties shall make this information available to the public.

Article 6

FLEGT Licences

1. FLEGT licences shall be issued by the Licensing Authority as a means of attesting that timber products have been legally produced.
2. The FLEGT licence shall be laid out and completed in English.
3. The Parties may, by agreement, establish electronic systems for issuing, sending and receiving FLEGT licences.
4. The technical specifications of the licence are set out in Annex IV. The procedure for issuing FLEGT licences is set out in Annex V.

Article 7

Verification of Legally-Produced Timber

1. Indonesia shall implement a TLAS to verify that timber products for shipment have been legally produced and to ensure that only shipments verified as such are exported to the Union.
2. The system for verifying that shipments of timber products have been legally produced is set out in Annex V.

*Article 8***Release of Shipments covered by a FLEGT Licence**

1. The procedures governing release for free circulation in the Union for shipments covered by a FLEGT licence are described in Annex III.
2. Where the competent authorities have reasonable grounds to suspect that a licence is not valid or authentic or does not conform to the shipment it purports to cover, the procedures contained in Annex III may be applied.
3. Where persistent disagreements or difficulties arise in consultations concerning FLEGT licences the matter may be referred to the Joint Implementation Committee.

*Article 9***Irregularities**

The Parties shall inform each other if they suspect or have found evidence of any circumvention or irregularity in the FLEGT Licensing Scheme, including in relation to the following:

- (a) circumvention of trade, including by re-direction of trade from Indonesia to the Union via a third country;
- (b) FLEGT licences covering timber products which contain timber from third countries that is suspected of being illegally produced; or
- (c) fraud in obtaining or using FLEGT licences.

*Article 10***Application of the Indonesian TLAS and Other Measures**

1. Using the Indonesian TLAS, Indonesia shall verify the legality of timber exported to non-Union markets and timber sold on domestic markets, and shall endeavour to verify the legality of imported timber products using, where possible, the system developed for implementing this Agreement.
2. In support of such endeavours, the Union shall encourage the use of the abovementioned system with respect to trade in other international markets and with third countries.
3. The Union shall implement measures to prevent the placing on the Union market of illegally-harvested timber and products derived therefrom.

*Article 11***Stakeholder Involvement in the Implementation of the Agreement**

1. Indonesia will hold regular consultations with stakeholders on the implementation of this Agreement and will in that regard promote appropriate consultation strategies, modalities and programmes.
2. The Union will hold regular consultations with stakeholders on the implementation of this Agreement, taking into account its obligations under the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

*Article 12***Social Safeguards**

1. In order to minimize possible adverse impacts of this Agreement, the Parties agree to develop a better understanding of the impacts on the timber industry as well as on the livelihoods of potentially affected indigenous and local communities as described in their respective national laws and regulations.

2. The Parties will monitor the impacts of this Agreement on those communities and other actors identified in paragraph 1, while taking reasonable steps to mitigate any adverse impacts. The Parties may agree on additional measures to address adverse impacts.

Article 13

Market Incentives

Taking into account its international obligations, the Union shall promote a favourable position in the Union market for the timber products covered by this Agreement. Such efforts will include in particular measures to support:

- (a) public and private procurement policies that recognise a supply of and ensure a market for legally harvested timber products; and
- (b) a more favourable perception of FLEGT-licensed products on the Union market.

Article 14

Joint Implementation Committee

1. The Parties shall establish a joint mechanism (hereinafter referred to as the "Joint Implementation Committee" or "JIC"), to consider issues relating to the implementation and review of this Agreement.

2. Each Party shall nominate its representatives on the JIC which shall take its decisions by consensus. The JIC shall be co-chaired by senior officials; one from the Union and the other from Indonesia.

3. The JIC shall establish its rules of procedure.

4. The JIC shall meet at least once a year, on a date and with an agenda which are agreed in advance by the Parties. Additional meetings may be convened at the request of either of the Parties.

5. The JIC shall:

- (a) consider and adopt joint measures to implement this Agreement;
- (b) review and monitor the overall progress in implementing this Agreement including the functioning of the TLAS and market-related measures, on the basis of the findings and reports of the mechanisms established under Article 15;
- (c) assess the benefits and constraints arising from the implementation of this Agreement and decide on remedial measures;
- (d) examine reports and complaints about the application of the FLEGT licensing scheme in the territory of either of the Parties;
- (e) agree on the date from which the FLEGT licensing scheme will start operating after an evaluation of the functioning of the TLAS on the basis of the criteria set out in Annex VIII;
- (f) identify areas of cooperation to support the implementation of this Agreement;
- (g) establish subsidiary bodies for work requiring specific expertise, if necessary;
- (h) prepare, approve, distribute, and make public annual reports, reports of its meetings and other documents arising out of its work.
- (i) perform any other tasks it may agree to carry out.

*Article 15***Monitoring and Evaluation**

The Parties agree to use the reports and findings of the following two mechanisms to evaluate the implementation and effectiveness of this Agreement.

- (a) Indonesia, in consultation with the Union, shall engage the services of a Periodic Evaluator to implement the tasks as set out in Annex VI.
- (b) the Union, in consultation with Indonesia, shall engage the services of an Independent Market Monitor to implement the tasks as set out in Annex VII.

*Article 16***Supporting Measures**

- 1. The provision of any resources necessary for measures to support the implementation of this Agreement, identified pursuant to Article 14(5) (f) above shall be determined in the context of the programming exercises of the Union and its Member States for cooperation with Indonesia.
- 2. The Parties shall ensure that activities associated with the implementation of this Agreement are coordinated with existing and future development programmes and initiatives.

*Article 17***Reporting and Public Disclosure of Information**

- 1. The Parties shall ensure that the workings of the JIC are as transparent as possible. Reports arising out of its work shall be jointly prepared and made public.
- 2. The JIC shall make public a yearly report that includes *inter alia*, details on:
 - (a) quantities of timber products exported to the Union under the FLEGT licensing scheme, according to the relevant HS Heading;
 - (b) the number of FLEGT licences issued by Indonesia;
 - (c) progress in achieving the objectives of this Agreement and matters relating to its implementation;
 - (d) actions to prevent illegally-produced timber products being exported, imported, and placed or traded on the domestic market;
 - (e) quantities of timber and timber products imported into Indonesia and actions taken to prevent imports of illegally-produced timber products and maintain the integrity of the FLEGT Licensing Scheme;
 - (f) cases of non-compliance with the FLEGT Licensing Scheme and the action taken to deal with them;
 - (g) quantities of timber products imported into the Union under the FLEGT licensing scheme, according to the relevant HS Heading and Union Member State in which importation into the Union took place;
 - (h) the number of FLEGT licences received by the Union;
 - (i) the number of cases and quantities of timber products involved where consultations took place under Article 8(2).

3. In order to achieve the objective of improved governance and transparency in the forest sector and to monitor the implementation and impacts of this Agreement in both Indonesia and the Union, the Parties agree that the information as described in Annex IX shall be made publicly available.

4. The Parties agree not to disclose confidential information exchanged under this Agreement, in accordance with their respective legislation. Neither Party shall disclose to the public, nor permit its authorities to disclose, information exchanged under this Agreement concerning trade secrets or confidential commercial information.

Article 18

Communication on Implementation

1. The representatives of the Parties responsible for official communications concerning implementation of this Agreement shall be:

For Indonesia:

The Director-General of Forest

Utilisation, Ministry for Forestry

For the Union:

The Head of Delegation

of the European Union in Indonesia

2. The Parties shall communicate to each other in a timely manner the information necessary for implementing this Agreement, including changes in paragraph 1

Article 19

Territorial Application

This Agreement shall apply to the territory in which the Treaty on the Functioning of the European Union is applied under the conditions laid down in that Treaty, on the one hand, and to the territory of Indonesia, on the other.

Article 20

Settlement of Disputes

1. The Parties shall seek to resolve any dispute concerning the application or interpretation of this Agreement through prompt consultations.

2. If a dispute has not been settled by means of consultations within two months from the date of the initial request for consultations either Party may refer the dispute to the JIC which shall endeavour to settle it. The JIC shall be provided with all relevant information for an in depth examination of the situation with a view to finding an acceptable solution. To this end, the JIC shall be required to examine all possibilities for maintaining the effective implementation of this Agreement.

3. In the event that the JIC is unable to settle the dispute within two months, the Parties may jointly seek the good offices of, or request mediation by, a third party.

4. If it is not possible to settle the dispute in accordance with paragraph 3, either Party may notify the other of the appointment of an arbitrator; the other Party must then appoint a second arbitrator within thirty calendar days of the appointment of the first arbitrator. The Parties shall jointly appoint a third arbitrator within two months of the appointment of the second arbitrator.

5. The arbitrators decisions shall be taken by majority vote within six months of the third arbitrator being appointed.

6. The award shall be binding on the Parties and it shall be without appeal.

7. The JIC shall establish the working procedures for arbitration.

*Article 21***Suspension**

1. A Party wishing to suspend this Agreement shall notify the other Party in writing of its intention to do so. The matter shall subsequently be discussed between the Parties.
2. Either Party may suspend the application of this Agreement. The decision on suspension and the reasons for that decision shall be notified to the other Party in writing.
3. The conditions of this Agreement will cease to apply thirty calendar days after such notice is given.
4. Application of this Agreement shall resume thirty calendar days after the Party that has suspended its application informs the other Party that the reasons for the suspension no longer apply.

*Article 22***Amendments**

1. Either Party wishing to amend this Agreement shall put the proposal forward at least three months before the next meeting of the JIC. The JIC shall discuss the proposal and if consensus is reached, it shall make a recommendation. If the Parties agree with the recommendation, they shall approve it in accordance with their respective internal procedures.
2. Any amendment so approved by the Parties shall enter into force on the first day of the month following the date on which the Parties notify each other of the completion of the procedures necessary for this purpose.
3. The JIC may adopt amendments to the Annexes to this Agreement.
4. Notification of any amendment shall be made to the Secretary-General of the Council of the European Union and to the Minister for Foreign Affairs of the Republic of Indonesia through diplomatic channels.

*Article 23***Entry into Force, Duration and Termination**

1. This Agreement shall enter into force on the first day of the month following the date on which the Parties notify each other in writing of the completion of their respective procedures necessary for this purpose.
2. Notification shall be made to the Secretary-General of the Council of the European Union and to the Minister for Foreign Affairs of the Republic of Indonesia through diplomatic channels
3. This Agreement shall remain in force for a period of five years. It shall be extended for consecutive periods of five years, unless a Party renounces the extension by notifying the other Party in writing at least twelve months before this Agreement expires.
4. Either Party may terminate this Agreement by notifying the other Party in writing. This Agreement shall cease to apply twelve months after the date of such notification.

*Article 24***Annexes**

The Annexes to this Agreement shall form an integral part thereof.

*Article 25***Authentic Texts**

This Agreement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Indonesian (Bahasa Indonesia) languages, each of these texts being authentic. In case of divergence of interpretation the English text shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Agreement.

Съставено в Брюксел на тридесети септември две хиляди и тринадесета година.

Hecho en Bruselas, el treinta de septiembre de dos mil trece.

V Bruselu dne třicátého září dva tisíce třináct.

Udfærdiget i Bruxelles den tredivte september to tusind og tretten.

Geschehen zu Brüssel am dreißigsten September zweitausenddreizehn.

Kahe tuhande kolmeteistkümnenda aasta septembrikuu kolmekümnendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις τριάντα Σεπτεμβρίου δύο χιλιάδες δεκατρία.

Done at Brussels on the thirtieth day of September in the year two thousand and thirteen.

Fait à Bruxelles, le trente septembre deux mille treize.

Sastavljeno u Bruxellesu tridesetog rujna dvije tisuće trinaeste.

Fatto a Bruxelles, addì trenta settembre duemilatreddici.

Briselē, divi tūkstoši trīspadsmitā gada trīsdesmitajā septembrī.

Priimta du tūkstančiai trylikų metų rugsėjo trisdešimtą dieną Briuselyje.

Kelt Brüsszelben, a kétezer-tizenharmadik év szeptember havának harmincadik napján.

Magħmul fi Brussell, fit-tletin jum ta' Settembru tas-sena elfejn u tlethtax.

Gedaan te Brussel, de dertigste september tweeduizend dertien.

Sporządzono w Brukseli dnia trzydziestego września roku dwa tysiące trzynastego.

Feito em Bruxelas, em trinta de setembro de dois mil e treze.

Întocmit la Bruxelles la treizeci septembrie două mii treisprezece.

V Bruseli tridsiateho septembra dvetisíctrinásť.

V Bruslju, dne tridesetega septembra leta dva tisoč trinajst.

Tehty Brysselissä kolmantenakymmenentenä päivänä syyskuuta vuonna kaksituhattakolmetoista.

Som skedde i Bryssel den trettionde september tjugohundratretton.

Dibuat di Brussel, pada tanggal tiga puluh bulan September tahun dua ribu tiga belas.

За Европейския съюз
 Por la Unión Europea
 Za Evropskou unii
 For Den Europæiske Union
 Für die Europäische Union
 Euroopa Liidu nimel
 Για την Ευρωπαϊκή Ένωση
 For the European Union
 Pour l'Union européenne
 Za Europsku uniju
 Per l'Unione europea
 Eiropas Savienības vārdā –
 Europos Sąjungos vardu
 Az Európai Unió részéről
 Ghall-Unjoni Ewropea
 Voor de Europese Unie
 W imieniu Unii Europejskiej
 Pela União Europeia
 Pentru Uniunea Europeană
 Za Európsku úniu
 Za Evropsko unijo
 Euroopan unionin puolesta
 För Europeiska unionen
 Untuk Uni Eropa



За Република Индонезия
 Por la República de Indonesia
 Za Indonéskou republiku
 For Republikken Indonesien
 Für die Republik Indonesien
 Indoneesia Vabariigi nimel
 Για τη Δημοκρατία της Ινδονησίας
 For the Republic of Indonesia
 Pour la République d'Indonésie
 Za Republiku Indoneziju
 Per la Repubblica di Indonesia
 Indonēzijas Republikas vārdā –
 Indonezijos Respublikos vardu
 Az Indonéz Köztársaság részéről
 Għar-Repubblika tal-Indonezja
 Voor de Republiek Indonesië
 W imieniu Republiki Indonezji
 Pela República da Indonésia
 Pentru Republica Indonezia
 Za Indonézsku republiku
 Za Republika Indonezijo
 Indonesian tasavallan puolesta
 För Republiken Indonesien
 Untuk Republik Indonesia



ANNEX I

PRODUCT COVERAGE

The list in this Annex refers to the Harmonised Commodity Description and Coding System established by the International Convention on the Harmonised Commodity Description and Coding System of the World Customs Union.

ANNEX IA

THE HARMONISED COMMODITY CODES FOR TIMBER AND TIMBER PRODUCTS COVERED UNDER THE FLEGT LICENSING SCHEME

Chapter 44:

HS Codes	Description
	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms.
4401.21	- Wood in chips or particles - coniferous
4401.22	- Wood in chips or particles - non coniferous
Ex.4404	- Chipwood and the like
Ex.4407	Wood sawn or chipped lengthwise, sliced or peeled, planed, sanded or end-jointed, of a thickness exceeding 6 mm.
4408	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm.
	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed.
4409.10	- Coniferous
4409.29	- Non-coniferous – other
4410	Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances.
4411	Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances.
4412	Plywood, veneered panels and similar laminated wood
4413	Densified wood, in blocks, plates, strips or profile shapes.
4414	Wooden frames for paintings, photographs, mirrors or similar objects.
4415	Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood.
4416	Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves.

HS Codes	Description
4417	Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood.
4418	Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes.
Ex.4421.90	- Wooden paving blocks

Chapter 47:

HS Codes	Description
	Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard:
4701	- Mechanical wood pulp
4702	- Chemical wood pulp, dissolving grades
4703	- Chemical wood pulp, soda or sulphate, other than dissolving grades.
4704	- Chemical wood pulp, sulphite, other than dissolving grades
4705	- Wood pulp obtained by a combination of mechanical and chemical pulping processes

Chapter 48:

HS Codes	Description
4802	Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non-perforated punch-cards and punch tape paper, in rolls or rectangular (including square) sheets, of any size, other than paper of heading 4801 or 4803; hand-made paper and paperboard:
4803	Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes, cellulose wadding and webs of cellulose fibres, whether or not creped, crinkled, embossed, perforated, surface -coloured, surface-decorated or printed, in rolls or sheets.
4804	Uncoated kraft paper and paperboard, in rolls or sheets, other than that of heading 4802 or 4803.
4805	Other Uncoated paper and paperboard, in rolls or sheets, not further worked or processed than as specify in Note 3 to this chapter.
4806	Vegetable parchment, greaseproof papers, tracing papers and glassine and other glazed transparent or translucent papers, in rolls or sheets.
4807	Composite paper and paperboard (made by sticking flat layers of paper or paperboard together with an adhesive), not surface-coated or impregnated, whether or not internally reinforced, in rolls or sheets.
4808	Paper and paperboard, corrugated (with or without glued flat surface sheets), creped, crinkled, embossed or perforated, in rolls or sheets, other than paper of the kind described in heading 4803.
4809	Carbon paper, self-copy paper and other copying or transfer papers (including coated or impregnated paper for duplicator stencils or offset plates), whether or not printed, in rolls or sheets.

