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⁽¹⁾ Text with EEA relevance.

EN

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

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I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2017/1369 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 4 July 2017
setting a framework for energy labelling and repealing Directive 2010/30/EU

(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 194(2) thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) The Union is committed to building an Energy Union with a forward looking climate policy. Energy efficiency is a crucial element of the Union's 2030 Climate and Energy Policy Framework and is key to moderating energy demand.
- (2) Energy labelling enables customers to make informed choices based on the energy consumption of energy-related products. Information on efficient and sustainable energy-related products makes a significant contribution to energy savings and to reducing energy bills, while at the same time promoting innovation and investments into the production of more energy efficient products. Improving the efficiency of energy-related products through informed customer choice and harmonising related requirements at Union level benefits also manufacturers, industry and the Union economy overall.
- (3) The Commission reviewed the effectiveness of Directive 2010/30/EU of the European Parliament and of the Council ⁽³⁾ and identified the need to update the energy labelling framework to improve its effectiveness.
- (4) It is appropriate to replace Directive 2010/30/EU by a Regulation which maintains essentially the same scope, but modifies and enhances some of its provisions in order to clarify and update their content, taking into account the technological progress for energy efficiency in products achieved over recent years. As the energy consumption of means of transport for persons or goods is directly and indirectly regulated by other Union law

⁽¹⁾ OJ C 82, 3.3.2016, p. 6.

⁽²⁾ Position of the European Parliament of 13 June 2017 (not yet published in the Official Journal) and decision of the Council of 26 June 2017.

⁽³⁾ Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJ L 153, 18.6.2010, p. 1).

and policies, it is appropriate to continue to exempt them from the scope of this Regulation, including means of transport with a motor that stays in the same location during operation, such as elevators, escalators and conveyor belts.

- (5) It is appropriate to clarify that all products placed on the Union market for the first time, including second-hand imported products, should fall under the scope of this Regulation. However, products that are made available on the Union market for a second or additional time should not be included.
- (6) A Regulation is the appropriate legal instrument as it imposes clear and detailed rules which preclude divergent transposition by Member States and thus ensures a higher degree of harmonisation across the Union. A harmonised regulatory framework at Union rather than at Member State level reduces costs for manufacturers, ensures a level playing field and ensures the free movement of goods across the internal market.
- (7) Moderating energy demand is recognised as a key action in the European Energy Security Strategy set out in the Commission Communication of 28 May 2014. The Energy Union Framework Strategy set out in the Commission Communication of 25 February 2015 further emphasised the energy efficiency first principle and the need to fully implement existing Union energy law. The Roadmap for the Energy Union Framework Strategy set out in that Communication provided for a review of the energy efficiency framework for products in 2015. This Regulation improves the legislative and enforcement framework for energy labelling.
- (8) Improving the efficiency of energy-related products through informed customer choice benefits the Union economy, reduces energy demand and saves customers money on energy bills, contributes to innovation and investment in energy efficiency, and enables industries which develop and produce the most energy efficient products to gain a competitive advantage. It also contributes to the achievement of the Union's 2020 and 2030 energy-efficiency targets, as well as to the Union's goals for the environment and climate change. Furthermore, it aims to have a positive impact on the environmental performance of the energy-related products and their parts, including use of resources other than energy.
- (9) This Regulation contributes to the development, recognition by customers and market uptake of energy smart products, which can be activated to interact with other appliances and systems, including the energy grid itself, in order to improve energy efficiency or the uptake of renewable energies, reduce energy consumption and foster innovation in Union industry.
- (10) The provision of accurate, relevant and comparable information on the specific energy consumption of energy-related products facilitates the customer's choice in favour of products which consume less energy and other essential resources during use. A standardised mandatory label for energy-related products is an effective means by which to provide potential customers with comparable information on the energy efficiency of energy-related products. The label should be supplemented by a product information sheet. The label should be easily recognisable, simple and concise. To that end, the existing dark green to red colour scale of the label should be retained as the basis for informing customers about the energy efficiency of products. In order for the label to be of real use for customers looking for energy and cost savings, the steps of the label scale should correspond to significant energy and cost savings for customers. For the majority of product groups, the label should, where appropriate, also indicate the absolute energy consumption in addition to the label scale, in order to allow customers to predict the direct impact of their choices on their energy bills. However, it is impossible to provide the same information with regard to energy-related products that do not themselves consume energy.
- (11) The classification using letters from A to G has been shown to be cost effective for customers. It is intended that its uniform application across product groups raises transparency and understanding among customers. In situations where because of ecodesign measures pursuant to Directive 2009/125/EC of the European Parliament and of the Council ⁽¹⁾ products can no longer fall into class 'E', 'F' or 'G', those classes should nonetheless be shown on the label in grey. In exceptional and duly justified cases, such as reaching insufficient savings across the full spectrum of the seven classes, the label should be able to contain fewer classes than a regular A to G scale. In those cases the dark green to red colour scale of the label should be retained for the remaining classes and should apply only to new products that are placed on the market or put into service.

⁽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).

- (12) Where a supplier places a product on the market, each unit of the product should be accompanied by a label in paper form complying with the requirements of the relevant delegated act. The relevant delegated act should set out the most effective way of displaying the labels, taking into account the implications for customers, suppliers and dealers, and could provide that the label is printed on the packaging of the product. The dealer should display the label supplied together with the unit of the product in the position required by the relevant delegated act. The label displayed should be clearly visible and identifiable as the label belonging to the product in question, without the customer having to read the brand name and model number on the label, and should attract the attention of the customer browsing through the product displayed.
- (13) Without affecting the obligation of the supplier to provide a printed label together with each unit of a product, advances in digital technology could allow for the use of electronic labels in addition to the printed energy label. The dealer should also be able to download the product information sheet from the product database.
- (14) Where it is not feasible to display the energy label, such as in certain forms of distance selling, visual advertisements and technical promotional material, potential customers should be provided at least with the energy class of the product and the range of the efficiency classes available on the label.
- (15) Manufacturers respond to the energy label by developing and placing on the market ever more efficient products. In parallel, they tend to discontinue the production of less efficient products, stimulated to do so by Union law relating to ecodesign. This technological development leads to the majority of product models populating the highest classes of the energy label. Further product differentiation may be necessary to enable customers to compare products properly, leading to the need to rescale labels. This Regulation should therefore lay down detailed arrangements for rescaling in order to maximise legal certainty for suppliers and dealers.
- (16) For several labels established by delegated acts adopted pursuant to Directive 2010/30/EU, products are available only or mostly in the top classes. This reduces the effectiveness of the labels. The classes on existing labels, depending on the product group have varying scales, where the top class can be anything between classes A to A+++ . As a result, when customers compare labels across different product groups, they could be led to believe that better energy classes exist for a particular label than those that are displayed. To avoid such potential confusion, it is appropriate to carry out, as a first step, an initial rescaling of existing labels, in order to ensure a homogeneous A to G scale for three categories of products pursuant to this Regulation.
- (17) Energy labelling of space and water heating products was introduced only recently and the rate of technological progress in those product groups is relatively slow. The current labelling scheme makes a clear distinction between conventional fossil fuel technologies that are at best class A, and technologies that use renewable energy, which are often significantly more expensive, for which classes A+, A++ and A+++ are reserved. Substantial energy savings can already be achieved by the most efficient fossil fuel technologies, which would make it appropriate to continue promoting them as class A. As the market for space and water heating products is likely to move slowly towards more renewable technologies, it is appropriate to rescale the energy labels for those products later.
- (18) Following initial rescaling, the frequency of further rescaling should be determined by reference to the percentage of products sold that are in the top classes. Further rescaling should take into account the speed of technological progress and the need to avoid over burdening suppliers and dealers, and, in particular, small businesses. Therefore, a timescale of approximately 10 years would be desirable for the frequency of rescaling. A newly rescaled label should leave the top class empty to encourage technological progress, provide for regulatory stability, limit the frequency of rescaling and enable ever more efficient products to be developed and recognised. In exceptional cases, where technology is expected to develop more rapidly, no products should fall within the top two classes at the moment of introduction of the newly rescaled label.
- (19) Before rescaling, the Commission should carry out an appropriate preparatory study.
- (20) When a label for a product group is rescaled, confusion on the part of customers should be avoided by replacing the labels on the affected products displayed in shops within a short timeframe, and by organising adequate consumer information campaigns clearly indicating that a new version of the label has been introduced.

- (21) In the case of a rescaled label, suppliers should provide both the existing and the rescaled labels to dealers for a certain period. The replacement of the existing labels on products on display, including on the internet, with the rescaled labels should take place as quickly as possible after the date of replacement specified in the delegated act on the rescaled label. Dealers should not display the rescaled labels before the date of replacement.
- (22) It is necessary to provide for a clear and proportionate distribution of obligations corresponding to the role of each operator in the supply and distribution process. Economic operators should be responsible for compliance in relation to their respective roles in the supply chain and should ensure that they make available on the market only products which comply with this Regulation and the delegated acts adopted pursuant thereto.
- (23) In order for customers to retain confidence in the energy label, other labels that mimic the energy label should not be allowed to be used for energy-related products and non-energy-related products. Where energy-related products are not covered by delegated acts, Member States should be able to maintain or introduce new national schemes for the labelling of such products. Additional labels, marks, symbols or inscriptions that are likely to mislead or confuse customers with respect to the consumption of energy for the product concerned should not be allowed for the same reason. Labels provided for pursuant to Union law, such as the labelling of tyres with respect to fuel efficiency and other environmental parameters, and additional labels such as the EU Energy Star and EU Ecolabel should not be considered to be misleading or confusing.
- (24) Increasingly, customers are offered software or firmware updates of their products after the products have been placed on the market and put into use. While such updates are typically intended to improve product performance, they may also impact the energy efficiency and other product parameters indicated on the energy label. If those changes are to the detriment of what is indicated on the label, customers should be informed about those changes and should be given the option of accepting or refusing the update.
- (25) In order to ensure legal certainty, it is necessary to clarify that rules on Union market surveillance and control of products entering the Union market provided for in Regulation (EC) No 765/2008 of the European Parliament and of the Council ⁽¹⁾ apply to energy-related products. Given the principle of free movement of goods, it is imperative that Member States' market surveillance authorities cooperate with each other effectively. Such cooperation on energy labelling should be reinforced through support by the Commission of the Administrative Cooperation Groups (AdCos) on Ecodesign and Energy Labelling.
- (26) The Commission proposal for a new regulation on market surveillance of products integrates the provisions of Regulation (EC) No 765/2008, Directive 2001/95/EC of the European Parliament and of the Council ⁽²⁾ and several sector-specific Union harmonisation legislative acts. That proposal includes provisions on safeguard clauses contained in Decision No 768/2008/EC of the European Parliament and of the Council ⁽³⁾, which would apply to all Union harmonisation legislative acts. For so long as the new regulation is still under consideration by the co-legislators, it is appropriate to refer to Regulation (EC) No 765/2008 and to include safeguard clauses in this Regulation.
- (27) Market surveillance activities covered by Regulation (EC) No 765/2008 are not directed exclusively towards the protection of health and safety, but are also applicable to the enforcement of Union law which seek to safeguard other public interests, including energy efficiency. In line with the Commission Communication entitled '20 actions for safer and compliant products for Europe: a multi-annual action plan for the surveillance of products in the EU' of 13 February 2013, the Union general risk assessment methodology has been updated so that it covers all risks, including those relating to energy labelling.
- (28) Coherent and cost-effective market surveillance activity throughout the Union also requires well-structured, comprehensive archiving and sharing of all pertinent information among Member States on national activities in this context, including a reference to notifications required by this Regulation. The Information and

⁽¹⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

⁽²⁾ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4).

