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I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2019/1148 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 20 June 2019****on the marketing and use of explosives precursors, amending Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Regulation (EU) No 98/2013 of the European Parliament and of the Council ⁽³⁾ established harmonised rules concerning the making available, introduction, possession and use of substances or mixtures that could be misused for the illicit manufacture of explosives, with a view to limiting their availability to the general public, and ensuring the appropriate reporting of suspicious transactions throughout the supply chain.
- (2) Although Regulation (EU) No 98/2013 has contributed to reducing the threat posed by explosives precursors in the Union, it is necessary to strengthen the system of controls on precursors that can be used for manufacturing homemade explosives. Given the number of changes needed, it is appropriate to replace Regulation (EU) No 98/2013 for the sake of clarity.
- (3) Regulation (EU) No 98/2013 restricted access to, and the use of explosives precursors by, members of the general public. Notwithstanding that restriction, Member States were, however, able to decide to grant members of the general public access to those substances through a system of licences and registration. Restrictions and controls on explosives precursors in the Member States have therefore been divergent and liable to cause barriers to trade within the Union, thus impeding the functioning of the internal market. Furthermore, the existing restrictions and

⁽¹⁾ OJ C 367, 10.10.2018, p. 35.

⁽²⁾ Position of the European Parliament of 16 April 2019 (not yet published in the Official Journal) and decision of the Council of 14 June 2019.

⁽³⁾ Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors (OJ L 39, 9.2.2013, p. 1).

controls have not ensured sufficient levels of public security, as they have not adequately prevented criminals from acquiring explosives precursors. The threat posed by homemade explosives has remained high and continues to evolve.

- (4) The system for preventing the illicit manufacture of explosives should therefore be further strengthened and harmonised in view of the evolving threat to public security caused by terrorism and other serious criminal activities. Such strengthening and harmonisation should also ensure the free movement of explosives precursors in the internal market and should promote competition between economic operators and encourage innovation, for example, by facilitating the development of safer chemicals to replace explosives precursors.
- (5) The criteria for determining which measures should apply to which explosives precursors include the level of threat associated with the explosives precursor concerned, the volume of trade in the explosives precursor concerned, and whether it is possible to establish a concentration level below which the explosives precursor could still be used for the legitimate purposes for which it is made available while making it significantly less likely for that precursor to be used for the illicit manufacture of explosives.
- (6) Members of the general public should not be permitted to acquire, introduce, possess or use certain explosives precursors at concentrations above certain limit values, expressed as a percentage by weight (w/w). However, members of the general public should be permitted to acquire, introduce, possess or use some explosives precursors at concentrations above those limit values for legitimate purposes, provided that they hold a licence to do so. Where the applicant is a legal person, the competent authority of the Member State should take into account the background of the legal person and of 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 power of representation of the legal person, an authority to take decisions on behalf of the legal person or an authority to exercise control within the legal person.
- (7) For some restricted explosives precursors at concentrations above the limit values provided for in this Regulation, there exists no legitimate use by members of the general public. Therefore, licensing should be discontinued for potassium chlorate, potassium perchlorate, sodium chlorate and sodium perchlorate. Licensing should only be permitted for a limited number of restricted explosives precursors for which there exists a legitimate use by members of the general public. Such licensing should be limited to concentrations that do not exceed the upper limit value provided for in this Regulation. Above that upper limit value the risk of the illicit manufacture of explosives outweighs the negligible legitimate use of those explosives precursors by members of the general public, given that alternatives to, or lower concentrations of, those precursors can achieve the same effect. This Regulation should also determine the circumstances which the competent authorities should, as a minimum, take into account when considering whether to issue a licence. Together with the format of a licence set out in Annex III, this should facilitate the recognition of licences issued by other Member States.
- (8) It should be possible for the mutual recognition of licences issued by other Member States to be done bilaterally or multilaterally, in order to achieve the objectives of the single market.
- (9) In order to apply the restrictions and controls of this Regulation, those economic operators selling to professional users or to members of the general public who hold a licence should be able to rely on information made available upstream in the supply chain. Each economic operator in the supply chain should therefore inform the recipient of regulated explosives precursors that the making available, introduction, possession or use of those explosives precursors by members of the general public is subject to this Regulation, for example, by affixing an appropriate label to the packaging, by verifying that an appropriate label is affixed to the packaging, or by including that information in the safety data sheet compiled in accordance with Annex II to Regulation (EC) No 1907/2006 of the European Parliament and of the Council⁽⁴⁾.
- (10) The difference between an economic operator and a professional user is that the economic operators make an explosives precursor available to another person, whereas professional users acquire or introduce an explosives precursor only for their own use. Economic operators selling to professional users, other economic operators or

⁽⁴⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

members of the general public who hold a licence should ensure that their personnel involved in the sale of the explosives precursors are aware of which of the products they make available contain explosives precursors, for instance by including information that a product contains an explosives precursor in the barcode of the product.

- (11) The distinction between professional users, to whom it should be possible to make restricted explosives precursors available, and members of the general public, to whom they should not be made available, depends on whether the person intends to use the explosives precursor concerned for purposes connected with that person's specific trade, business, or profession, including forestry, horticultural and agricultural activity, conducted either on a full-time or part-time basis and not necessarily related to the size of the area of land on which that activity is conducted. Economic operators should therefore not make restricted explosives precursors available either to natural or legal persons who are professionally active in areas in which the specific restricted explosives precursors tend not to be used for professional purposes or to natural or legal persons who are engaged in activities that are not connected to any professional purpose.
- (12) Personnel of economic operators who are involved in the making available of explosives precursors should be subject to the same rules under this Regulation as apply to members of the general public when using such explosives precursors in their personal capacity.
- (13) Economic operators should retain transaction data to substantially assist the authorities in preventing, detecting, investigating and prosecuting serious crime committed with homemade explosive devices and in verifying compliance with this Regulation. The identification of all actors in the supply chain and all customers is essential for this purpose, be it members of the general public, professional users or economic operators. As the illicit manufacture and use of homemade explosives might occur only a significant amount of time after the sale of the explosives precursor, the transaction data should be retained for as long as is necessary, proportionate and appropriate to facilitate investigations, taking average inspection periods into account.
- (14) This Regulation should also apply to economic operators that operate online, including those that operate on online marketplaces. Therefore, economic operators that operate online should also train their personnel and should also have in place appropriate procedures to detect suspicious transactions. Furthermore, they should only make restricted explosives precursors available to a member of the general public in Member States that maintain or establish a licensing regime in accordance with this Regulation, and only after verifying that that member of the general public holds a valid licence. After having verified the identity of the prospective customer, for instance through mechanisms provided for in Regulation (EU) No 910/2014 of the European Parliament and of the Council⁽⁵⁾, the economic operator should verify that a licence has been issued covering the intended transaction, for instance through a physical inspection of the licence at the time of delivery of the explosives precursor or, with the consent of the prospective customer, by contacting the competent authority of the Member State that issued the licence. Economic operators that operate online, like those operating offline, should also request end-use declarations of professional users.
- (15) Online marketplaces act as mere intermediaries between economic operators on the one side, and members of the general public, professional users or other economic operators, on the other side. Therefore, online marketplaces should not fall under the definition of an economic operator and should not be required to instruct their personnel involved in the sale of restricted explosives precursors regarding the obligations under this Regulation or to verify the identity and, where appropriate, the licence of the prospective customer, or to request other information from the prospective customer. However, given the central role which online marketplaces play in online transactions, including as regards the sales of regulated explosives precursors, they should inform their users who aim to make regulated explosives precursors available through the use of their services of the obligations under this Regulation in a clear and effective manner. In addition, online marketplaces should take measures to help ensure that their users comply with their own obligations regarding verification, for instance by offering tools to facilitate the verification of licences. Given the increasing significance of online marketplaces for all kinds of supply and the importance of this procurement channel, including for terrorist purposes, online marketplaces should be subject to the same detection and reporting obligations as economic operators, although procedures to detect suspicious transactions should be properly adapted to the specific online environment.

⁽⁵⁾ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

- (16) The obligations on online marketplaces under this Regulation should not amount to a general monitoring obligation. This Regulation should lay down only specific obligations for online marketplaces with respect to the detection and reporting of suspicious transactions that take place on their websites or that use their computing services. Online marketplaces should not be held liable, on the basis of this Regulation, for transactions that were not detected despite the online marketplace having in place appropriate, reasonable and proportionate procedures to detect such suspicious transactions.
- (17) This Regulation requires economic operators to report suspicious transactions, regardless of whether the prospective customer is a member of the general public, a professional user or an economic operator. The obligations that relate to regulated explosives precursors, including the obligation to report suspicious transactions, should apply to all substances listed in Annexes I and II, irrespective of their concentration. However, products that contain explosives precursors only to such a small extent and in such complex mixtures that the extraction of the explosives precursors is technically extremely difficult should be excluded from the scope of this Regulation.
- (18) To improve the application of this Regulation, both economic operators and public authorities should provide for adequate training with respect to the obligations under this Regulation. Member States should have inspection authorities in place, should organise regular awareness-raising actions that are adapted to the specificities of each of the different sectors, and should maintain a permanent dialogue with economic operators at all levels of the supply chain, including economic operators that operate online.
- (19) The choice of substances used by criminals for the illicit manufacture of explosives can change rapidly. It should therefore be possible to bring additional substances under the reporting obligation provided for by this Regulation, where necessary as a matter of urgency. In order to accommodate possible developments in the misuse of substances as explosives precursors, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending this Regulation by modifying the limit values above which certain substances that are restricted under this Regulation are not to be made available to the members of the general public, and by listing additional substances in respect of which suspicious transactions are to be reported. 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⁽⁶⁾. 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.
- (20) In order to deal with substances not already listed in Annex I or II, but in respect of which a Member State discovers reasonable grounds for believing that they could be used for the illicit manufacture of explosives, a safeguard clause for an adequate Union procedure should be provided. Moreover, in view of the specific risks to be addressed in this Regulation, it is appropriate to allow Member States, in certain circumstances, to adopt safeguard measures, including in respect of substances already subject to measures under this Regulation. Furthermore, Member States should be allowed to maintain national measures of which they have already informed or notified the Commission in accordance with Article 13 of Regulation (EU) No 98/2013.
- (21) The regulatory framework would be simplified by integrating the relevant security-oriented restrictions on the making available of ammonium nitrate from Regulation (EC) No 1907/2006 into this Regulation. For that reason, Annex XVII to Regulation (EC) No 1907/2006 should be amended accordingly.

⁽⁶⁾ OJ L 123, 12.5.2016, p. 1.

- (22) This Regulation requires the processing of personal data and their further disclosure to third parties in the case of suspicious transactions. Such processing and disclosure imply an interference with the fundamental rights to respect for one's private life and the protection of personal data. Accordingly, it should be ensured that the fundamental right to the protection of personal data of individuals whose personal data are processed in application of this Regulation is duly protected. Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽⁷⁾ governs the processing of personal data carried out in the framework of this Regulation. Therefore, the processing of personal data involved in licensing and the reporting of suspicious transactions should be carried out in accordance with Regulation (EU) 2016/679, including the general data protection principles of lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality and the requirement to show due respect for the data subject's rights.
- (23) The Commission should carry out an evaluation of this Regulation based on the criteria of efficiency, effectiveness, relevance, coherence and EU added value. That evaluation should provide the basis for impact assessments of possible further measures. Information should be collected regularly for the purpose of evaluating this Regulation.
- (24) Since the objective of this Regulation, namely limiting access by the members of the general public to explosives precursors, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the limitation, 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 that objective.
- (25) Regulation (EU) No 98/2013 should be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes harmonised rules concerning the making available, introduction, possession and use of substances or mixtures that could be misused for the illicit manufacture of explosives, with a view to limiting the availability of those substances or mixtures to members of the general public, and with a view to ensuring the appropriate reporting of suspicious transactions throughout the supply chain.

This Regulation is without prejudice to other more stringent provisions of Union law concerning the substances listed in Annexes I and II.

Article 2

Scope

1. This Regulation applies to the substances listed in Annexes I and II and to mixtures and substances that contain those substances.
2. This Regulation does not apply to:
 - (a) articles as defined in point (3) of Article 3 of Regulation (EC) No 1907/2006;
 - (b) pyrotechnic articles as defined in point (1) of Article 3 of Directive 2013/29/EU of the European Parliament and of the Council ⁽⁸⁾;

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

⁽⁸⁾ Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (OJ L 178, 28.6.2013, p. 27).

- (c) pyrotechnic articles intended for non-commercial use in accordance with national law by the armed forces, law enforcement authorities or fire services;
- (d) pyrotechnic equipment falling within the scope of Directive 2014/90/EU of the European Parliament and of the Council ⁽⁹⁾;
- (e) pyrotechnic articles intended for use in the aerospace industry;
- (f) percussion caps intended for toys;
- (g) medicinal products that have been legitimately made available to a member of the general public on the basis of a medical prescription in accordance with the applicable national law.