HS Codes	Description
4810	Paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without binder, and with no other coating, whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size.
4811	Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810.
4812	Filter blocks, slabs and plates, of paper pulp.
4813	Cigarette paper, whether or not cut to size or in the form booklets or tubes.
4814	Wallpaper and similar wall covering; window transparencies of paper.
4816	Carbon paper, self-copy paper and other copying or transfer papers (other than those of heading 4809), duplicator stencils and offset plates, of paper, whether or not put up in boxes.
4817	Envelopes, letter cards, plain postcards and correspondence cards, of paper or paper board; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationary.
4818	Toilet paper and similar paper, cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchief, cleansing tissues, towels, tablecloths, serviettes, napkins for babies, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibres.
4821	Paper or paperboard labels of all kinds, whether or not printed.
4822	Bobbins, spools, cops and similar support of paper pulp, paper or paper board whether or not perforated or hardened.
4823	Other paper, paperboard, cellulose wadding and webs cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres.

Chapter 94:

HS Codes	Description
	Other seats, with wooden frames:
9401.61.	- Upholstered
9401.69.	- Other
	Other furniture and parts thereof
9403.30	- Wooden furniture of a kind used in offices
9403.40	- Wooden furniture of a kind used in the kitchen
9403.50	- Wooden furniture of a kind used in the bedroom
9403.60	- Other wooden furniture
Ex. 9406.00.	- Pre-fabricated constructions made of wood

ANNEX IB

THE HARMONISED COMMODITY CODES FOR TIMBER PROHIBITED FROM EXPORT UNDER INDONESIAN LAW

Chapter 44:

HS Codes	Description
4403	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared:
Ex. 4404	Hoopwood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed, but not turned, bent or otherwise worked, suitable for the manufacture of walking-sticks, umbrellas, tool handles or the like.
4406	Railway or tramway sleepers (cross-ties) of wood.
Ex. 4407	Wood sawn or chipped lengthwise, sliced or peeled, not planed, not sanded or not end-jointed, of a thickness exceeding 6 mm.

ANNEX II

LEGALITY DEFINITION

Introduction

Indonesian timber is deemed legal when its origin and production process as well as subsequent processing, transport and trade activities are verified as meeting all applicable Indonesian laws and regulations.

Indonesia has five legality standards articulated through a series of principles, criteria, indicators and verifiers, all based on the underlying laws, regulations and procedures.

These five standards are:

- Legality Standard 1: the standard for concessions within production forest zones on state-owned lands;
- Legality Standard 2: the standard for community plantation forests and community forests within production forest zones on state-owned lands;
- Legality Standard 3: the standard for privately-owned forests;
- Legality Standard 4: the standard for timber utilisation rights within non-forest zones on state-owned lands;
- Legality Standard 5: the standard for primary and downstream forest based industries.

These five legality standards apply to different types of timber permits as set out in the following table:

Permit type	Description	Land ownership / resource management or utilisation	Applicable legality standard
IUPHHK-HA/HPH	Permit to utilise forest products from natural forests	State owned/ company managed	1
IUPHHK-HTI/HPHTI	Permit to establish and manage industrial forest plantation	State owned/ company managed	1
IUPHHK-RE	Permit for forest ecosystem restoration	State owned/ company managed	1
IUPHHK- HTR	Permit for community forest plantations	State owned/ community managed	2
IUPHHK-HKM	Permit for community forest management	State owned/ community managed	2
Private Land	No permit required	Privately owned/ privately utilised	3
IPK/ILS	Permit to utilise timber from non-forest zones	State owned/ privately utilised	4
IUIPHHK	Permit for establishing and managing a primary processing company	Not applicable	5
IUI Lanjutan or IPKL	Permit for establishing and managing a secondary processing company	Not applicable	5

These five legality standards and the associated verifiers are outlined below.

ANNEX II - LEGALITY STANDARD 1: THE STANDARDS FOR CONCESSIONS WITHIN PRODUCTION FOREST ZONES

No	Principles	Criteria	Indicators	Verifiers	Related Regulations ⁽¹⁾
1.	P1. Legal status of area and right to utilise	K1.1 Forest management unit (concessionaires) is located within the production forest zone.	1.1.1 Permit holder can demonstrate that the timber utilisation permit (IUPHHK) is valid	Forest concession right certificate	Government Regulation PP72/2010
				Proof of payment for the timber forest product utilisation permit.	Regulation of the Minister for Forestry P50/2010 Regulation of the Minister for Forestry P12/2010
2.	P2. Comply with the system and procedures for harvesting.	K2.1 Permit holder possesses a harvest plan for the cutting area that has been approved by the competent administrative authorities.	2.1.1 The competent administrative authority has approved the work plan documents: master plan, annual work plan, including their attachments.	<p>The approved master plan & attachments, drawn up based on a comprehensive forest inventory conducted by technically competent staff.</p> <p>The approved annual work plan, drawn up based on the master plan</p> <p>Maps, drawn up by technically competent staff, which describe the layout and boundaries of the areas covered by the plan of work</p> <p>Map indicating logging exclusion zones within the Annual Work Plan and evidence of implementation on the ground.</p> <p>Harvesting locations (blocks or compartments) on the map are clearly marked and verified on the ground.</p>	<p>Regulation of the Minister for Forestry P62/2008</p> <p>Regulation of the Minister for Forestry P56/2009 Regulation of the Minister for Forestry P60/2011</p>

No	Principles	Criteria	Indicators	Verifiers	Related Regulations ⁽¹⁾
		K2.2 Work plan is valid	2.2.1 Forest permit holder has a valid work plan in compliance with applicable regulations	Timber forest product utilisation master plan document & attachments (ongoing applications are acceptable).	Regulation of the Minister for Forestry P62/2008
				The location and extractable volumes of natural forest logs within areas to be harvested correspond with the work plan.	Regulation of the Minister for Forestry P56/2009 Regulation of the Minister for Forestry P60/2011
			2.2.2 Permits for all harvesting equipment are valid and can be verified in the field. (not applicable to a state forest company)	Permit for equipment and equipment transfer	Regulation of the Minister for Forestry P53/2009
3.	P3. The legality of the transport or the change of ownership of round logs.	K3.1 Permit holders ensure that all the logs transported from a log yard in the forest to a primary forest products industry, or registered log trader, including via an intermediate log yard, is physically identified and accompanied by valid documents.	3.1.1 All the large diameter logs harvested or commercially extracted have been reported in a Timber Production Report	Approved Timber Production Report documents	Regulation of the Minister for Forestry P55/2006
			3.1.2 All the timber transported out of the permit areas is accompanied by a valid transport document.	Valid transport documents and attachments accompany logs from the log yard to primary forest products industry or registered log trader, including via intermediate log yards	Regulation of the Minister for Forestry P55/2006
			3.1.3 The round logs have been harvested in the areas set out in the forest utilisation permit	Timber administration marks/ barcode (PUHH) on logs.	Regulation of the Minister for Forestry P55/2006
				Payment of the Reforestation Funds and/or Forest Resources Fee is consistent with log production and the applicable tariff.	

No	Principles	Criteria	Indicators	Verifiers	Related Regulations ⁽¹⁾
		K3.2 Permit holder has settled the payment of applicable fees and levies for the commercial extraction of timber	3.2.1 Permit holder shows proof of payment of Reforestation Fund and/or Forest Resources Fee, which corresponds to the log production and the applicable tariff.	Payment Orders for Reforestation Funds and/or Forest Resources Fee.	Government Regulation PP22/1997 Government Regulation PP 51/1998
				Proof of Deposit made for the Payment of Reforestation Fund and/or Forest Resources Fee and the Payment Slips.	Regulation of the Minister for Forestry P18/2007 Regulation of the Minister for Trade 22/M-DAG/PER/4/2012
				Payment of the Reforestation Funds and/or Forest Resources Fee is consistent with log production and the applicable tariff.	Government Regulation PP59/1998
		K3.3 Inter-island transportation and trade	3.3.1 Permit holders who ship logs are Registered Inter- Island Timber Traders (PKAPT).	PKAPT documents	Regulation of the Minister for Industry and Trade 68/2003 Joint Regulation of the Minister for Forestry, Minister for Transportation, and Minister for Industry and Trade 22/2003
			3.3.2 The vessel used to transport round logs is Indonesian flagged and possesses a valid permit to operate.	Registration documents which show the identity of the vessel and valid permit.	Regulation of the Minister for Industry and Trade 68/2003 Joint Regulation of the Minister for Forestry, Minister for Transportation, and Minister for Industry and Trade 22/2003
4.	P4. Compliance with environmental and social aspects related to timber harvesting	K4.1 Permit holder has an approved Environmental Impact Assessment (EIA) document and has implemented measures identified in it.	4.1.1 Permit holder has EIA documents approved by the competent authorities which cover the entire work area.	EIA documents	Government Regulation PP27/1999 Regulation of the Minister for Forestry and Plantation 602/1998

No	Principles	Criteria	Indicators	Verifiers	Related Regulations ⁽¹⁾
			4.1.2 Permit holder has environmental management plan and environmental monitoring plan implementation reports indicating the actions taken to mitigate environmental impacts and provide social benefits.	Environmental management plan and environmental monitoring plan documents Proof of implementation of the environmental management plan and monitoring of significant environmental and social impacts	Government Regulation PP27/1999
5.	P5. Compliance with labour laws and regulations	K.5.1 Fulfilment of occupational safety and health (OSH) requirements	5.1.1 Availability of OSH procedures and their implementation	Implementation of OSH procedures	Regulation of the Minister for Manpower & Transmigration 01/1978
				OSH equipment	Regulation of the Minister for Forestry P12/2009
				Employment injury records	
		K.5.2 Fulfilment of workers' rights	5.2.1 Freedom of association for workers	Workers belong to workers unions or company policies allow workers to establish or get involved in union activities	Act 21/2000 Regulation of the Minister for Manpower & Transmigration 16/2001
			5.2.2 Existence of collective labour agreements	Collective labour agreement documents or company policy documents on labour rights	Act 13/2003 Regulation of the Minister for Manpower & Transmigration 16/2011
			5.2.3 Company does not employ minors/ underage workers	There are no underage workers	Act 13/2003 Act 23/2003 Act 20/2009

⁽¹⁾ Indicates main regulations, which also covers subsequent amendments

LEGALITY STANDARD 2: THE STANDARD FOR COMMUNITY PLANTATION FORESTS AND COMMUNITY FORESTS WITHIN PRODUCTION FOREST ZONES

No	Principles	Criteria	Indicators	Verifiers	Related Regulations
1.	P1. Legal status of area and right to utilise	K1.1 Forest management unit is located within the production forest zone.	1.1.1 Permit holder can demonstrate that the timber utilisation permit (IUPHHK) is valid.	Forest concession right certificate	Regulation of the Minister for Forestry P55/2011
				Proof of payment for the timber forest product utilisation permit.	Regulation of the Minister for Forestry P37/2007 Regulation of the Minister for Forestry P49/2008 Regulation of the Minister for Forestry P12/2010
2.	P2. Comply with the system and procedures for harvesting	K2.1 Permit holder has a harvesting plan for the cutting area that has been approved by the competent administrative authorities	2.1.1 The competent administrative authority has approved the annual work plan document.	Approved annual work plan document.	Regulation of the Minister for Forestry P62/2008
				Map indicating logging exclusion zones in the annual work plan and evidence of implementation on the ground.	
				Harvesting block location are clearly marked and can be verified on the ground.	
		K2.2 Work plan is valid	2.2.1 Forest permit holder has a valid work plan in compliance with applicable regulations.	Timber Forest Product Utilisation Master Plan document and attachments (on-going applications are acceptable) The location and extractable volumes of logs within the area to be established to timber estate are to correspond to the work plan.	Regulation of the Minister for Forestry P62/2008

No	Principles	Criteria	Indicators	Verifiers	Related Regulations
			2.2.2 Permits for all harvesting equipment are valid and can be physically verified in the field.	Permits for equipment and equipment transfer.	Regulation of the Minister for Forestry P53/2009.
		K2.3 Permit holders ensure that all the logs transported from a log yard in the forest to a primary forest products industry or registered log trader, including via an intermediate log yard are physically identified and accompanied by valid documents.	2.3.1 All large diameter logs which have been harvested or commercially extracted are reported in the Timber Production Report.	Approved Timber Production Report documents	Regulation of the Minister for Forestry P55/2006
			2.3.2 All the logs transported out of the permit area are accompanied by a legal transport document.	Legal transport documents and relevant attachments from the Log Yard to the Intermediate Log Yard and from Intermediate Log Yard to primary industry and/or registered log trader.	Regulation of the Minister for Forestry P55/2006
			2.3.3 The round logs have been harvested in the areas set out in the forest utilisation permit	Timber administration marks/ barcode (PUHH) on logs.	Regulation of the Minister for Forestry P55/2006
				Permit holder applies timber marking consistently.	
			2.3.4 Permit holder can show the existence of log transport documents accompanying logs transported from log yard.	Log Transport Document to which is attached a log list document.	Regulation of the Minister for Forestry P55/2006

No	Principles	Criteria	Indicators	Verifiers	Related Regulations
		K2.4 Permit holder has paid applicable fees and levies required for the commercial extraction of timber	2.4.1 Permit holders show proof of payment of Forest Resources Fee which corresponds to the log production and the applicable tariff.	Payment Order for Forest Resources Fee	Regulation of the Minister for Forestry P18/2007
				Proof of Payment of Forest Resources Fee	Regulation of the Minister for Trade 22/M-DAG/PER/4/2012
				Payment of the Forest Resources Fee is consistent with log production and the applicable tariff.	
3.	P3. Compliance with environmental and social aspects pertaining to timber harvesting	K3.1 Permit holder has an approved Environmental Impact Assessment (EIA) document and has implemented measures identified in it.	3.1.1 Permit holder has environmental impact assessment documents approved by the competent authorities which cover the entire work area.	EIA documents	Regulation of the Minister for Forestry and Plantation 622/1999
			3.1.2 Permit holder has environmental management and monitoring implementation reports taken to mitigate environmental impacts and provide social benefits.	Relevant environmental management and monitoring documents	Government Regulation PP27/1999
				Proof of implementation of environmental management and monitoring of significant environmental and social impacts	

LEGALITY STANDARD 3: THE STANDARD FOR PRIVATELY-OWNED FORESTS

No	Principles	Criteria	Indicators	Verifiers	Related Regulations
1.	P1. Timber ownership can be verified	K1.1 Legality of ownership or land title in relation to the timber harvesting area.	1.1.1 Private land or forest owner can prove ownership or use rights of the land.	Valid land ownership or land tenure documents (land title documents recognized by competent authorities)	Act 5/1960 Regulation of the Minister for Forestry P33/2010
				Land Cultivation Right.	Government Regulation PP12/1998
				Deed of Establishment of the Company	Regulation of the Minister for Trade 36/2007
				Business licence for companies engaging in trading business (SIUP)	Regulation of the Minister for Trade 37/2007
				Company registration (TDP)	Act 6/1983
				Tax payer registration (NPWP)	Act 13/2003
			1.1.2 Management units (either owned individually or by a group) demonstrate valid timber transportation documents.	Map of the area of private forest and boundaries delineated on the ground.	Act 23/2003 Act 20/2009
				Certificate of Timber Origin or Log Transport Document	Regulation of the Minister for Forestry P30/2012
				Invoice/ sales receipt/ freight clearance.	
			1.1.3 Management units show proof of payment of applicable charges related to trees present prior to the transfer of rights or tenure of the area.	Proof of payment of Reforestation Fund and/or Forest Resources Fee and compensation to the state for the value of stumpage cut.	Regulation of the Minister for Forestry P18/2007

No	Principles	Criteria	Indicators	Verifiers	Related Regulations
2.	P2. Compliance with environmental and social aspects related to timber harvesting in the case of areas subject to Land Cultivation Rights	K2.1 Permit holder has an approved Environmental Impact Assessment (EIA) document and has implemented measures identified in it.	2.1.1 Permit holder has EIA documents approved by the competent authorities which cover the entire work area.	EIA documents	Government Regulation PP27/1999 Regulation of the Minister for Forestry and Plantation 602/1998
3.	P3. Compliance with labour laws and regulations in the case of areas subject to Land Cultivation Rights	K3.1 Fulfilment of occupational safety and health (OSH) requirements	3.1.1 Availability of OSH procedures and their implementation	Implementation of OSH procedures	Regulation of the Minister for Manpower & Transmigration 01/1978
				OSH equipment	
				Employment injury records	Regulation of the Minister for Forestry P12/2009
		K3.2 Fulfilment of workers' rights	3.2.1 Freedom of association for workers	Workers belong to workers unions or company policies allow workers to establish or get involved in union activities	Act 21/2000 Regulation of the Minister for Manpower & Transmigration 16/2001
			3.2.2 Existence of collective labour agreements	Collective labour agreement documents or company policy documents on labour rights	Act 13/2003 Regulation of the Minister for Manpower & Transmigration 16/2011
			3.2.3 Company does not employ minors underage workers	There are no underage workers	Act 13/2003 Act 23/2003 Act 20/2009