⁽³⁾ Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (OJ L 218, 13.8.2008, p. 82).

Communication System on Market Surveillance (ICSMS) database established by the Commission is well-suited for the purpose of forming a complete database of market surveillance information, and its use should therefore be strongly encouraged.

- (29) In order to set up a useful tool for consumers, to allow for alternative ways for dealers to receive product information sheets, to facilitate the monitoring of compliance and to provide up-to-date market data for the regulatory process on revisions of product-specific labels and information sheets, the Commission should set up and maintain a product database consisting of a public and a compliance part, which should be accessible via an online portal.
- (30) Without prejudice to the Member States' market surveillance obligations and to suppliers' obligations to check product conformity, suppliers should make the required product compliance information available electronically in the product database. The information relevant for consumers and dealers should be made publicly available in the public part of the product database. That information should be made available as open data so as to give mobile application developers and other comparison tools the opportunity to use it. Easy direct access to the public part of the product database should be facilitated by user-oriented tools, such as a dynamic quick response code (QR code), included on the printed label.
- (31) The compliance part of the product database should be subject to strict data protection rules. The required specific parts of the technical documentation in the compliance part should be made available both to market surveillance authorities and to the Commission. Where some technical information is so sensitive that it would be inappropriate to include it in the category of technical documentation as detailed in delegated acts adopted pursuant to this Regulation, market surveillance authorities should retain the power to access that information when necessary in accordance with the duty of cooperation on suppliers or by way of additional parts of the technical documentation uploaded to the product database by suppliers on a voluntary basis.
- (32) In order for the product database to be of use as soon as possible, registration should be mandatory for all models the units of which are placed on the market as from the date of entry into force of this Regulation. For models, the units of which are placed on the market before the date of entry into force of this Regulation and which are no longer marketed, registration should be optional. An appropriate transitional period should be provided for the development of the database and to allow suppliers to comply with their registration obligation. When any changes with relevance for the label and the product information sheet are made to a product already on the market, the product should be considered to be a new model and the supplier should register it in the product database. The Commission, in cooperation with market surveillance authorities and suppliers, should pay special attention to the transitional process until the full implementation of the public and compliance parts of the product database.
- (33) The penalties applicable to infringements of the provisions of this Regulation and delegated acts adopted pursuant thereto should be effective, proportionate and dissuasive.
- (34) In order to promote energy efficiency, climate mitigation and environmental protection, Member States should be able to create incentives for the use of energy-efficient products. Member States are free to decide on the nature of such incentives. Such incentives should comply with Union State aid rules and should not constitute unjustifiable market barriers. This Regulation does not prejudice the outcome of any future State aid procedure that may be undertaken in accordance with Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) in respect of such incentives.
- (35) Energy consumption, performance and other information concerning the products covered by product-specific requirements under this Regulation should be measured by using reliable, accurate and reproducible methods that take into account the generally recognised state-of-the-art measurements and calculation methods. In the interests of the proper functioning of the internal market, standards should be harmonised at Union level. Such methods and standards should, to the extent possible, take into account the real-life usage of a given product, reflect average consumer behaviour and be robust in order to deter intentional and unintentional circumvention. Energy labels should reflect the comparative performance of the actual use of products, within the constraints due to the need of reliable and reproducible laboratory testing. Suppliers should therefore not be allowed to include software or hardware that automatically alters the performance of the product in test conditions. In the absence of published standards at the time of application of product-specific requirements, the Commission should publish, in the *Official Journal of the European Union*, transitional measurement and calculation methods in relation

to those product-specific requirements. Once a reference to such a standard has been published, compliance with it should provide a presumption of conformity with measurement methods for those product-specific requirements adopted on the basis of this Regulation.

- (36) The Commission should provide a long-term working plan for the revision of labels for particular energy-related products including an indicative list of further energy-related products for which an energy label could be established. The working plan should be implemented starting with a technical, environmental and economic analysis of the product groups concerned. That analysis should also look at supplementary information including the possibility and cost of providing consumers with information on the performance of an energy-related product, such as its energy consumption, durability or environmental performance, in coherence with the objective to promote a circular economy. Such supplementary information should improve the intelligibility and effectiveness of the label towards consumers and should not lead to any negative impact on consumers.
- (37) Suppliers of products marketed in accordance with Directive 2010/30/EU before the date of entry into force of this Regulation should continue to be subject to the obligation to make available an electronic version of the technical documentation of the products concerned upon request of the market surveillance authorities. Appropriate transitional provisions should ensure legal certainty and continuity in this respect.
- (38) In addition, in order to ensure a seamless transition to this Regulation, the existing requirements laid down in delegated acts adopted pursuant to Article 10 of Directive 2010/30/EU and Commission Directive 96/60/EC ⁽¹⁾ should continue to apply to the relevant product groups until they are repealed or replaced by delegated acts adopted pursuant to this Regulation. The application of those existing requirements is without prejudice to the application of the obligations under this Regulation.
- (39) In order to establish specific product groups of energy-related products in accordance with a set of specific criteria and in order to establish product-specific labels and information sheets, 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, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making ⁽²⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (40) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers for determining under the Union safeguard procedure whether a national measure is justified or not and for establishing detailed requirements concerning the operational details relating to the product database 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⁾.
- (41) Since the objectives of this Regulation, namely to allow customers to choose more efficient products by supplying relevant information, cannot be sufficiently achieved by the Member States but can rather, by further developing the harmonised regulatory framework and ensuring a level playing field for manufacturers, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (42) This Regulation should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and the date of application of Directive 2010/30/EU.
- (43) Directive 2010/30/EU should therefore be repealed,

⁽¹⁾ Commission Directive 96/60/EC of 19 September 1996 implementing Council Directive 92/75/EEC with regard to energy labelling of household combined washer-driers (OJ L 266, 18.10.1996, p. 1).

⁽²⁾ OJ L 123, 12.5.2016, p. 1.

⁽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).

HAVE ADOPTED THIS REGULATION:

Article 1

Subject-matter and scope

1. This Regulation lays down a framework that applies to energy-related products ('products') placed on the market or put into service. It provides for the labelling of those products and the provision of standard product information regarding energy efficiency, the consumption of energy and of other resources by products during use and supplementary information concerning products, thereby enabling customers to choose more efficient products in order to reduce their energy consumption.
2. This Regulation does not apply to:
 - (a) second-hand products, unless they are imported from a third country;
 - (b) means of transport for persons or goods.

Article 2

Definitions

For the purposes of this Regulation the following definitions apply:

- (1) 'energy-related product' or 'product' means a good or system with an impact on energy consumption during use which is placed on the market or put into service, including parts with an impact on energy consumption during use which are placed on the market or put into service for customers and that are intended to be incorporated into products;
- (2) 'product group' means a group of products which have the same main functionality;
- (3) 'system' means a combination of several goods which when put together perform a specific function in an expected environment and of which the energy efficiency can then be determined as a single entity;
- (4) 'model' means a version of a product of which all units share the same technical characteristics relevant for the label and the product information sheet and the same model identifier;
- (5) 'model identifier' means the code, usually alphanumeric, which distinguishes a specific product model from other models with the same trade mark or the same supplier's name;
- (6) 'equivalent model' means a model which has the same technical characteristics relevant for the label and the same product information sheet, but which is placed on the market or put into service by the same supplier as another model with a different model identifier;
- (7) 'making available on the market' means the supply of a product for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;
- (8) 'placing on the market' means the first making available of a product on the Union market;
- (9) 'putting into service' means the first use of a product for its intended purpose on the Union market;
- (10) 'manufacturer' means a natural or legal person who manufactures a product or has a product designed or manufactured, and markets that product under its name or trademark;
- (11) 'authorised representative' means a natural or legal person established in the Union who has received a written mandate from the manufacturer to act on its behalf in relation to specified tasks;
- (12) 'importer' means a natural or legal person established in the Union who places a product from a third country on the Union market;
- (13) 'dealer' means a retailer or other natural or legal person who offers for sale, hire, or hire purchase, or displays products to customers or installers in the course of a commercial activity, whether or not in return for payment;

- (14) 'supplier' means a manufacturer established in the Union, the authorised representative of a manufacturer who is not established in the Union, or an importer, who places a product on the Union market;
- (15) 'distance selling' means the offer for sale, hire or hire purchase by mail order, catalogue, internet, telemarketing or by any other method by which the potential customer cannot be expected to see the product displayed;
- (16) 'customer' means a natural or legal person who buys, hires or receives a product for own use whether or not acting for purposes which are outside its trade, business, craft or profession;
- (17) 'energy efficiency' means the ratio of output of performance, service, goods or energy to input of energy;
- (18) 'harmonised standard' means standard as defined in point (c) of Article 2(1) of Regulation (EU) No 1025/2012 of the European Parliament and of the Council ⁽¹⁾;
- (19) 'label' means a graphic diagram, either in printed or electronic form, including a closed scale using only letters from A to G, each letter representing a class and each class corresponding to energy savings, in seven different colours from dark green to red, in order to inform customers about energy efficiency and energy consumption; it includes rescaled labels and labels with fewer classes and colours in accordance with Article 11(10) and (11);
- (20) 'rescaling' means an exercise making the requirements for achieving the energy class on a label for a particular product group more stringent;
- (21) 'rescaled label' means a label for a particular product group that has undergone rescaling and is distinguishable from labels before rescaling while preserving a visual and perceptible coherence of all labels;
- (22) 'product information sheet' means a standard document containing information relating to a product, in printed or electronic form;
- (23) 'technical documentation' means documentation sufficient to enable market surveillance authorities to assess the accuracy of the label and the product information sheet of a product, including test reports or similar technical evidence;
- (24) 'supplementary information' means information, as specified in a delegated act, on the functional and environmental performance of a product;
- (25) 'product database' means a collection of data concerning products, which is arranged in a systematic manner and consists of a consumer-oriented public part, where information concerning individual product parameters is accessible by electronic means, an online portal for accessibility and a compliance part, with clearly specified accessibility and security requirements;
- (26) 'verification tolerance' means the maximum admissible deviation of the measurement and calculation results of the verification tests performed by, or on behalf of, market surveillance authorities, compared to the values of the declared or published parameters, reflecting deviation arising from interlaboratory variation.

Article 3

General obligations of suppliers

1. The supplier shall ensure that products that are placed on the market are accompanied, for each individual unit, free of charge, with accurate printed labels and with product information sheets in accordance with this Regulation and the relevant delegated acts.

As an alternative to supplying the product information sheet with the product, delegated acts referred to in point (h) of Article 16(3) may provide that it is sufficient for the supplier to enter the parameters of such product information sheet into the product database. In such a case, the supplier shall provide the product information sheet in printed form to the dealer on request.

Delegated acts may provide that the label is printed on the packaging of the product.

⁽¹⁾ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

2. The supplier shall deliver printed labels, including rescaled labels in accordance with Article 11(13), and product information sheets, to the dealer free of charge, promptly and in any event within five working days upon the dealer's request.
3. The supplier shall ensure the accuracy of the labels and product information sheets that it provides and shall produce technical documentation sufficient to enable the accuracy to be assessed.
4. Once a unit of a model is in service, the supplier shall request explicit consent from the customer regarding any changes intended to be introduced to the unit by means of updates that would be detrimental to the parameters of the energy efficiency label for that unit, as set out in the relevant delegated act. The supplier shall inform the customer of the objective of the update and of the changes in the parameters, including any change in the label class. For a period proportionate to the average lifespan of the product, the supplier shall give the customer the option of refusing the update without avoidable loss of functionality.
5. The supplier shall not place on the market products that have been designed so that a model's performance is automatically altered in test conditions with the objective of reaching a more favourable level for any of the parameters specified in the relevant delegated act or included in any of the documentation provided with the product.