Article 3

Definitions

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

- (1) 'substance' means a substance as defined in point (1) of Article 3 of Regulation (EC) No 1907/2006;
- (2) 'mixture' means a mixture as defined in point (2) of Article 3 of Regulation (EC) No 1907/2006;
- (3) 'article' means an article as defined in point (3) of Article 3 of Regulation (EC) No 1907/2006;
- (4) 'making available' means any supply, whether in return for payment or free of charge;
- (5) 'introduction' means the act of bringing a substance into the territory of a Member State, irrespective of its destination within the Union, whether from another Member State or from a third country, under any customs procedure, as defined in Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽¹⁰⁾ including transit;
- (6) 'use' means use as defined in point (24) of Article 3 of Regulation (EC) No 1907/2006;
- (7) 'suspicious transaction' means any transaction concerning regulated explosives precursors for which there are reasonable grounds, after taking account of all relevant factors, for suspecting that the substance or mixture concerned is intended for the illicit manufacture of explosives;
- (8) 'member of the general public' means any natural or legal person who is acting for purposes not connected with that person's trade, business, or profession;

⁽⁹⁾ Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (OJ L 257, 28.8.2014, p. 146).

⁽¹⁰⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (9) 'professional user' means any natural or legal person or public entity or group of such persons or entities that has a demonstrable need for a restricted explosives precursor for purposes connected with its trade, business, or profession, including agricultural activity, conducted either on a full-time or part-time basis and not necessarily related to the size of the area of land on which that agricultural activity is conducted, provided that such purposes do not include making that restricted explosives precursor available to another person;
- (10) 'economic operator' means any natural or legal person or public entity or group of such persons or entities which make regulated explosives precursors available on the market, either offline or online, including on online marketplaces;
- (11) 'online marketplace' means a provider of an intermediary service that allows economic operators on the one side, and members of the general public, professional users, or other economic operators, on the other side, to conclude transactions regarding regulated explosives precursors via online sales or service contracts, either on the online marketplace's website or on an economic operator's website that uses computing services provided by the online marketplace;
- (12) 'restricted explosives precursor' means a substance listed in Annex I that is at a concentration higher than the corresponding limit value set out in column 2 of the table in Annex I, including a mixture or another substance in which a substance listed in that Annex is present at a concentration higher than the corresponding limit value;
- (13) 'regulated explosives precursor' means a substance listed in Annex I or II including a mixture or another substance in which a substance listed in those Annexes is present, excluding homogeneous mixtures of more than 5 ingredients in which the concentration of each substance listed in Annex I or II is below 1 % w/w;
- (14) 'agricultural activity' means the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the agricultural area in good agricultural and environmental condition as established under Article 94 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council ⁽¹⁾.

Article 4

Free movement

Unless otherwise provided for in this Regulation or in other legal acts of the Union, Member States shall not prohibit, restrict or impede the making available of a regulated explosives precursor on grounds related to the prevention of the illicit manufacture of explosives.

Article 5

Making available, introduction, possession and use

1. Restricted explosives precursors shall not be made available to, or introduced, possessed or used by members of the general public.
2. The restriction under paragraph 1 also applies to mixtures containing chlorates or perchlorates listed in Annex I, where the overall concentration of those substances in the mixture exceeds the limit value for any of the substances set out in column 2 of the table in Annex I.
3. A Member State may maintain or establish a licensing regime allowing certain restricted explosives precursors to be made available to, or to be introduced, possessed or used by members of the general public at concentrations not higher than the corresponding upper limit values set out in column 3 of the table in Annex I.

⁽¹⁾ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

Under such licensing regimes, a member of the general public shall obtain, and, if requested, present a licence for acquiring, introducing, possessing or using restricted explosives precursors. Such licences shall be issued in accordance with Article 6 by a competent authority of the Member State where that restricted explosives precursor is intended to be acquired, introduced, possessed or used.

4. Member States shall notify all measures that they take in order to implement the licensing regime provided for in paragraph 3 to the Commission without delay. The notification shall set out the restricted explosives precursors in respect of which the Member State provides for a licensing regime in accordance with paragraph 3.

5. The Commission shall make publicly available a list of measures notified by Member States in accordance with paragraph 4.

Article 6

Licences

1. Each Member State which issues licences to members of the general public who have a legitimate interest in acquiring, introducing, possessing or using restricted explosives precursors shall lay down rules for issuing licences in accordance with Article 5(3). When considering whether to issue a licence, the competent authority of the Member State shall take into account all relevant circumstances, in particular:

- (a) the demonstrable need for the restricted explosives precursor and the legitimacy of its intended use;
- (b) the availability of the restricted explosives precursor at lower concentrations or alternative substances with a similar effect;
- (c) the background of the applicant, including information on previous criminal convictions of the applicant anywhere within the Union;
- (d) the storage arrangements that have been proposed to ensure that the restricted explosives precursor is securely stored.

2. The competent authority shall refuse to issue a licence if it has reasonable grounds for doubting the legitimacy of the intended use or the intention of the member of the general public to use the restricted explosives precursor for a legitimate purpose.

3. The competent authority may choose to limit the validity of the licence, through permitting single or multiple use. The period of the validity of the licence shall not exceed three years. Until the designated expiry of the licence, the competent authority may require the licence holder to demonstrate that the conditions under which the licence was issued continue to be fulfilled. The licence shall indicate the restricted explosives precursors in respect of which it is issued.

4. The competent authority may require applicants to pay a licence application fee. Such fees shall not exceed the cost of processing the application.

5. The competent authority may suspend or revoke the licence where it has reasonable grounds for believing that the conditions under which the licence was issued are no longer fulfilled. The competent authority shall inform licence holders of any suspension or revocation of their licences without delay, unless this would jeopardise ongoing investigations.

6. Appeals against any decision of the competent authority, and disputes concerning compliance with the conditions of the licence, shall be heard by an appropriate body that is responsible for such appeals and disputes under national law.

7. A Member State may recognise licences issued by other Member States under this Regulation.
8. Member States may use the format for a licence set out in Annex III.
9. The competent authority shall obtain the information on previous criminal convictions of the applicant in other Member States as referred to in point (c) of paragraph 1 of this Article, through the system established by Council Framework Decision 2009/315/JHA⁽¹²⁾. The central authorities referred to in Article 3 of that Framework Decision shall provide replies to requests for such information within 10 working days from the date the request was received.

Article 7

Informing the supply chain

1. An economic operator who makes available a restricted explosives precursor to another economic operator shall inform that economic operator that the acquisition, introduction, possession or use of that restricted explosives precursor by members of the general public is subject to a restriction as set out in Article 5(1) and (3).

An economic operator who makes available a regulated explosives precursor to another economic operator shall inform that economic operator that the acquisition, introduction, possession or use of that regulated explosives precursor by members of the general public is subject to reporting obligations as set out in Article 9.

2. An economic operator who makes available regulated explosives precursors to a professional user or to a member of the general public shall ensure and be able to demonstrate to the national inspection authorities referred to in Article 11 that its personnel involved in the sale of regulated explosives precursors are:

- (a) aware which of the products it makes available contain regulated explosives precursors;
- (b) instructed regarding the obligations pursuant to Articles 5 to 9.

3. An online marketplace shall take measures to ensure that its users, when making available regulated explosives precursors through its services, are informed of their obligations pursuant to this Regulation.

Article 8

Verification upon sale

1. An economic operator who makes available a restricted explosives precursor to a member of the general public in accordance with Article 5(3) shall for each transaction verify the proof of identity and licence of that member of the general public in compliance with the licensing regime established by the Member State where the restricted explosives precursor is made available and record the amount of the restricted explosives precursor on the licence.

2. For the purpose of verifying that a prospective customer is a professional user or another economic operator, the economic operator who makes available a restricted explosives precursor to a professional user or another economic operator shall for each transaction request the following information, unless such a verification for that prospective customer has already occurred within a period of one year prior to the date of that transaction and the transaction does not significantly deviate from previous transactions:

- (a) proof of identity of the individual entitled to represent the prospective customer;
- (b) the trade, business, or profession together with the company name, address and the value added tax identification number or any other relevant company registration number, if any, of the prospective customer;

⁽¹²⁾ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23).

(c) the intended use of the restricted explosives precursors by the prospective customer.

Member States may use the template of the customer's statement set out in Annex IV.

3. For the purpose of verifying the intended use of the restricted explosives precursor, the economic operator shall assess whether the intended use is consistent with the trade, business or profession of the prospective customer. The economic operator may refuse the transaction if it has reasonable grounds for doubting the legitimacy of the intended use or the intention of the prospective customer to use the restricted explosives precursor for a legitimate purpose. The economic operator shall report such transactions or such attempted transactions in accordance with Article 9.

4. For the purpose of verifying compliance with this Regulation and preventing and detecting the illicit manufacture of explosives, economic operators shall retain the information referred to in paragraphs 1 and 2 for 18 months from the date of transaction. During that period, the information shall be made available for inspection at the request of the national inspection authorities or law enforcement authorities.

5. An online marketplace shall take measures to help ensure that its users, when making available restricted explosives precursors through its service, comply with their obligations under this Article.

Article 9

Reporting of suspicious transactions, disappearances and thefts

1. For the purpose of preventing and detecting the illicit manufacture of explosives, economic operators and online marketplaces shall report suspicious transactions. Economic operators and online marketplaces shall do so after having regard to all the circumstances and, in particular, where the prospective customer acts in one or more of the following ways:

- (a) appears unclear about the intended use of the regulated explosives precursors;
- (b) appears unfamiliar with the intended use of the regulated explosives precursors or cannot plausibly explain it;
- (c) intends to buy regulated explosives precursors in quantities, combinations or concentrations uncommon for legitimate use;
- (d) is unwilling to provide proof of identity, place of residence or, where appropriate, status as professional user or economic operator;
- (e) insists on using unusual methods of payment, including large amounts of cash.

2. Economic operators and online marketplaces shall have in place appropriate, reasonable and proportionate procedures to detect suspicious transactions, adapted to the specific environment in which the regulated explosives precursors are made available.

3. Each Member State shall set up one or more national contact points with a clearly identified telephone number and e-mail address, web form or any other effective tool for the reporting of suspicious transactions and significant disappearances and thefts. The national contact points shall be available 24 hours a day, seven days a week.

4. Economic operators and online marketplaces may refuse the suspicious transaction. They shall report the suspicious transaction or attempted suspicious transaction within 24 hours of considering that it is suspicious. When reporting such transactions, they shall give the identity of the customer if possible and all the details which have led them to consider the transaction to be suspicious to the national contact point of the Member State where the suspicious transaction was concluded or attempted.

5. Economic operators and professional users shall report significant disappearances and thefts of regulated explosives precursors within 24 hours of detection to the national contact point of the Member State where the disappearance or theft took place. In deciding whether a disappearance or theft is significant, they shall take into account whether the amount is unusual considering all circumstances of the case.

6. Members of the general public that have acquired restricted explosives precursors in accordance with Article 5(3) shall report significant disappearances and thefts of restricted explosives precursors within 24 hours of detection to the national contact point of the Member State where the disappearance or theft took place.

Article 10

Training and awareness-raising

1. Member States shall ensure adequate resources for and the provision of training for law enforcement authorities, first responders and customs authorities to recognise regulated explosives precursors in the course of their duties and to react in a timely and appropriate manner to a suspicious activity. Member States may request additional specific trainings from the European Union Agency for Law Enforcement Training (CEPOL) established by Regulation (EU) 2015/2219 of the European Parliament and of the Council ⁽¹³⁾.

2. Member States shall organise, at least once a year, awareness-raising actions adapted to the specificities of each of the different sectors using regulated explosives precursors.

3. With a view to facilitating cooperation and ensuring that all stakeholders implement this Regulation effectively, Member States shall organise regular exchanges between law enforcement authorities, national supervisory authorities, economic operators, online marketplaces and representatives of the sectors that use regulated explosives precursors. Economic operators shall be responsible for providing information to their personnel on the manner in which explosives precursors are to be made available under this Regulation and for raising personnel awareness in this regard.

Article 11

National inspection authorities

1. Each Member State shall ensure that competent authorities are in place for inspection and controls of the correct application of Articles 5 to 9 ('national inspection authorities').

2. Each Member State shall ensure that the national inspection authorities have the resources and investigative powers necessary to ensure the proper administration of their tasks under this Regulation.

Article 12

Guidelines

1. The Commission shall provide regularly updated guidelines to assist actors in the chemical supply chain and the competent authorities, and to facilitate cooperation between the competent authorities and economic operators. The Commission shall consult the Standing Committee on Explosives Precursors on any draft guidelines or updates thereof. The guidelines shall, in particular, provide:

(a) information on how to conduct inspections;

(b) information on how to apply the restrictions and controls under this Regulation to regulated explosives precursors ordered at a distance by members of the general public or professional users;

⁽¹³⁾ Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA (OJ L 319, 4.12.2015, p. 1).

- (c) information on possible measures to be adopted by online marketplaces to ensure compliance with this Regulation;
 - (d) information on how to exchange relevant information between the competent authorities and the national contact points and between Member States;
 - (e) information on how to recognise and report suspicious transactions;
 - (f) information on storage arrangements which ensure that a regulated explosives precursor is securely stored;
 - (g) other information, which may be deemed useful.
2. The competent authorities shall ensure that the guidelines provided for in paragraph 1 are regularly disseminated in a manner deemed appropriate by the competent authorities in accordance with the objectives of the guidelines.
 3. The Commission shall ensure that the guidelines referred to in paragraph 1 are available in all official languages of the Union.