LEGALITY STANDARD 4: THE STANDARD FOR TIMBER UTILISATION RIGHTS WITHIN NON-FOREST ZONES

No	Principles	Criteria	Indicators	Verifiers	Related Regulations
1.	P1. Legal status of area and right to utilise	K1.1.1. Timber harvesting permit within non-forest zone without altering the legal status of the forest.	1.1.1 Harvesting operation authorised under Other Legal Permit (ILS) / conversion permits (IPK) in a lease area.	ILS/IPK permits for harvesting operations in the lease area	Regulation of the Minister for Forestry P18/2011
				Maps attached to the ILS/IPK permits of the lease area and evidence of compliance on the ground.	
		K1.2. Timber harvesting permit within non-forest zone which leads to a change in the legal status of the forest	1.2.1 Timber harvesting authorised under a land conversion permit (IPK).	Business permit and maps attached to the permit (this requirement applies to both IPK holders and business permit holders)	Regulation of the Minister for Forestry P14/2011 Regulation of the Minister for Forestry P33/2010
				IPK in conversion areas	
				Maps attached to IPK	
				Documents authorising changes in the legal status of the forest (this requirement applies to both IPK permit holders and business permit holders)	
		K1.3 Permit to extract timber forest products from a state forest area for Reforestation-based Plantation Forest (HTHR) activities	1.3.1. Timber harvesting is authorised under a permit to extract timber forest products from reforestation-based plantation forests in areas designated for reforestation-based plantation forests (HTHR)	HTHR permit	Regulation of the Minister for Forestry P59/2011
				Maps attached to HTHR and evidence of compliance on the ground	

No	Principles	Criteria	Indicators	Verifiers	Related Regulations
2.	P2. Compliance with legal systems and procedures for tree harvesting and for the transportation of logs	K2.1 IPK/ILS plan and implementation complies with land use planning.	2.1.1 Approved work plan for the areas covered by IPK/ ILS	IPK/ILS work plan documents	Regulation of the Minister for Forestry P62/2008
				Valid equipment permit	Regulation of the Minister for Forestry P53/2009
			2.1.2 The permit holder can demonstrate that the transported logs are from areas under valid land conversion permit/ other use permits (IPK/ILS)	Forest inventory documents	Regulation of the Minister for Forestry P62/2008
				Timber Production Report documents (LHP)	Regulation of the Minister for Forestry P55/2006
		K2.2 Payment of government fees and levies and compliance with timber transportation requirements	2.2.1 Evidence of payment of charges.	Proof of payment of Reforestation Funds, Forest Resources Fee and compensation to the state for the value of stumpage cut.	Regulation of the Minister for Forestry P18/2007
			2.2.2 Permit holder has valid timber transportation documents	Logs Transportation Invoice (FAKB) and log list for small diameter logs	Regulation of the Minister for Forestry P55/2006
Log Legality Document (SKSKB) and log list for large diameter logs					
3.	P3. Compliance with labour laws and regulations	K.3.1 Fulfilment of occupational safety and health (OSH) requirements	3.1.1 Availability of OSH procedures and their implementation	Implementation of OSH procedures	Regulation of the Minister for Manpower & Transmigration 01/1978
				OSH equipment	
				Employment injury records	Regulation of the Minister for Forestry P12/2009

No	Principles	Criteria	Indicators	Verifiers	Related Regulations
		K.3.2 Fulfilment of workers' rights	3.2.1 Freedom of association for workers	Workers belong to workers unions or company policies allow workers to establish or get involved in union activities	Act 21/2000 Regulation of the Minister for Manpower & Transmigration 16/2001
			3.2.2 Existence of collective labour agreements	Collective labour agreement documents or company policy documents on labour rights	Act 13/2003 Regulation of the Minister for Manpower & Transmigration 16/2011
			3.2.3 Company does not employ minors/ underage workers	There are no underage workers	Act 13/2003 Act 23/2003 Act 20/2009

LEGALITY STANDARD 5: THE STANDARD FOR PRIMARY AND DOWNSTREAM FOREST-BASED INDUSTRY

Principles	Criteria	Indicators	Verifiers	Related Regulations
P1. Timber forest product processing industry supports the realization of legal trade in timber.	K1.1. Business units in the form of: (a) Processing industry, and (b) Exporters of processed products are in possession of valid permits	1.1.1 Processing industry units are in possession of valid permits	The deed of establishment of the company and latest amendments to the deed (the Company's Establishment Deed)	Regulation of the Minister for Law & Human Rights M.01-HT.10/2006 Regulation of the Minister for Trade 36/2007
			Permit to engage in trading business (Business Licence /SIUP) or trading permit, which may be Industrial Business Permit (IUI) or Permanent Business Permit (IUT) or Industrial Registration Certificate (TDI)	Regulation of the Minister for Trade 37/2007 Act 6/1983 Government Regulation PP80/2007
			Nuisance/ disturbance permit (permit issued to the company for affecting the environment around which it operates its business)	Regulation of the Minister for Forestry P35/2008 Regulation of the Minister for Forestry P16/2007
			Company Registration Certificate (TDP)	Regulation of the Minister for Trade 39/2011
			Tax Payer Identification Number (NPWP)	Regulation of the Minister for Industry 41/2008 Reg. of the Minister for Environment 13/2010
			Availability of Environmental Impact Assessment documents	
			Availability of Industrial Business Permit (IUI) or Permanent Business Permit (IUT) or Industrial Registration Certificate (TDI)	

Principles	Criteria	Indicators	Verifiers	Related Regulations
			Availability of Raw Materials Stock Planning (RPBBI) for Forest Products Primary Industry (IPHH).	
		1.1.2 Exporters of processed timber products have valid permits as both producers and exporters of timber products.	The exporters have the status of Registered Exporters of Forestry Industry Products (ETPIK).	Regulation of the Minister for Trade P64/2012
	K1.2 Business units in the form of groups of artisans / household industries are legally registered	1.2.1 The business groups (cooperatives / limited partnership (CV) / other business groups) are legally established.	Deed of establishment	Act 6/1983
			Tax Payer Registration (NPWP)	
		1.2.2 Traders of processed timber products have valid registration as exporters and are supplied by small and medium certified processing industry not registered as exporters	Registration of the traders as Non-Producer Exporters of Forestry Industry Products (ETPIK Non Produsen).	Regulation of the Minister for Trade P64/2012
			Agreement or contract of collaboration with a processing industry unit which has timber legality certificate (S-LK)	
P2. Business units apply timber tracking system which ensures that the origin of the timber can be traced	K2.1 Existence and application of a system which traces timber in the forest products	2.1.1 Business units can demonstrate that the timber received comes from legal sources.	Sales and purchase documents and or contract of supply of materials and or proof of purchase and equipped with forest products legality documents / letter of attestation of the legality of forest products	Regulation of the Minister for Forestry P55/2006 Regulation of the Minister for Forestry P30/2012 Regulation of the Minister for Forestry P62/2008 Regulation of the Minister for Forestry P56/2009

Principles	Criteria	Indicators	Verifiers	Related Regulations
			<p>Approved report on the transfer of timber and/or proof of transfer and or official report on the examination of timber; letter of attestation of the legality of forest products</p> <p>Imported timber is accompanied by Import Notification documents and information concerning the origin of the timber as well as documents certifying the legality of the timber and country of harvest</p> <p>Log transport documents</p> <p>Transport documents (SKAU/ Nota) with corresponding official reports from the officer of the local authority with respect to used timber from demolished buildings/ structures, unearthed timber and buried timber.</p> <p>Transport documents in the form of FAKO/ Nota for industrial waste wood</p> <p>Documents/ reports on changes in the stock of round logs (LMKB) /reports on changes in the stock of small-diameter round logs (LMKBK)/reports on changes in the stock of processed timber forest products (LMHHOK)</p> <p>Supporting documents, that is, Raw Materials Stock Planning (RPBBI), letter of decision officially certifying the annual work plan (SK RKT)</p>	

Principles	Criteria	Indicators	Verifiers	Related Regulations
		2.1.2 Business units apply a timber tracking system and operate within permitted production levels	Tally sheets on the use of raw materials and on production outputs.	Regulation of the Minister for Forestry P55/2006
			Output reports on the production of processed products.	Regulation of the Minister for Industry 41/2008
			The production of the unit does not exceed the permitted production capacity.	Regulation of the Minister for Forestry P35//2008
		2.1.3 Production process in collaboration with another party (another industry or with artisans/ household industries) provides for tracking of timber	Contract of collaboration or service contract for product processing with another party	Regulation of the Minister for Trade 37/M-DAG/PER/9/2007
			The collaborating party has valid permits as set out under Principle 1	Act 6/1983
			Segregation/ separation of produced products.	Regulation of the Minister for Forestry P35/2008
			Documentation of raw materials, processes, production and where applicable of exports if export is conducted through the business unit / another company with which collaboration agreement is entered into.	Regulation of the Minister for Forestry P16/2007 Regulation of the Minister for Trade 39/M-DAG/PER/12/2011 Regulation of the Minister for Industry 41/M- IND/PER/6/2008 Regulation of the Minister for Forestry P55/2006

Principles	Criteria	Indicators	Verifiers	Related Regulations
P3. Legality of the trade or the change of ownership of processed timber.	K3.1 Inter-island transportation and trade complies with applicable legislation.	3.1.1 The business unit shipping processed timber products inter-island are Registered Interisland Timber Traders (PKAPT).	PKAPT documents	Regulation of the Minister for Industry and Trade 68/MPP/Kep/2/2003
			PKAPT report documents	Joint Regulation of the Minister for Forestry, Minister for Transportation, and Minister for Industry and Trade 22/2003
		3.1.2 The vessel used to transport processed timber is Indonesian-flagged and possesses valid permits to operate.	Documents showing identity of vessel. Registration documents which show the identity of the vessel and valid permit.	Regulation of the Minister for Forestry P55/2006
			The identity of vessel agrees with that stated in the log or timber transport documents	Regulation of the Minister for Forestry P30/2012 Regulation of the Minister for Transportation KM71/2005 Joint Regulation of the Minister for Forestry, Minister for Transportation, and Minister for Industry and Trade 22/2003
		3.1.3 Registered Inter- island Timber Traders (PKAPT) can demonstrate that the transported timber originates from legitimate sources	Log or timber transport documents	Regulation of the Minister for Forestry P55/2006
			Timber administration marks/barcode (PUHH) on logs.	Regulation of the Minister for Forestry P30/2012 Joint Regulation of the Minister for Forestry, Minister for Transportation, and Minister for Industry and Trade 22/2003

Principles	Criteria	Indicators	Verifiers	Related Regulations
	K3.2 Shipping of processed timber for export complies with applicable legislation.	3.2.1 Shipping of processed timber for export with Export Notification (PEB) documents	PEB	Act 17/2006 (Customs)
			Packing list	Regulation of the Minister for Finance 223/PMK.011/2008.
			Invoice	Regulation of the Directorate General for Customs P-40/BC/2008
			B/L (bill of lading)	Regulation of the Directorate General for Customs P-06/BC/2009
			Export licence documents (V-Legal)	Regulation of the Minister for Trade P64/2012
			Results of technical verification (Surveyor's Report) for products for which technical verification is mandatory	Presidential Decree 43/1978
			Proof of payment of export duty, where applicable.	Regulation of the Minister for Forestry 447/2003
			Other relevant documents (including CITES permits) for types of wood whose trade is restricted	
P4. Fulfilment of labour regulations as far as processing industry is concerned	K.4.1 Fulfilment of occupational safety and health (OSH) requirements	4.1.1 Availability of OSH procedures and implementation	Implementation of OSH procedures.	Regulation of the Minister for Manpower & Transmigration 01/1978
			OSH equipment such as lightweight fire extinguishers, personal protective equipment and evacuation routes	Regulation of the Minister for Forestry P12/2009
			Employment injury records	

Principles	Criteria	Indicators	Verifiers	Related Regulations
	K.4.2 Fulfilment of the rights of workers	4.2.1 Freedom of association for workers	Trade union or a company policy that allows employees/ workers to establish a trade union or get involved in trade union activities	Regulation of the Minister for Manpower & Transmigration 16/2001
		4.2.2 Existence of collective labour agreement or company policy on labour rights	Availability of collective labour agreement or company policy documents on labour rights	Act 13/2013 Regulation of the Minister for Manpower & Transmigration 16/2011
		4.2.3 Company does not employ minor/ underage workers	There are no underage workers	Act 13/2003 Act 23/2003 Act 20/2009

ANNEX III

CONDITIONS FOR THE RELEASE FOR FREE CIRCULATION IN THE UNION OF INDONESIAN FLEGT-LICENSED TIMBER PRODUCTS

1. LODGING OF THE LICENCE

- 1.1. The licence shall be lodged with the competent authority of the Union Member State in which the shipment covered by that licence is presented for release for free circulation. This can be done electronically or by other expeditious means.
- 1.2. A licence shall be accepted if it meets all the requirements set out in Annex IV and no further verification in accordance with sections 3, 4 and 5 of this Annex is deemed necessary.
- 1.3. A licence may be lodged before the arrival of the shipment it covers.

2. ACCEPTANCE OF THE LICENCE

- 2.1. Any licence which does not meet the requirements and specifications set out in Annex IV is invalid.
- 2.2. Erasures in or alterations to a licence shall only be accepted if such erasures or alterations have been validated by the Licensing Authority.
- 2.3. A licence shall be considered as void if it is lodged with the competent authority after the expiry date indicated in the licence. The extension of the validity of a licence shall not be accepted unless that extension has been validated by the Licensing Authority.
- 2.4. A duplicate or replacement licence shall not be accepted unless it has been issued and validated by the Licensing Authority.
- 2.5. Where further information is required on the licence or on the shipment, in accordance with this Annex, the licence shall be accepted only after the required information has been received.
- 2.6. Where the volume or weight of the timber products contained in the shipment presented for release for free circulation does not deviate by more than ten per cent from the volume or weight indicated in the corresponding licence, it shall be considered that the shipment conforms to the information provided in the licence in so far as volume or weight is concerned.
- 2.7. The competent authority shall, in accordance with the applicable legislation and procedures, inform the customs authorities as soon as a licence has been accepted.

3. VERIFICATION OF THE VALIDITY AND AUTHENTICITY OF THE LICENCE

- 3.1. In case of doubt concerning the validity or authenticity of a licence, a duplicate or a replacement licence, the competent authority may request additional information from the Licence Information Unit.
- 3.2. The Licence Information Unit may request the competent authority to send a copy of the licence in question.
- 3.3. If necessary the Licensing Authority shall withdraw the licence and issue a corrected copy which will be authenticated by the stamped endorsement "Duplicate" and forward it to the competent authority.
- 3.4. If no answer is received by the competent authority within twenty-one calendar days of the request for additional information from the Licence Information Unit, as specified in section 3.1 of this Annex, the competent authority shall not accept the licence and shall act in accordance with applicable legislation and procedures.

3.5. If the validity of the licence is confirmed, the Licence Information Unit shall inform the competent authority forthwith, preferably by electronic means. The copies returned shall be authenticated by the stamped endorsement "Validated on".

3.6. If following the provision of additional information and further investigation, it is determined that the licence is not valid or authentic the competent authority shall not accept the licence and shall act in accordance with applicable legislation and procedures.

4. VERIFICATION OF THE CONFORMITY OF THE LICENCE WITH THE SHIPMENT

4.1. If further verification of the shipment is considered necessary before the competent authorities can decide whether a licence can be accepted, checks may be carried out to establish whether the shipment in question conforms to the information provided in the licence and/or to the records relating to the relevant licence held by the Licensing Authority.

4.2. In case of doubt as to the conformity of the shipment with the licence the competent authority concerned may seek further clarification from the Licence Information Unit.

4.3. The Licence Information Unit may request the competent authority to send a copy of the licence or the replacement in question.

4.4. If necessary, the Licensing Authority shall withdraw the licence and issue a corrected copy which must be authenticated by the stamped endorsement "Duplicate" and forwarded to the competent authority.

4.5. If no answer is received by the competent authority within twenty one calendar days upon request of the further clarification as specified in section 4.2 above, the competent authority shall not accept the licence and shall act in accordance with applicable legislation and procedures.

4.6. If following the provision of additional information and further investigation, it has been determined that the shipment in question does not conform with the licence and/or to the records relating to the relevant licence held by the Licensing Authority, the competent authority shall not accept the licence and shall act in accordance with applicable legislation and procedures.

5. OTHER MATTERS

5.1. Costs incurred while the verification is being completed shall be at the expense of the importer, except where the applicable legislation and procedures of the Union Member State concerned determine otherwise.

5.2. Where persistent disagreements or difficulties arise from the verification of licences the matter may be referred to the JIC.

6. EU CUSTOMS DECLARATION

6.1. The number of the licence that covers the timber products that are being declared for release for free circulation shall be entered in Box 44 of the Single Administrative Document on which the customs declaration is made.

6.2. Where the customs declaration is made by means of a data-processing technique the reference shall be provided in the appropriate box.

7. RELEASE FOR FREE CIRCULATION

7.1. Shipments of timber products shall be released for free circulation only when the procedure described in section 2.7 above has been duly completed.

ANNEX IV

REQUIREMENTS AND TECHNICAL SPECIFICATIONS OF FLEGT LICENCES**1. GENERAL REQUIREMENTS OF FLEGT LICENCES**

- 1.1. A FLEGT licence may be in paper or electronic form.
- 1.2. Both paper-based and electronic licences shall provide the information specified in Appendix 1, in accordance with the notes for guidance set out in Appendix 2.
- 1.3. A FLEGT licence shall be numbered in a manner that allows the Parties to distinguish between a FLEGT licence covering shipments destined for Union markets and a V-Legal Document for shipments destined for non-Union markets.
- 1.4. A FLEGT licence shall be valid from the date on which it is issued.
- 1.5. The period of validity of a FLEGT licence shall not exceed four months. The date of expiry shall be indicated on the licence.
- 1.6. A FLEGT licence shall be considered void after it has expired. In the event of force majeure or other valid causes beyond the control of the licensee, the Licensing Authority may extend the period of validity for an additional two months. The Licensing Authority shall insert and validate the new expiry date when granting such an extension.
- 1.7. A FLEGT licence shall be considered void and returned to the Licensing Authority if the timber products covered by that licence have been lost or destroyed prior to its arrival in the Union.