Article 4

Obligations of suppliers in relation to the product database

1. As from 1 January 2019, the supplier shall, before placing on the market a unit of a new model covered by a delegated act, enter in the public and compliance parts of the product database the information for that model, as set out in Annex I.
2. Where units of models covered by a delegated act are placed on the market between 1 August 2017 and 1 January 2019, the supplier shall, by 30 June 2019, enter in the product database the information set out in Annex I in relation to those models.

Until data entry in the product database, the supplier shall make an electronic version of the technical documentation available for inspection within 10 days of a request received from market surveillance authorities or the Commission.

3. The supplier may enter in the product database the information for models, as set out in Annex I, the units of which were exclusively placed on the market before 1 August 2017.
4. A product for which changes are made that are relevant for the label or the product information sheet shall be considered to be a new model. The supplier shall indicate in the database when it no longer places on the market units of a model.
5. The obligations referred to in paragraphs 1 and 2 of this Article shall not apply to packages of heaters referred to in Commission Delegated Regulations (EU) No 811/2013 ⁽¹⁾, (EU) No 812/2013 ⁽²⁾ and (EU) 2015/1187 ⁽³⁾, where the provision of labels for those packages is the sole responsibility of the dealer.
6. After the final unit of a model has been placed on the market, the supplier shall keep the information concerning that model in the compliance part of the product database for a period of 15 years. Where appropriate in relation to the average life span of a product, a shorter retention period may be provided for pursuant to point (q) of Article 16(3). The information in the public part of the database shall not be deleted.

⁽¹⁾ Commission Delegated Regulation (EU) No 811/2013 of 18 February 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of space heaters, combination heaters, packages of space heater, temperature control and solar device and packages of combination heater, temperature control and solar device (OJ L 239, 6.9.2013, p. 1).

⁽²⁾ Commission Delegated Regulation (EU) No 812/2013 of 18 February 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of water heaters, hot water storage tanks and packages of water heater and solar device (OJ L 239, 6.9.2013, p. 83).

⁽³⁾ Commission Delegated Regulation (EU) 2015/1187 of 27 April 2015 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of solid fuel boilers and packages of a solid fuel boiler, supplementary heaters, temperature controls and solar devices (OJ L 193, 21.7.2015, p. 43).

*Article 5***Obligations of dealers**

1. The dealer shall:
 - (a) display, in a visible manner, including for online distance selling, the label provided by the supplier or made available in accordance with paragraph 2 for units of a model covered by the relevant delegated act; and
 - (b) make available to customers the product information sheet, including, upon request, in physical form at the point of sale.
2. Where, notwithstanding Article 3(1), the dealer does not have a label, it shall request one from the supplier in accordance with Article 3(2).
3. Where, notwithstanding Article 3(1), the dealer does not have a product information sheet, it shall request one from the supplier in accordance with Article 3(2); or, if it chooses to do so, print or download one for electronic display from the product database, if those functions are available for the relevant product.

*Article 6***Other obligations of suppliers and dealers**

The supplier and the dealer shall:

- (a) make reference to the energy efficiency class of the product and the range of the efficiency classes available on the label in visual advertisements or technical promotional material for a specific model in accordance with the relevant delegated act;
- (b) cooperate with market surveillance authorities and take immediate action to remedy any case of non-compliance with the requirements set out in this Regulation and the relevant delegated acts, which falls under their responsibility, at their own initiative or when required to do so by market surveillance authorities;
- (c) for products covered by delegated acts, not provide or display other labels, marks, symbols or inscriptions which do not comply with the requirements of this Regulation and the relevant delegated acts, if doing so would be likely to mislead or confuse customers with respect to the consumption of energy or other resources during use;
- (d) for products not covered by delegated acts, not supply or display labels which mimic the labels provided for under this Regulation and the relevant delegated acts;
- (e) for non-energy related products, not supply or display labels which mimic the labels provided for in this Regulation or in delegated acts.

Point (d) in the first subparagraph shall not affect labels provided for in national law, unless those labels are provided for in delegated acts.

*Article 7***Obligations of Member States**

1. Member States shall not impede the placing on the market or putting into service, within their territories, of products which comply with this Regulation and the relevant delegated acts.
2. Where Member States provide incentives for a product specified in a delegated act, those incentives shall aim at the highest two significantly populated classes of energy efficiency, or at higher classes as laid down in that delegated act.
3. Member States shall ensure that the introduction of labels and rescaling of labels is accompanied by educational and promotional information campaigns on energy labelling, if appropriate in cooperation with suppliers and dealers. The Commission shall support cooperation and the exchange of best practices in relation to those campaigns, including through the recommendation of common key messages.

4. Member States shall lay down the rules on penalties and enforcement mechanisms applicable to infringements of this Regulation and the delegated acts, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Rules which fulfil the requirements of Article 15 of Directive 2010/30/EU shall be considered to fulfil the requirements of this paragraph as regards penalties.

Member States shall, by 1 August 2017, notify the Commission of the rules referred to in the first subparagraph that have not previously been notified to the Commission, and shall notify the Commission, without delay, of any subsequent amendment affecting them.

Article 8

Union market surveillance and control of products entering the Union market

1. Articles 16 to 29 of Regulation (EC) No 765/2008 shall apply to products covered by this Regulation and by the relevant delegated acts.

2. The Commission shall encourage and support cooperation and the exchange of information on market surveillance relating to the labelling of products between national authorities of the Member States that are responsible for market surveillance or in charge of the control of products entering the Union market and between them and the Commission, inter alia, by involving more closely the AdCos on Ecodesign and Energy Labelling.

Such exchanges of information shall also be conducted when test results indicate that the product complies with this Regulation and the relevant delegated act.

3. Member States' general market surveillance programmes or sector specific programmes established pursuant to Article 18 of Regulation (EC) No 765/2008 shall include actions to ensure the effective enforcement of this Regulation.

4. The Commission shall, in cooperation with the AdCos on Ecodesign and Energy Labelling, elaborate guidelines for the enforcement of this Regulation, in particular as regards best practices for product testing and the sharing of information between national market surveillance authorities and the Commission.

5. Market surveillance authorities shall have the right to recover from the supplier the costs of document inspection and physical product testing in case of non-compliance with this Regulation or the relevant delegated acts.

Article 9

Procedure at national level for dealing with products presenting a risk

1. Where the market surveillance authorities of one Member State have sufficient reason to believe that a product covered by this Regulation presents a risk to aspects of public interest protection covered by this Regulation, such as environmental and consumer protection aspects, they shall carry out an evaluation in relation to the product concerned covering all energy labelling requirements relevant to the risk and laid down in this Regulation or in the relevant delegated act. Suppliers and dealers shall cooperate as necessary with the market surveillance authorities for the purpose of that evaluation.

2. Where, in the course of the evaluation referred to in paragraph 1, the market surveillance authorities find that the product does not comply with the requirements laid down in this Regulation or in the relevant delegated act, they shall without delay require the supplier, or where appropriate, the dealer, to take all appropriate corrective action to bring the product into compliance with those requirements, where appropriate to withdraw the product from the market, or where appropriate, to recall it within a reasonable period, commensurate with the nature of the risk as they may prescribe.

Article 21 of Regulation (EC) No 765/2008 shall apply to the measures referred to in this paragraph.

3. Where the market surveillance authorities consider that a case of non-compliance as referred to in paragraph 2 is not restricted to their national territory, they shall inform the Commission and the other Member States of the results of the evaluation and of the action which they have required the supplier or dealer to take.

4. The supplier or, where appropriate, the dealer shall ensure that all appropriate corrective or restrictive action in accordance with paragraph 2 is taken in respect of all the products concerned that it has made available on the market throughout the Union.

5. Where the supplier or, where appropriate, the dealer does not take adequate corrective action within the period referred to in paragraph 2, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the availability of the product on their national market, to withdraw the product from that market, or to recall it.

6. The market surveillance authorities shall inform the Commission and the other Member States without delay of the measures taken pursuant to paragraph 5. That information shall include all available details, in particular:

- (a) the data necessary for the identification of the non-compliant product;
- (b) the origin of the product;
- (c) the nature of the non-compliance alleged and the risk involved;
- (d) the nature and duration of the national measures taken and the arguments put forward by the supplier or, where appropriate, the dealer.

In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either failure of the product to meet requirements relating to aspects of public interest protection laid down in this Regulation or shortcomings in the harmonised standards referred to in Article 13 conferring a presumption of conformity.

7. Member States other than the Member State initiating the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the product concerned, and, in the event of disagreement with the notified national measure, of their objections.

8. Where, within 60 days of receipt of the information referred to in paragraph 6, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed to be justified.

9. Member States shall ensure that appropriate restrictive measures, such as withdrawal of the product from their market, are taken in respect of the product concerned, without delay.

Article 10

Union safeguard procedure

1. Where, on completion of the procedure set out in Article 9(4) and (5), objections are raised against a measure taken by a Member State, or where the Commission considers a national measure to be contrary to Union law, the Commission shall, without delay, consult the Member State and the supplier or, where appropriate, the dealer and shall evaluate the national measure.

On the basis of the results of that evaluation, the Commission shall decide by means of an implementing act whether the national measure is justified or not and may suggest an appropriate alternative measure. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 18(2).

2. The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the supplier or dealer concerned.

3. If the national measure is considered to be justified, all Member States shall take the measures necessary to ensure that the non-compliant product is withdrawn from their market, and shall inform the Commission accordingly. If the national measure is considered to be unjustified, the Member State concerned shall withdraw the measure.

4. Where the national measure is considered to be justified and the non-compliance of the product is attributed to shortcomings in the harmonised standards referred to in Article 9(6) of this Regulation, the Commission shall apply the procedure provided for in Article 11 of Regulation (EU) No 1025/2012.

5. Corrective or restrictive measures pursuant to Article 9(2), (4), (5) or (9), or Article 10(3) shall be extended to all units of a non-compliant model and of its equivalent models, except those units for which the supplier demonstrates that they are compliant.

Article 11

Procedure for the introduction and rescaling of labels

1. As regards the product groups referred to in paragraphs 4 and 5, the Commission shall rescale labels which were in force on 1 August 2017 subject to paragraphs 4 and 5 and paragraphs 8 to 12.

By way of derogation from the requirement of achieving significant energy and cost savings set out in point (b) of Article 16(3), where the rescaling cannot achieve such savings, it shall ensure at least a homogenous A to G scale.

2. Where a label does not exist for a product group on 1 August 2017, the Commission may, subject to paragraphs 8 to 12, introduce labels.

3. The Commission may further rescale labels which have been rescaled in accordance with paragraph 1 or introduced in accordance with paragraph 2 where the conditions under point (a) or (b) of paragraph 6 are met, and subject to paragraphs 8 to 12.

4. In order to ensure a homogenous A to G scale, the Commission shall adopt, by 2 August 2023, delegated acts pursuant to Article 16 of this Regulation in order to supplement this Regulation by introducing A to G rescaled labels for product groups covered by delegated acts adopted pursuant to Directive 2010/30/EU, with the aim of displaying the rescaled label both in shops and online, 18 months after the date of entry into force of the delegated acts adopted pursuant to this Regulation.

When determining the order of product groups to be rescaled, the Commission shall take into account the proportion of products in the highest classes.

5. By way of derogation from paragraph 4, the Commission shall:

(a) present reviews for the product groups covered by Delegated Regulations (EU) No 811/2013, (EU) No 812/2013 and (EU) 2015/1187 by 2 August 2025 with a view to rescaling them, and, where appropriate, shall, by 2 August 2026, adopt delegated acts pursuant to Article 16 of this Regulation in order to supplement this Regulation by introducing A to G rescaled labels.