Article 13

Penalties

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Article 14

Safeguard clause

1. Where a Member State has reasonable grounds for believing that a specific substance that is not listed in Annex I or II could be used for the illicit manufacture of explosives, it may restrict or prohibit the making available, introduction, possession and use of that substance, or of any mixture or substance containing it, or provide that the substance be subject to reporting obligations in accordance with Article 9.
2. Where a Member State has reasonable grounds for believing that a specific substance listed in Annex I could be used for the illicit manufacture of explosives at a concentration equal to or lower than the limit values set out in column 2 or 3 of the table in Annex I, it may further restrict or prohibit the making available, introduction, possession and use of that substance by imposing a lower limit value.
3. Where a Member State has reasonable grounds for establishing a limit value above which a substance listed in Annex II is to be subject to the restrictions that otherwise apply to restricted explosives precursors, it may restrict or prohibit the making available, introduction, possession and use of that substance by imposing that limit value.
4. A Member State that restricts or prohibits substances in accordance with paragraph 1, 2 or 3 shall immediately inform the Commission and the other Member States of such restrictions or prohibitions, giving its reasons.
5. A Member State that restricts or prohibits substances in accordance with paragraph 1, 2 or 3 shall raise awareness of such restrictions or prohibitions among economic operators and online marketplaces on its territory.
6. Upon receiving the information referred to in paragraph 4, the Commission shall immediately examine whether to prepare amendments to the Annexes in accordance with Article 15(1) or to prepare a legislative proposal to amend the Annexes. Where appropriate, the Member State concerned shall amend or repeal its national measures to take account of any such amendments to those Annexes.

7. Without prejudice to paragraph 6, the Commission may, after consulting the Member State concerned and, if appropriate, third parties, take a decision that the measure taken by that Member State is not justified and require that Member State to revoke or amend the provisional measure. The Commission shall take such decisions within 60 days of receipt of the information referred to in paragraph 4. The Member State concerned shall raise awareness of such decisions among economic operators and online marketplaces on its territory.

8. Measures of which the Member States informed or notified the Commission prior to 1 February 2021 under Article 13 of Regulation (EU) No 98/2013 shall be unaffected by this Article.

Article 15

Amendments to the Annexes

1. The Commission shall adopt delegated acts in accordance with Article 16 amending this Regulation by:
 - (a) modifying the limit values in Annex I to the extent necessary to accommodate developments in the misuse of substances as explosives precursors, or on the basis of research and testing;
 - (b) adding substances to Annex II, where necessary to accommodate developments in the misuse of substances as explosives precursors.

The Commission shall, as part of its preparation of those delegated acts, consult relevant stakeholders, in particular those in the chemical industry and the retail sector.

Where there is a sudden change in the risk assessment as far as the misuse of substances for the illicit manufacture of explosives is concerned and imperative grounds of urgency so require, the procedure provided for in Article 17 shall apply to delegated acts adopted pursuant to this Article.

2. The Commission shall adopt a separate delegated act in respect of each modification of the limit values in Annex I and in respect of each new substance that is added to Annex II. Each delegated act shall be based on an analysis that demonstrates that the amendment is not likely to lead to disproportionate burdens on economic operators or consumers, having due regard to the objectives pursued.

Article 16

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission, subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 15 shall be conferred on the Commission for a period of five years from 31 July 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 15 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

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

6. A delegated act adopted pursuant to Article 15 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 17

Urgency procedure

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

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 16(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

Article 18

Amendment of Regulation (EC) No 1907/2006

In Annex XVII to Regulation (EC) No 1907/2006, entry 58. (Ammonium nitrate (AN)), column 2, paragraphs 2 and 3 are deleted.

Article 19

Reporting

1. Member States shall provide to the Commission, by 2 February 2022 and subsequently on an annual basis, information on:

- (a) the numbers of reported suspicious transactions, significant disappearances and thefts respectively;
- (b) the number of licence applications received under any licensing regime that they have maintained or established pursuant to Article 5(3), as well as the number of licences issued, and the most common reasons for refusing to issue licences;
- (c) awareness-raising actions as referred to in Article 10(2);
- (d) inspections carried out as referred to in Article 11, including the number of inspections and economic operators covered.

2. In transmitting the information referred to in points (a), (c) and (d) of paragraph 1 to the Commission, Member States shall distinguish between reports, actions and inspections which relate to online activities and those that relate to offline activities.

Article 20

Monitoring programme

1. By 1 August 2020, the Commission shall establish a detailed programme for monitoring the outputs, results and impact of this Regulation.

2. The monitoring programme shall set out the means by which, and the intervals at which, data and other necessary evidence are to be collected. It shall specify the actions to be taken by the Commission and by the Member States in collecting and analysing those data and other evidence.
3. Member States shall provide the Commission with the data and other evidence necessary for the monitoring.

Article 21

Evaluation

1. By 2 February 2026, the Commission shall carry out an evaluation of this Regulation and present a report on the main findings to the European Parliament, to the Council and to the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation Guidelines.
2. Member States shall provide the Commission with the information necessary for the preparation of that report.

Article 22

Repeal

1. Regulation (EU) No 98/2013 is repealed with effect from 1 February 2021.
2. References to the repealed Regulation (EU) No 98/2013 shall be construed as references to this Regulation.

Article 23

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from 1 February 2021.
3. Notwithstanding paragraph 2, licences that have been validly issued under Regulation (EU) No 98/2013 shall remain valid either until the date of validity originally stated on those licences or until 2 February 2022, whichever is the sooner.
4. Any applications for the renewal of the licences referred to in paragraph 3 that are made on or after 1 February 2021 shall be made in accordance with this Regulation.
5. Notwithstanding Article 5(1), the possession, introduction and use by members of the general public of restricted explosives precursors that were legally acquired before 1 February 2021 shall be allowed until 2 February 2022.

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

Done at Brussels, 20 June 2019.

For the European Parliament
The President
A. TAJANI

For the Council
The President
G. CIAMBA

ANNEX I

RESTRICTED EXPLOSIVES PRECURSORS

List of substances which are not to be made available to, or introduced, possessed or used by, members of the general public, whether on their own or in mixtures or substances that include those substances, unless the concentration is equal to or lower than the limit values set out in column 2, and for which suspicious transactions and significant disappearances and thefts are to be reported within 24 hours:

1. Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	2. Limit value	3. Upper limit value for the purpose of licensing under Article 5(3)	4. Combined Nomenclature (CN) code for a separate chemically defined compound meeting the requirements of Note 1 to Chapter 28 or 29 of the CN, respectively (1)	5. Combined Nomenclature (CN) code for a mixture without constituents (e.g. mercury, precious or rare-earth metals or radioactive substances) which would determine classification under another CN code (1)
Nitric acid (CAS RN 7697-37-2)	3 % w/w	10 % w/w	ex 2808 00 00	ex 3824 99 96
Hydrogen peroxide (CAS RN 7722-84-1)	12 % w/w	35 % w/w	2847 00 00	ex 3824 99 96
Sulphuric acid (CAS RN 7664-93-9)	15 % w/w	40 % w/w	ex 2807 00 00	ex 3824 99 96
Nitromethane (CAS RN 75-52-5)	16 % w/w	100 % w/w	ex 2904 20 00	ex 3824 99 92
Ammonium nitrate (CAS RN 6484-52-2)	16 % w/w of nitrogen in relation to ammonium nitrate (2)	No licensing permitted	3102 30 10 (in aqueous solution) 3102 30 90 (other)	ex 3824 99 96
Potassium chlorate (CAS RN 3811-04-9)	40 % w/w	No licensing permitted	ex 2829 19 00	ex 3824 99 96
Potassium perchlorate (CAS RN 7778-74-7)	40 % w/w	No licensing permitted	ex 2829 90 10	ex 3824 99 96
Sodium chlorate (CAS RN 7775-09-9)	40 % w/w	No licensing permitted	2829 11 00	ex 3824 99 96
Sodium perchlorate (CAS RN 7601-89-0)	40 % w/w	No licensing permitted	ex 2829 90 10	ex 3824 99 96

(1) Commission Implementing Regulation (EU) 2017/1925 (1). Subsequent amendments of Annex I to Council Regulation (EEC) No 2658/87 (2) should be consulted as regards updated CN codes.

(2) 16 % w/w of nitrogen in relation to ammonium nitrate corresponds to 45,7 % ammonium nitrate, discarding impurities.

(1) Commission Implementing Regulation (EU) 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 1).

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

ANNEX II

REPORTABLE EXPLOSIVES PRECURSORS

List of substances on their own or in mixtures or in substances for which suspicious transactions and significant disappearances and thefts are to be reported within 24 hours:

1. Name of the substance and Chemical Abstracts Service Registry number (CAS RN)	2. Combined Nomenclature (CN) code ⁽¹⁾	3. Combined Nomenclature (CN) code for mixtures without constituents (e.g. mercury, precious or rare-earth metals or radioactive substances) which would determine classification under another CN code ⁽¹⁾
Hexamine (CAS RN 100-97-0)	ex 2933 69 40	ex 3824 99 93
Acetone (CAS RN 67-64-1)	2914 11 00	ex 3824 99 92
Potassium nitrate (CAS RN 7757-79-1)	2834 21 00	ex 3824 99 96
Sodium nitrate (CAS RN 7631-99-4)	3102 50 00	ex 3824 99 96
Calcium nitrate (CAS RN 10124-37-5)	ex 2834 29 80	ex 3824 99 96
Calcium ammonium nitrate (CAS RN 15245-12-2)	ex 3102 60 00	ex 3824 99 96
Magnesium, powders (CAS RN 7439-95-4) ⁽²⁾ ⁽³⁾	ex 8104 30 00	
Magnesium nitrate hexahydrate (CAS RN 13446-18-9)	ex 2834 29 80	ex 3824 99 96
Aluminium, powders (CAS RN 7429-90-5) ⁽²⁾ ⁽³⁾	7603 10 00 ex 7603 20 00	

⁽¹⁾ Implementing Regulation (EU) 2017/1925. Subsequent amendments of Annex I to Regulation (EEC) No 2658/87 should be consulted as regards updated CN codes.

⁽²⁾ With a particle size less than 200 µm.

⁽³⁾ As a substance or in mixtures containing 70 % w/w or more of aluminium or magnesium.

ANNEX III

FORMAT FOR A LICENCE

Format for a licence for a member of the general public to acquire, introduce, possess and use restricted explosives precursors, as referred to in Article 6(8).

<p>1. Member of the general public (Name and address)</p> <p>Name:</p> <p>Identification Document Number:</p> <p>Address:</p> <p>Country:</p> <p>Tel.:</p> <p>Email:</p>
<p>2. Licence Number:</p>
<p>3. Licence for single use or multiple use (please tick)</p> <p><input type="checkbox"/> single acquisition, introduction, possession and use of a restricted explosives precursor name of the restricted explosives precursor(s):</p> <p> maximum amount:</p> <p> maximum concentration:</p> <p> licensed use:</p> <p><input type="checkbox"/> multiple acquisition, introduction, possession and use of a restricted explosives precursor name of the restricted explosives precursor(s):</p> <p> maximum amount in possession at any time:</p> <p> maximum concentration:</p> <p> licensed use:</p>
<p>4. If different than box 1 and required by national law, address where the restricted explosives precursor(s) will be stored:</p>
<p>5. If different than box 1 and required by national law, address where the restricted explosives precursor(s) will be used:</p>
<p>6. Indicate whether the restricted explosives precursor(s) is/are intended to be introduced or used (or both) in a Member State different from the Member State issuing this licence or outside the European Economic Area:</p> <p><input type="checkbox"/> yes</p> <p><input type="checkbox"/> No</p> <p>Address:</p> <p>Timeframe for the introduction or use (or both) of the restricted explosives precursor(s):</p>

ANNEX IV

CUSTOMER'S STATEMENT

concerning the specific use or uses of a restricted explosives precursor as referred to in Regulation (EU) 2019/1148 of the European Parliament and of the Council ⁽¹⁾

(Fill in capital letters) (*)

The undersigned,

Name (customer): _____

Proof of identity (number, issuing authority): _____

Authorised representative of:

Company (principal): _____

Value added tax or another company identification number (**)/Address:

Trade/business/profession: _____

Commercial name of the product	Restricted explosives precursor	CAS No.	Amount (kg/litre)	Concentration	Intended use

I hereby declare that the commercial product and the substance or mixture that it contains shall be used only for the indicated use, which is in any case legitimate, and will be sold or delivered to another customer only if they make a similar declaration of use, respecting the restrictions established in Regulation (EU) 2019/1148 for the making available to the members of the general public.

Signature: _____ Name: _____

Function: _____ Date: _____

⁽¹⁾ Regulation (EU) 2019/1148 of the European Parliament and of the Council of 20 June 2019 on the marketing and use of explosives precursors, amending Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013 (OJ L 186, 11.7.2019, p. 1).

(*) You can add the required rows in the table of substances.

(**) You can verify the validity of a VAT identification number of an economic operator through the VIES website of the Commission. Depending on the national rules on data protection, some Member States will also provide the name and address linked to the given VAT identification number as they are recorded in the national databases.