2. TECHNICAL SPECIFICATIONS WITH REGARD TO PAPER-BASED FLEGT LICENCES

- 2.1. Paper-based licences shall conform to the format set out in Appendix 1.
- 2.2. The paper size will be standard A4. The paper will have watermarks showing a logo that will be embossed on the paper in addition to the seal.
- 2.3. A FLEGT licence shall be completed in typescript or by computerised means. It may be completed in manuscript, if necessary.
- 2.4. The stamps of the Licensing Authority shall be applied by means of a stamp. However, an embossment or perforation may be substituted for the Licensing Authority stamp.
- 2.5. The Licensing Authority shall use a tamper-proof method to record the quantity allocated in such a way as to make it impossible to insert figures or references.
- 2.6. The form shall not contain any erasures or alterations, unless those erasures or alterations have been authenticated by the stamp and signature of the Licensing Authority.
- 2.7. A FLEGT licence shall be printed and completed in English.

3. COPIES OF FLEGT LICENCES

- 3.1. A FLEGT licence shall be drawn up in seven copies, as follows:
 - i. an "Original" for the competent authority on white paper;

- ii. a "Copy for Customs at destination" on yellow paper;
 - iii. a "Copy for the Importer" on white paper;
 - iv. a "Copy for the Licensing Authority" on white paper;
 - v. a "Copy for the Licensee" on white paper;
 - vi. a "Copy for the Licence Information Unit" on white paper;
 - vii. a "Copy for Indonesian Customs" on white paper
- 3.2. The copies marked "Original", "Copy for Customs at destination" and "Copy for the Importer" shall be given to the licensee, who shall send them to the importer. The importer shall lodge the original with the competent authority and the relevant copy with the customs authority of the Member State of the Union in which the shipment covered by that licence is declared for release for free circulation. The third copy marked "Copy for the Importer" shall be retained by the importer for the importer's records.
- 3.3. The fourth copy marked "Copy for the Licensing Authority" shall be retained by the Licensing Authority for its records and for possible future verification of licences issued.
- 3.4. The fifth copy marked "Copy for the Licensee" shall be given to the licensee for the licensee's records.
- 3.5. The sixth copy marked "Copy for the Licence Information Unit" shall be given to the Licence Information Unit for its records.
- 3.6. The seventh copy marked "Copy for Indonesian Customs" shall be given to the customs authority of Indonesia for exportation purposes.
4. FLEGT LICENCE LOST, STOLEN OR DESTROYED
- 4.1. In the event of loss, theft or destruction of the copy marked "Original" or the copy marked "Copy for Customs at destination" or both, the licensee or the licensee's authorised representative may apply to the Licensing Authority for a replacement. Together with the application, the licensee or the licensee's authorised representative shall provide an explanation for the loss of the original and/or the copy.
- 4.2. If it is satisfied with the explanation, the Licensing Authority shall issue a replacement licence within five working days of receipt of the request from the licensee.
- 4.3. The replacement shall contain the information and entries that appeared on the licence it replaces, including the licence number, and shall bear the endorsement "Replacement Licence".
- 4.4. In the event that the lost or stolen licence is retrieved, it shall not be used and must be returned to the Licensing Authority.
5. TECHNICAL SPECIFICATIONS WITH REGARD TO ELECTRONIC FLEGT LICENCES
- 5.1. The FLEGT licence may be issued and processed using electronic systems.
- 5.2. In Member States of the Union which are not linked to an electronic system a paper-based licence shall be made available.
-

Appendices

1. Licence Format
2. Notes for Guidance.

Appendix 1

LICENCE FORMAT

A.		Indonesian V-legal logo		B.	
ORIGINAL	1	1 Issuing authority		2 Importer	
		Name		Name	
		Address		Address	
		Authority registration number:			
		3 V-Legal/FLEGT licence number		4 Date of Expiry	
				<div style="border: 1px solid black; width: 100px; height: 15px; margin: 0 auto;"></div>	
		5 Country of export		7 Means of transport	
		6 ISO Code			
		8 Licensee			
		Name:		ETPIK Number:	
	Address:		Tax payer number:		
1	9 Commercial description of the timber products			10 HS-Heading	
	11 Common and Scientific Names		12 Countries of harvest		13 ISO Codes
	14 Volume (m ³)	15 Net Weight (kg)		16 Number of units	
	17 Distinguishing marks				
	18 Signature and stamp of issuing authority				
	Name				
	Place and date				

Appendix 2

NOTES FOR GUIDANCE

General:

- Complete in capitals.
- ISO codes, where indicated, refer to the international standard two letter code for any country.
- Box 2 is for use by the Indonesian authorities only
- Headings A and B for use of FLEGT licensing to the EU only

Heading A	Destination	Insert "European Union" if the licence covers a shipment destined for the European Union.
Heading B	FLEGT licence	Insert "FLEGT" if the licence covers a shipment destined for the European Union.
Box 1	Issuing authority	Indicate the name, address, and registration number of the Licensing Authority.
Box 2	Information for use by Indonesia	Indicate the name and address of the importer, the total value (in USD) of the shipment, as well as the name and the two-letter ISO code of the country of destination and where applicable of the country of transit.
Box 3	V-Legal/licence number	Indicate the issuing number.
Box 4	Date of expiry	Period of validity of the licence.
Box 5	Country of export	This refers to the partner country from where the timber products were exported to the EU.
Box 6	ISO code	Indicate the two-letter ISO code for the partner country referred to in Box 5.
Box 7	Means of transport	Indicate the means of transport at the point of export.
Box 8	Licensee	Indicate the name and address of the exporter, including the registered exporter ETPIK and tax payer numbers.
Box 9	Commercial Description	Indicate the commercial description of the timber product(s). The description should be sufficiently detailed to allow for classification into the HS.
Box 10	HS code	For the "Original", "Copy for Customs at Destination" and "Copy for Importer" indicate the four-digit or six-digit commodity code established pursuant to the Harmonised Commodity Description and Coding System. For copies for use within Indonesia (copies (iv) to (vii) as set out in Article 3.1 of Annex IV) indicate the ten-digit commodity code in accordance with the Indonesia Customs Tariff Book.
Box 11	Common and scientific names	Indicate the common and scientific names of the species of timber used in the product. Where more than one species is included in a composite product, use a separate line. May be omitted for a composite product or component that contains multiple species whose identity has been lost (e.g. particle board).

Box 12	Countries of harvest	Indicate the countries where the species of timber referred to in Box 10 was harvested. Where a composite product include for all sources of wood used. May be omitted for a composite product or component that contains multiple species whose identity has been lost (e.g. particle board).
Box 13	ISO codes	Indicate the ISO code of the countries referred to in box 12. May be omitted for a composite product or component that contains multiple species whose identity has been lost (e.g. particle board).
Box 14	Volume (m ³)	Indicate the overall volume in m ³ . May be omitted unless the information referred to in box 15 has been omitted.
Box 15	Net weight (kg)	Indicate the overall weight of the shipment at the time of measurement in kg. This is defined as the net mass of the timber products without immediate containers or any packaging, other than bearers, spacers, stickers etc.
Box 16	Number of units	Indicate the number of units, where a manufactured product is best quantified in this way. May be omitted.
Box 17	Distinguishing marks	Insert barcode and any distinguishing marks where appropriate e.g. lot number, bill of lading number. May be omitted.
Box 18	Signature and stamp of issuing authority	The box shall be signed by the authorised official and stamped with the official stamp of the Licensing Authority. The signatories' name, as well as place and date shall also be indicated.

ANNEX V

INDONESIAN TIMBER LEGALITY ASSURANCE SYSTEM**1. INTRODUCTION**

Objective: To provide assurance that harvesting, transportation, processing and selling of round logs and processed timber products comply with all relevant Indonesian laws and regulations.

Known for its pioneering role in combating illegal logging and the trade in illegally harvested timber and timber products, Indonesia hosted the East Asia Ministerial Conference on Forest Law Enforcement and Governance (FLEG) in Bali, in September 2001, which resulted in the Declaration on Forest Law Enforcement and Governance' (Bali Declaration). Since then, Indonesia has continued to be at the forefront of international cooperation in combating illegal logging and associated trade.

As part of international efforts to address these issues, a growing number of consumer countries have committed themselves to take measures to prevent trade in illegal timber on their markets, whilst producer countries have committed themselves to provide a mechanism assuring the legality of their timber products. It is important to establish a credible system to guarantee the legality of harvesting, transportation, processing and trade of timber processed timber products.

The Indonesian Timber Legality Assurance System (TLAS) provides assurance that timber and timber products produced and processed in Indonesia come from legal sources and are in full compliance with relevant Indonesian laws and regulations, as verified by independent auditing and monitored by civil society.

1.1. Indonesian laws and regulations as foundation of the TLAS

The Indonesian regulation on the "Standards and Guidelines on the Assessment of Performance of Sustainable Forest Management and the Verification of Timber Legality in the State and Privately-owned Forests" (Forestry Minister's Regulation P.38/Menhut-II/2009) establish the TLAS as well as the sustainability scheme (SFM), to improve forest governance; to suppress illegal logging and the associated timber trade and to ensure the credibility and improve the image of Indonesia's timber products.

The TLAS comprises the following elements:

1. Legality Standards,
2. Control of Supply Chain,
3. Verification Procedures,
4. Licensing Scheme,
5. Monitoring.

TLAS is the basic system used to assure the legality of timber and timber products produced in Indonesia for export to the Union and to other markets.

1.2. Development of the TLAS: a multi-stakeholder process

Since 2003, a wide range of Indonesian forestry stakeholders have been actively engaged in developing, implementing and evaluating the TLAS, thereby providing better oversight, transparency and credibility in the process. In 2009, the multi-stakeholder process resulted in the issuance of Forestry Minister's Regulation P.38/Menhut-II/2009, followed by DG Forest Utilization Technical Guidelines No.6/VI-SET/2009 and No.02/VI-BPPHH/2010.

2. SCOPE OF THE TLAS

Indonesian forest resources can broadly be divided into two types of ownership: state forests and privately owned forests/lands. State forests consist of production forests for long-term sustainable timber production under a variety of permit types and forest areas that can be converted for non-forestry purposes such as for settlement or plantations. The application of TLAS on state forests and privately owned forests/lands is set out in Annex II.

The TLAS covers timber and timber products from all permit types as well as the operations of all timber traders, downstream processors and exporters.

The TLAS requires that imported timber and timber products are cleared at customs and comply with Indonesia's import regulations. Imported timber and timber products must be accompanied by documents providing assurance of the legality of the timber in its country of harvest. Imported timber and timber products will have to enter into a controlled supply chain that complies with the Indonesian rules and regulations. Indonesia will provide guidance on how to implement the above.

Certain timber products may contain recycled materials. Indonesia provides guidance on how the use of recycled materials will be dealt with under the TLAS.

Impounded timber is not included in the TLAS and therefore cannot be covered by a FLEGT licence.

The TLAS covers timber products destined for domestic and international markets. All Indonesian producers, processors, and traders (operators) will be verified for legality, including those supplying the domestic market.

2.1. TLAS legality standards

The TLAS has five timber legality standards. These standards and their verification guidelines are set out in Annex II.

The TLAS also incorporates the "Standard and Guidelines on Assessment of Performance in Sustainable Forest Management (SFM)". The assessment of sustainable forest management using the SFM standard also verifies that the auditee complies with the relevant legality criteria. SFM-certified organisations operating within production forest zones on state-owned lands (permanent forest domain) adhere to both relevant legality and SFM standards.

3. CONTROL OF THE TIMBER SUPPLY CHAIN

The permit holder (in the case of concessions) or landowner (in the case of private land) or company (in the case of traders, processors and exporters) shall demonstrate that every node of their supply chain is controlled and documented as set out in the Minister for Forestry Regulations P.55/Menhut-II/2006 and P.30/Menhut-II/2012 (hereinafter referred to as the Regulations). These Regulations require provincial and district forestry officials to undertake field verification and validate the documents which are submitted by permit holders, landowners, or processors at each node of the supply chain.

The operational controls at each point in the supply chain are summarised in Diagram 1; the guidance for imports is being developed.

All consignments in the supply chain must be accompanied by relevant transport documents. Companies must apply appropriate systems to segregate between timber and timber products from verified sources with timber and timber products from other sources, and maintain records that distinguish between these two sources. Companies at each point in the supply chain are required to record whether the involved logs, products or timber consignment are TLAS-verified.

Operators in the supply chain are required to keep records on received, stored, processed and delivered timber and timber products so as to enable subsequent reconciliation of quantitative data between and within nodes of the supply chain. Such data shall be made available for provincial and district forestry officials to carry out reconciliation tests. Main activities and procedures, including reconciliation, for each stage of the supply chain are further explained in the Appendix of this Annex.

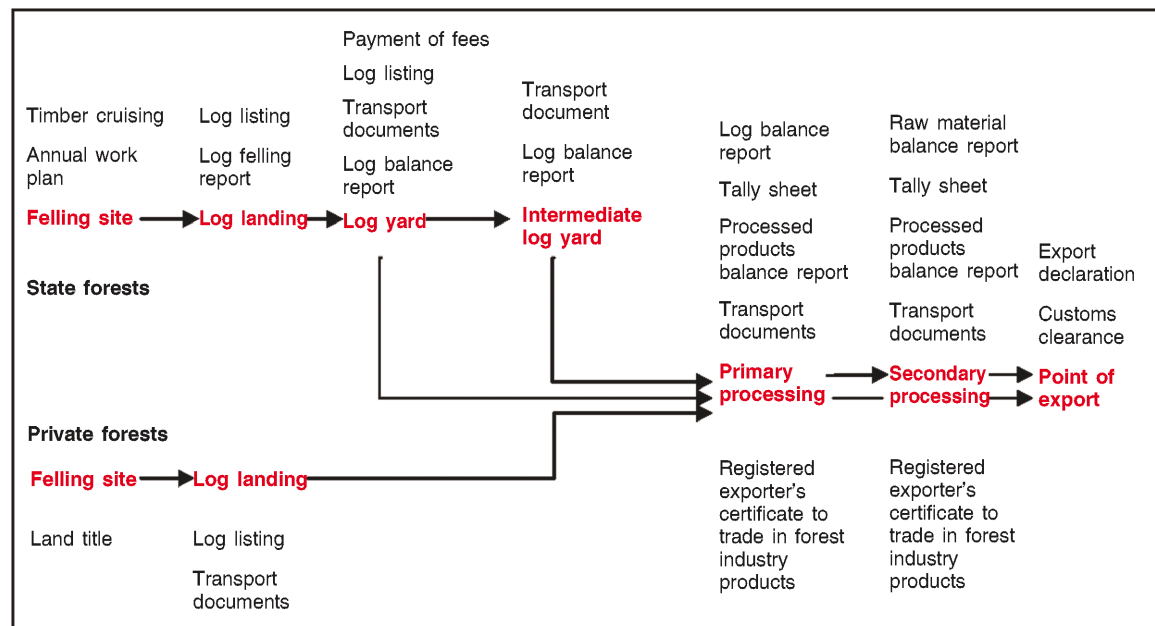


Diagram 1: Control of the supply chain which shows the required key documents at each point in the supply chain.

4. INSTITUTIONAL SET-UP FOR LEGALITY VERIFICATION AND EXPORT LICENSING

4.1. Introduction

The Indonesian TLAS is based on an approach known as "operator-based licensing" which has much in common with product or forest management certification systems. The Indonesian Ministry of Forestry nominates a number of conformity assessment bodies (LP and LV) which it authorizes to audit the legality of operations of timber producers, traders, processors and exporters ("operators").

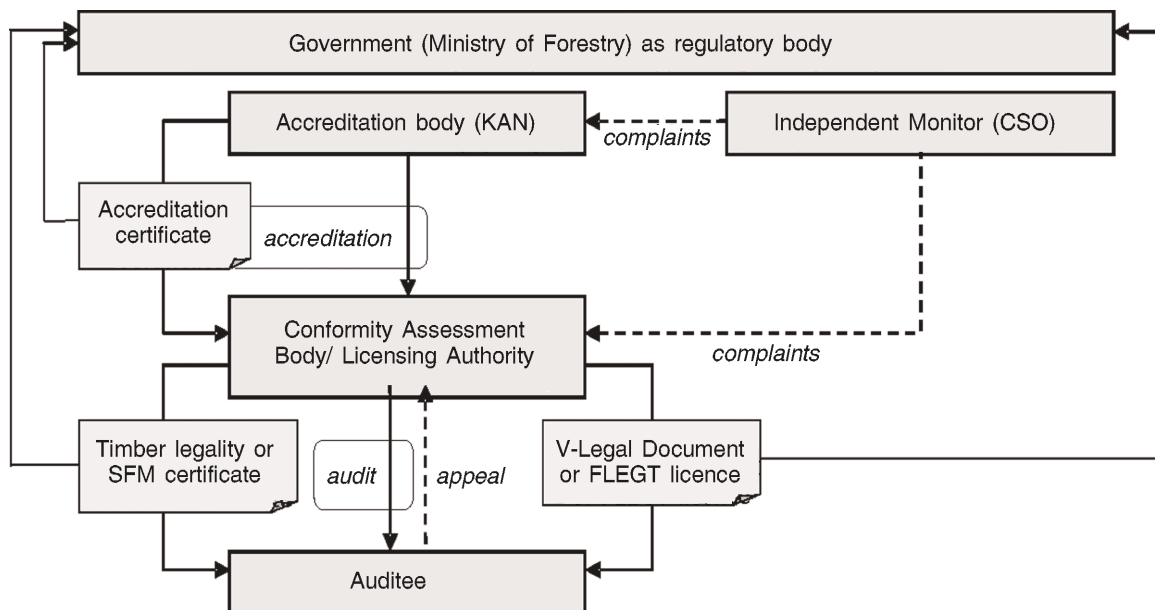
The conformity assessment bodies (CAB) are accredited by the Indonesian National Accreditation Body (KAN). CAB are contracted by operators who want their operations to be certified as legal and are required to operate according to relevant ISO guidelines. They report the outcome of the audits to the auditee and to the Ministry of Forestry.