In any event, the delegated acts introducing A to G rescaled labels shall be adopted no later than 2 August 2030.

(b) adopt, by 2 November 2018, delegated acts pursuant to Article 16 of this Regulation in order to supplement this Regulation by introducing A to G rescaled labels for product groups covered by Commission Delegated Regulations (EU) No 1059/2010 ⁽¹⁾, (EU) No 1060/2010 ⁽²⁾, (EU) No 1061/2010 ⁽³⁾, (EU) No 1062/2010 ⁽⁴⁾ and (EU) No 874/2012 ⁽⁵⁾ and Directive 96/60/EC, with the aim of displaying the rescaled label both in shops and online, 12 months after their date of entry into force.

6. As regards the products for which the Commission may further rescale the labels in accordance with paragraph 3, the Commission shall review the label with a view to rescaling if it estimates that:

(a) 30 % of the units of models belonging to a product group sold within the Union market fall into the top energy efficiency class A and further technological development can be expected; or

(b) 50 % of the units of models belonging to a product group sold within the Union market fall into the top two energy efficiency classes A and B and further technological development can be expected.

⁽¹⁾ Commission Delegated Regulation (EU) No 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household dishwashers (OJ L 314, 30.11.2010, p. 1).

⁽²⁾ Commission Delegated Regulation (EU) No 1060/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances (OJ L 314, 30.11.2010, p. 17).

⁽³⁾ Commission Delegated Regulation (EU) No 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines (OJ L 314, 30.11.2010, p. 47).

⁽⁴⁾ Commission Delegated Regulation (EU) No 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJ L 314, 30.11.2010, p. 64).

⁽⁵⁾ Commission Delegated Regulation (EU) No 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires (OJ L 258, 26.9.2012, p. 1).

7. The Commission shall carry out a review study if it has estimated that the conditions of point (a) or (b) of paragraph 6 are met.

If, for a specific product group, those conditions are not met within eight years after the date of entry into force of the relevant delegated act, the Commission shall identify which barriers, if any, have prevented the label from fulfilling its role.

In the case of new labels it shall carry out a preparatory study based on the indicative list of product groups set out in the working plan.

The Commission shall finalise its review study, present the results and, where appropriate, a draft delegated act to the Consultation Forum within 36 months of the Commission estimating that the conditions referred to in point (a) or (b) of paragraph 6 are met. The Consultation Forum shall discuss the estimate and the review study.

8. Where a label is introduced or rescaled, the Commission shall ensure that no products are expected to fall into energy class A at the moment of the introduction of the label and the estimated time within which a majority of models falls into that class is at least 10 years later.

9. By way of derogation from paragraph 8, where technology is expected to develop more rapidly, requirements shall be laid down so that no products are expected to fall into energy classes A and B at the moment of the introduction of the label.

10. Where, for a given product group, models belonging to energy class E, F or G are no longer allowed to be placed on the market or put into service because of an Ecodesign implementing measure adopted pursuant to Directive 2009/125/EC, the class or classes in question shall be shown on the label in grey as specified in the relevant delegated act. The label with the grey classes shall apply only to new product units placed on the market or put into service.

11. Where, for technical reasons, it is impossible to define seven energy classes that correspond to significant energy and cost savings from a customer's perspective, the label may, by way of derogation from point (14) of Article 2, contain fewer classes. In such cases, the dark green to red spectrum of the label shall be retained.

12. The Commission shall exercise the powers and obligations conferred on it by this Article in accordance with Article 16.

13. Where, pursuant to paragraph 1 or 3, a label is rescaled:

- (a) the supplier shall, when placing a product on the market, provide both the existing and the rescaled labels and the product information sheets to the dealer for a period beginning four months before the date specified in the relevant delegated act for starting the display of the rescaled label.

By way of derogation from the first subparagraph of this point, if the existing and the rescaled label require different testing of the model, the supplier may choose not to supply the existing label with units of models placed on the market or put into service during the four-month period before the date specified in the relevant delegated act for starting the display of the rescaled label if no units belonging to the same model or equivalent models were placed on the market or put into service before the start of the four-month period. In that case, the dealer shall not offer those units for sale before that date. The supplier shall notify the dealer concerned of that consequence as soon as possible, including when it includes such units in its offers to dealers.

- (b) the supplier shall, for products placed on the market or put into service before the four-month period, deliver the rescaled label on request from the dealer in accordance with Article 3(2) as from the start of that period. For such products, the dealer shall obtain a rescaled label in accordance with Article 5(2).

By way of derogation from the first subparagraph of this point:

- (i) a dealer who is unable to obtain a rescaled label in accordance with the first subparagraph of this point for units already in its stock because the supplier has ceased its activities shall be permitted to sell those units exclusively with the non-rescaled label until nine months after the date specified in the relevant delegated act for starting the display of the rescaled label; or

- (ii) if the non-rescaled and the rescaled label require different testing of the model, the supplier is exempt from the obligation to supply a rescaled label for units placed on the market or put into service before the four month period, if no units belonging to same model or equivalent models are placed on the market or put into service after the start of the four-month period. In that case, the dealer shall be permitted to sell those units exclusively with the non-rescaled label until nine months after the date specified in the relevant delegated act for starting the display of the rescaled label.
- (c) the dealer shall replace the existing labels on products on display, both in shops and online, with the rescaled labels within 14 working days after the date specified in the relevant delegated act for starting the display of the rescaled label. The dealer shall not display the rescaled labels before that date.

By way of derogation from points (a), (b) and (c) of this paragraph, delegated acts referred to in point (e) of Article 16(3) may provide for specific rules for energy labels printed on the packaging.

Article 12

Product database

1. The Commission shall establish and maintain a product database consisting of a public part, a compliance part and an online portal giving access to those two parts.

The product database shall not replace or modify the responsibilities of the market surveillance authorities.

2. The product database shall serve the following purposes:

- (a) to support market surveillance authorities in carrying out their tasks under this Regulation and the relevant delegated acts, including enforcement thereof;
- (b) to provide the public with information about products placed on the market and their energy labels, and product information sheets;
- (c) to provide the Commission with up-to-date energy efficiency information for products for reviewing energy labels;

3. The public part of the database and the online portal shall contain the information set out in points 1 and 2 of Annex I respectively which shall be made publicly available. The public part of the database shall meet the criteria in paragraph 7 of this Article, and the functional criteria set out in point 4 of Annex I.

4. The compliance part of the product database shall be accessible only to market surveillance authorities and to the Commission and shall contain the information set out in point 3 of Annex I, including the specific parts of the technical documentation as referred to in paragraph 5 of this Article. The compliance part shall meet the criteria in paragraphs 7 and 8 of this Article, and the functional criteria set out in point 4 of Annex I.

5. The mandatory specific parts of the technical documentation that the supplier shall enter into the database shall cover only:

- (a) a general description of the model, sufficient for it to be unequivocally and easily identified;
- (b) references to the harmonised standards applied or other measurement standards used;
- (c) specific precautions that shall be taken when the model is assembled, installed, maintained or tested;
- (d) the measured technical parameters of the model;
- (e) the calculations performed with the measured parameters;
- (f) testing conditions if not described sufficiently in point (b).

In addition, the supplier may upload additional parts of the technical documentation on a voluntary basis into the database.

6. When data other than those specified in paragraph 5 or not available in the public part of the database would become necessary for market surveillance authorities and/or the Commission for carrying out their tasks under this Regulation, they shall be able to obtain them from the supplier on request.

7. The product database shall be established in accordance with the following criteria:
 - (a) minimising the administrative burden for the supplier and other database users;
 - (b) user-friendliness and cost-effectiveness; and
 - (c) automatic avoidance of redundant registration.
8. The compliance part of the database shall be established in accordance with the following criteria:
 - (a) protection from unintended use and the safeguarding of confidential information by way of strict security arrangements;
 - (b) access rights based on the need-to-know principle;
 - (c) processing of personal data in accordance with Regulation (EC) No 45/2001 and Directive 95/46/EC, as applicable;
 - (d) limitation of data access in scope to prevent copying larger data sets;
 - (e) traceability of data access for the supplier with regard to its technical documentation.
9. The data in the compliance part of the database shall be treated in accordance with Commission Decision (EU, Euratom) 2015/443 ⁽¹⁾. In particular, the specific cyber-security arrangements of Commission Decision (EU, Euratom) 2017/46 ⁽²⁾ and its implementing rules shall apply. The confidentiality level shall reflect the consequential harm resulting from disclosure of the data to unauthorised persons.
10. The supplier shall have access and editing rights to the information it enters in the product database pursuant to Article 4(1) and (2). A record of changes shall be kept for market surveillance purposes, keeping track of the dates of any editing.
11. Customers using the public part of the product database shall be able to easily identify the best energy class populated for each product group, allowing them to compare model characteristics and to choose the most energy efficient products.
12. The Commission shall be empowered to specify, by means of implementing acts, the operational details of the product database. After consulting the Consultation Forum provided for in Article 14, those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).

Article 13

Harmonised standards

1. After the adoption of a delegated act pursuant to Article 16 of this Regulation setting specific labelling requirements the Commission shall, in accordance with Regulation (EU) No 1025/2012, publish references to the harmonised standards that satisfy the relevant measurement and calculation requirements of the delegated act in the *Official Journal of the European Union*.
2. Where such harmonised standards are applied during the conformity assessment of a product, the model shall be presumed to be in conformity with the relevant measurement and calculation requirements of the delegated act.
3. Harmonised standards shall aim to simulate real-life usage as far as possible while maintaining a standard test method. Test methods shall furthermore take into account the associated costs for industry and small and medium sized enterprises (SMEs).
4. Measurement and calculation methods included in the harmonised standards shall be reliable, accurate and reproducible, and aligned with the requirements of Article 3(4) and (5).

⁽¹⁾ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁽²⁾ Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission (OJ L 6, 11.1.2017, p. 40).

*Article 14***Consultation Forum**

1. In the conduct of its activities under this Regulation the Commission shall ensure, in respect of each delegated act adopted pursuant to Article 16 and each implementing act adopted pursuant to Article 12(12) of this Regulation, a balanced participation of Member States' representatives and interested parties concerned with the product group in question, such as industry, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups and consumer organisations. For this purpose, the Commission shall establish a Consultation Forum in which these parties shall meet. The Consultation Forum shall be combined with the Consultation Forum referred to in Article 18 of Directive 2009/125/EC.

2. Where appropriate, when preparing delegated acts, the Commission shall test the design and content of the labels for specific product groups with representative groups of Union customers to ensure their clear understanding of the labels.

*Article 15***Working plan**

The Commission shall, after consulting the Consultation Forum referred to in Article 14, establish a long-term working plan which shall be made publicly available. The working plan shall set out an indicative list of product groups which are considered to be priorities for the adoption of delegated acts. The working plan shall also set out plans for the revision and rescaling of labels for product groups in accordance with Article 11(4) and (5), with the exception of the rescaling of labels which were in force at 1 August 2017 for which the rescaling is provided for in Article 11 of this Regulation.

The Commission shall update the working plan periodically after consulting the Consultation Forum. The working plan may be combined with the working plan required by Article 16 of Directive 2009/125/EC and shall be reviewed every three years.

The Commission shall inform the European Parliament and the Council annually of the progress made in the implementation of the working plan.

*Article 16***Delegated Acts**

1. The Commission is empowered to adopt delegated acts in accordance with Article 17 in order to supplement this Regulation by establishing detailed requirements relating to labels for specific product groups.