**REGULATION (EU) 2019/1149 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 20 June 2019**

establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344

(Text with relevance for the EEA and for Switzerland)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 46 and 48 thereof,

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

- (1) The freedom of movement for workers, the freedom of establishment and the freedom to provide services are fundamental principles of the internal market of the Union, enshrined in the Treaty on the Functioning of the European Union (TFEU).
- (2) Pursuant to Article 3 of the Treaty on European Union (TEU), the Union is to work for a highly competitive social market economy, aiming at full employment and social progress, and to promote social justice and protection, equality between women and men, solidarity between generations and combatting discrimination. Pursuant to Article 9 TFEU, the Union, in defining and implementing its policies and activities, is to take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and the promotion of a high level of education, training and the protection of human health.
- (3) The European Pillar of Social Rights was the subject of a joint proclamation by the European Parliament, the Council and the Commission at the Social Summit for Fair Jobs and Growth, in Gothenburg on 17 November 2017. That Summit emphasised the need to put people first in order to further develop the social dimension of the Union, and to promote convergence through efforts at all levels, as confirmed in the conclusions of the European Council following its meeting on 14 and 15 December 2017.
- (4) In their Joint Declaration on the EU's legislative priorities for 2018 to 2019, the European Parliament, the Council and the Commission committed themselves to taking action to reinforce the social dimension of the Union, by working on improving the coordination of social security systems, by protecting workers from health risks in the workplace, by ensuring fair treatment for all in the Union labour market through modernised rules on posting of workers, and by further improving cross-border enforcement of Union law.

⁽¹⁾ OJ C 440, 6.12.2018, p. 128.

⁽²⁾ OJ C 461, 21.12.2018, p. 16.

⁽³⁾ Position of the European Parliament of 16 April 2019 (not yet published in the Official Journal) and decision of the Council of 13 June 2019.

- (5) In order to protect the rights of mobile workers and to foster fair competition between companies, in particular small and medium-sized enterprises (SMEs), it is crucial to improve the cross-border enforcement of Union law in the area of labour mobility and to tackle abuse.
- (6) A European Labour Authority (the 'Authority') should be established in order to help strengthen fairness and trust in the internal market. The Authority's objectives should be clearly defined, with a strong focus on a limited number of tasks, in order to ensure that the means available are used as efficiently as possible in areas where the Authority can provide the greatest added value. To that end, the Authority should assist the Member States and the Commission in strengthening the access to information, should support compliance and cooperation between the Member States in the consistent, efficient and effective application and enforcement of the Union law related to labour mobility across the Union, and the coordination of social security systems within the Union, and should mediate and facilitate solutions in the case of disputes.
- (7) Improving access to information for individuals and employers, in particular SMEs, about their rights and obligations in the areas of labour mobility, the free movement of services and social security coordination, is essential to allowing them to benefit from the full potential of the internal market.
- (8) The Authority should carry out its activities in the areas of labour mobility across the Union and social security coordination, including the freedom of movement for workers, the posting of workers, and highly mobile services. It should also enhance cooperation between Member States in tackling undeclared work, and other situations that put at risk the proper functioning of the internal market, such as letter-box entities and bogus self-employment, without prejudice to the competence of Member States to decide on national measures. Where the Authority, in the course of carrying out its activities, becomes aware of suspected irregularities in areas of Union law, such as breaches of working conditions or health and safety rules, or labour exploitation, it should be able to report them to, and cooperate on those matters with, the national authorities of the Member States concerned and, where appropriate, the Commission and other competent Union bodies.
- (9) The scope of activities of the Authority should cover specific Union legal acts listed in this Regulation, including amendments thereto. That list should be extended in the case of further Union legal acts being adopted in the field of labour mobility across the Union.
- (10) The Authority should proactively contribute to Union and national efforts in the area of labour mobility across the Union and social security coordination, by carrying out its tasks in full cooperation with the Union institutions and bodies and the Member States, while avoiding any duplication of work and promoting synergy and complementarity.
- (11) The Authority should contribute to facilitating the application and enforcement of Union law within the scope of this Regulation, and to supporting the enforcement of those provisions implemented through universally applicable collective agreements in accordance with the practices of Member States. To that end, the Authority should set up a single Union website for the purpose of accessing all relevant Union websites, and national websites established in accordance with Directive 2014/67/EU of the European Parliament and of the Council⁽⁴⁾ and Directive 2014/54/EU of the European Parliament and of the Council⁽⁵⁾. Without prejudice to the tasks and activities of the Administrative Commission for the Coordination of Social Security Systems established by Regulation (EC) No 883/2004 of the European Parliament and of the Council⁽⁶⁾ (the 'Administrative Commission'), the Authority should also assist in the coordination of social security systems.

⁽⁴⁾ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (the IMI Regulation) (OJ L 159, 28.05.2014, p. 11).

⁽⁵⁾ Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128, 30.4.2014, p. 8).

⁽⁶⁾ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

- (12) In certain instances, sector-specific Union law has been adopted in order to respond to specific needs in particular sectors, such as in the area of international transport, including road, rail, maritime transport, inland waterways and aviation. Within the scope of this Regulation, the Authority should also deal with the cross-border labour mobility and social security aspects of the application of such sector-specific Union law. The scope of the Authority's activities, in particular whether its activities should be extended to further Union legal acts that cover sector-specific needs in the area of international transport, should be subject to periodic evaluation and, if appropriate, review.
- (13) The Authority's activities should cover individuals who are subject to the Union law within the scope of this Regulation, including workers, self-employed persons and jobseekers. Such individuals should include citizens of the Union and third-country nationals who are legally resident in the Union, such as posted workers, intra-corporate transferees or long-term residents, as well as their family members, in accordance with Union law regulating their mobility within the Union.
- (14) The establishment of the Authority should not create new rights or obligations for individuals or employers, including economic operators or not-for-profit organisations as the activities of the Authority should envisage such individuals and employers to the extent that they are covered by the Union law within the scope of this Regulation. Increased cooperation in the area of enforcement should neither place an excessive administrative burden on mobile workers or employers, in particular SMEs, nor discourage labour mobility.
- (15) To ensure that individuals and employers are able to reap the benefits of a fair and effective internal market, the Authority should support Member States in promoting opportunities for labour mobility or the provision of services and recruitment anywhere within the Union, including opportunities for access to cross-border mobility services, such as the cross-border matching of jobs, traineeships and apprenticeships and mobility schemes such as 'Your first EURES job' or ErasmusPRO. The Authority should also contribute to improving transparency of information, including on rights and obligations provided for in Union law, and access to services to individuals and employers, in cooperation with other Union information services, such as Your Europe Advice, and taking full advantage and ensuring consistency with the Your Europe portal, which is to form the backbone of the single digital gateway established by Regulation (EU) 2018/1724 of the European Parliament and of the Council⁽⁷⁾.
- (16) To that end, the Authority should cooperate in other relevant Union initiatives and networks, in particular in the European Network of Public Employment Services, the European Enterprise Network, the Border Focal Point SOLVIT, and the Senior Labour Inspectors' Committee, as well as in relevant national services such as the bodies to promote equal treatment and to support Union workers and members of their family that are designated by Member States pursuant to Directive 2014/54/EU. The Authority should replace the Commission in managing the European Coordination Office of the European network of employment services (EURES), established by Regulation (EU) 2016/589 of the European Parliament and of the Council⁽⁸⁾, including establishing user needs and business requirements for the effectiveness of the EURES portal and related information technology (IT) services, but excluding the provision of IT and the operation and development of IT infrastructure, which will continue to be ensured by the Commission.
- (17) With a view to ensuring the fair, simple and effective application and enforcement of Union law, the Authority should support cooperation and the timely exchange of information between Member States. Together with other staff, National Liaison Officers working within the Authority should support Member States' compliance with cooperation obligations, speed up exchanges between them through procedures dedicated to reducing delays, and ensure links with other national liaison offices, bodies, and contact points established under Union law. The Authority should encourage the use of innovative approaches to effective and efficient cross-border cooperation, including electronic data exchange tools such as the Electronic Exchange of Social Security Information (EESSI) system and the Internal Market Information (IMI) system, and should contribute to further digitalising procedures and improving IT tools used for message exchange between national authorities.

⁽⁷⁾ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

⁽⁸⁾ Regulation (EU) 2016/589 of the European Parliament and the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) No 1296/2013 (OJ L 107, 22.4.2016, p. 1).

- (18) To increase Member States' capacity to ensure protection of persons exercising their right to free movement and tackle irregularities with a cross-border dimension in relation to Union law within the scope of this Regulation, the Authority should support the national authorities in carrying out concerted and joint inspections, including by facilitating the implementation of inspections in accordance with Article 10 of Directive 2014/67/EU. Those inspections should take place at the request of Member States or upon their agreement to the Authority's suggestion. The Authority should provide strategic, logistical, and technical support to Member States participating in the concerted or joint inspections in full respect of the confidentiality requirements. Inspections should be carried out in agreement with the Member States concerned and should take place within the legal framework of national law or practice of the Member States in which they take place. Member States should follow up on the outcomes of the concerted and joint inspections according to national law or practice.
- (19) Concerted and joint inspections should not replace or undermine national competences. National authorities should also be fully associated in the process of such inspections and should have full authority. Where trade unions are in charge of inspections at national level, concerted and joint inspections should take place following the agreement of, and in cooperation with, the relevant social partners.
- (20) In order to keep track of emerging trends, challenges, or loopholes in the areas of labour mobility and social security coordination, the Authority should develop, in cooperation with Member States and, where appropriate, the social partners, an analytical and risk assessment capacity. This should involve carrying out labour market analyses and studies, as well as peer reviews. The Authority should monitor potential imbalances in terms of skills and cross-border labour flows, including their possible impact on territorial cohesion. The Authority should also support the risk assessment referred to in Article 10 of Directive 2014/67/EU. The Authority should ensure synergies and complementarity with Union agencies, services or networks. This should include seeking input from SOLVIT and similar services on sector-specific challenges and recurring problems concerning labour mobility within the scope of this Regulation. The Authority should also facilitate and streamline data collection activities provided for by Union law within the scope of this Regulation. This does not entail the creation of new reporting obligations for Member States.
- (21) To strengthen the capacity of national authorities in the areas of labour mobility and social security coordination and improve consistency in the application of Union law within the scope of this Regulation, the Authority should provide operational assistance to national authorities, including developing practical guidelines, establishing training and peer learning programmes, including for labour inspectorates to address challenges such as bogus self-employment and abuses of posting, promoting mutual assistance projects, facilitating staff exchanges such as those referred to in Article 8 of Directive 2014/67/EU, and supporting Member States in organising awareness-raising campaigns informing individuals and employers of their rights and obligations. The Authority should promote the exchange, dissemination and uptake of good practices and knowledge, and promote mutual understanding of different national systems and practices.
- (22) The Authority should develop synergies between its task to ensure fair labour mobility and tackling undeclared work. For the purposes of this Regulation, 'tackling' undeclared work means preventing, deterring and combating undeclared work as well as promoting the declaration thereof. Building on the knowledge and the working methods of the European Platform to enhance cooperation in tackling undeclared work, established by Decision (EU) 2016/344 of the European Parliament and the Council⁽⁹⁾, the Authority should set up, with the involvement of the social partners, a permanent working group also named Platform to enhance cooperation in tackling undeclared work. The Authority should ensure a smooth transition of the existing activities of the platform established by Decision (EU) 2016/344 to the working group within the Authority.
- (23) The Authority should have a mediation role. Member States should be able to refer disputed individual cases to the Authority for mediation after failing to solve them by means of direct contact and dialogue. Mediation should only concern disputes between Member States, while individuals and employers facing difficulties with exercising their Union rights should continue to have at their disposal the national and Union services dedicated to dealing with such cases, such as the SOLVIT network, to which the Authority should refer such cases. The SOLVIT network should also be able to refer to the Authority for its consideration cases in which the problem cannot be solved due to differences between national administrations. The Authority should carry out its mediation role without prejudice to the competence of the Court of Justice of the European Union (the 'Court of Justice') concerning the interpretation of Union law and without prejudice to the competence of the Administrative Commission.

⁽⁹⁾ Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work (OJ L 65, 11.3.2016, p. 12).