The CAB ensure that the auditees operate in compliance with the Indonesian legality definition as contained in Annex II, including controls to prevent material from unknown sources entering their supply chains. When an auditee is found to be compliant, a legality certificate with a validity of 3 (three) years is issued.

LVs also act as export licensing authorities and check verified exporters' supply chain control systems. If compliant, they issue export licences in the form of V-Legal Documents. Thus exports without an export permit are prohibited.

Indonesia has enacted a regulation which allows civil society groups to raise objections on the legality verification of an operator by CAB or in the event of illegal activities detected during operations. In case of complaints about the operations of a conformity assessment body, civil society groups can file complaints with KAN.

The relationship between different entities involved in implementing the TLAS is illustrated in Diagram 2:



4.2. Conformity assessment bodies

The conformity assessment bodies play a key role in the Indonesian system. They are contracted to verify the legality of the production, processing and trade activities of individual companies in the supply chain, including the integrity of the supply chain. LV also issue V-Legal Documents for individual shipments of exported timber.

There are two types of CAB: (i) assessment bodies (Lembaga Penilai/LP) which audits the performance of Forest Management Units (FMUs) against the sustainability standard; and (ii) verification bodies (Lembaga Verifikasi/LV), which audit FMUs and forest-based industries against the legality standards.

In order to ensure those audits that verify the legality standards as set out in Annex II are of the highest quality, the LP and LV are required to develop the necessary management systems addressing competency, consistency, impartiality, transparency, and assessment process requirements as outlined in ISO/IEC 17021 (SFM Standard for LPs) and/or ISO/IEC Guide 65 (Legality Standards for LVs). These requirements are specified in the TLAS Guidelines.

LVs can also act as Licensing Authorities. In this case the LVs issue export licences to cover timber products destined to international markets. For non-Union markets, the Licensing Authorities will issue V-Legal Documents, and as for the Union market, FLEGT licenses will be issued in accordance with the requirements as outlined in Annex IV. Indonesia is developing detailed procedures for the V-Legal Document or FLEGT licensing of export consignments.

The LVs are contracted by the auditees to carry out legality audits and will issue TLAS legality certificates and V-Legal document or FLEGT licences for exports to international markets. LPs will audit timber producing concessions against the SFM standard. LPs do not issue export licences.

4.3. Accreditation body

The Indonesian National Accreditation Body (Komite Akreditasi Nasional - KAN) is responsible for the accreditation of CAB. In case of problem with a LP or LV, complaints can be submitted to the KAN.

On 14 July 2009, the KAN signed a Memorandum of Understanding with the Ministry of Forestry to provide accreditation services for the TLAS. KAN is an independent accreditation body established through Government Regulation (Peraturan Pemerintah/PP) 102/2000 concerning National Standardisation and Presidential Decree (Keputusan Presiden/Keppres) 78/2001 regarding the National Accreditation Committee.

The KAN operates under the guidance of ISO/IEC 17011 (General Requirements for Accreditation Bodies Accrediting Conformity Assessment Bodies). It has developed internal TLAS-specific supporting documents for the accreditation of LPs (DPLS 13) and LVs (DPLS 14). In addition, the KAN will develop requirements and guidance for the accreditation of LVs for export licensing.

KAN is internationally recognised by the Pacific Accreditation Cooperation (PAC) and the International Accreditation Forum (IAF) to accredit certification bodies for Quality Management Systems, Environmental Management Systems and Product Certification. KAN is also recognised by the Asia Pacific Laboratory Accreditation Cooperation (APLAC) and the International Laboratory Accreditation Cooperation (ILAC).

4.4. Auditees

Auditees are operators which are subject to legality verification. They include forest management units (concessionaires or timber utilization permit holders, community-based forest permit holders, private forest/land owners) and forestry-based industries. The forest management units and forest-based industries must comply with the applicable TLAS standard. For export purposes, the forest-based industries must comply with export licensing requirements. The system allows auditees to submit appeals to the LP or LV on the conduct of or results of audits.

4.5. Independent monitor

Civil society plays a key role in the Independent Monitoring (IM) of the TLAS. Findings from the Independent Monitor can also be used as part of the Periodic Evaluation (PE) which is required under this Agreement.

In the event of an assessment-related irregularity, complaints by civil society shall be submitted directly to the concerned LP or LV. If no appropriate response is given to the complaints, civil society entities may file a report to the KAN. For accreditation-related irregularities, complaints shall be submitted directly to the KAN. Whenever civil society entities discover wrongdoings by operators, they can lodge complaints with the relevant LP or LV.

4.6. The Government

The Ministry of Forestry regulates the TLAS and authorises the accredited LPs to undertake SFM assessment and LVs to undertake legality verification and to issue V-Legal Documents.

Furthermore, the Ministry of Forestry also regulates the Licence Information Unit (LIU) as a unit responsible for information exchange which receives and stores relevant data and information on the issuance of V-Legal Documents and which responds to queries from competent authorities or stakeholders.

5. LEGALITY VERIFICATION

5.1. Introduction

Indonesian timber is deemed legal when its origin and production process as well as subsequent processing, transport and trade activities are verified as meeting all applicable Indonesian laws and regulations, as set out in Annex II. LVs carry out conformity assessments to verify compliance.

5.2. Legality verification process

In accordance with ISO/IEC Guide 65 and the TLAS Guidelines, the legality verification process consists of the following:

Application and contracting: The permit holder submits to the LV an application that defines the scope of verification, permit holder's profile and other necessary information. A contract between the permit holder and the LV, setting out the conditions for verification, is required prior to the commencement of the verification activities.

Verification plan: After the signing of the verification contract, the LV prepares a verification plan, which includes nomination of the audit team, verification programme and schedule of activities. The plan is communicated to the auditee and the dates of verification activities agreed upon. This information shall be made available in advance for the independent monitors through the websites of LVs and the Ministry of Forestry or mass media.

Verification activities: The verification audit consists of three stages: (i) opening audit meeting, (ii) document verification & field observation and (iii) closing audit meeting.

- Opening audit meeting: the audit's objective, scope, schedule and methodology are discussed with the auditee, so as to allow the auditee to raise questions on methods and conduct of verification activities;
- Document verification and field observation stage: in order to collect evidence on the auditee's compliance with the Indonesian TLAS requirements, LV checks the auditee's systems and procedures, relevant documents and records. LV carries out field checks to verify compliance, including cross-checking the findings of official inspection reports. LV also checks the auditee's timber traceability system to ensure that, with adequate evidence, all timber meets the legality requirements.
- Closing audit meeting: the verification results, in particular any non-compliances that may be detected, are presented to the auditee. The auditee may raise questions on the verification results and provide clarification on the evidence presented by the LV.

Reporting and decision making: The audit team draws up a verification report, following a structure provided by the Ministry of Forestry. The report is shared with the auditee within fourteen calendar days after the closing audit meeting. A copy of the report, which includes a description of any findings of non-compliances, is submitted to the Ministry of Forestry.

The report is used primarily to decide on the outcome of the verification audit by the LV. The LV takes the decision on whether to issue a legality certificate based on the verification report prepared by the audit team.

In cases of non-compliance, the LV will refrain from issuing a legality certificate, which will prevent the timber from entering the supply chain of verified legal timber. Once the non-compliance has been addressed, the operator may resubmit a request for legality verification.

Infringements, which are discovered by LV during the verification and reported to the Ministry of Forestry, shall be handled by the responsible authorities in accordance with administrative or judicial procedures. If an operator is suspected of breaching regulations, the national, provincial and district authorities may decide to halt the operator's activities.

Issuance of the legality certificate and recertification: the LV will issue a legality certificate if an auditee is found to comply with all the indicators in the legality standard, including the rules on control of the timber supply chain.

The LV may report at any time to the Ministry of Forestry on issued, changed, suspended and withdrawn certificates and every three months shall issue a report. The Ministry of Forestry will then publish these reports on its website.

A legality certificate is valid for a period of three years, after which the operator is subject to a re-certification audit. The re-certification shall be done prior to the expiry date of the certificate.

Surveillance: Operators with a legality certificate are subject to annual surveillance that follow the principles of the verification activities summarised above. The LV may also carry out surveillance earlier than scheduled before the annual audit if the scope of the verification has been extended.

The surveillance team draws up a surveillance report. A copy of the report, including a description of any non-compliance found, is submitted to the Ministry of Forestry. Non-compliances detected by the surveillance will result in suspension or withdrawal of the legality certificate.

Infringements discovered by the LV during the surveillance and reported to the Ministry of Forestry shall be handled by the relevant authorities, in accordance with administrative or judicial procedures.

Special audits: Operators with a legality certificate are obliged to report to the LV any significant changes in ownership, structures, management, and operations that affect the quality of its legality controls during the period of validity of the certificate. The LV may carry out special audits to investigate any complaints or disputes filed by the independent monitors, government institutions or other stakeholders or upon receipt of the operator's report on changes that affect the quality of its legality controls

5.3. Government responsibility for enforcement

The Ministry of Forestry, as well as provincial and district forestry offices are responsible for the control of timber supply chains and checking of related documents (e.g. annual work plans, log felling reports, log balance-sheet reports, transport documents, logs/raw material/processed products balance-sheet reports and production tally sheets). In the event of inconsistencies, forestry officials may withhold approval of the control documents resulting in a suspension of operations.

Infringements detected by forestry officials or by independent monitors are communicated to the LV, which upon verification may lead the LV to suspend or withdraw the awarded legality certificate. Forestry officials may take appropriate follow-up action in accordance with the regulatory procedures.

The Ministry of Forestry also receives copies of the verification reports and subsequent surveillance and special audit reports issued by the LVs. Infringements discovered by the LVs, by forestry officials or by independent monitors are handled in accordance with administrative and judicial procedures. If an operator is suspected of breaching regulations, the national, provincial and district authorities may decide to suspend or halt the operator's activities.

6. FLEGT LICENSING

The Indonesian FLEGT licence is known as the "V-Legal Document". This is an export licence that provides evidence that the timber products exported meet the Indonesian legality standard as set out in Annex II and were sourced from a supply chain with adequate controls against the inflow of timber from unknown sources. The V-Legal Document is issued by the LVs who act as Licensing Authorities and will be used as a FLEGT licence for shipments to the Union once the parties have agreed to start the FLEGT licensing scheme.

Indonesia will clearly define the procedures for issuing V-Legal Documents and communicate these procedures to the exporters and any other parties concerned through its licensing authorities (the LVs) and the website of the Ministry of Forestry.

The Ministry of Forestry has established a Licence Information Unit to maintain a database with copies of all V-Legal Documents and LV non-compliance reports. In the event of an inquiry concerning the authenticity, completeness, and validity of the V-Legal Document or FLEGT licence, the competent authorities in the Union will contact the Licence Information Unit in the Ministry of Forestry for further clarification. This unit will communicate with the relevant LV. The Licence Information Unit will respond to the competent authorities upon receipt of the information from the LV.

The V-Legal Document is issued at the point at which the export consignment is established prior to the transportation to the point of export. The procedure is as follows:

- 6.1. The V-Legal Document is issued by the LV, which holds a contract with the exporter, for the consignment of timber products to be exported.

- 6.2. The exporter's internal traceability system shall provide evidence on the legality of timber for export licensing. This system shall at minimum cover all the supply chain related controls from the stage where the raw materials (such as logs or semi-processed products) were dispatched to the processing mill, within the mill site itself and from the mill to the point of export.
- 6.2.1. With regard to the primary industry, the exporter's traceability system shall at minimum cover transportation from the log landing or log yard and all the subsequent stages until the point of export.
- 6.2.2. With regard to the secondary industry, the traceability system shall at minimum cover transportation from the primary industry and all subsequent stages until the point of export.
- 6.2.3. If managed by the exporter, any previous stage of the supply chain as referred to in 6.2.1 and 6.2.2 shall also be included in the exporter's internal traceability system.
- 6.2.4. If managed by a legal entity than the exporter, the LV shall verify that the previous stages of the supply chain as referred to in 6.2.1 and 6.2.2 are controlled by the exporter's supplier(s) or sub-supplier(s), and that the transport documents state whether the timber originates or does not originate from a felling site that has not been certified for legality.
- 6.2.5. For a V-Legal Document to be issued, all suppliers in the exporter's supply chain that make up the consignment must have been covered by a valid legality or SFM certificate and must demonstrate that at all stages in the supply chain the supply of legally verified timber has been kept segregated from supplies not covered by a valid legality or SFM certificate.
- 6.3. To obtain a V-Legal Document, a company must be a registered exporter (an ETPIK holder) who possesses a valid legality certificate. The ETPIK holder submits a letter of application to the LV and attaches the following documents to demonstrate that the timber raw materials in the product originate only from verified legal sources:
- 6.3.1. A summary of the transport documents for all timber/raw materials received by the factory since the last audit (up to max twelve months); and
- 6.3.2. Summaries of Timber/Raw Material Balance-Sheet Reports and Processed Timber Balance-Sheet Reports since the last audit (up to max twelve months);
- 6.4. The LV then carries out the following verification steps:
- 6.4.1. Data reconciliation based on the summaries of the transport documents, Timber/Raw Material Balance-Sheet Report, and Processed Timber Balance-Sheet Report;
- 6.4.2. Control of the recovery rate(s) for each type of product, based on analysis of the Timber/Raw Material Balance-Sheet Report and Processed Timber Balance-Sheet Report;
- 6.4.3. Where necessary, a field visit may be conducted after data reconciliation so as to ensure consistency with the information to be specified in the V-Legal Document. This may be done through export consignments sample checking and inspecting the factory operation and record-keeping.
- 6.5. Result of verification:
- 6.5.1. If an ETPIK holder complies with legality and supply chain requirements, then the LV issues a V-Legal Document in the format presented in Annex IV;

6.5.2. An ETPIK holder meeting the above mentioned requirements is allowed to use conformity marking on the products and/or packaging. Guidelines on the use of conformity marking have been developed.

6.5.3. If an ETPIK holder does not comply with the legality and supply chain requirements, LV will issue a non-compliance report instead of V-Legal Document.

6.6. The LV shall:

6.6.1. Forward a copy of a V-Legal Document or non-compliance report to the Ministry of Forestry within twenty four hours from the time the decision was taken;

6.6.2. Submit a comprehensive report and a public summary report outlining the number of V-Legal Documents issued as well as the number and type of non-compliances detected to the Ministry of Forestry once every three months with copies to KAN, Ministry of Trade, and Ministry of Industry;

7. MONITORING

The Indonesian TLAS includes civil society monitoring (Independent Monitoring) and Comprehensive Evaluation (CE). To make the system even more robust for a FLEGT-VPA, a Period Evaluation (PE) component is added.

IM is carried out by civil society to assess compliance of the operators, LPs, and LVs with the Indonesian TLAS requirements including accreditation standards and guidelines. Civil society is defined in this context as Indonesian legal entities including forestry NGOs, communities living in and around the forest, and individual Indonesian citizens.

CE is carried out by multi-stakeholder team which review the Indonesian TLAS and identify gaps and possible system improvements as mandated by the Ministry of Forestry.

The objective of PE is to provide independent assurance that the Indonesian TLAS is functioning as described, thereby enhancing the credibility of the FLEGT licences issued. PE makes use of the findings and recommendations of IM and CE. Terms of Reference for PE are set out in Annex VI.

Appendix

CONTROL OF THE SUPPLY CHAIN

1. DESCRIPTION OF THE OPERATIONAL CONTROL OF THE SUPPLY CHAIN FOR TIMBER FROM STATE-OWNED FORESTS

1.1. Felling Site

(a) Main activities:

- Timber cruising (enumeration of trees) by the permit holder;
- Preparation of a Timber Cruising Report by the permit holder;
- Verification and approval of the Timber Cruising Report by the district forestry official;
- Submission of a Proposed Annual Work Plan by the permit holder;
- Approval of the Annual Work Plan by the provincial forestry official;
- Harvesting operations by the permit holder, including skidding of logs to the log-landing site.

(b) Procedures:

- Timber cruising (enumeration of trees) is conducted by the permit holder using tags. These tags are made up of three detachable sections, attached to the stump, harvested log, and the operator report. Each section contains the necessary information required for timber tracking, including the number of the tree and its location;
- The permit holder prepares a Timber Cruising Report, which contains information on the number, estimated volume, preliminary species identification and location of trees to be harvested, and a summary, using official Ministry of Forestry Forms;
- The permit holder submits the Timber Cruising Report to the district forestry official. The official conducts both a document-based and field verification of the Timber Cruising Report on a sample basis. The official approves the Report if all is in order;
- The Timber Cruising Report provides the basis for the Proposed Annual Work Plan, which is prepared by the permit holder and submitted to the provincial forestry officer for review and approval. The official reviews and cross-checks the Proposed Annual Work Plan against the approved Timber Cruising Report and approves the work plan if all is in order;
- Once the Annual Work Plan is approved by the official, the permit holder is allowed to commence harvesting operations;
- During harvesting operations, tags are used to ensure that the log is from an approved felling site, as described above.