2. The delegated acts referred to in paragraph 1 shall specify product groups which satisfy the following criteria:

- (a) according to the most recently available figures and considering the quantities placed on the Union market, the product group shall have significant potential for saving energy and where relevant, other resources;
- (b) within the product group, models with equivalent functionality shall differ significantly in the relevant performance levels;
- (c) there shall be no significant negative impact as regards the affordability and the life cycle cost of the product group;
- (d) the introduction of energy labelling requirements for a product group shall not have a significant negative impact on the functionality of the product during use;

3. Delegated acts relating to specific product groups shall specify, in particular:

- (a) the definition of the specific product group falling under the definition of 'energy-related product' set out in point 1 of Article 2 which is to be covered by the detailed labelling requirements;

- (b) the design and content of the label, including a scale showing consumption of energy consisting of A to G, which as far as possible shall have uniform design characteristics across product groups and shall in all cases be clear and legible. The A to G steps of the classification shall correspond to significant energy and cost savings and appropriate product differentiation from the customer's perspective. It shall also specify how the A to G steps of the classification, and where applicable energy consumption is displayed in a prominent position on the label;
- (c) where appropriate, the use of other resources and supplementary information concerning the product, in which case the label shall emphasise the energy efficiency of the product. Supplementary information shall be unambiguous and with no negative impact on the clear intelligibility and effectiveness of the label as a whole towards customers. It shall be based on data relating to physical product characteristics that are measurable and verifiable by market surveillance authorities;
- (d) where appropriate, the inclusion of a reference in the label allowing customers to identify products that are energy smart, that is to say, capable of automatically changing and optimising their consumption patterns in response to external stimuli (such as signals from or via a central home energy managing system, price signals, direct control signals, local measurement) or capable of delivering other services which increase energy efficiency and the up-take of renewable energy, with the aim to improve the environmental impact of energy use over the whole energy system;
- (e) the locations where the label shall be displayed, such as attached to the product unit where no damage is caused to it, printed on the packaging, provided in electronic format or displayed online, taking into account the requirements of Article 3(1), and the implications for customers, suppliers and dealers;
- (f) where appropriate, electronic means for labelling products;
- (g) the manner in which the label and product information sheet are to be provided in the case of distance selling;
- (h) the required contents and, where appropriate, the format and other details concerning the product information sheet and the technical documentation, including the possibility to enter the parameters of the product information sheet into the database in accordance with Article 3(1);
- (i) the verification tolerances to be used by Member States when verifying compliance with the requirements;
- (j) how the energy class and the range of the efficiency classes available on the label shall be included in visual advertisements and technical promotional material, including legibility and visibility;
- (k) the measurement and calculation methods referred to in Article 13, to be used to determine label and product information sheet information, including the definition of the energy efficiency index (EEI), or equivalent parameter;
- (l) whether for larger appliances a higher level of energy efficiency is required to reach a given energy class;
- (m) the format of any additional references on the label allowing customers to access through electronic means more detailed information on the product performance included in the product information sheet. The format of those references may take the form of a website address, a dynamic quickresponse code (QR code), a link on online labels or any other appropriate consumer-oriented means;
- (n) how, where appropriate energy classes describing the product's energy consumption during use should be shown on the product's interactive display;
- (o) the date for the evaluation and possible consequent revision of the delegated act;
- (p) where appropriate, differences in energy performances in different climatic regions;
- (q) as regards the requirement of keeping information in the compliance part of the database in Article 4(6), a retention period of less than 15 years, where appropriate in relation to the average lifespan of the product.

4. The Commission shall adopt a separate delegated act for each specific product group. When the Commission decides on the timing for the adoption of the delegated act for a specific product group, it shall not delay the adoption on grounds related to the adoption of a delegated act concerning another specific product group, unless exceptional circumstances warrant otherwise.

5. The Commission shall keep an updated inventory of all relevant delegated acts, as well as of the measures developing Directive 2009/125/EC, including complete references to all relevant harmonised standards.

*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 Article 11(4) and (5) and Article 16 shall be conferred on the Commission for a period of six years from 1 August 2017. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the six-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 11(4) and (5) and Article 16 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 on the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. The consultation of Member States' experts shall take place after the consultation pursuant to Article 14.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 11(4) and (5) and Article 16 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 may 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 committee established by Article 19 of Directive 2009/125/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 19***Evaluation and report**

By 2 August 2025, the Commission shall assess the implementation of this Regulation and submit a report to the European Parliament and to the Council. That report shall assess how effectively this Regulation and the delegated and implementing acts adopted pursuant thereto have allowed customers to choose more efficient products, taking into account its impacts on business, energy consumption, greenhouse gas emissions, market surveillance activities, and the cost to establish and maintain the database.

*Article 20***Repeal and transitional measures**

1. Directive 2010/30/EU is repealed with effect from 1 August 2017.
2. References to the repealed Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex II.

3. For models, the units of which were placed on the market or put into service in accordance with Directive 2010/30/EU before 1 August 2017, the supplier shall, for a period ending five years after the final unit was manufactured, make an electronic version of the technical documentation available for inspection within 10 days of a request received from market surveillance authorities or the Commission.

4. Delegated acts adopted pursuant to Article 10 of Directive 2010/30/EU and Directive 96/60/EC shall remain in force until they are repealed by a delegated act adopted pursuant to Article 16 of this Regulation covering the relevant product group.

Obligations under this Regulation shall apply in relation to product groups covered by delegated acts adopted pursuant to Article 10 of Directive 2010/30/EU and by Directive 96/60/EC.

5. With regard to product groups already covered by delegated acts adopted pursuant to Article 10 of Directive 2010/30/EU, or by Directive 96/60/EC, where the Commission adopts delegated acts pursuant to Article 16 of this Regulation, the energy efficiency classification established by Directive 2010/30/EU may, by way of derogation from point (b) of Article 16(3) of this Regulation, continue to apply until the date on which the delegated acts introducing rescaled labels pursuant to Article 11 of this Regulation become applicable.

Article 21

Entry into force and application

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

It shall apply from 1 August 2017.

By way of derogation from the second paragraph, Article 4 concerning the obligations of suppliers in relation to the product database shall apply from 1 January 2019.

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

Done at Strasbourg, 4 July 2017.

For the European Parliament
The President
A. TAJANI

For the Council
The President
M. MAASIKAS

ANNEX I

INFORMATION TO BE ENTERED IN THE PRODUCT DATABASE AND FUNCTIONAL CRITERIA FOR THE PUBLIC PART OF THE DATABASE

1. Information to be entered in the public part of the database by the supplier:
 - (a) the name or trademark, address, contact details and other legal identification of the supplier;
 - (b) the model identifier;
 - (c) the label in electronic format;
 - (d) the energy efficiency class(es) and other parameters of the label;
 - (e) the parameters of the product information sheet in electronic format.
 2. Information to be entered in the online portal by the Commission:
 - (a) contact details of Member State market surveillance authorities;
 - (b) working-plan pursuant to Article 15;
 - (c) minutes of the Consultation Forum;
 - (d) an inventory of delegated and implementing acts, transitional measurement and calculation methods and applicable harmonised standards.
 3. Information to be entered in the compliance part of the database by the supplier:
 - (a) the model identifier of all equivalent models already placed on the market;
 - (b) the technical documentation as specified in Article 12(5).

The Commission shall provide a link to the Information and Communication System on Market Surveillance (ICSMS), which includes the outcome of compliance checks performed by Member States and provisional measures adopted.
 4. Functional criteria for the public part of the product database:
 - (a) each product model shall be retrievable as an individual record;
 - (b) it shall generate a single viewable, downloadable and printable file of the energy label of each model, as well as the linguistic versions of the complete product information sheet, in all official languages of the Union;
 - (c) the information shall be machine readable, sortable and searchable, respecting open standards for third party use, free of charge;
 - (d) an online helpdesk or contact point for the supplier shall be established and maintained, clearly referenced on the portal.
-

ANNEX II

CORRELATION TABLE

Directive 2010/30/EU	This Regulation
Article 1(1)	Article 1(1)
Article 1(2)	—
Article 1(3)(a) and (b)	Article 1(2)(a) and (b)
Article 1(3)(c)	—
Article 2	Article 2
Article 2(a)	Article 2, point 1
Article 2(b)	Article 2, point 22
Article 2(c)	—
Article 2(d)	—
Article 2(e)	—
Article 2(f)	—
Article 2(g)	Article 2, point 13
Article 2(h)	Article 2, point 14
Article 2(i)	Article 2, point 8
Article 2(j)	Article 2, point 9
Article 2(k)	—
Article 3	Article 7
Article 3(1)(a)	Article 7(3)
Article 3(1)(b)	Article 6(c)
Article 3(1)(c)	Article 7(3)
Article 3(1)(d)	Article 8(2)
Article 3(2)	Article 6(b) and Article 9
Article 3(3)	Article 8(1)
Article 3(4)	—
Article 4(a)	Article 5
Article 4(b)	—
Article 4(c)	Article 6(a)
Article 4(d)	Article 6(a)
Article 5	Article 3(1) and Article 6
Article 5(a)	Article 3(1)(a)
Article 5(b), points (i), (ii), (iii) and (iv)	Article 4(6) and Annex I
Article 5(c)	Article 4(6)
Article 5(d)	Article 3(1)
Article 5(d), second subparagraph	Article 3(1)
Article 5(e)	Article 3(1)
Article 5(f)	—
Article 5(g)	Article 3(1)
Article 5(h)	—
Article 6	Article 5(1) and Article 6
Article 6(a)	Article 5(1)(a)
Article 6(b)	Article 5(1)(a)

Directive 2010/30/EU	This Regulation
Article 7	Article 16(3)(e) and (g)
Article 8(1)	Article 7(1)
Article 8(2)	—
Article 9(3)	Article 7(2)
Article 9(4)	—
Article 10(1)	Article 16
Article 10(1), second paragraph	Article 16(2)
Article 10(1), third paragraph	—
Article 10(1), fourth paragraph	Article 16(3)(c)
Article 10(2)(a)	Article 16(2)(a)
Article 10(2)(b)	Article 16(2)(b)
Article 10(2)(c)	—
Article 10(3)(a)	—
Article 10(3)(b)	—
Article 10(3)(c)	Article 14
Article 10(3)(d)	—
Article 10(4)(a)	Article 16(3)(a)
Article 10(4)(b)	Article 16(3)(k)
Article 10(4)(c)	Article 16(3)(h)
Article 10(4)(d)	Article 16(3)(b)
Article 10(4)(d), second paragraph	—
Article 10(4)(d), third paragraph	Article 16(3)(b)
Article 10(4)(d), fourth paragraph	Article 11(3)
Article 10(4)(d), fifth paragraph	Article 11
Article 10(4)(e)	Article 16(3)(e)
Article 10(4)(f)	Article 16(3)(h)
Article 10(4)(g)	Article 16(3)(j)
Article 10(4)(h)	Article 11(3)
Article 10(4)(i)	Article 16(3)(i)
Article 10(4)(j)	Article 16(3)(o)
Article 11(1)	Article 17(2)
Article 11(2)	Article 17(5)
Article 11(3)	Article 17(1)
Article 12(1)	Article 17(3)
Article 12(2)	—
Article 12(3)	Article 17(3)
Article 13	Article 17(6)
Article 14	Article 19
Article 15	Article 7(4)
Article 16	—
Article 17	Article 20
Article 18	Article 21
Article 19	Article 21
Annex I	—
—	Annex I
Annex II	Annex II

REGULATION (EU) 2017/1370 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 4 July 2017
amending Council Regulation (EC) No 1683/95 laying down a uniform format for visas

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)(a) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) Council Regulation (EC) No 1683/95 ⁽²⁾ laid down a uniform format for visas.
- (2) The common design for the visa sticker, which has been in circulation for 20 years, is considered to be compromised in view of serious incidents of counterfeiting and fraud.
- (3) A new common design should therefore be established with more modern security features to render the visa sticker more secure and to prevent forgery.
- (4) Upon request from Ireland or the United Kingdom, the Commission should enter into appropriate arrangements with the requesting Member State to exchange technical information with that Member State for the purposes of issuing national visas by that Member State.
- (5) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (6) 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 ⁽³⁾; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (7) 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 ⁽⁴⁾; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (8) This Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, of Article 4(1) of the 2005 Act of Accession and of Article 4(1) of the 2011 Act of Accession.
- (9) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽⁵⁾ which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC ⁽⁶⁾.