- (24) The European Interoperability Framework (EIF) offers principles and recommendations on how to improve governance of interoperability activities and public services delivery, establish cross-organisational and cross-border relationships, streamline processes supporting end-to-end digital exchanges, and ensure that both existing and new legislation support interoperability principles. The European Interoperability Reference Architecture (EIRA) is a generic structure, comprising principles and guidelines applying to the implementation of interoperability solutions, referred to in Decision (EU) 2015/2240 of the European Parliament and of the Council⁽¹⁰⁾. Both the EIF and the EIRA should guide and support the Authority when considering interoperability matters.
- (25) The Authority should aim to provide better access to online information and services for Union and national stakeholders and facilitate the exchange of information between them. Therefore, the use of digital tools should be encouraged by the Authority, whenever possible. Besides IT systems and websites, digital tools such as online platforms and databases play an increasingly central role in the cross-border labour mobility market. Thus, such tools are useful to provide easy access to relevant online information and facilitate exchange of information for Union and national stakeholders regarding their cross-border activities.
- (26) The Authority should strive for websites and mobile applications established for the implementation of the tasks laid down in this Regulation to be in accordance with relevant accessibility requirements of the Union. Directive (EU) 2016/2102 of the European Parliament and of the Council⁽¹¹⁾ requires Member States to ensure that their public bodies' websites are accessible in accordance with the principles that they are perceivable, operable, understandable and robust and that they comply with the requirements of that Directive. That Directive does not apply to websites or mobile applications of Union institutions, bodies, offices and agencies. However, the Authority should endeavour to comply with the principles set out in that Directive.
- (27) The Authority should be governed and operated in line with the principles of the Joint Statement of the European Parliament, the Council and the Commission on decentralised agencies of 19 July 2012.
- (28) The principle of equality is a fundamental principle of Union law. It requires that equality between women and men is ensured in all areas, including employment, work and pay. All parties should aim to achieve a balanced representation between women and men on the Management Board and the Stakeholder Group. That aim should also be pursued by the Management Board with regard to its Chairperson and Deputy Chairpersons taken together.
- (29) The Member States and the Commission should be represented on a Management Board, in order to ensure the effective functioning of the Authority. The European Parliament as well as cross-industry social partner organisations at Union level, with an equal representation of trade union and employer organisations and with adequate representation of SMEs, may also nominate representatives to the Management Board. The composition of the Management Board, including the selection of its Chair and Deputy-Chair, should respect the principles of gender balance, experience and qualification. In view of the effective and efficient functioning of the Authority, the Management Board, in particular, should adopt an annual work programme, carry out its functions relating to the Authority's budget, adopt the financial rules applicable to the Authority, appoint an Executive Director, and establish procedures for taking decisions relating to the operational tasks of the Authority by the Executive Director. Representatives from third countries that apply the Union rules within the scope of this Regulation, should be able to participate in the meetings of the Management Board as observers.
- (30) In exceptional cases, where necessary to maintain the maximum level of confidentiality, the independent expert appointed by the European Parliament and the representatives of cross-industry social partner organisations at Union level should not participate in deliberations of the Management Board. Such provision should be clearly specified in the rules of procedure of the Management Board and limited to sensitive information regarding individual cases, to ensure that the effective participation of the expert and the representatives in the work of the Management Board is not unduly limited.
- (31) An Executive Director should be appointed to ensure the overall administrative management of the Authority and the implementation of the tasks assigned to the Authority. Other staff members may deputise for the Executive Director where this is deemed to be necessary in order to ensure the day-to-day management of the Authority, in accordance with the internal rules of the Authority, without creating additional managerial positions.

⁽¹⁰⁾ Decision (EU) 2015/2240 of the European Parliament and of the Council of 25 November 2015 establishing a programme on interoperability solutions and common frameworks for European public administrations, businesses and citizens (ISA² programme) as a means for modernising the public sector (OJ L 318, 4.12.2015, p. 1).

⁽¹¹⁾ Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (OJ L 327, 2.12.2016, p. 1).

- (32) Without prejudice to the powers of the Commission, the Management Board and the Executive Director should be independent in the performance of their duties and act in the public interest.
- (33) The Authority should directly rely on the expertise of relevant stakeholders in the areas under the scope of this Regulation through a dedicated Stakeholder Group. The members should be representatives of the Union-level social partners, including recognised Union sectoral social partners representing sectors particularly concerned with labour mobility issues. The Stakeholder Group should receive prior briefing and be able to submit their opinions to the Authority, upon request or on their own initiative. In carrying out its activities, the Stakeholder Group will take due account of the opinions and draw on the expertise of the Advisory Committee for the Coordination of Social Security Systems established by Regulation (EC) No 883/2004 and the Advisory Committee on the Free Movement of Workers established pursuant to Regulation (EU) No 492/2011 of the European Parliament and of the Council ⁽¹²⁾.
- (34) To guarantee its full autonomy and independence, the Authority should be granted an autonomous budget, with revenue coming from the general budget of the Union, any voluntary financial contribution from the Member States and any contribution from third countries participating in the work of the Authority. In exceptional and duly justified cases it should also be in the position to receive delegation agreements or ad hoc grants, and to charge for publications and any service provided by the Authority.
- (35) The translation services required for the Authority's functioning should be provided by the Translation Centre of the Bodies of the European Union (Translation Centre). The Authority should work together with the Translation Centre to establish indicators for quality, timeliness and confidentiality, to identify clearly the Authority's needs and priorities, and create transparent and objective procedures for the translation process.
- (36) Processing of personal data carried out in the context of this Regulation should be conducted in accordance with Regulation (EU) 2016/679 ⁽¹³⁾ or (EU) 2018/1725 ⁽¹⁴⁾ of the European Parliament and of the Council, as applicable. This includes putting in place appropriate technical and organisational measures to comply with the obligations imposed by those Regulations, in particular measures relating to the lawfulness of the processing, the security of the processing activities, the provision of information and the rights of data subjects.
- (37) In order to ensure the transparent operation of the Authority, Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹⁵⁾ should apply to the Authority. The activities of the Authority should be subject to the scrutiny of the European Ombudsman in accordance with Article 228 TFEU.
- (38) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽¹⁶⁾ should apply to the Authority, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF).
- (39) The Authority's host Member State should provide the best possible conditions to ensure the proper functioning of the Authority.
- (40) In order to ensure open and transparent employment conditions and the equal treatment of staff, the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁷⁾ (referred to as the 'Staff Regulations' and the 'Conditions of Employment', respectively), should apply to the staff and to the Executive Director of the Authority, including the rules of professional secrecy or other equivalent duties of confidentiality.

⁽¹²⁾ Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.5.2011, p. 1).

⁽¹³⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽¹⁴⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁽¹⁵⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

⁽¹⁶⁾ 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).

⁽¹⁷⁾ OJ L 56, 4.3.1968, p. 1.

- (41) Within the framework of their respective competences, the Authority should cooperate with agencies of the Union, in particular those established in the area of employment and social policy, building on their expertise and maximising synergies: the European Foundation for the Improvement of Living and Working Conditions (Eurofound), the European Centre for the Development of Vocational Training (Cedefop), the European Agency for Safety and Health at Work (EU-OSHA), and the European Training Foundation (ETF), as well as, as regards the fight against organised crime and trafficking in human beings, with the European Union Agency for Law Enforcement Cooperation (Europol) and European Union Agency for Criminal Justice Cooperation (Eurojust). Such cooperation should ensure coordination, promote synergies and avoid any duplication in their activities.
- (42) In the field of social security coordination, the Authority and the Administrative Commission should cooperate closely with the aim of achieving synergies and avoiding any duplication.
- (43) In order to bring an operational dimension to the activities of existing bodies in the areas within the scope of this Regulation, the Authority should carry out the tasks of the Technical Committee on the Free Movement of Workers established pursuant to Regulation (EU) No 492/2011, the Committee of Experts on Posting of Workers set up by Commission Decision 2009/17/EC⁽¹⁸⁾, including the exchange of information on administrative cooperation, the assistance in questions on implementation as well as cross-border enforcement, and the platform established by Decision (EU) 2016/344. Once the Authority is operational, those bodies should cease to exist. The Management Board may decide to set up dedicated working groups or expert panels.
- (44) The Advisory Committee for the Coordination of Social Security Systems and the Advisory Committee on the Free Movement of Workers provide a forum for the consultation of social partners and government representatives at national level. The Authority should contribute to their work and may participate in their meetings.
- (45) In order to reflect the new institutional set-up, Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 should be amended, and Decision (EU) 2016/344 should be repealed once the Authority is operational.
- (46) The Authority should respect the diversity of national industrial relations systems as well as the autonomy of the social partners as explicitly recognised by the TFEU. Taking part in the activities of the Authority is without prejudice to the Member States' competences, obligations and responsibilities under, inter alia, relevant and applicable International Labour Organisation (ILO) conventions, such as Convention No 81 concerning Labour Inspection in Industry and Commerce, and to the Member States' powers to regulate, mediate or monitor national industrial relations, in particular on the exercise of the right to collective bargaining and to take collective action.
- (47) Since the objectives of this Regulation, namely to contribute, within its scope, to ensuring fair labour mobility across the Union and to assist Member States and the Commission in the coordination of social security systems within the Union cannot be sufficiently achieved by the Member States acting in an uncoordinated manner, but can rather, by reason of the cross-border nature of those activities and the need for increased cooperation between Member States, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (48) This Regulation respects the fundamental rights and observes the principles endorsed, in particular, by the Charter of Fundamental Rights of the European Union, as recognised in Article 6 TEU,

⁽¹⁸⁾ Commission Decision 2009/17/EC of 19 December 2008 setting up the Committee of Experts on Posting of Workers (OJ L 8, 13.1.2009, p. 26).

HAVE ADOPTED THIS REGULATION:

CHAPTER I

PRINCIPLES

Article 1

Establishment, subject matter and scope

1. This Regulation establishes the European Labour Authority (the 'Authority').
2. The Authority shall assist Member States and the Commission in their effective application and enforcement of Union law related to labour mobility across the Union and the coordination of social security systems within the Union. The Authority shall act within the scope of the Union acts listed in paragraph 4, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.
3. This Regulation shall not in any way affect the exercise of fundamental rights as recognised in the Member States and at Union level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States in accordance with national law or practice. Nor does it affect the right to negotiate, conclude and enforce collective agreements, or to take collective action in accordance with national law or practice.
4. The scope of activities of the Authority shall cover the following Union acts, including all future amendments to these acts:
 - (a) Directive 96/71/EC of the European Parliament and of the Council⁽¹⁹⁾;
 - (b) Directive 2014/67/EU;
 - (c) Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council⁽²⁰⁾, including the provisions of Council Regulations (EEC) No 1408/71⁽²¹⁾ and (EEC) No 574/72⁽²²⁾ insofar as they are still applicable, Regulation (EU) No 1231/2010 of the European Parliament and of the Council⁽²³⁾ and Council Regulation (EC) No 859/2003⁽²⁴⁾ extending the provisions of Regulations (EEC) No 1408/71 and (EEC) No 574/72 to nationals of third countries who are not already covered by these Regulations solely on the grounds of their nationality;
 - (d) Regulation (EU) No 492/2011;

⁽¹⁹⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

⁽²⁰⁾ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

⁽²¹⁾ Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ L 149, 5.7.1971, p. 2).

⁽²²⁾ Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons, and to their families moving within the Community (OJ L 74, 27.3.1972, p. 1).

⁽²³⁾ Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).

⁽²⁴⁾ Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ L 124, 20.5.2003, p. 1).

- (e) Directive 2014/54/EU;
- (f) Regulation (EU) 2016/589;
- (g) Regulation (EC) No 561/2006 of the European Parliament and of the Council ⁽²⁵⁾;
- (h) Directive 2006/22/EC of the European Parliament and of the Council ⁽²⁶⁾;
- (i) Regulation (EC) No 1071/2009 of the European Parliament and of the Council ⁽²⁷⁾.

5. The scope of activities of the Authority shall cover the provisions of this Regulation related to the cooperation between Member States in order to tackle undeclared work.

6. This Regulation shall respect the competences of Member States with regard to the application and enforcement of Union law listed in paragraph 4.

It shall not affect the rights or obligations of individuals or employers granted by Union law or national law or practice, nor the rights and obligations of national authorities deriving thereof, as well as the autonomy of the social partners as recognised by the TFEU.

This Regulation shall be without prejudice to existing bilateral agreements and administrative cooperation arrangements between Member States, in particular those related to concerted and joint inspections.

Article 2

Objectives

The objectives of the Authority shall be to contribute to ensuring fair labour mobility across the Union and assist Member States and the Commission in the coordination of social security systems within the Union. To that end, and within the scope pursuant to Article 1, the Authority shall:

- (a) facilitate access to information on rights and obligations regarding labour mobility across the Union as well as to relevant services;
- (b) facilitate and enhance cooperation between Member States in the enforcement of relevant Union law across the Union, including facilitating concerted and joint inspections;
- (c) mediate and facilitate a solution in cases of cross-border disputes between Member States; and
- (d) support cooperation between Member States in tackling undeclared work.

Article 3

Legal status

1. The Authority shall be a Union body with legal personality.

⁽²⁵⁾ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

⁽²⁶⁾ Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

⁽²⁷⁾ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).

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

CHAPTER II

TASKS OF THE AUTHORITY

Article 4

Tasks of the Authority

In order to achieve its objectives, the Authority shall carry out the following tasks:

- (a) facilitate access to information and coordinate EURES in accordance with Articles 5 and 6;
- (b) facilitate cooperation and the exchange of information between Member States with a view to the consistent, efficient and effective application and enforcement of relevant Union law, in accordance with Article 7;
- (c) coordinate and support concerted and joint inspections, in accordance with Articles 8 and 9;
- (d) carry out analyses and risk assessment on issues of cross-border labour mobility, in accordance with Article 10;
- (e) support Member States with capacity building regarding the effective application and enforcement of relevant Union law, in accordance with Article 11;
- (f) support Member States in tackling undeclared work, in accordance with Article 12;
- (g) mediate disputes between Member States on the application of relevant Union law, in accordance with Article 13.