1.2. Log-Landing Site

(a) Main activities:

- Where necessary, cross cutting of the logs by the permit holder, and marking of such logs so as to ensure consistency with the Log Production Report;
- Scaling (measurement) and grading of logs by the permit holder;
- Preparation of a log-list by the permit holder;

- Submission of Proposed Log Production Report by the permit holder;
- Approval of the Log Production Report by the district forestry official.

(b) Procedures:

- The permit holder marks all cross-cut logs;
- The permanent physical marking of logs consists of the original tree ID number and other marks enabling the log to be linked to the approved felling site;
- The permit holder scales and grades all logs and records the information on the logs in a log-list using an official Ministry of Forestry Form;
- Based on the log-list, the permit holder prepares a periodic Log Production Report and a summary report using official Ministry of Forestry Forms;
- The permit holder periodically submits the Log Production Report and summary to the district forestry official for approval;
- The district forestry official carries out sample-based physical verification of the reports. The result of the physical verification is summarised in a log-verification-list using an official Ministry of Forestry Form;
- Subject to a positive outcome of the physical verification the official approves the Log Production Report;
- Once logs have been verified by the official they must be stacked separately from any non-verified logs;
- The Log Production Report is used to calculate the required payment of the Forest Resources Fee and to the Reforestation Fund (as applicable).

(c) Data reconciliation:

For natural forest concessions:

The district forestry official checks the number of logs, the tags and the total cumulative volume of logs extracted and declared in the Log Production Report against the quota approved in the Annual Work Plan.

For timber plantation concession:

The district forestry official checks the total cumulative volume of logs extracted and declared in the Log Production Report against the approved quota in the Annual Work Plan.

1.3. Log-Yard

Logs are transported from the log-landing site to log yards and then either directly transported to a processing mill or to an intermediate log-yard.

(a) Main activities:

- Preparation of a log-list by the permit holder;
- Invoicing by the district forest office and payment of relevant amount for the Forest Resources Fee and to the Reforestation Fund by the permit holder. Based on the log-list, the district forestry official conducts a field inspection;

- Subject to a positive result of the field inspection, issuance by the official of a Log Transport Document, to which is annexed a log-list;
- Preparation of a Log Balance-Sheet Report by the permit holder.

(b) Procedures:

- The permit holder submits a request to settle the relevant fees to the district forestry official in charge of billing, based on the log-list, which is attached to the request;
- Based on the aforementioned request, the district forestry official issues an invoice or invoices for settlement by the permit holder;
- The permit holder pays the amount set out in the Forest Resources Fee and/or Reforestation Fund Invoice(s) and the district forestry official issues a receipt or receipts for this payment;
- The permit holder submits a request for the issuance of Log Transportation Documents, accompanied by the payment receipt, log-list, and Log Balance-Sheet Report;
- The district forestry official carries out administrative and physical verification of the logs to be transported and prepares a verification report;
- Subject to a positive outcome of the verification, the district forestry official issues the Log Transport Documents;
- The permit holder prepares/updates the Log Balance-Sheet Report to record the quantity of incoming, stored and outgoing logs at the logyard.

(c) Data reconciliation:

The district forestry official checks the Log Balance-Sheet Report comparing inflows, outflows and storage of logs at the log yard, based on Log Production Reports and relevant Log Transport Documents.

1.4. Intermediate Log-Yard

Intermediate log-yards are used if logs are not transported from the concession area directly to the mill yard. Intermediate log-yards are used in particular for inter-island transportation of logs or if the transport mode is changed.

The permit for establishment of an intermediate log-yard is granted by the forestry official based on a proposal submitted by the permit holder. An intermediate log-yard permit is valid for five years, but can be extended following review and approval by the forestry official.

(a) Main activities:

- Termination of the validity of the Log Transport Document by an official;
- Preparation of Log Balance-Sheet Report by the permit holder;
- Preparation of log-list by the permit holder;
- The permit holder completes the Log Transport Document following the format provided by the Ministry of Forestry.

(b) Procedures

- The district forestry official physically verifies the number, species, and dimensions of incoming logs by counting them (census) or on a sample basis if the number of logs exceeds 100;

- Subject to a positive outcome of the verification, the official terminates the validity of the Log Transport Document for the incoming logs;
- The permit holder prepares a Log Balance-Sheet Report as a means to control the inflow and outflow of logs at the intermediate log-yard;
- For the outgoing logs, the permit holder prepares a log-list, which is linked to the previous Log Transport Documents;
- The Log Transport Document for moving logs from the intermediate log yard is completed by the permit holder.

(c) Data reconciliation:

The district forestry official checks the consistency between the logs transported from the log-yard and the logs entering the intermediate log-yard.

The permit holder updates the Log Balance-Sheet Report, which records inflows, outflows and storage of logs at the intermediate log-yard, based on the relevant Log Transport Documents.

2. DESCRIPTION OF THE OPERATIONAL CONTROL OF SUPPLY CHAINS OF TIMBER FROM FOR PRIVATELY OWNED FOREST/LANDS

Timber harvesting operations on privately-owned forest/land are regulated by Minister of Forestry Regulation P.30/Menhut-II/2012 (hereinafter referred to as the Regulation).

There are no legal requirements for the private owners of forest/lands to affix ID marks on trees inventoried for harvesting or on logs. Log yards and intermediate log yards are generally not used for timber harvested from privately-owned forest/lands.

Control procedures for timber from privately-owned forest/lands differ between logs obtained from trees which were on the site when the land title was acquired and logs obtained from trees that have been planted since the title was acquired. They also depend on the tree species harvested. The payment of the Forest Resources Fee and to the Reforestation Fund applies to logs from trees already present on the site when the land title was awarded but does not apply to logs from trees established after the award of the land title.

In the case of logs harvested from trees established after granting of the land title, there are two scenarios:

- for species listed in Article 5(1) of the Regulation, the owner prepares an invoice, which serves as the transport document.
- for other species, the head of the village or appointed official issues the transport document.

In the case of logs harvested from trees present on a site before the granting of the land title, the district forestry official issues the transport document.

Felling/Log-Landing Site

(a) Main activities:

- Recognition of the property right;
- Where necessary, cross-cutting
- Scaling (measurement);
- Preparation of a log-list;

- Invoicing by the district forestry office and payment of the invoiced amount by the owner of the Forest Resources Fee and/or to the Reforestation Fund;
- Issuance or preparation of the transport document.

(b) Procedures:

- The private forest/land owner requests recognition of his or her property right;
- Once the forest/land property right is recognised, the owner prepares a log-list after measurement of the logs;

In the case of logs harvested from trees present on a site before the granting of the land title:

- The owner submits a log-list and a request to settle the Forest Resources Fee and Reforestation Fund payment to the district forestry official
- The official conducts document checks and physical verification of the logs (dimensions, species identification, and number of logs);
- Subject to a positive outcome of the document checks and physical verification, the district forestry official issues a Forest Resources Fee and Reforestation Fund Invoice for settlement by the owner;
- The landowner submits the receipt for payment of the Forest Resources Fee and to the Reforestation Fund to the head of village, together with a request for issuance of a Log Transport Document;
- The head of village conducts document checks and physical verification of the logs (dimensions, species identification, and number of logs);
- Based on the above, the head of village issues the Log Transport Document.

In the case of logs harvested from trees established after granting of the land title:

Species listed in Article 5(1) of the Regulation:

- The owner marks the logs and identifies the species;
- The owner prepares a log-list;
- Based on the above, the owner prepares an invoice following the format provided by the Ministry of Forestry, which also serves as the transport document.

Other species not listed in Article 5(1) of the Regulation:

- The owner marks the logs and identifies the species;
- The owner prepares a log-list;
- The owner submits the log-list and a request for issuance of a Log Transport Document to the head of village or appointed official;
- The head of village or appointed official conducts document checks and physical verification of the logs (species identification, number of logs, location of harvest);
- Based on the above, the head of village or appointed official issues the Log Transport Document following the format provided by the Ministry of Forestry.

(c) Data reconciliation:

The head of village or appointed official or the district forestry official compares the volume of harvested logs with the log-list.

3. DESCRIPTION OF THE OPERATIONAL CONTROL OF TIMBER SUPPLY CHAINS FOR INDUSTRY AND FOR EXPORT.

3.1. Primary/Integrated Industry

(a) Main activities:

- Preparation of Log Balance-Sheet Report by the processing mill;
- Physical verification of logs by the district forestry official;
- Termination of the validity of Log Transport Document by an official;
- Preparation of Raw Material and Products Tally Sheet by the mill;
- Preparation of Processed Timber Balance-Sheet Report by the mill;
- The mill completes in the Timber Products Transport Document following the format provided by the Ministry of Forestry;
- Preparation of sales report of the mill.

(b) Procedures:

- The mill prepares a Log Balance-Sheet Report as a means to record the flow of logs in to and within the mill;
- The mill submits copies of the Log Transport Documents corresponding to each batch of logs received by the mill to the district forestry official;
- The official verifies the information in the reports by comparing with the physical products. This may be done on the basis of a sample if there are over 100 items;
- Subject to a positive outcome of the verification, the official terminates the validity of the Log Transport Documents;
- The official files copies of the Log Transport Documents and prepares a Summary List of the Log Transport Documents, following the format provided by the Ministry of Forestry;
- Copies of the Log Transport Documents whose validity that have been terminated by an official are handed over to the company for filing;
- A summary of the Log Transport Documents is submitted to the district forestry office at the end of each month;
- The mill prepares raw material and product tally sheets by production line as a means to control the input of logs and output of timber products and to calculate the recovery rate;
- The mill prepares a Processed Timber Balance-Sheet Report as a means to report on flows of timber product within and from the mill, as well as stocks;
- The company or mill sends sales reports of the mill to the district forestry office on a regular basis.

(c) Data reconciliation:

The company checks the Log Balance-Sheet Report comparing inflows, outflows and storage of logs based on Log Transport Documents.

The Production Tally Sheet is used to reconcile input and output volume of production lines and the recovery rate is compared with the published average rate.

The company checks the Processed Products Balance-Sheet Report comparing inflows, outflows and storage of products based on Timber Product Transport Documents.

The district forestry official checks the reconciliation carried out by the company.

3.2. Secondary Industry

(a) Main activities:

- Preparation of Processed Timber (semi-processed products) and Processed Products Balance-Sheet Reports by the factory;
- Preparation of invoices by the factory, which also serve as transport documents for processed timber products;
- Preparation of Processed Timber Balance-Sheet Report by the factory;
- Preparation of Sales Report by the company or factory.

(b) Procedures:

- The factory files the Processed Timber Transport Documents (for incoming material) and prepares a summary of these documents, which is submitted to the district forestry official;
- The factory uses the Processed Timber and Processed Products Tally Sheet by production lines as a means to report on flows of materials into the factory, output of products and to calculate the raw material recovery rate;
- The factory prepares a Processed Timber Balance-Sheet Report as a means to check flows of materials into the mill, output of timber products and stocks held. The company or factory prepares invoices for processed products, which else serves as the transport document, and files copies of the invoices. A timber products list is annexed to each invoice;
- The company or factory sends Sales Reports to the district forestry office.

(c) Data reconciliation:

The factory checks the Processed Timber Balance-Sheet Report comparing inflows, outflows and storage of materials based on Processed Timber Transport Documents and Processed Timber Tally Sheet.

The Production Tally Sheet is used to check input and output volume of production lines and the recovery rate is evaluated.

The company checks the Processed Products Balance-Sheet Report, comparing inflows, outflows and storage of products based on invoices.

The above is subject to checks under the Forest Utilization Director-General Regulation P.8/VI-BPPHH/2011.

4. EXPORT

The procedures and reconciliation processes for export of timber originating from state-owned forests and privately-owned forest/land are identical.

(a) Main activities:

- The Ministry of Trade issues a Forestry Industry Products Registered Exporters Certificate (ETPIK) to the exporter;
- The Exporter requests the issuance of a V-Legal Document/FLEGT licence for each export consignment;
- The LV verifies the relevant conditions have been met and issues the V-Legal Document/FLEGT licence;
- The exporter prepares an Export Declaration Document, which is submitted to Customs;
- The Customs issues an Export Approval Document for Customs clearance.

(b) Procedures:

- The exporter requests the LV to issue a V-Legal Document/FLEGT licence;
 - The LV issues a V-Legal Document/FLEGT licence after a document-based and physical verification, so as to ensure that the timber or timber products come from legally verified sources and are thus produced in compliance with the legality definition described in Annex II;
 - The exporter submits an Export Declaration Document to which are attached the invoice, Packing List, Export Duty Receipt/Bukti Setor Bea Keluar (if regulated), ETPIK Certificate, V-Legal Document/FLEGT licence, Export Permit/Surat Persetujuan Ekspor (if regulated), Surveyor Report (if regulated), and CITES Document (where applicable) to the Customs for approval;
 - Subject to a positive outcome of the verification of the Export Declaration Document, Customs issues an Export Approval Document/Nota Pelayanan Ekspor.
-

ANNEX VI

TERMS OF REFERENCE FOR PERIODIC EVALUATION

1. OBJECTIVE

Periodic Evaluation (PE) is an independent evaluation done by an independent third party, referred to as Evaluator. The objective of PE is to provide assurance that the TLAS is functioning as described, thereby enhancing the credibility of the FLEGT licences issued under this Agreement.

2. SCOPE

PE shall cover:

1. The functioning of control measures from the point of production in the forest to the point of export of timber products.
2. The data management and timber traceability systems supporting the TLAS, the issuance of FLEGT licences as well as the production, licensing and trade statistics relevant to this Agreement.

3. OUTPUT

The output of PE comprises regular reports presenting evaluation findings and recommendations on measures to be undertaken to address gaps and system weaknesses identified by the evaluation.

4. MAIN ACTIVITIES

PE activities include *inter alia*:

- (a) Audits of compliance by all bodies undertaking control functions within the provisions of the TLAS;
- (b) Evaluation of the effectiveness of supply chain controls from the point of production in the forest to the point of export from Indonesia;
- (c) Assessment of the adequacy of data management and timber traceability systems supporting the TLAS as well as the issuance of FLEGT licences;
- (d) Identification and recording of cases of non-compliance and system failures, and prescribing necessary corrective actions;
- (e) Assessment of the effective implementation of corrective actions previously identified and recommended; and
- (f) Reporting findings to the Joint Implementation Committee (JIC).

5. EVALUATION METHODOLOGY

- 5.1. The Evaluator shall use a documented and evidence-based methodology which meets the requirements of ISO/IEC 19011, or equivalent. This shall include adequate checks of relevant documentation, operating procedures and records of the operations of the organisations responsible for implementing the TLAS, identification of any cases of non-compliance and system failures, and issuance of requests for corresponding corrective action.

5.2. The Evaluator shall, *inter alia*:

- (a) Review the process for accreditation of Independent Assessment and Verification Bodies (IP and IV);
- (b) Review documented procedures of each body involved in TLAS implementation controls for completeness and coherence;

- (c) Examine implementation of documented procedures and records, including work practices, during visits to offices, forest harvesting areas, log yards/log ponds, forest checking stations, mill sites and export and import points;
- (d) Examine information collected by the regulatory and enforcement authorities, LPs and LVs and other bodies identified in the TLAS to verify compliance;
- (e) Examine data collection by private sector organisations involved in TLAS implementation;
- (f) Assess the availability of public information set out in Annex IX including the effectiveness of information disclosure mechanisms;
- (g) Make use of the findings and recommendations of Independent Monitoring and Comprehensive Evaluation reports, as well as reports of the Independent Market Monitor;
- (h) Seek the views of stakeholders and use information received from stakeholders who are either directly or indirectly involved in the implementation of the TLAS; and
- (i) Use appropriate sampling and spot check methods to evaluate the work of the forest regulatory agencies, LPs and LVs, industries, and other relevant actors at all levels of forest activities, supply chain control, timber processing and export licensing, including cross checks with information on timber imports from Indonesia provided by the Union.

6. QUALIFICATIONS OF THE EVALUATOR

The Evaluator shall be a competent, independent and impartial third party that complies with the following requirements:

- (a) The Evaluator shall demonstrate the qualifications and capability to meet the requirements of ISO/IEC Guide 65 and ISO/IEC 17021, or equivalent, including the qualification to offer assessment services covering the forest sector and forest products supply chains;
- (b) The Evaluator shall not be directly involved in forest management, timber processing, trade in timber or control of the forest sector in Indonesia or in the Union;
- (c) The Evaluator shall be independent from all other components of the TLAS and Indonesia's forest regulatory authorities and shall have systems to avoid any conflict of interest. The Evaluator shall declare any potential conflict of interest that may arise and take effective action to mitigate it;
- (d) The Evaluator and its employees undertaking the evaluation tasks shall have proven experience of auditing tropical forest management, timber processing industries and related supply chain controls;
- (e) The Evaluator shall have a mechanism in place for receiving and dealing with complaints that arise from its activities and findings.