⁽¹⁾ Position of the European Parliament of 1 June 2017 (not yet published in the Official Journal) and decision of the Council of 20 June 2017.

⁽²⁾ Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1).

⁽³⁾ 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).

⁽⁴⁾ 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).

⁽⁵⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁶⁾ 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 *acquis* (OJ L 176, 10.7.1999, p. 31).

- (10) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁾, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽²⁾.
- (11) 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 *acquis* ⁽³⁾, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ⁽⁴⁾.
- (12) Regulation (EC) No 1683/95 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1683/95 is amended as follows:

- (1) in Article 7, the following paragraphs are added:

'Upon request from Ireland or the United Kingdom, the Commission shall enter into appropriate arrangements with the requesting Member State to exchange technical information referred to in Article 2 for the purposes of issuing national visas by the requesting Member State.

Costs to which Ireland and the United Kingdom do not contribute in accordance with Article 5 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 Treaty on European Union and to the Treaty on the Functioning of the European Union, shall be borne by Ireland or the United Kingdom respectively if they make such a request.'

- (2) the Annex is replaced by the image and the text set out in the Annex to this Regulation.

Article 2

Visa stickers conforming to the specifications set out in the Annex to Regulation (EC) No 1683/95 and which are applicable until the date referred to in the second paragraph of Article 3 of this Regulation may be used for visas issued during a period of six months after that date.

Article 3

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

Member States shall apply this Regulation at the latest 15 months after the adoption of the further technical specifications referred to in Article 2 of Regulation (EC) No 1683/95.

⁽¹⁾ OJ L 53, 27.2.2008, p. 52.

⁽²⁾ 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).

⁽³⁾ OJ L 160, 18.6.2011, p. 21.

⁽⁴⁾ 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).

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

Done at Strasbourg, 4 July 2017.

For the European Parliament

The President

A. TAJANI

For the Council

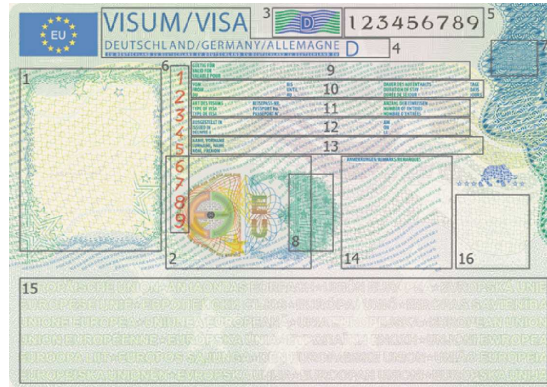
The President

M. MAASIKAS

ANNEX

The Annex to Regulation (EC) No 1683/95 is replaced by the following:

‘ANNEX



Security features

1. An integrated colour portrait of the holder shall be produced to high security standards.
2. A diffractive optically variable device (“Kinegram” or equivalent) shall appear in this space. Depending on the angle of view, the letters “EU”, “EUE” and kinematic guilloche lines shall become visible in various sizes and colours.
3. This box shall contain the three-letter country code as set out in ICAO Document 9303 on machine-readable travel documents of the issuing Member State, or the acronym “BNL” if issued by Belgium, Luxembourg or the Netherlands, in optically variable colouring. Depending on the angle of view, it shall appear in different colours.
4. The following shall appear, in capital letters, in this space:
 - (a) the word “VISA”. The issuing Member State may include the equivalent term in another official language of the institutions of the Union;
 - (b) the name of the issuing Member State, in English, French and another official language of the institutions of the Union;
 - (c) the three-letter country code of the issuing Member State, as set out in ICAO Document 9303.
5. This box shall contain the nine-digit national number of the visa sticker in horizontal orientation, which shall be pre-printed in black. A special font type shall be used.
6. This box shall contain the nine-digit national number of the visa sticker in vertical orientation, which shall be pre-printed in red. A special font type shall be used, different from that used in box 5. The “number of the visa sticker” is the three-letter country code as set out in ICAO Document 9303 and the national number as referred to in boxes 5 and 6.
7. This box shall contain the letters “EU” with a latent image effect. Those letters shall appear dark when tilted away from the viewer and light when then turned by 90°.
8. This box shall contain the code as referred to in box 3 with a latent image effect. That code shall appear dark when tilted away from the viewer and light when then turned by 90°.

Sections to be completed

The captions for the boxes shall appear in English and French. The issuing Member State may add a translation in another official language of the institutions of the Union.

9. This box shall begin with the words “valid for”. The issuing authority shall indicate the territory in which the visa holder is entitled to travel.

10. This box shall begin with the word “from” and the word “until” shall appear further along the line. The issuing authority shall indicate the period of the visa holder’s stay as authorised by the visa. Further along the line the words “duration of stay” (i.e. the duration of the applicant’s intended stay) and again “days” shall appear.
 11. This box shall begin with the words “type of visa”. The issuing authority shall indicate the category of visa. Further along the line the words “Passport No” and “number of entries” shall appear.
 12. This box shall begin with the words “issued in” and shall be used to indicate the location of the issuing authority. Further along the line the word “on” (after which the date of issue shall be filled in by the issuing authority) shall appear.
 13. This box shall begin with the words “Surname, Name”.
 14. This box shall begin with the word “remarks”. The area below the word “remarks” shall be used by the issuing authority to indicate any further information.
 15. This box shall contain the relevant machine-readable information to facilitate external border controls. The machine-readable zone shall contain a printed text in the visible background printing with the words “European Union” in all the official languages of the institutions of the Union. This text shall not affect the technical features of the machine-readable zone or its ability to be read.
 16. This box shall be reserved for the possible addition of a common 2D barcode.’
-

DIRECTIVES

DIRECTIVE (EU) 2017/1371 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law

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 83(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 Committee of the Regions ⁽¹⁾

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

Whereas:

- (1) The protection of the Union's financial interests concerns not only the management of budget appropriations, but extends to all measures which negatively affect or which threaten to negatively affect its assets and those of the Member States, to the extent that those measures are of relevance to Union policies.
- (2) The Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests of 26 July 1995 ⁽³⁾, including the Protocols thereto of 27 September 1996 ⁽⁴⁾, of 29 November 1996 ⁽⁵⁾ and of 19 June 1997 ⁽⁶⁾ (the 'Convention') establishes minimum rules relating to the definition of criminal offences and sanctions in the area of fraud affecting the Union's financial interests. The Member States drew up the Convention, in which it was noted that fraud affecting Union revenue and expenditure in many cases was not confined to a single country and was often committed by organised criminal networks. On that basis, it was already recognised in the Convention that the protection of the Union's financial interests called for the criminal prosecution of fraudulent conduct injuring those interests. In parallel, Council Regulation (EC, Euratom) No 2988/95 ⁽⁷⁾ was adopted. That Regulation lays down general rules relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Union law while, at the same time, referring to sectoral rules in that area, fraudulent actions as defined in the Convention and the application of the Member States' criminal law and proceedings.
- (3) Union policy in the area of the protection of the Union's financial interests has already been the subject of harmonisation measures such as Regulation (EC, Euratom) No 2988/95. In order to ensure the implementation of Union policy in this area, it is essential to continue to approximate the criminal law of the Member States by complementing the protection of the Union's financial interests under administrative and civil law for the most serious types of fraud-related conduct in that field, whilst avoiding inconsistencies, both within and among those areas of law.
- (4) The protection of the Union's financial interests calls for a common definition of fraud falling within the scope of this Directive, which should cover fraudulent conduct with respect to revenues, expenditure and assets at the

⁽¹⁾ OJ C 391, 18.12.2012, p. 134.

⁽²⁾ Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal) and position of the Council at first reading of 25 April 2017 (OJ C 184, 9.6.2017, p. 1). Position of the European Parliament of 5 July 2017 (not yet published in the Official Journal).

⁽³⁾ OJ C 316, 27.11.1995, p. 48.

⁽⁴⁾ OJ C 313, 23.10.1996, p. 1.

⁽⁵⁾ OJ C 151, 20.5.1997, p. 1.

⁽⁶⁾ OJ C 221, 19.7.1997, p. 11.

⁽⁷⁾ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312, 23.12.1995, p. 1).

expense of the general budget of the European Union (the 'Union budget'), including financial operations such as borrowing and lending activities. The notion of serious offences against the common system of value added tax ('VAT') as established by Council Directive 2006/112/EC ⁽¹⁾ (the 'common VAT system') refers to the most serious forms of VAT fraud, in particular carousel fraud, VAT fraud through missing traders, and VAT fraud committed within a criminal organisation, which create serious threats to the common VAT system and thus to the Union budget. Offences against the common VAT system should be considered to be serious where they are connected with the territory of two or more Member States, result from a fraudulent scheme whereby those offences are committed in a structured way with the aim of taking undue advantage of the common VAT system and the total damage caused by the offences is at least EUR 10 000 000. The notion of total damage refers to the estimated damage that results from the entire fraud scheme, both to the financial interests of the Member States concerned and to the Union, excluding interest and penalties. This Directive aims to contribute to the efforts to fight those criminal phenomena.

- (5) When the Commission implements the Union budget under shared or indirect management, it may delegate budget implementation tasks to the Member States or entrust them to bodies, offices or agencies established pursuant to the Treaties or to other entities or persons. In the event of such shared or indirect management, the Union's financial interests should benefit from the same level of protection as they do when under the direct management of the Commission.
- (6) For the purposes of this Directive, procurement-related expenditure is any expenditure in connection with the public contracts determined by Article 101(1) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽²⁾.
- (7) Union money laundering law is fully applicable to money laundering involving property derived from the criminal offences covered by this Directive. A reference made to that law should ensure that the sanctioning regime introduced by this Directive applies to all serious cases of criminal offences against the Union's financial interests.
- (8) Corruption constitutes a particularly serious threat to the Union's financial interests, which can in many cases also be linked to fraudulent conduct. Since all public officials have a duty to exercise judgment or discretion impartially, the giving of bribes in order to influence a public official's judgment or discretion and the taking of such bribes should be included in the definition of corruption, irrespective of the law or regulations applicable in the particular official's country or to the international organisation concerned.
- (9) The Union's financial interests can be negatively affected by certain types of conduct of a public official who is entrusted with the management of funds or assets, whether he or she is in charge or acts in a supervisory capacity, which types of conduct aim at misappropriating funds or assets, contrary to the intended purpose and whereby the Union's financial interests are damaged. There is therefore a need to introduce a precise definition of criminal offences covering such conduct.
- (10) As regards the criminal offences of passive corruption and misappropriation, there is a need to include a definition of public officials covering all relevant officials, whether holding a formal office in the Union, in the Member States or in third countries. Private persons are increasingly involved in the management of Union funds. In order to protect Union funds adequately from corruption and misappropriation, the definition of 'public official' therefore needs to cover persons who do not hold formal office but who are nonetheless assigned and exercise, in a similar manner, a public service function in relation to Union funds, such as contractors involved in the management of such funds.
- (11) With regard to the criminal offences provided for in this Directive, the notion of intention must apply to all the elements constituting those criminal offences. The intentional nature of an act or omission may be inferred from objective, factual circumstances. Criminal offences which do not require intention are not covered by this Directive.