Article 5

Information on labour mobility

The Authority shall improve the availability, quality and accessibility of information of a general nature offered to individuals, employers and social partner organisations regarding rights and obligations deriving from the Union acts listed in Article 1(4) to facilitate labour mobility across the Union. To that end, the Authority shall:

- (a) contribute to the provision of relevant information on the rights and obligations of individuals in cross-border labour mobility situations, including through a single Union-wide website acting as a single portal for accessing information sources and services at Union and national level in all official languages of the Union established by Regulation (EU) 2018/1724;
- (b) support Member States in the application of Regulation (EU) 2016/589;
- (c) support Member States in complying with the obligations on the access to and dissemination of information relating to the free movement of workers, in particular as laid down in Article 6 of Directive 2014/54/EU and in Article 22 of Regulation (EU) 2016/589, to social security coordination as laid down in Article 76(4) and (5) of Regulation (EC) No 883/2004, and to the posting of workers as laid down in Article 5 of Directive 2014/67/EU, including by means of reference to national information sources such as the single official national websites;

- (d) support Member States in improving the accuracy, completeness and user-friendliness of relevant national information sources and services, in accordance with the quality criteria laid down in Regulation (EU) 2018/1724;
- (e) support Member States in streamlining the provision of information and services to individuals and employers pertaining to cross-border mobility on a voluntary basis;
- (f) facilitate cooperation between the competent bodies designated in accordance with Directive 2014/54/EU to provide information, guidance and assistance to individuals and employers in the area of labour mobility within the internal market.

Article 6

Coordination of EURES

In order to support Member States in providing services to individuals and employers through EURES, such as cross-border matching of job, traineeship, and apprenticeship vacancies with CVs, and thus facilitating labour mobility across the Union, the Authority shall manage the European Coordination Office of EURES, established under Article 7 of Regulation (EU) 2016/589.

The European Coordination Office shall, under the management of the Authority, fulfil its responsibilities in accordance with Article 8 of Regulation (EU) 2016/589, except for the technical operation and development of the EURES portal and related IT services, which shall continue to be managed by the Commission. The Authority, under the responsibility of the Executive Director as set out in point (n) of Article 22(4) of this Regulation, shall ensure that this activity fully complies with the requirements of the applicable data protection legislation, including the requirement to appoint a Data Protection Officer, in accordance with Article 36 of this Regulation.

Article 7

Cooperation and exchange of information between Member States

1. The Authority shall facilitate the cooperation and acceleration of exchange of information between Member States and support their effective compliance with cooperation obligations, including on information exchange, as defined in Union law within the scope of this Regulation.

To that end, the Authority shall in particular:

- (a) upon request of one or more Member States, support national authorities in identifying the relevant contact points of national authorities in other Member States;
- (b) upon request of one or more Member States, facilitate the follow-up to requests and information exchanges between national authorities by providing logistical and technical support, including translation and interpretation services, and through exchanges on the status of cases;
- (c) promote, share and contribute to disseminating best practices between Member States;
- (d) upon request of one or more Member States, where relevant, facilitate and support cross-border enforcement procedures relating to penalties and fines, within the scope of this Regulation according to Article 1;
- (e) report to the Commission twice a year about unresolved requests between Member States and consider whether to refer those to mediation in accordance with Article 13(2).

2. Upon request of one or more Member States and in fulfilling its tasks, the Authority shall provide information to support the Member State concerned in the effective application of the Union acts that fall within the Authority's competence.

3. The Authority shall promote the use of electronic tools and procedures for message exchange between national authorities, including the IMI system.

4. The Authority shall encourage the use of innovative approaches to effective and efficient cross-border cooperation, and shall promote the potential use of electronic exchange mechanisms and databases between the Member States to facilitate the access to data in real time and detection of fraud, and may suggest possible improvements in the use of those mechanisms and databases. The Authority shall provide reports to the Commission with a view to the further development of electronic exchange mechanisms and databases.

Article 8

Coordination and support of concerted and joint inspections

1. At the request of one or more Member States, the Authority shall coordinate and support concerted or joint inspections in the areas within the Authority's competence. The Authority may also, on its own initiative, suggest to the authorities of the Member States concerned that they carry out a concerted or joint inspection.

Concerted and joint inspections shall be subject to the agreement of the Member States concerned.

Social partner organisations at national level may bring cases to the attention of the Authority.

2. For the purposes of this Regulation:

(a) concerted inspections are inspections carried out in two or more Member States simultaneously regarding related cases, with each national authority operating in its own territory, and supported, where appropriate, by the staff of the Authority;

(b) joint inspections are inspections carried out in a Member State with the participation of the national authorities of one or more other Member States, and supported, where appropriate, by the staff of the Authority.

3. In accordance with the principle of sincere cooperation, Member States shall endeavour to participate in concerted or joint inspections.

A concerted or joint inspection shall be subject to the prior agreement of all participating Member States, and such agreement shall be notified via National Liaison Officers designated pursuant to Article 32.

In the event that one or more Member States decide not to participate in the concerted or joint inspection, the national authorities of the other Member States shall carry out such an inspection only in the participating Member States. Member States that decide not to participate shall keep information about such an inspection confidential.

4. The Authority shall establish and adopt the modalities to ensure appropriate follow-up where a Member State decides not to participate in a concerted or joint inspection.

In such cases, the Member State concerned shall inform the Authority and the other Member States concerned in writing, including by electronic means, without undue delay of the reasons for its decision and possibly about the measures it plans to take to resolve the case, as well as, once known, about the outcomes of such measures. The Authority may suggest that the Member State which did not participate in a concerted or joint inspection carry out its own inspection on a voluntary basis.

5. Member States and the Authority shall keep information about envisaged inspections confidential with regard to third parties.

Article 9

Arrangements for concerted and joint inspections

1. An agreement to carry out a concerted inspection or a joint inspection between the participating Member States and the Authority shall set out the terms and the conditions for carrying out that inspection, including the scope and purpose

of the inspection and, if relevant, any arrangements with regard to the participation of the staff of the Authority. The agreement may include provisions which enable concerted or joint inspections, once agreed and planned, to take place at short notice. The Authority shall establish a model agreement in accordance with Union law, as well as national law or practice.

2. Concerted and joint inspections shall be carried out in accordance with the law or practice of the Member States in which the inspections take place. Any follow-up to such inspections shall be carried out in accordance with the law or practice of the Member States concerned.

3. Concerted and joint inspections shall take place in an operationally effective manner. To that end, Member States shall, in the inspection agreement, grant officials from another Member State participating in such inspections an appropriate role and status, in accordance with the law or practice of the Member State where the inspection is carried out.

4. The Authority shall provide conceptual, logistical and technical support, and, where appropriate, legal expertise, if requested by the Member States concerned, including translation and interpretation services, to Member States carrying out concerted or joint inspections.

5. Staff of the Authority may attend the inspection as observers, may provide logistical support, and may participate in a concerted or joint inspection with the prior agreement of the Member State on whose territory they will be providing their assistance to the inspection in accordance with the Member State's law or practice.

6. The authority of a Member State that carries out a concerted or joint inspection shall report to the Authority on the outcome of the inspection within that Member State and on the overall operational running of the concerted or joint inspection at the latest six months after the end of the inspection.

7. It shall be possible to use the information collected during concerted or joint inspections as evidence in legal proceedings in the Member States concerned, in accordance with the law or practice of that Member State.

8. Information on concerted and joint inspections coordinated by the Authority, as well as information provided by Member States and by the Authority as referred to in Article 8(2) and (3) shall be included in the reports that are to be submitted to the Management Board twice a year. Such reports shall be sent also to the Stakeholder Group, with sensitive information duly redacted. A yearly report on the inspections supported by the Authority shall be included in the Authority's annual activity report.

9. In the event that the Authority, in the course of concerted or joint inspections, or in the course of any of its activities, becomes aware of suspected irregularities in the application of Union law, it may report those suspected irregularities, where appropriate, to the Member State concerned and to the Commission.

Article 10

Labour mobility analyses and risk assessment

1. The Authority shall, in cooperation with Member States and, where appropriate, the social partners, assess risks and carry out analyses regarding labour mobility and social security coordination across the Union. The risk assessment and analytical work shall address topics such as labour market imbalances, sector-specific challenges and recurring problems, and the Authority may also carry out focused in-depth analyses and studies to investigate specific issues. In carrying out its risk assessment and analytical work, the Authority shall, to the extent possible, use relevant and current statistical data available from existing surveys, and ensure complementarity with, and draw on the expertise of Union agencies or services and of national authorities, agencies or services, including in the areas of fraud, exploitation, discrimination, skills forecasting and health and safety at work.

2. The Authority shall organise peer reviews among Member States which agree to participate in order to:

- (a) examine any questions, difficulties and specific issues which might arise concerning the implementation and practical application of Union law within the Authority's competence, as well as its enforcement in practice;
 - (b) strengthen consistency in the provision of services to individuals and businesses;
 - (c) improve the knowledge and mutual understanding of different systems and practices, as well as assess the effectiveness of different policy measures, including prevention and deterrence measures.
3. Where a risk assessment or any other type of analytical work has been completed, the Authority shall report its findings to the Commission, as well as to the Member States concerned directly, outlining possible measures to address identified weaknesses.

The Authority shall also include a summary of its findings in its annual reports to the European Parliament and to the Commission.

4. The Authority shall, where appropriate, collect statistical data compiled and provided by Member States in the areas of Union law within the Authority's competence. In doing so, the Authority shall seek to streamline current data collection activities in those areas to avoid duplication of data collection. Where relevant, Article 15 shall apply. The Authority shall liaise with the Commission (Eurostat) and share the results of its data collection activities, where appropriate.

Article 11

Support to capacity building

The Authority shall support Member States with capacity building aimed at promoting the consistent enforcement of the Union law in all areas listed in Article 1. The Authority shall, in particular, carry out the following activities:

- (a) in cooperation with national authorities and, where appropriate, the social partners, develop common non-binding guidelines for use by Member States and the social partners, including guidance for inspections in cases with a cross-border dimension, as well as shared definitions and common concepts, building on relevant work at national and Union level;
- (b) promote and support mutual assistance, either in the form of peer-to-peer or group activities, as well as staff exchanges and secondment schemes between national authorities;
- (c) promote the exchange and dissemination of experiences and good practices, including examples of cooperation between the relevant national authorities;
- (d) develop sectoral and cross-sectoral training programmes, including for labour inspectorates, and dedicated training material, including through online learning methods;
- (e) promote awareness-raising campaigns, including campaigns to inform individuals and employers, especially SMEs, of their rights and obligations and the opportunities available to them.

Article 12

European Platform to enhance cooperation in tackling undeclared work

1. The European Platform to enhance cooperation in tackling undeclared work (the 'Platform') established in accordance with Article 16(2) shall support the activities of the Authority in tackling undeclared work by:

- (a) enhancing cooperation between Member States' relevant authorities and other actors involved in order to tackle more efficiently and effectively undeclared work in its various forms and falsely declared work associated with it, including bogus self-employment;
- (b) improving the capacity of Member States' different relevant authorities and actors to tackle undeclared work with regard to its cross-border aspects; and in this way contributing to a level playing field;
- (c) increasing public awareness of issues relating to undeclared work and of the urgent need for appropriate action as well as encouraging Member States to step up their efforts to tackle undeclared work;
- (d) carrying out the activities listed in the Annex.

2. The Platform shall encourage cooperation between Member States through:

- (a) exchanging best practices and information;
- (b) developing expertise and analysis, while avoiding any duplication;
- (c) encouraging and facilitating innovative approaches to effective and efficient cross-border cooperation and evaluating experiences;
- (d) contributing to a horizontal understanding of matters relating to undeclared work.

3. The Platform shall be composed of:

- (a) a senior representative appointed by each Member State;
- (b) a representative of the Commission;
- (c) a maximum of four representatives of cross-industry social partner organisations at Union level, appointed by those organisations, with an equal representation of trade union and employer organisations.

4. The following stakeholders may attend the meetings of the Platform as observers and their contributions shall be taken into due consideration:

- (a) a maximum of 14 representatives of social partner organisations in sectors with a high incidence of undeclared work, appointed by those organisations, with an equal representation of trade union and employer organisations;
- (b) one representative of each of Eurofound, EU-OSHA and the ILO;
- (c) one representative of each of the third countries in the European Economic Area.

Observers other than those referred to in the first subparagraph may be invited to attend the meetings of the Platform and their contributions shall be taken into due consideration.

The Platform shall be chaired by a representative of the Authority.

Article 13

Mediation between Member States

1. The Authority may facilitate a solution in the case of a dispute between two or more Member States regarding individual cases of application of Union law in areas covered by this Regulation, without prejudice to the powers of the Court of Justice. The purpose of such mediation shall be to reconcile divergent points of view between the Member States that are party to the dispute and to adopt a non-binding opinion.

2. Where a dispute cannot be solved by direct contact and dialogue between the Member States that are party to the dispute, the Authority shall launch a mediation procedure upon request of one or more of the Member States concerned. The Authority may also suggest launching a mediation procedure on its own initiative. Mediation shall be conducted only with the agreement of all Member States that are party to the dispute.

3. The first stage of mediation shall be conducted between the Member States that are party to the dispute and a mediator, who shall adopt a non-binding opinion by common agreement. Experts from the Member States, the Commission and the Authority may participate in the first stage of mediation in an advisory capacity.

4. If no solution is found in the first stage of mediation, the Authority shall launch a second stage of mediation before its Mediation Board, subject to the agreement of all Member States that are party to the dispute.

5. The Mediation Board composed of experts from Member States other than those that are party to the dispute shall seek to reconcile the points of view of the Member States that are party to the dispute and shall agree on a non-binding opinion. Experts from the Commission and the Authority may participate in the second stage of mediation in an advisory capacity.