7. REPORTING

- 7.1. The PE report shall comprise: (i) a full report containing all relevant information on the evaluation, its findings (including cases of non-compliance and system failures) and recommendations; and (ii) a public summary report based on the full report, covering key findings and recommendations;
- 7.2. The full report and the public summary report shall be submitted to the JIC for review and approval before releasing the reports to the public;

7.3. Upon the request of the JIC the Evaluator shall provide additional information to support or clarify its findings;

7.4. The Evaluator shall notify the JIC of all received complaints and the actions taken to resolve them.

8. CONFIDENTIALITY

The Evaluator shall maintain the confidentiality of data it receives while carrying out its activities.

9. APPOINTMENT, PERIODICITY AND FINANCING

9.1. The Evaluator shall be appointed by Indonesia after consultation with the Union in the JIC;

9.2. PE shall be carried out at intervals of no more than twelve months starting from the date as agreed by the JIC in accordance with Article 14 (5) (e) of the Agreement.

9.3. The financing of the PE shall be decided by the JIC.

ANNEX VII

TERMS OF REFERENCE FOR INDEPENDENT MARKET MONITORING**1. OBJECTIVE OF INDEPENDENT MARKET MONITORING**

Independent Market Monitoring (IMM) is market monitoring done by an independent third party referred to as Monitor. The objective of Independent Market Monitoring (IMM) is to collect and analyse information on the acceptance of Indonesian FLEGT-licensed timber in the Union market, and review impacts of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligation of operators who place timber and timber products on the market and of related initiatives such as public and private procurement policies.

2. SCOPE

IMM shall cover:

- 2.1. The release for free circulation of Indonesian FLEGT-licensed timber at points of entry in the Union;
- 2.2. The performance of Indonesian FLEGT-licensed timber in the Union market and the impact of market-related measures taken in the Union on the demand for Indonesian FLEGT-licensed timber;
- 2.3. The performance of non-FLEGT-licensed timber in the Union market and the impact of market-related measures taken in the Union on the demand for non-FLEGT-licensed timber;
- 2.4. Examination of the impact of other market-related measures taken in the Union such as public procurement policies, green building codes and private sector action such as trade codes of practice and corporate social responsibility.

3. OUTPUT

The output of IMM will comprise regular reports to the Joint Implementation Committee (JIC) containing its findings and recommendations on measures to strengthen the position of Indonesian FLEGT-licensed timber in the Union market and to improve the implementation of market-related measures to prevent illegally harvested timber from being placed on the Union market.

4. MAIN ACTIVITIES

IMM includes *inter alia*:

4.1. Evaluation of:

- (a) progress with and impact of the implementation of policy measures to tackle trade in illegally harvested timber in the Union.
- (b) trends in imports of timber and timber products by the Union from Indonesia as well as other VPA and non-VPA timber exporting countries;
- (c) actions by pressure groups that could affect demand for timber and timber products or markets for Indonesia's forest products trade.

4.2. Reporting findings and recommendations to the JIC.**5. MONITORING METHODOLOGY**

- 5.1. The Monitor shall have a documented and evidence-based methodology. This shall include adequate analysis of relevant documentation, identification of any inconsistencies in the available trade data and information, and in-depth interviews with relevant actors on key indicators of the impacts and effectiveness of market-related measures.

5.2. The Monitor shall conduct observations and analysis on, *inter alia*:

- (a) The current market situation and trends in the Union for timber and timber products;
- (b) Public procurement policies and their treatment of FLEGT- and non-FLEGT- licensed timber and timber products in the Union;
- (c) Legislation affecting the timber industry, the trade in timber and timber products within the Union and imports of timber and timber products into the Union;
- (d) Price differentials between FLEGT- and non-FLEGT- licensed timber and timber products in the Union;
- (e) Market acceptance, perception and market share of FLEGT-licensed and certified timber and timber products in the Union;
- (f) Statistics and trends on volumes and values of imports at different Union ports of FLEGT- and non-FLEGT- licensed timber and timber products from Indonesia as well as other VPA and non-VPA timber exporting countries;
- (g) Descriptions of, including any changes to, the legal instruments and processes by which competent authorities and border control authorities in the Union validate FLEGT licences and release shipments for free circulation, as well as penalties imposed for non-compliance;
- (h) Possible difficulties and constraints faced by exporters and importers in bringing FLEGT-licensed timber into the Union;
- (i) The effectiveness of campaigns to promote FLEGT-licensed timber in the Union;

5.3. The Monitor shall recommend market promotion activities to further enhance the market acceptance of Indonesian FLEGT-licensed timber

6. QUALIFICATIONS OF THE INDEPENDENT MARKET MONITOR

The Monitor shall:

- (a) be an independent third party with a proven track record of professionalism and integrity in monitoring the Union timber and timber products market and related trade issues;
- (b) be familiar with the trade in and markets for Indonesian timber and timber products, in particular, hardwood and for those countries in the Union producing similar products;
- (c) have systems to avoid any conflict of interest. The Monitor shall declare any potential conflict of interest that may arise and take effective action to mitigate it.

7. REPORTING

7.1. Reports shall be submitted biennially and comprise: (i) a full report containing all relevant findings and recommendations; and (ii) a summary report based on the full report.

7.2. The full report and the summary report shall be submitted to the JIC for review and approval before releasing the reports to the public;

7.3. Upon the request of the JIC the Monitor shall provide additional information to support or clarify its findings.

8. CONFIDENTIALITY

The Monitor shall maintain the confidentiality of data it receives while carrying out its activities.

9. APPOINTMENT, PERIODICITY AND FINANCING

9.1. The Monitor shall be appointed by the Union after consultation with Indonesia in the JIC;

9.2. IMM shall be carried out at intervals of no more than twenty four months starting from the date as agreed by the JIC in accordance with Article 14(5) (e) of the Agreement

9.3. The financing of IMM shall be decided by the JIC

ANNEX VIII

CRITERIA FOR ASSESSING THE OPERATIONALITY OF THE INDONESIAN TIMBER LEGALITY ASSURANCE SYSTEM

BACKGROUND

An independent technical evaluation of the Indonesian TLAS will be carried out before FLEGT licensing of timber exports to the Union starts. This technical evaluation will aim at: (i) examining the function of the TLAS in practice to determine whether it delivers the intended results and (ii) examining any revisions made to the TLAS after this Agreement was signed;

The criteria for this evaluation are set out below:

1. Definition of legality
2. Control of the supply chain
3. Verification procedures
4. Licensing of exports
5. Independent monitoring

1. DEFINITION OF LEGALITY

Legally produced timber should be defined on the basis of the laws applicable in Indonesia. The definition used must be unambiguous, objectively verifiable and operationally workable and, as a minimum, include those law and regulations which cover:

- Harvesting rights: Granting of legal rights to harvest the timber within legally designated and/or gazetted boundaries;
- Forest operations: Compliance with legal requirements regarding forest management including compliance with relevant environmental and labour law and regulations;
- Fees and taxes: Compliance with legal requirements concerning taxes, royalties and fees directly related to timber harvesting rights and to timber harvesting;
- Other users: Respect for other parties' legal tenure or rights of use of land and resources that may be affected by timber harvesting rights, where such other rights exist;
- Trade and customs: Compliance with legal requirements for trade and customs procedures.

Key Questions:

- Have the definition of legality and the legality verification standards been amended since this Agreement was concluded?
- Have the relevant labour laws and regulations been included in the legality definitions as per Annex II?

In the event of amendments to the legality definition, key questions will include:

- Were all relevant stakeholders consulted about these amendments and any subsequent changes to the legality verification system through a process that took adequate account of their viewpoints?

- Is it clear what legal instrument underpins each new element of the definition? Are criteria and indicators that can be used to test compliance with each element of the definition specified? Are the criteria and indicators clear, objective and operationally workable?
- Do the criteria and indicators clearly identify the roles and responsibilities of all relevant parties and does verification assess their performance?
- Does the definition of legality include the main areas of existing law and regulations outlined above? If not, why were certain areas of law and regulations left out from the definition?

2. CONTROL OF THE SUPPLY CHAIN

Systems to control the supply chain must provide credible assurance that timber products can be traced throughout the supply chain from harvesting or point of import to the point of export. It will not always be necessary to maintain physical traceability for a log, log load or timber product from the point of export back to the forest of origin, but it is always needed between the forest and the first point of mixing (e.g. a timber terminal or a processing facility).

2.1. Rights of use

There is clear delineation of areas where forest resource use rights have been allocated and the holders of those rights have been identified.

Key Questions:

- Does the control system ensure that only timber originating from a forest area with valid use rights enters the supply chain?
- Does the control system ensure that enterprises carrying out harvesting operations have been granted appropriate rights of use for the concerned forest areas?
- Are the procedures for issuing rights of harvesting and the information on such rights, including their holders, available in the public domain?

2.2. Methods for controlling the supply chain

There are effective mechanisms for tracing timber throughout the supply chain from harvesting to the point of export. The approach for identifying timber may vary, ranging from the use of labels for individual items to reliance on documentation accompanying a load or a batch. The selected method should reflect the type and value of timber and the risk of contamination with unknown or illegal timber.

Key Questions:

- Are all supply chain alternatives, including different sources of timber, identified and described in the control system?
- Are all stages in the supply chain identified and described in the control system?
- Have methods to identify the product origin and to prevent mixing with timber from unknown sources in the following stages of the supply chain been defined and documented?
- standing timber
- logs in the forest
- transport and interim storage (log yards/ponds, interim log yards/ponds)

- arrival at processing facility and storage of materials
- entry into and exit from production lines at processing facility
- storing of processed products at the processing facility
- exit from processing facility and transport
- arrival at point of export
- Which organisations are in charge of controlling the timber flows? Do they have adequate human and other resources for carrying out the control activities?
- In the event of concrete findings that unverified timber enters into the supply chain, have any weaknesses in the control system being identified e.g. the absence of an inventory of standing timber before harvesting from private forest/lands?
- Does Indonesia have a policy on the inclusion of recycled materials in the Indonesian TLAS and if so, has guidance on how to include recycled materials been developed?

2.3. Quantitative data management:

There are robust and effective mechanisms for measuring and recording the quantities of timber or timber products at each stage of the supply chain, including reliable and accurate pre-harvest estimations of the standing timber volume in each harvesting site.

Key questions:

- Does the control system produce quantitative data of inputs and outputs, including conversion ratios where applicable, at the following stages of the supply chain:
 - standing timber
 - logs in the forest (at log landings)
 - transported and stored timber (log yards/ponds, interim log yards/ponds)
 - arrival at the processing facility and storing of materials
 - entry into and exit from production lines
 - storing of processed products at the processing facility
 - exit from processing facility and transport
 - arrival at point of export
- Which organisations are responsible for keeping records on the quantitative data? Are they adequately resourced in terms of personnel and equipment?
- What is the quality of the controlled data?
- Are all quantitative data recorded in a way that makes it possible to verify quantities with the prior and subsequent stages in the supply chain in a timely manner?
- What information on the supply chain control is made publicly available? How can interested parties access this information?

2.4. Segregation of legally verified timber from timber of unknown sources

Key Questions:

- Are there sufficient controls in place to exclude timber from unknown sources or timber which was harvested without legal harvesting rights?
- What control measures are applied to ensure that verified and unverified materials are segregated throughout the supply chain?

2.5. Imported timber products

There are adequate controls to ensure that imported timber and derived products have been legally imported.

Key Questions:

- How is the legal import of timber and derived products demonstrated?
- What documents are required to identify the country of harvest and to provide assurance that imported products originate from legally harvested timber, as referred to in Annex V?
- Does the TLAS identify imported timber and timber products throughout the supply chain until they are mixed for manufacturing of processed products?
- Where imported timber is used, can the country of harvest origin be identified on the FLEGT licence (may be omitted for reconstituted products)?

3. VERIFICATION PROCEDURES

Verification provides adequate checks to ensure the legality of timber. It must be sufficiently robust and effective to ensure that any non-compliance with requirements, either in the forest or within the supply chain, is identified and prompt action is taken.

3.1. Organisation

Verification is carried out by a third-party organisation which has adequate resources, management systems, skilled and trained personnel, as well as robust and effective mechanisms to control conflicts of interest.

Key Questions:

- Do the verification bodies have a valid accreditation certificate issued by the National Accreditation Body (KAN)?
- Does the government appoint bodies to undertake the verification tasks? Is the mandate (and associated responsibilities) clear and in the public domain?
- Are institutional roles and responsibilities clearly defined and applied?
- Do the verification bodies have adequate resources for carrying out verification against the legality definition and the systems for controlling the timber supply chain?
- Do the verification bodies have a fully documented management system that:
 - ensures its personnel have the necessary competence and experience to carry out effective verification?
 - applies internal control / supervision?
 - includes mechanisms to control conflicts of interest?

- ensures transparency of the system?
- defines and applies verification methodology?

3.2. Verification with respect to the definition of legality

There is a clear definition that sets out what has to be verified. The verification methodology is documented and ensures that the process is systematic, transparent, evidence-based, carried out at regular intervals and covers everything included within the definition.

Key Questions:

- Does the verification methodology used by the verification bodies cover all elements of the legality definition and include tests of compliance with all indicators?
- Do the verification bodies:
 - check documentation, operating records and on-site operations (including through spot checks)?
 - collect information from external interested parties?
 - record their verification activities?
- Are the verification results made publicly available? How can interested parties access this information?

3.3. Verification of systems for controlling the integrity of the supply chain

There is a clear scope of criteria and indicators to be verified which covers the entire supply chain. The verification methodology is documented, ensures that the process is systematic, transparent, evidence-based, carried out at regular intervals, covers all criteria and indicators within the scope and includes regular and timely reconciliation of data between each stage in the chain.

Key Questions:

- Does the verification methodology fully cover checks on supply chain controls? Is this clearly spelt out in the verification methodology?
- What evidence is there to demonstrate application of verification of supply chain controls?
- Which organisations are responsible for data verification? Do they have adequate human and other resources for carrying out the data management activities?
- Are there methods for assessing correspondence between standing timber, harvested logs and timber entering the processing facility or point of export?
- Are there methods to assess the coherence between inputs of raw materials and the outputs of processed products at sawmills and other plants? Do these methods include specification and periodic updating of conversion ratios?
- What information systems and technologies are applied for storing, verifying, and recording data? Are there robust systems in place for securing the data?
- Are the verification results on supply chain control made publicly available? How can the interested parties access this information?

3.4. Mechanisms for handling complaints

There are adequate mechanisms for handling complaints and disputes that arise from the verification process.

Key Questions:

- Do verification bodies have a complaints mechanism that is available to all interested parties?
- Do the verification bodies have mechanisms in place to receive and respond to objections from the independent monitors?
- Do the verification bodies have mechanisms in place to receive and respond to infringements / breaches detected by government officials?
- Is it clear how complaints are received, documented, escalated (where necessary) and responded to?

3.5. Mechanisms for dealing with non-compliance

There are adequate mechanisms for dealing with cases of non-compliance identified during the verification process or brought forward through complaints and independent monitoring.

Key Questions:

- Is there an effective and functioning mechanism for requiring and enforcing appropriate corrective decision on verification results and action where breaches are identified?
- Does the verification system define the above requirement?
- Have mechanisms been developed for handling cases of non-compliance? Are these applied in practice?
- Are there adequate records available on cases of non-compliance and of correction of the verification results, or on other actions taken? Is there an evaluation of the effectiveness of such actions?
- Is there a mechanism for reporting to the government on verification findings of the verification bodies?
- What kind of information on cases of non-compliance goes into the public domain?

4. LICENSING OF EXPORTS

Indonesia has assigned overall responsibility for issuing V-Legal Document/FLEGT licences to licensing authorities. FLEGT licences are issued for individual shipments destined to the Union.

4.1. Organisational set-up

Key Questions:

- Which bodies are assigned responsibility for issuing FLEGT licences?
- Does the Licensing Authority have a valid accreditation certificate issued by KAN?
- Are the roles of the Licensing Authority and its personnel with regard to the issuance of FLEGT licences clearly defined and publicly available?
- Are the competence requirements defined and internal controls established for the personnel of the Licensing Authority?
- Does the Licensing Authority have adequate resources for carrying out its task?

4.2. Issuing of V-Legal Documents and their use for FLEGT licensing

Adequate arrangements have been made to use V-Legal Documents for FLEGT licensing.

Key Questions:

- Does the Licensing Authority have publicly available documented procedures for issuing a V-Legal Document?
- What evidence is there that these procedures are properly applied in practice?
- Are there adequate records on issued V-Legal Documents and on cases where V-Legal Documents were not issued? Do the records clearly show the evidence on which the issuing of V-Legal Documents is based?
- Does the Licensing Authority have adequate procedures to ensure that each shipment of timber meets the requirements of the legality definition and supply chain controls?
- Have the requirements for issuing licences been clearly defined and communicated to exporters and to other concerned parties?
- What kind of information on issued licences goes into the public domain?
- Do the FLEGT licences comply with the technical specifications contained in Annex IV?
- Has Indonesia developed a numbering system for FLEGT licences that enables differentiation between FLEGT licences destined to the Union market and V-Legal Documents destined to non-Union markets?

4.3. Queries on issued FLEGT licences

There is an adequate mechanism in place for handling queries from competent authorities with regard to FLEGT licences, as set out in Annex III.

Key Questions:

- Has a Licence Information Unit been assigned and established, *inter alia*, to receive and respond to inquiries from the competent authorities?
- Have clear communication procedures been established between the Licence Information Unit and the competent authorities?
- Have clear communication procedures been established between the Licence Information Unit and the Licensing Authority?
- Are there channels for Indonesian or international stakeholders to inquire about issued FLEGT licences?