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁽²⁾ 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).

- (12) This Directive does not oblige Member States to provide for sanctions of imprisonment for the commission of criminal offences that are not of a serious nature, in cases where intent is presumed under national law.
- (13) Some criminal offences against the Union's financial interests are in practice often closely related to the criminal offences covered by Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) and Union legislative acts that are based on that provision. Coherence between such legislative acts and this Directive should therefore be ensured in the wording of this Directive.
- (14) Insofar as the Union's financial interests can be damaged or threatened by conduct attributable to legal persons, legal persons should be liable for the criminal offences, as defined in this Directive, which are committed on their behalf.
- (15) In order to ensure equivalent protection of the Union's financial interests throughout the Union by means of measures which should act as a deterrent, Member States should provide for certain types and levels of sanctions when the criminal offences defined in this Directive are committed. The levels of sanctions should not go beyond what is proportionate for the offences.
- (16) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent rules for criminal offences affecting the Union's financial interests.
- (17) This Directive does not affect the proper and effective application of disciplinary measures or penalties other than of a criminal nature. Sanctions that cannot be equated to criminal sanctions, which are imposed on the same person for the same conduct, can be taken into account when sentencing that person for a criminal offence defined in this Directive. For other sanctions, the principle of prohibition of being tried or punished twice in criminal proceedings for the same criminal offence (*ne bis in idem*) should be fully respected. This Directive does not criminalise behaviour which is not also subject to disciplinary penalties or other measures concerning a breach of official duties, in cases where such disciplinary penalties or other measures can be applied to the persons concerned.
- (18) Sanctions with regard to natural persons should, in certain cases, provide for a maximum penalty of at least four years of imprisonment. Such cases should include at least those involving considerable damage done or advantage gained whereby the damage or advantage should be presumed to be considerable when it involves more than EUR 100 000. Where a Member State's law does not provide for an explicit threshold for considerable damage or advantage as a basis for a maximum penalty, the Member State should ensure that the amount of damage or advantage is taken into account by its courts in the determination of sanctions for fraud and other criminal offences affecting the Union's financial interests. This Directive does not prevent Member States from providing for other elements which would indicate the serious nature of a criminal offence, for instance when the damage or advantage is potential, but of very considerable nature. However, for offences against the common VAT system, the threshold as of which the damage or advantage should be presumed to be considerable is, in conformity with this Directive, EUR 10 000 000. The introduction of minimum levels of maximum imprisonment sanctions is necessary in order to ensure equivalent protection of the Union's financial interests throughout the Union. The sanctions are intended to serve as a strong deterrent for potential offenders, with effect throughout the Union.
- (19) Member States should ensure that the fact that a criminal offence is committed within a criminal organisation as defined in Council Framework Decision 2008/841/JHA ⁽¹⁾ is considered to be an aggravating circumstance in accordance with the applicable rules established by their legal systems. They should ensure that the aggravating circumstance is made available to judges for their consideration when sentencing offenders, although there is no obligation on judges to take the aggravating circumstance into account in their sentence. Member States are not obliged to provide for the aggravating circumstance where national law provides for the criminal offences as defined in Framework Decision 2008/841/JHA to be punishable as a separate criminal offence and this may lead to more severe sanctions.
- (20) Given, in particular, the mobility of perpetrators and of the proceeds stemming from illegal activities at the expense of the Union's financial interests, as well as the complex cross-border investigations which this entails, each Member State should establish its jurisdiction in order to enable it to counter such activities. Each Member State should thereby ensure that its jurisdiction covers criminal offences which are committed using information and communication technology accessed from its territory.

⁽¹⁾ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

- (21) Given the possibility of multiple jurisdictions for cross-border criminal offences falling under the scope of this Directive, the Member States should ensure that the principle of *ne bis in idem* is respected in full in the application of national law transposing this Directive.
- (22) Member States should lay down rules concerning limitation periods necessary in order to enable them to counter illegal activities at the expense of the Union's financial interests. In cases of criminal offences punishable by a maximum sanction of at least four years of imprisonment, the limitation period should be at least five years from the time when the criminal offence was committed. This should be without prejudice to those Member States which do not set limitation periods for investigation, prosecution and enforcement.
- (23) Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters and to other rules under Union law, in particular under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽¹⁾, there is a need for appropriate provision to be made for cooperation to ensure effective action against the criminal offences defined in this Directive affecting the Union's financial interests, including exchange of information between the Member States and the Commission as well as technical and operational assistance provided by the Commission to the competent national authorities as they may need to facilitate coordination of their investigations. Such assistance should not entail the participation of the Commission in the investigation or prosecution procedures of individual criminal cases conducted by the national authorities. The Court of Auditors and the auditors responsible for auditing the budgets of the Union institutions, bodies, offices and agencies should disclose to the European Anti-Fraud Office (OLAF) and to other competent authorities any fact which could be qualified as a criminal offence under this Directive, and Member States should ensure that national audit bodies within the meaning of Article 59 of Regulation (EU, Euratom) No 966/2012 do the same, in accordance with Article 8 of Regulation (EU, Euratom) No 883/2013.
- (24) The Commission should report to the European Parliament and to the Council on the measures taken by Member States to comply with this Directive. The report may be accompanied, if necessary, by proposals taking into consideration possible evolutions, in particular regarding the financing of the Union budget.
- (25) The Convention should be replaced by this Directive for the Member States bound by it.
- (26) For the application of point (d) of Article 3(4) of Directive (EU) 2015/849 of the European Parliament and of the Council ⁽²⁾, the reference to serious fraud affecting the Union's financial interests as defined in Article 1(1) and Article 2(1) of the Convention should be construed as fraud affecting the Union's financial interests as defined in Article 3 and in Article 7(3) of this Directive or, as regards offences against the common VAT system, as defined in Article 2(2) of this Directive.
- (27) Proper implementation of this Directive by the Member States includes the processing of personal data by the competent national authorities, and the exchange of such data between Member States on the one hand, and between competent Union bodies on the other. The processing of personal data at national level between national competent authorities should be regulated by the *acquis* of the Union. The exchange of personal data between Member States should be carried out in accordance with Directive (EU) 2016/680 of the European Parliament and of the Council ⁽³⁾. To the extent that the Union institutions, bodies, offices and agencies process personal data, Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽⁴⁾ or, where applicable, other Union legal acts regulating the processing of personal data by those bodies, offices and agencies as well as the applicable rules concerning the confidentiality of judicial investigations, should apply.

⁽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⁾ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

⁽³⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

⁽⁴⁾ 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).

- (28) The intended dissuasive effect of the application of criminal law sanctions requires particular caution with regard to fundamental rights. This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the 'Charter') and in particular the right to liberty and security, the protection of personal data, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the principles of the legality and proportionality of criminal offences and sanctions, as well as the principle of *ne bis in idem*. This Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.
- (29) Member States should take the necessary measures to ensure the prompt recovery of sums and their transfer to the Union budget, without prejudice to the relevant Union sector-specific rules on financial corrections and recovery of amounts unduly spent.
- (30) Administrative measures and penalties play an important role in the protection of the Union's financial interests. This Directive does not exempt Member States from the obligation to apply and implement administrative Union measures and penalties within the meaning of Articles 4 and 5 of Regulation (EC, Euratom) No 2988/95.
- (31) This Directive should oblige Member States to provide in their national law for criminal penalties in respect of the acts of fraud and fraud-related criminal offences affecting the Union's financial interests to which this Directive applies. This Directive should not create obligations regarding the application of such penalties or any other available system of law enforcement to individual cases. Member States may in principle continue to apply administrative measures and penalties in parallel in the area covered by this Directive. In the application of national law transposing this Directive, Member States should, however, ensure that the imposition of criminal sanctions for criminal offences in accordance with this Directive and of administrative measures and penalties does not lead to a breach of the Charter.
- (32) This Directive should not affect the competences of Member States to structure and organise their tax administration as they see fit to ensure the correct determination, assessment and collection of value added tax, as well as the effective application of VAT law.
- (33) This Directive applies without prejudice to the provisions on the lifting of the immunities contained in the TFEU, Protocol No 3 on the Statute of the Court of Justice of the European Union and Protocol No 7 on the Privileges and Immunities of the European Union, annexed to the TFEU and to the Treaty on European Union (TEU), and the texts implementing them, or similar provisions incorporated in national law. In the transposition of this Directive into national law as well as in the application of national law transposing this Directive, those privileges and immunities, including the respect for the freedom of the Member's mandate, are fully taken into account.
- (34) This Directive is without prejudice to the general rules and principles of national criminal law on the application and execution of sentences in accordance with the concrete circumstances in each individual case.
- (35) Since the objective of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (36) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified its wish to take part in the adoption and application of this Directive.
- (37) 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 Directive and is not bound by it or subject to its application.
- (38) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(39) The European Court of Auditors has been consulted and has adopted an opinion ⁽¹⁾,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SUBJECT MATTER, DEFINITIONS AND SCOPE

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions with regard to combatting fraud and other illegal activities affecting the Union's financial interests, with a view to strengthening protection against criminal offences which affect those financial interests, in line with the *acquis* of the Union in this field.

Article 2

Definitions and scope

1. For the purposes of this Directive, the following definitions apply:
 - (a) 'Union's financial interests' means all revenues, expenditure and assets covered by, acquired through, or due to:
 - (i) the Union budget;
 - (ii) the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored by them;
 - (b) 'legal person' means an entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.
2. In respect of revenue arising from VAT own resources, this Directive shall apply only in cases of serious offences against the common VAT system. For the purposes of this Directive, offences against the common VAT system shall be considered to be serious where the intentional acts or omissions defined in point (d) of Article 3(2) are connected with the territory of two or more Member States of the Union and involve a total damage of at least EUR 10 000 000.
3. The structure and functioning of the tax administration of the Member States are not affected by this Directive.

TITLE II

CRIMINAL OFFENCES WITH REGARD TO FRAUD AFFECTING THE UNION'S FINANCIAL INTERESTS

Article 3

Fraud affecting the Union's financial interests

1. Member States shall take the necessary measures to ensure that fraud affecting the Union's financial interests constitutes a criminal offence when committed intentionally.
2. For the purposes of this Directive, the following shall be regarded as fraud affecting the Union's financial interests:
 - (a) in respect of non-procurement-related expenditure, any act or omission relating to:
 - (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
 - (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
 - (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted;

⁽¹⁾ OJ C 383, 12.12.2012, p. 1.

- (b) in respect of procurement-related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, any act or omission relating to:
 - (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
 - (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
 - (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;
- (c) in respect of revenue other than revenue arising from VAT own resources referred to in point (d), any act or omission relating to:
 - (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf;
 - (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
 - (iii) misapplication of a legally obtained benefit, with the same effect;
- (d) in respect of revenue arising from VAT own resources, any act or omission committed in cross-border fraudulent schemes in relation to:
 - (i) the use or presentation of false, incorrect or incomplete VAT-related statements or documents, which has as an effect the diminution of the resources of the Union budget;
 - (ii) non-disclosure of VAT-related information in violation of a specific obligation, with the same effect; or
 - (iii) the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds.

Article 4

Other criminal offences affecting the Union's financial interests

1. Member States shall take the necessary measures to ensure that money laundering as described in Article 1(3) of Directive (EU) 2015/849 involving property derived from the criminal offences covered by this Directive constitutes a criminal offence.
2. Member States shall take the necessary measures to ensure that passive and active corruption, when committed intentionally, constitute criminal offences.
 - (a) For the purposes of this Directive, 'passive corruption' means the action of a public official who, directly or through an intermediary, requests or receives advantages of any kind, for himself or for a third party, or accepts a promise of such an advantage, to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests.
 - (b) For the purposes of this Directive, 'active corruption' means the action of a person who promises, offers or gives, directly or through an intermediary, an advantage of any kind to a public official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests.
3. Member States shall take the necessary measures to ensure that misappropriation, when committed intentionally, constitutes a criminal offence.