6. The Management Board shall adopt the rules of procedure for mediation, including working arrangements and the appointment of mediators, the applicable deadlines, the involvement of experts from the Member States, the Commission and the Authority, and the possibility of the Mediation Board to sit in panels composed of several members.

7. The participation of the Member States that are party to the dispute in both stages of mediation shall be voluntary. Where such a Member State decides not to participate in mediation, it shall inform the Authority and the other Member States that are party to the dispute in writing, including by electronic means, of the reasons for its decision within the period set in the rules of procedure referred to in paragraph 6.

8. When presenting a case for mediation, Member States shall ensure that all personal data related to that case is anonymised in such a manner that the data subject is not or no longer identifiable. The Authority shall not process the personal data of individuals concerned by the case at any point in the course of the mediation.

9. Cases in which there are ongoing court proceedings at national or Union level shall not be admissible for mediation by the Authority. Where court proceedings are initiated during the mediation, the mediation procedure shall be suspended.

10. Mediation shall be without prejudice to the competence of the Administrative Commission including all decisions it takes. Mediation shall take into account all relevant decisions of the Administrative Commission.

11. When a dispute relates, fully or in part, to matters of social security, the Authority shall inform the Administrative Commission.

In order to ensure good cooperation, to coordinate the activities in mutual agreement and to avoid any duplication in cases of mediation which concern both issues of social security and labour law, the Administrative Commission and the Authority shall establish a cooperation agreement.

Upon request of the Administrative Commission and in agreement with the Member States that are party to the dispute, the Authority shall refer the issue concerning social security to the Administrative Commission pursuant to Article 74a(2) of Regulation (EC) No 883/2004. Mediation may continue on the issues not concerning social security.

Upon request of any Member State that is party to the dispute, the Authority shall refer the issue concerning social security coordination to the Administrative Commission. That referral may be made at any stage of the mediation. Mediation may continue on the issues not concerning social security.

12. Within three months of the adoption of the non-binding opinion, the Member States that are party to the dispute shall report to the Authority with regard to the measures that they have taken for the purpose of following up on the opinion or, where they have not taken measures, with regard to the reasons why they have not done so.

13. The Authority shall report to the Commission twice a year with regard to the outcome of the mediation cases it has conducted and about cases which were not pursued.

Article 14

Cooperation with agencies and specialised bodies

The Authority shall aim in all its activities at ensuring cooperation, avoiding overlaps, promoting synergies and complementarity with other decentralised Union agencies and specialised bodies, such as the Administrative Commission. To that end, the Authority may conclude cooperation agreements with relevant Union agencies, such as Cedefop, Eurofound, EU-OSHA, ETF, Europol and Eurojust.

Article 15

Interoperability and exchange of information

The Authority shall coordinate, develop and apply interoperability frameworks to guarantee the exchange of information between Member States as well as with the Authority. Those interoperability frameworks shall be based on and supported by the European Interoperability Framework and by the European Interoperability Reference Architecture referred to in Decision (EU) 2015/2240.

CHAPTER III

ORGANISATION OF THE AUTHORITY

Article 16

Administrative and management structure

1. The Authority's administrative and management structure shall comprise:

(a) a Management Board;

(b) an Executive Director;

(c) a Stakeholder Group.

2. The Authority may set up working groups or expert panels comprising representatives from Member States or from the Commission, or external experts following a selection procedure, or a combination thereof, for the fulfilment of its specific tasks or for specific policy areas. It shall set up the Platform referred to in Article 12 as a permanent working group, and the Mediation Board referred to in Article 13.

The rules of procedure of such working groups and panels shall be set out by the Authority after consulting the Commission.

Article 17

Composition of the Management Board

1. The Management Board shall be composed of:

- (a) one member from each Member State;
- (b) two members representing the Commission;
- (c) one independent expert appointed by the European Parliament;
- (d) four members, representing cross-industry social partner organisations at Union level, with an equal representation of trade union and employer organisations.

Only the members referred to in points (a) and (b) of the first subparagraph shall have the right to vote.

2. Each member of the Management Board shall have an alternate. The alternate shall represent the member in the member's absence.

3. The members referred to in point (a) of the first subparagraph of paragraph 1 and their alternates shall be appointed by their Member State.

The Commission shall appoint the members referred to in point (b) of the first subparagraph of paragraph 1.

The European Parliament shall appoint the expert referred to in point (c) of the first subparagraph of paragraph 1.

The cross-industry social partner organisations at Union level shall appoint their representatives and the European Parliament shall appoint its independent expert, after verifying that there is no conflict of interest.

Members of the Management Board and their alternates shall be appointed on the basis of their knowledge in the fields referred to in Article 1, taking into account their relevant managerial, administrative and budgetary skills.

All parties represented on the Management Board shall endeavour to limit the turnover of their representatives, in order to ensure continuity of its work. All parties shall aim to achieve a balanced representation between women and men on the Management Board.

4. Each member and alternate shall sign a written statement at the time of taking office declaring that he or she is not in a situation of conflict of interests. Each member and alternate shall update his or her statement in the case of a change of circumstances with regard to any conflict of interests. The Authority shall publish the statements and updates on its website.

5. The term of office of members and alternates shall be four years. That term shall be renewable.
6. Representatives from third countries which are applying the Union law in areas covered by this Regulation may participate in the meetings and deliberations of the Management Board as observers.
7. A representative of Eurofound, a representative of EU-OSHA, a representative of Cedefop and a representative of the European Training Foundation may be invited to participate as observers in the meetings of the Management Board in order to enhance the efficiency of the agencies and the synergies between them.

Article 18

Functions of the Management Board

1. The Management Board shall, in particular:
 - (a) provide the strategic orientations and oversee the Authority's activities;
 - (b) adopt, by a majority of two-thirds of members with the right to vote, the annual budget of the Authority and exercise other functions in respect of the Authority's budget pursuant to Chapter IV;
 - (c) assess and adopt the consolidated annual activity report on the Authority's activities, including an overview of the fulfilment of its tasks, and submit it by 1 July each year to the European Parliament, the Council, the Commission and the Court of Auditors and make the consolidated annual activity report public;
 - (d) adopt the financial rules applicable to the Authority in accordance with Article 29;
 - (e) adopt an anti-fraud strategy, proportionate to fraud risks, taking into account the costs and benefits of the measures to be implemented;
 - (f) adopt rules for the prevention and management of conflicts of interest in respect of its members and independent experts, as well as the members of the Stakeholder Group and of the working groups and panels of the Authority referred to in Article 16(2), as well as of seconded national experts and other staff not employed by the Authority as referred to in Article 33, and shall publish annually on its website the declarations of interests of the Management Board members;
 - (g) adopt and regularly update the communication and dissemination plans referred to in Article 36(3), based on an analysis of needs;
 - (h) adopt its rules of procedure;
 - (i) adopt the rules of procedure for mediation pursuant to Article 13;
 - (j) set up working groups and expert panels pursuant to Article 16(2) and adopt their rules of procedure;
 - (k) exercise, in accordance with paragraph 2, with respect to the staff of the Authority, the powers of the Appointing Authority conferred by the Staff Regulations and the Authority Empowered to Conclude a Contract of Employment conferred by the Conditions of Employment (the 'appointing authority power');

- (l) adopt implementing rules to give effect to the Staff Regulations and the Conditions of Employment in accordance with Article 110 of the Staff Regulations;
- (m) establish, where appropriate, an internal audit capacity;
- (n) appoint and, where relevant, extend the term of office of the Executive Director or remove him or her from office in accordance with Article 31;
- (o) appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment, who shall be fully independent in the performance of his or her duties;
- (p) determine the procedure for selecting the members and alternates of the Stakeholder Group set up in accordance with Article 23 and appoint those members and alternates;
- (q) ensure an adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations from OLAF;
- (r) take all decisions on the establishment of the Authority's internal committees or other bodies and, where necessary, their modification, taking into consideration the Authority's activity needs and having regard to sound financial management;
- (s) approve the Authority's draft single programming document referred to in Article 24 before its submission to the Commission for its opinion;
- (t) adopt, having received the opinion of the Commission, the Authority's single programming document by a majority of two-thirds of the members of the Management Board who are entitled to vote and in accordance with Article 24.

2. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and Article 6 of the Conditions of Employment, delegating relevant appointing authority powers to the Executive Director and setting out the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

3. Where exceptional circumstances so require, the Management Board may, by way of decision, temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the Executive Director and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

Article 19

Chairperson of the Management Board

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among the members with voting rights, and shall strive for gender balance. The Chairperson and the Deputy Chairperson shall be elected by a majority of two-thirds of the members of the Management Board with the right to vote.

In the event that a first vote does not reach the two-thirds majority, a second vote shall be organised whereby the Chairperson and Deputy Chairperson shall be elected by a simple majority of the members of the Management Board with the right to vote.

The Deputy Chairperson shall automatically replace the Chairperson if he or she is prevented from attending to his or her duties.

2. The term of office of the Chairperson and the Deputy Chairperson shall be three years. Their term of office may be renewed once. Where, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date.

Article 20

Meetings of the Management Board

1. The Chairperson shall convene the meetings of the Management Board.
2. The Chairperson shall organise the deliberations according to the items on the agenda. The members referred to in points (c) and (d) of the first subparagraph of Article 17(1) shall not participate in deliberations on items related to sensitive information regarding individual cases, as specified in the rules of procedure of the Management Board.
3. The Executive Director of the Authority shall take part in the deliberations, without the right to vote.
4. The Management Board shall hold at least two ordinary meetings per year. In addition, it shall meet at the request of its Chairperson, at the request of the Commission, or at the request of at least one-third of its members.
5. The Management Board shall convene meetings with the Stakeholder Group at least once a year.
6. The Management Board may invite any person or organisation whose opinion may be of interest to attend its meetings as an observer, including members of the Stakeholder Group.
7. The members of the Management Board and their alternates may, subject to its rules of procedure, be assisted at the meetings by advisers or experts.
8. The Authority shall provide the secretariat for the Management Board.

Article 21

Voting rules of the Management Board

1. Without prejudice to points (b) and (t) of Article 18(1), Article 19(1) and Article 31(8), the Management Board shall take decisions by a majority of members with the right to vote.
2. Each member with the right to vote shall have one vote. In the absence of a member with the right to vote, his or her alternate shall be entitled to exercise his or her right to vote.
3. The Executive Director of the Authority shall take part in the deliberations, without the right to vote.
4. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member and the circumstances in which written procedures are to be used for voting.

Article 22

Responsibilities of the Executive Director

1. The Executive Director shall be responsible for the management of the Authority and shall aim to ensure gender balance within the Authority. The Executive Director shall be accountable to the Management Board.
2. The Executive Director shall report to the European Parliament on the performance of his or her duties when invited to do so. The Council may invite the Executive Director to report on the performance of his or her duties.

3. The Executive Director shall be the legal representative of the Authority.
4. The Executive Director shall be responsible for the implementation of the tasks assigned to the Authority by this Regulation, in particular:
 - (a) the day-to-day administration of the Authority;
 - (b) implementing decisions adopted by the Management Board;
 - (c) preparing the draft single programming document and submitting it to the Management Board for approval;
 - (d) implementing the single programming document and reporting to the Management Board on its implementation;
 - (e) preparing the draft consolidated annual report on the Authority's activities and presenting it to the Management Board for assessment and adoption;
 - (f) preparing an action plan following up conclusions of internal or external audit reports and evaluations, as well as investigations by OLAF and reporting on progress twice a year to the Commission and regularly to the Management Board;
 - (g) protecting the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, without prejudicing the investigative competence of OLAF by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative, including financial, penalties;
 - (h) preparing an anti-fraud strategy for the Authority and presenting it to the Management Board for approval;
 - (i) preparing the draft financial rules applicable to the Authority and presenting them to the Management Board;
 - (j) preparing the Authority's draft statement of estimates of revenue and expenditure as part of the Authority's single programming document, and implementing its budget;
 - (k) in accordance with the decision referred to in Article 18(2), taking decisions with regard to the management of human resources;
 - (l) taking decisions with regard to the Authority's internal structures including, where necessary, deputising functions which may cover the day-to-day management of the Authority and, where necessary, their amendment, taking into account the needs relating to the Authority's activities and sound budgetary management;
 - (m) where relevant, cooperating with Union agencies and concluding cooperation agreements with them;
 - (n) implementing measures established by the Management Board for the application of Regulation (EU) 2018/1725 by the Authority;
 - (o) informing the Management Board about the submissions from the Stakeholder Group.

5. The Executive Director shall decide whether it is necessary to locate one or more staff in one or more Member States and whether it is necessary to establish a liaison office in Brussels to further the Authority's cooperation with the relevant Union institutions and bodies. Before deciding to establish a local office or a liaison office, the Executive Director shall obtain the prior consent of the Commission, the Management Board and the Member State where the office is to be located. The decision shall specify the scope of the activities to be carried out at the office in a manner that avoids unnecessary costs and the duplication of administrative functions of the Authority. A headquarters agreement with the Member State where the local office or liaison office is to be located may be required.

Article 23

Stakeholder Group

1. To facilitate the consultation of relevant stakeholders and to benefit from their expertise in areas covered by this Regulation, a Stakeholder Group shall be established. The Stakeholder Group shall be attached to the Authority and shall have advisory functions.