4.4. Mechanism for handling complaints

There is an adequate mechanism for handling complaints and disputes that arise from licensing. This mechanism makes it possible to deal with any complaint relating to the operation of the licensing scheme.

Key Questions:

- Is there a documented procedure for handling complaints that is available to all interested parties?
- Is it clear how complaints are received, documented, escalated (where necessary) and responded to?

5. INDEPENDENT MONITORING

Independent Monitoring (IM) is conducted by Indonesia's civil society and is independent from other elements of the TLAS (those involved in the management or regulation of forest resources and those involved in the independent audit). One of the key objectives is to maintain the credibility of the TLAS by monitoring the implementation of verification.

Indonesia has formally recognized the IM function and allows civil society to submit complaints when irregularities in the accreditation, assessment and licensing processes are found.

Key Questions:

- Has the government made the guidelines for IM publicly available?
 - Do the guidelines provide clear requirements on the eligibility of organisations to perform IM functions to ensure impartiality and avoid conflicts of interest?
 - Do the guidelines provide procedures to access the information contained in Annex IX?
 - Can civil society access the information contained in Annex IX in practice?
 - Do the guidelines provide procedures for the submission of complaints? Are these procedures publicly available?
 - Have reporting and public disclosure provisions that apply to verification bodies been clarified and established?
-

ANNEX IX

PUBLIC DISCLOSURE OF INFORMATION**1. INTRODUCTION**

The Parties are committed to ensuring that key forestry-related information is made available to the public.

This Annex provides for this objective to be met by outlining (i) the forestry-related information to be made available to the public, (ii) the bodies responsible for making that information available, and (iii) the mechanisms by which it can be accessed.

The aim is to ensure that (1) JIC operations during implementation of this Agreement are transparent and understood; (2) a mechanism exists for the Parties as well as relevant stakeholders to access key forestry-related information; (3) TLAS functioning is strengthened through the availability of information for independent monitoring; and (4) larger objectives of this Agreement are achieved. The public availability of information represents an important contribution to reinforcing Indonesia's forest governance.

2. MECHANISMS TO ACCESS INFORMATION

This Annex is in line with the Indonesian Law on Freedom of Information No. 14/2008. According to this Law, it is mandatory for every public institution to develop regulations on access to information by the public. The Law distinguishes four categories of information: (1) information available and actively disseminated on a regular basis; (2) information that should be made public without delay; (3) information that is available at all times and provided upon request; and (4) information that is restricted or confidential.

The Ministry of Forestry (Ministry of Forestry), provincial and district offices, the National Accreditation Body (KAN), the conformity assessment body (CAB), the licensing authorities are all significant institutions in the functioning of the TLAS and therefore obliged as part of their duties to disclose forestry-related information to the public.

To implement the said Law, the Ministry of Forestry, provincial and district offices and all other public agencies including KAN have developed or are developing procedures for making information available to the public.

The KAN is also required to make information available to the public under ISO/IEC 17011:2004, clause 8.2-Obligation of the accreditation body. Verification bodies and licensing authorities are required to make information available to the public under Minister for Forestry Regulations and ISO/IEC 17021:2006 clause 8.1-Publicly accessible information and ISO/IEC Guide 65:1996 clause 4.8-Documentation.

Civil society organisations function as one of the sources of forestry-related information under Minister for Forestry Regulations.

The Minister for Forestry has issued Regulation No. P.7/Menhut-II/2011 dated 2 February 2011, which provides that requests for information held by the Ministry of Forestry are to be addressed to the Director of the Centre for Public Relations of the Ministry of Forestry in a "one-door" information policy. Further implementing guidance is being developed by Ministry of Forestry. Information available at regional, provincial, and district forestry offices can be accessed directly.

To make this Annex operable, the procedures/guidelines/instructions for the mentioned institutions to respond to requests for information need to be developed and approved. In addition, the reporting and public disclosure provisions that apply to verification bodies and Licensing Authorities will be clarified.

3. CATEGORIES OF INFORMATION USED TO REINFORCE MONITORING AND EVALUATION OF THE FUNCTIONING OF THE TLAS

Laws and regulations: All laws, regulations, standards, and guidelines listed in the legality standards.

Land and forest allocation: land allocation maps and provincial spatial plans, procedures for land allocation, forest concession or utilisation rights and other rights of exploitation and processing, and related document such as concession maps, forest area release permit, land title documents and land title maps.

Forest management practices: forest use plans, annual work plans including maps and equipment permit, minutes of consultation meetings with communities living in and around permit area required for the development of the annual work plans, forest timber exploitation work plan and annexes, Environmental Impact Assessment documents and minutes of public consultation meetings required for the development of the Environmental Impact Assessment reports, log production reports, and stand inventory data in state-owned forest land.

Transport and supply chain information, e.g. log or forest product transport documents and annexes and timber reconciliation reports, inter-island timber transportation registration documents, and documents showing ship identity.

Processing and industry information: e.g. company establishment deed, business licence and company registration number, report of the Environmental Impact Assessment, industrial business licence or industrial registration numbers, industrial raw material supply plans for primary forest product industries, registration of the exporter of forest industry products, raw material and processed product reports, list of holders of rights to processing, and information on companies in secondary processing.

Forest-related fees: e.g. area-based payment fees and payment slip invoices, payment orders and invoices for reforestation and forestry resource fees.

Verification and licensing information: quality guidance and standard of procedures for accreditation; name and address of each accredited CAB dates of granting accreditation and expiry dates; scopes of accreditation; list of CAB personnel (auditors, decision makers) associated with each certificate; clarification on what is considered commercially confidential information; audit plan to know when public consultations take place; announcement of audit by CAB; minutes from public consultations with CAB including list of participants; public summary of audit result; recap reports by auditing body of certificate issuance; status report on all audits: certificates passed, failed, those currently in process, granted, suspended and withdrawn certificates and any changes to the above; cases of non-compliance relevant to audits and licensing and the action taken to deal with them; issued export licences; regular recap reports from licensing authorities.

Monitoring and complaint procedures: standard operating procedures for complaints to KAN, verification bodies and licensing authorities, including procedures to monitor the progress of complaint reports and close out of complaint report.

A list of key documents of relevance to forest monitoring, the agencies that hold these documents as well as the procedure by which this information can be acquired is contained in the appendix to this Annex.

4. CATEGORIES OF INFORMATION USED TO REINFORCE LARGER VPA OBJECTIVES

1. Record of Discussions in the JIC

2. The annual report of the JIC outlining:

- (a) quantities of timber products exported from Indonesia to the Union under the FLEGT licensing scheme, according to the relevant HS Heading, and the Union Member State in which importation into the Union took place;
- (b) the number of FLEGT licences issued by Indonesia;
- (c) progress in achieving the objectives of this Agreement and matters relating to its implementation;

- (d) actions to prevent illegally-produced timber products being exported, imported, and placed or traded on the domestic market;
 - (e) quantities of timber and timber products imported into Indonesia and actions taken to prevent imports of illegally-produced timber products and maintain the integrity of the FLEGT Licensing Scheme;
 - (f) cases of non-compliance with the FLEGT Licensing Scheme and the action taken to deal with them;
 - (g) quantities of timber products imported into the Union under the FLEGT licensing scheme, according to the relevant HS Heading and Union Member State in which importation into the Union took place;
 - (h) the number of FLEGT licences from Indonesia received by the Union;
 - (i) the number of cases and quantities of timber products involved where consultations between the competent authorities and the Indonesian Licence Information Unit were undertaken.
3. Full report and summary report of the PE.
 4. Full report and summary report of the IMM.
 5. Complaints about the PE and the IMM and how they have been handled.
 6. Time schedule for implementation of this Agreement and overview of activities undertaken.
 7. Any other data and information of relevance to the implementation and functioning of this Agreement. This includes:

Legal information

- The text of this Agreement, its Annexes and any amendments
- The text of all laws and regulations referred to in Annex II
- Implementing regulations and procedures

Information on production:

- Total annual timber production in Indonesia;
- Annual volumes of timber products exported (total and to the Union);

Information on allocation of concessions:

- Total area of forestry concessions allocated;
- List of concessions, the names of the companies to whom they have been allocated and the names of the companies by whom they are managed;
- Location map of all logging concessions;
- List of registered forestry companies (production, processing, trade and exports);
- List of SVLK-certified forestry companies (production, processing, trade and exports);

Information on management

- List of concessions under management by type;
- List of certified forestry concessions and the type of certificate under which they are managed;

Information on authorities:

- List of Licensing Authorities in Indonesia including address and contact details;
- Address and contact details of the Licence Information Unit;
- List of competent authorities in the Union including address and contact details;

This information will be made available through the websites of the Parties.

5. IMPLEMENTATION OF PUBLIC DISCLOSURE PROVISIONS

As part of the implementation of this Annex the Parties will assess:

- the need for capacity-building on the use of public information for independent monitoring;
 - the need to raise public sector and stakeholder awareness of the public disclosure provisions contained in this Agreement.
-

INFORMATION TO REINFORCE VERIFICATION, MONITORING AND THE FUNCTIONING OF THE TLAS

No	Document to be made publicly available	Agencies that hold the document	Information Category
TIMBER FROM FORESTS ON STATE-OWNED LANDS (IUPHHK-HA/HPH, IUPHHK-HTI/HPHTI, IUPHHK RE) and TIMBER FROM FORESTS ON STATE-OWNED LANDS MANAGED BY LOCAL COMMUNITIES (IUPHHK-HTR, IUPHHK-HKM)			
1	Forest Concession Rights Permits (SK IUPHHK-HA/HPH, IUPHHK-HTI/HPHTI, IUPHHK RE)	Ministry of Forestry (BUK); copies in district and provincial forestry offices	3
2	Concession Maps	Ministry of Forestry (BAPLAN); copies in district and provincial forestry offices	3
3	Production Forest Timber Utilisation Permits (SK IUPHHK-HTR, IUPHHK-HKm)	Ministry of Forestry (BUK); copies in district and provincial forestry offices	3
4	Production Forest Timber Utilisation maps	Ministry of Forestry (BAPLAN); copies in district and provincial forestry offices	3
5	Forest Use Plan (TGHK)	Ministry of Forestry (BAPLAN); copies in district and provincial forestry offices	3
6	Forest Timber Exploitation Work Plan (RKUPHHK) and annexes including equipment permit	Ministry of Forestry (BUK)	3
7	IUPHHK Permit Fee Payment Order (SPP) and payment slip	Ministry of Forestry (BUK)	3
8	Annual Work Plan (RKT/Blue Print) including map	Provincial forestry offices; copies in district forestry offices	3
9	Cruising and production reports (LHP and LHC) documents	District forestry offices; copies in provincial offices	3
10	Transport Documents (skshh)	District forestry office; copies in provincial forestry offices	3
11	Log reconciliation report (LMKB)	District forestry offices and local Ministry of Forestry unit (BP2HP)	3
12	Payment Order and slip for production fee (SPP) (by logs/volume)	District forestry offices	3

No	Document to be made publicly available	Agencies that hold the document	Information Category
13	Payment receipt of Forestry Resource Fee and Reforestation Fund fee (PSDH or DR for licence holders of natural forests or PSDH for licence holders of plantation forests)	District forestry offices	3
14	Environmental Impact Assessment (EIA) documents (AMDAL, ANDAL, RKL and RPL)	Provincial or district environmental office (BAPEDALDA or BLH); copies in Ministry of Forestry (BUK)	3
TIMBER FROM PRIVATE LAND			
15	Valid land title document	National or provincial/district land agency office (BPN)	3
16	Land title/location maps	National or provincial/district land agency office (BPN)	3
17	Log transport SKAU or SKSKB document stamped with KR (Community Timber)	Village head (SKAU); copies in district forestry offices (SKSKB-KR and SKAU)	3
TIMBER FROM FOREST CONVERSION LAND (IPK)			
18	Timber utilisation licences: ILS/IPK including equipment permit	Provincial and district forestry offices	3
19	Maps annexed to ILS/IPK	Provincial and district forestry offices	3
20	Forest area release permit	Ministry of Forestry (BAPLAN) and Ministry of Forestry Provincial Unit (BPKH)	3
21	Work plan IPK/ILS	District forestry offices	3
22	Stand inventory data in state-owned forest land to be converted (section in IPK/ILS work plan)	District forestry offices	3
23	Timber production document (LHP)	District forestry offices	3
24	DR and PSDH payment receipt (see no. 13)	District forestry offices; copies in Ministry of Forestry (BUK)	3
25	Transport documents FAKB and the annexes for KBK and SKSKB and the annexes for KB	District forestry offices	3

No	Document to be made publicly available	Agencies that hold the document	Information Category
FOREST-BASED INDUSTRY			
26	Company Establishment Deed	Ministry of Law and Human Rights; for primary and integrated industry with capacity above 6 000 m ³ copies in Ministry of Forestry (BUK), with capacity under 6 000 m ³ copies in provincial and district forestry offices; for secondary industry copies in Ministry of Industry.	3
27	Business Licence (SIUP)	Local investment office or investment coordinating agency (BKPM), Ministry of Trade. For secondary industry copies in Ministry of Industry.	3
28	Company Registration Number (TDP)	Local investment office or investment coordinating agency (BKPM) and Ministry of Trade	3
29	Environmental Impact Assessment (EIA) (UKL/UPL and SPPL)	Provincial and district environmental offices (BAPEDALDA or BLH); copies in local trade office or investment coordinating agency (BKPM)	3
30	Industrial Business Licence (IUI) or Industrial Registration Number (TDI)	Primary and integrated industry with capacity above 6 000 m ³ copies in Ministry of Forestry (BUK), with capacity under 6 000 m ³ copies in provincial forestry offices, with capacity under 2 000 m ³ copies in district forestry offices; for secondary industry copies in Ministry of Industry.	3
31	Industrial Raw Material Supply Plan (RPBBI) for Primary Forest Product Industries (IPHH)	Primary and integrated industry with capacity above 6 000 m ³ copies in Ministry of Forestry (BUK), with capacity under 6 000 m ³ copies in provincial forestry offices, with capacity under 2 000 m ³ copies in district forestry offices; copies in provincial and district forestry offices.	3
32	Forest Industry Product Registered Exporter (ETPIK)	Ministry of Trade	3
33	Transport documents (SKSKB, FAKB, SKAU and/or FAKO)	Village head (SKAU); copies in district forestry offices (SKSKB-KR, SKAU), copies of FAKO at provincial forestry offices	3
34	Documents reporting changes in round log stocks (LMKB/LMKBK)	District forestry offices	3
35	Processed Product Report (LMOHHK)	District forestry offices, copies to provincial forestry offices	3
36	Inter-island timber trade document (PKAPT)	Ministry of Trade (DG Domestic Trade)	3
37	Document showing ship identity	Local Port Administration Office (under Ministry of Transportation); copy in Indonesian Classification Bureau (BKI)	3

No	Document to be made publicly available	Agencies that hold the document	Information Category
OTHER RELEVANT INFORMATION			
38	Laws and regulations: all laws, regulations, standards, and guidelines listed in the legality standards	Ministry of Forestry, provincial or district forestry offices	3
39	Verification and Licensing information:		
	(a) quality guidance and standard of procedures for accreditation	National Accreditation Body (KAN)	1
	(b) name and address of each accredited conformity assessment body (LP and LV)	National Accreditation Body (KAN)	1
	(c) list of personnel (auditors, decision makers) associated with each certificate	Conformity assessment bodies (LP and LV), Ministry of Forestry	1
	(d) clarification on what is considered commercially confidential information	Conformity assessment bodies (LP and LV)	1
	(e) audit plan to know when public consultations take place, announcement of audit by auditing body, public summary of audit result, recap reports by auditing body of certificate issuance	Conformity assessment bodies (LP and LV)	1
40	Status reports on audits:		
	(a) certificates passed, failed, those currently in process, granted, suspended and withdrawn certificates and any changes to the above	Conformity assessment bodies (LP and LV)	1
	(b) cases of non-compliance relevant to audits and licensing and the action taken to deal with them;	Conformity assessment bodies (LP and LV)	3
	(c) Issued export licences (V-Legal Document); periodic reports from licensing body	Conformity assessment bodies (LP and LV)	1

No	Document to be made publicly available	Agencies that hold the document	Information Category
41	Monitoring and complaint procedures:		
	(a) standard operating procedures for complaints for accreditation body and each auditing body	National Accreditation Body (KAN), conformity assessment bodies (LP and LV)	1
	(b) civil society procedures for monitoring, complaints, reports from civil society monitor	Ministry of Forestry, Independent Monitor	1
	(c) documents to monitor the progress of complaint reports and resolution of complaint report	National Accreditation Body (KAN), conformity assessment bodies (LP and LV)	3

Procedures to acquire information:

- The Freedom of Information Act (UU 14/2008) distinguishes four categories of information: (1) information available and actively disseminated on a regular basis; (2) information that should be made public immediately; (3) information that is available at all times and provided upon request and (4) restricted or confidential information.
- Information under category 3 of the Freedom of Information Act is provided to the public upon request to the designated body (PPID) within the respective institution, e.g. the Public Relations Centre of the Ministry of Forestry. Each institution has its own implementing regulation on public information, based on the Freedom of Information Act.
- Some information, although falling under Category 3 under the Freedom of Information Act is published on the websites of the relevant institutions, inter alia: decrees and regulations, land allocation maps, forest use plans.

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