For the purposes of this Directive, 'misappropriation' means the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests.

4. For the purposes of this Directive, 'public official' means:

(a) a Union official or a national official, including any national official of another Member State and any national official of a third country:

(i) 'Union official' means a person who is:

- an official or other servant engaged under contract by the Union within the meaning of the 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 ⁽¹⁾ (the 'Staff Regulations'), or
- seconded to the Union by a Member State or by any public or private body, who carries out functions equivalent to those performed by Union officials or other servants.

Without prejudice to the provisions on privileges and immunities contained in Protocols No 3 and No 7, Members of the Union institutions, bodies, offices and agencies, set up in accordance with the Treaties and the staff of such bodies shall be assimilated to Union officials, inasmuch as the Staff Regulations do not apply to them;

(ii) 'national official' shall be understood by reference to the definition of 'official' or 'public official' in the national law of the Member State or third country in which the person in question carries out his or her functions.

Nevertheless, in the case of proceedings involving a national official of a Member State, or a national official of a third country, initiated by another Member State, the latter shall not be bound to apply the definition of 'national official' except insofar as that definition is compatible with its national law.

The term 'national official' shall include any person holding an executive, administrative or judicial office at national, regional or local level. Any person holding a legislative office at national, regional or local level shall be assimilated to a national official;

(b) any other person assigned and exercising a public service function involving the management of or decisions concerning the Union's financial interests in Member States or third countries.

TITLE III

GENERAL PROVISIONS RELATING TO FRAUD AND OTHER CRIMINAL OFFENCES AFFECTING THE UNION'S FINANCIAL INTERESTS

Article 5

Incitement, aiding and abetting, and attempt

1. Member States shall take the necessary measures to ensure that inciting, and aiding and abetting the commission of any of the criminal offences referred to in Articles 3 and 4 are punishable as criminal offences.

2. Member States shall take the necessary measures to ensure that an attempt to commit any of the criminal offences referred to in Article 3 and Article 4(3) is punishable as a criminal offence.

Article 6

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for any of the criminal offences referred to in Articles 3, 4 and 5 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

⁽¹⁾ OJ L 56, 4.3.1968, p. 1.

2. Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission, by a person under its authority, of any of the criminal offences referred to in Article 3, 4 or 5 for the benefit of that legal person.

3. Liability of legal persons under paragraphs 1 and 2 of this Article shall not exclude the possibility of criminal proceedings against natural persons who are perpetrators of the criminal offences referred to in Articles 3 and 4 or who are criminally liable under Article 5.

Article 7

Sanctions with regard to natural persons

1. As regards natural persons, Member States shall ensure that the criminal offences referred to in Articles 3, 4 and 5 are punishable by effective, proportionate and dissuasive criminal sanctions.

2. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3 and 4 are punishable by a maximum penalty which provides for imprisonment.

3. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3 and 4 are punishable by a maximum penalty of at least four years of imprisonment when they involve considerable damage or advantage.

The damage or advantage resulting from the criminal offences referred to in points (a), (b) and (c) of Article 3(2) and in Article 4 shall be presumed to be considerable where the damage or advantage involves more than EUR 100 000.

The damage or advantage resulting from the criminal offences referred to in point (d) of Article 3(2) and subject to Article 2(2) shall always be presumed to be considerable.

Member States may also provide for a maximum sanction of at least four years of imprisonment in other serious circumstances defined in their national law.

4. Where a criminal offence referred to in point (a), (b) or (c) of Article 3(2) or in Article 4 involves damage of less than EUR 10 000 or an advantage of less than EUR 10 000, Member States may provide for sanctions other than criminal sanctions.

5. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials.

Article 8

Aggravating circumstance

Member States shall take the necessary measures to ensure that where a criminal offence referred to in Article 3, 4 or 5 is committed within a criminal organisation in the sense of Framework Decision 2008/841/JHA, this shall be considered to be an aggravating circumstance.

Article 9

Sanctions with regard to legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent exclusion from public tender procedures;
- (c) temporary or permanent disqualification from the practice of commercial activities;

- (d) placing under judicial supervision;
- (e) judicial winding-up;
- (f) temporary or permanent closure of establishments which have been used for committing the criminal offence.

Article 10

Freezing and confiscation

Member States shall take the necessary measures to enable the freezing and confiscation of instrumentalities and proceeds from the criminal offences referred to in Articles 3, 4 and 5. Member States bound by Directive 2014/42/EU of the European Parliament and of the Council ⁽¹⁾ shall do so in accordance with that Directive.

Article 11

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the criminal offences referred to in Articles 3, 4 and 5 where:

- (a) the criminal offence is committed in whole or in part within its territory; or
- (b) the offender is one of its nationals.

2. Each Member State shall take the necessary measures to establish its jurisdiction over the criminal offences referred to in Articles 3, 4 and 5 where the offender is subject to the Staff Regulations at the time of the criminal offence. Each Member State may refrain from applying the rules on jurisdiction established in this paragraph or may apply them only in specific cases or only where specific conditions are fulfilled and shall inform the Commission thereof.

3. A Member State shall inform the Commission where it decides to extend its jurisdiction to criminal offences referred to in Article 3, 4 or 5 which have been committed outside its territory in any of the following situations:

- (a) the offender is a habitual resident in its territory;
- (b) the criminal offence is committed for the benefit of a legal person established in its territory; or
- (c) the offender is one of its officials who acts in his or her official duty.

4. In cases referred to in point (b) of paragraph 1, Member States shall take the necessary measures to ensure that the exercise of their jurisdiction is not subject to the condition that a prosecution can be initiated only following a report made by the victim in the place where the criminal offence was committed, or a denunciation from the State of the place where the criminal offence was committed.

Article 12

Limitation periods for criminal offences affecting the Union's financial interests

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3, 4 and 5 for a sufficient period of time after the commission of those criminal offences, in order for those criminal offences to be tackled effectively.

2. Member States shall take the necessary measures to enable the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3, 4 and 5 which are punishable by a maximum sanction of at least four years of imprisonment, for a period of at least five years from the time when the offence was committed.

3. By way of derogation from paragraph 2, Member States may establish a limitation period that is shorter than five years, but not shorter than three years, provided that the period may be interrupted or suspended in the event of specified acts.

⁽¹⁾ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

4. Member States shall take the necessary measures to enable the enforcement of:

- (a) a penalty of more than one year of imprisonment; or alternatively
- (b) a penalty of imprisonment in the case of a criminal offence which is punishable by a maximum sanction of at least four years of imprisonment,

imposed following a final conviction for a criminal offence referred to in Article 3, 4 or 5, for at least five years from the date of the final conviction. That period may include extensions of the limitation period arising from interruption or suspension.

Article 13

Recovery

This Directive shall be without prejudice to the recovery of the following:

- (1) at Union level of sums unduly paid in the context of the commission of the criminal offences referred to in point (a), (b) or (c) of Article 3(2), or in Article 4 or 5;
- (2) at national level, of any VAT not paid in the context of the commission of the criminal offences referred in point (d) of Article 3(2), or in Article 4 or 5.

Article 14

Interaction with other applicable legal acts of the Union

The application of administrative measures, penalties and fines as laid down in Union law, in particular those within the meaning of Articles 4 and 5 of Regulation (EC, Euratom) No 2988/95, or in national law adopted in compliance with a specific obligation under Union law, shall be without prejudice to this Directive. Member States shall ensure that any criminal proceedings initiated on the basis of national provisions implementing this Directive do not unduly affect the proper and effective application of administrative measures, penalties and fines that cannot be equated to criminal proceedings, laid down in Union law or national implementing provisions.

TITLE IV

FINAL PROVISIONS

Article 15

Cooperation between the Member States and the Commission (OLAF) and other Union institutions, bodies, offices or agencies

1. Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, the Member States, Eurojust, the European Public Prosecutor's Office and the Commission shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in Articles 3, 4 and 5. To that end the Commission, and where appropriate, Eurojust, shall provide such technical and operational assistance as the competent national authorities need to facilitate coordination of their investigations.

2. The competent authorities in the Member States may, within their competences, exchange information with the Commission so as to make it easier to establish the facts and to ensure effective action against the criminal offences referred to in Articles 3, 4 and 5. The Commission and the competent national authorities shall take into account in each specific case the requirements of confidentiality and the rules on data protection. Without prejudice to national law on access to information, a Member State may, to that end, when supplying information to the Commission, set specific conditions covering the use of information, whether by the Commission or by another Member State to which the information is passed.

3. The Court of Auditors and auditors responsible for auditing the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties, and the budgets managed and audited by the institutions, shall disclose to OLAF and to other competent authorities any fact of which they become aware when carrying out their duties, which could be qualified as a criminal offence referred to in Article 3, 4 or 5. Member States shall ensure that national audit bodies do the same.

*Article 16***Replacement of the Convention on the protection of the European Communities' financial interests**

The Convention on the protection of the European Communities' financial interests of 26 July 1995, including the Protocols thereto of 27 September 1996, of 29 November 1996 and of 19 June 1997, is hereby replaced by this Directive for the Member States bound by it, with effect from 6 July 2019.

For the Member States bound by this Directive, references to the Convention shall be construed as references to this Directive.

*Article 17***Transposition**

1. Member States shall adopt and publish, by 6 July 2019, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission. They shall apply those measures from 6 July 2019.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that, for the Member States bound by this Directive, references in existing laws, regulations and administrative provisions to the Convention replaced by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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

*Article 18***Reporting and assessment**

1. The Commission shall by 6 July 2021 submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive.

2. Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit the following statistics on the criminal offences referred to in Articles 3, 4 and 5 to the Commission, if they are available at a central level in the Member State concerned:

- (a) the number of criminal proceedings initiated, dismissed, resulting in an acquittal, resulting in a conviction and ongoing;
- (b) the amounts recovered following criminal proceedings and the estimated damage.

3. The Commission shall, by 6 July 2024 and taking into account its report submitted pursuant to paragraph 1 and the Member States' statistics submitted pursuant to paragraph 2, submit a report to the European Parliament and to the Council, assessing the impact of national law transposing this Directive on the prevention of fraud to the Union's financial interests.

4. The Commission shall, by 6 July 2022 and on the basis of the statistics submitted by Member States, pursuant to paragraph 2, submit a report to the European Parliament and to the Council, assessing, with regard to the general objective to strengthen the protection of the Union's financial interests, whether:

- (a) the threshold indicated in Article 2(2) is appropriate;
- (b) the provisions relating to limitation periods as referred to in Article 12 are sufficiently effective;
- (c) this Directive effectively addresses cases of procurement fraud.

5. The reports referred to in paragraphs 3 and 4 shall be accompanied, if necessary, by a legislative proposal, which may include a specific provision on procurement fraud.

*Article 19***Entry into force**

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

*Article 20***Addressees**

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

Done at Strasbourg, 5 July 2017.

For the European Parliament

The President

A. TAJANI

For the Council

The President

M. MAASIKAS

CORRIGENDA**Corrigendum to Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market**

(Official Journal of the European Union L 168 of 30 June 2017)

On page 11, Article 9 (2)

for: 'By 21 May 2018...',

read: 'By 2 June 2018...';

On page 11, Article 10

for: 'By 21 March 2021...',

read: 'By 2 April 2021...';

On page 11, Article 11 (2):

for: 'It shall apply from 20 March 2018.',

read: 'It shall apply from 1 April 2018.'.