2. The Stakeholder Group shall receive prior briefing and may, upon request of the Authority or on its own initiative, submit opinions to the Authority on:

(a) issues related to the application and enforcement of Union law in the areas covered by this Regulation, including on the cross-border labour mobility analyses and risk assessment, as referred to in Article 10;

(b) the draft consolidated annual activity report on the Authority's activities referred to in Article 18;

(c) the draft single programming document referred to in Article 24.

3. The Stakeholder Group shall be chaired by the Executive Director and shall meet at least twice a year at the initiative of the Executive Director or at the request of the Commission.

4. The Stakeholder Group shall be composed of two representatives of the Commission and ten representatives of the Union-level social partners with an equal representation of trade union and employer organisations, including recognised Union sectoral social partners representing sectors that are particularly concerned with labour mobility issues.

5. The members and alternate members of the Stakeholder Group shall be designated by their organisations and shall be appointed by the Management Board. The alternate members shall be appointed by the Management Board in accordance with the same conditions as the members, and shall automatically replace any members who are absent. To the extent possible, an appropriate gender balance and an adequate representation of SMEs shall be achieved.

6. The Authority shall provide the secretariat for the Stakeholder Group. The Stakeholder Group shall adopt its rules of procedure by a majority of two-thirds of its members entitled to vote. The rules of procedure shall be subject to approval by the Management Board.

7. The Stakeholder Group may invite experts or representatives of relevant international organisations to its meetings.

8. The Authority shall make public the opinions, advice and recommendations of the Stakeholder Group and the results of its consultations, except in case of confidentiality requirements.

CHAPTER IV

ESTABLISHMENT AND STRUCTURE OF THE BUDGET OF THE AUTHORITY

SECTION 1

Single Programming Document of the Authority

Article 24

Annual and multi-annual programming

1. Each year, the Executive Director shall draw up a draft single programming document containing in particular multi-annual and annual programming in accordance with Commission Delegated Regulation (EU) No 1271/2013⁽²⁸⁾, taking into account guidelines set by the Commission and any advice given by the Stakeholder Group.

2. By 30 November each year, the Management Board shall adopt the draft single programming document referred to in paragraph 1. It shall forward it to the European Parliament, the Council and the Commission by 31 January of the following year, as well as any later updated version of that document.

The single programming document shall become definitive after final adoption of the general budget of the Union, and if necessary shall be adjusted accordingly.

3. The annual work programme shall set out detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action. The annual work programme shall be consistent with the multi-annual work programme referred to in paragraph 4. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year. The Management Board shall amend the adopted annual work programme when a new task is given to the Authority within the scope of this Regulation.

Any substantial amendment to the annual work programme shall be adopted in accordance with the same procedure as the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

4. The multi-annual work programme shall set out the overall strategic programming including objectives, expected results and performance indicators. It shall also show, for each activity, the indicative financial and human resources considered necessary to attain the objectives set.

The strategic programming shall be updated where appropriate, in particular to address the outcome of the evaluation referred to in Article 40.

Article 25

Establishment of the budget

1. Each year, the Executive Director shall draw up a provisional draft estimate of the Authority's revenue and expenditure for the following financial year, including the establishment plan, and send it to the Management Board.

2. The provisional draft estimate shall be based on the objectives and expected results of the annual programming document referred to in Article 24(3) and shall take into account the financial resources necessary to achieve those objectives and expected results, in accordance with the principle of performance-based budgeting.

⁽²⁸⁾ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

3. The Management Board shall, on the basis of the provisional draft estimate, adopt a draft estimate of the Authority's revenue for the following financial year, and shall send it to the Commission by 31 January each year.
4. The Commission shall send the draft estimate to the budgetary authority together with the draft general budget of the Union. The draft estimate shall also be made available to the Authority.
5. On the basis of the draft estimate, the Commission shall enter in the draft general budget of the Union the estimates that it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 TFEU.
6. The budgetary authority shall authorise the appropriations for the contribution from the general budget of the Union to the Authority.
7. The budgetary authority shall adopt the Authority's establishment plan.
8. The Management Board shall adopt the Authority's budget. It shall become final following the final adoption of the general budget of the Union and, if necessary, it shall be adjusted accordingly.
9. For any building project likely to have significant implications for the budget of the Authority, Delegated Regulation (EU) No 1271/2013 shall apply.

SECTION 2

Presentation, implementation and control of the budget of the Authority

Article 26

Structure of the budget

1. Estimates of all revenue and expenditure of the Authority shall be prepared each financial year and shall be shown in the Authority's budget. The financial year shall correspond to the calendar year.
2. The Authority's budget shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, the Authority's revenue shall comprise:
 - (a) a contribution from the Union entered in the general budget of the Union;
 - (b) any voluntary financial contribution from the Member States;
 - (c) any contribution from third countries participating in the work of the Authority, as provided for in Article 42;
 - (d) possible Union funding in the form of delegation agreements or ad hoc grants in accordance with the Authority's financial rules referred to in Article 29 and with the provisions of the relevant instruments supporting the policies of the Union;
 - (e) charges for publications and any service provided by the Authority.

4. The expenditure of the Authority shall include staff remuneration, administrative and infrastructure expenses and operational expenditure.

Article 27

Implementation of the budget

1. The Executive Director shall implement the Authority's budget.
2. Each year the Executive Director shall send to the budgetary authority all information relevant to the findings of evaluation procedures.

Article 28

Presentation of accounts and discharge

1. The Authority's accounting officer shall send the provisional accounts for the financial year (year N) to the Commission's Accounting Officer and to the Court of Auditors by 1 March of the following financial year (year N + 1).
2. The Authority's accounting officer shall also provide the required accounting information for consolidation purposes to the Commission's accounting officer, in the manner and format required by the latter by 1 March of year N + 1.
3. The Authority shall send the report on the budgetary and financial management for year N to the European Parliament, the Council, the Commission and the Court of Auditors by 31 March of year N + 1.
4. On receipt of the Court of Auditor's observations on the Authority's provisional accounts for year N, the Authority's accounting officer shall draw up the Authority's final accounts under his or her own responsibility. The Executive Director shall submit them to the Management Board for an opinion.
5. The Management Board shall deliver an opinion on the Authority's final accounts for year N.
6. The Authority's accounting officer shall, by 1 July of year N + 1, send the final accounts for year N to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.
7. A link to the pages of the website containing the final accounts of the Authority shall be published in the *Official Journal of the European Union* by 15 November of year N + 1.
8. The Executive Director shall send to the Court of Auditors, by 30 September of year N + 1, a reply to the observations made in its annual report. The Executive Director shall also send this reply to the Management Board and to the Commission.
9. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for year N, in accordance with Article 261(3) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽²⁹⁾.
10. On a recommendation from the Council acting by qualified majority, the European Parliament shall, before 15 May of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

⁽²⁹⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

*Article 29***Financial rules**

The financial rules applicable to the Authority shall be adopted by the Management Board after consulting the Commission. They shall not depart from Delegated Regulation (EU) No 1271/2013 unless such a departure is specifically required for the Authority's operation and the Commission has given its prior consent.

CHAPTER V

STAFF*Article 30***General provision**

The Staff Regulations and the Conditions of Employment and the rules adopted by agreement between the Union institutions for giving effect to the Staff Regulations and the Conditions of Employment shall apply to the staff of the Authority.

*Article 31***Executive Director**

1. The Executive Director shall be engaged as a temporary agent of the Authority in accordance with point (a) of Article 2 of the Conditions of Employment.
2. The Executive Director shall be appointed by the Management Board from a list of candidates proposed by the Commission, following an open and transparent selection procedure. The selected candidate shall be invited to make a statement before the European Parliament and to answer questions from Members of Parliament. That exchange of views shall not unduly delay the appointment of the Executive Director.
3. For the purpose of concluding the contract with the Executive Director, the Authority shall be represented by the Chairperson of the Management Board.
4. The term of office of the Executive Director shall be five years. Before the end of that period, the Commission shall carry out an assessment that takes into account an evaluation of the Executive Director's performance and the Authority's future tasks and challenges.
5. The Management Board may, taking into account the assessment referred to in paragraph 4, extend the Executive Director's term of office once by no more than five years.
6. An Executive Director whose term of office has been extended pursuant to paragraph 5 shall not participate in another selection procedure for the same post at the end of the overall period.
7. The Executive Director may be removed from office only upon a decision of the Management Board. In its decision, the Management Board shall take into account the Commission's assessment of the Executive Director's performance, as referred to in paragraph 4.
8. The Management Board shall reach decisions on the appointment, extension of the term of office or removal from office of the Executive Director on the basis of a majority of two-thirds of members with the right to vote.

*Article 32***National Liaison Officers**

1. Each Member State shall designate one National Liaison Officer as a seconded national expert to the Authority and to work at its seat, pursuant to Article 33.
2. National Liaison Officers shall contribute to executing the tasks of the Authority, including by facilitating the cooperation and exchange of information set out in Article 7 and the support and coordination of inspections set out in Article 8. They shall also act as national contact points for questions from their Member States and relating to their Member States, either by answering those questions directly or by liaising with their national administrations.
3. National Liaison Officers shall be entitled to request and receive all relevant information from their Member States, as provided for by this Regulation, while fully respecting the national law or practice of their Member States, in particular as regards data protection and the rules on confidentiality.

*Article 33***Seconded national experts and other staff**

1. In addition to the National Liaison Officers, the Authority may make use of other seconded national experts or other staff not employed by the Authority, in any areas of its work.
2. The Management Board shall adopt a decision laying down rules on the secondment of national experts, including National Liaison Officers.

CHAPTER VI

GENERAL AND FINAL PROVISIONS*Article 34***Privileges and immunities**

Protocol No 7 on the privileges and immunities of the European Union shall apply to the Authority and its staff.

*Article 35***Language arrangements**

1. The provisions laid down in Council Regulation No 1⁽³⁰⁾ shall apply to the Authority.
2. The translation services required for the Authority's functioning shall be provided by the Translation Centre.

*Article 36***Transparency, protection of personal data and communication**

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Authority. The Management Board shall, within six months of the date of its first meeting, adopt the detailed rules for applying Regulation (EC) No 1049/2001.
2. The Management Board shall establish measures to comply with the obligations laid down in Regulation (EU) 2018/1725, in particular those concerning the appointment of a Data Protection Officer of the Authority and those relating to the lawfulness of the processing of data, the security of the processing activities, the provision of information and the rights of data subjects.

⁽³⁰⁾ Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

3. The Authority may engage in communication activities on its own initiative within its field of competence. The allocation of resources to communication activities shall not be detrimental to the effective exercise of the tasks referred to in Article 4. Communication activities shall be carried out in accordance with the relevant communication and dissemination plans adopted by the Management Board.

Article 37

Combating fraud

1. In order to facilitate the fight against fraud, corruption and other illegal activities under Regulation (EU, Euratom) No 883/2013, the Authority shall, within six months from the day that it becomes operational, accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by OLAF and shall adopt appropriate provisions applicable to all employees of the Authority using the template set out in the Annex to that Agreement.

2. The Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot checks, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Authority.

3. OLAF may carry out investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Authority, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and in Council Regulation (Euratom, EC) No 2185/96⁽³¹⁾.

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Authority shall contain provisions expressly empowering the Court of Auditors and OLAF to conduct such audits and investigations, in accordance with their respective competences.

Article 38

Security rules on the protection of classified and sensitive non-classified information

The Authority shall adopt its own security rules equivalent to the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, set out in Commission Decisions (EU, Euratom) 2015/443⁽³²⁾ and (EU, Euratom) 2015/444⁽³³⁾. The Authority's security rules shall cover, inter alia, provisions for the exchange, processing and storage of such information.

Article 39

Liability

1. The Authority's contractual liability shall be governed by the law applicable to the contract in question.

2. The Court of Justice shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by the Authority.

3. In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.

4. The Court of Justice shall have jurisdiction in disputes relating to compensation for damages as referred to in paragraph 3.

⁽³¹⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

⁽³²⁾ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security on the Commission (OJ L 72, 17.3.2015, p. 41).

⁽³³⁾ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

5. The personal liability of its staff towards the Authority shall be governed by the provisions laid down in the Staff Regulations and the Conditions of Employment applicable to them.

Article 40

Evaluation and review

1. By 1 August 2024, and every five years thereafter, the Commission shall assess the Authority's performance in relation to its objectives, mandate and tasks. The evaluation shall, in particular, address the experiences gained from the mediation procedure pursuant to Article 13. It shall also assess whether there is a need to modify the mandate of the Authority and the scope of its activities, including the extension of the scope to cover sector specific needs, and the financial implications of any such modification, taking into account also the work carried out by Union agencies in those areas. The evaluation shall also explore further synergies and streamlining with agencies in the area of employment and social policy. On the basis of the evaluation, the Commission may, as appropriate, submit legislative proposals to review the scope of this Regulation.

2. Where the Commission considers that the continuation of the Authority is no longer justified with regard to its objectives, mandate and tasks, it may propose that this Regulation be amended or repealed accordingly.

3. The Commission shall report to the European Parliament, the Council and the Management Board on the findings of the evaluation. The findings of the evaluation shall be made public.

Article 41

Administrative inquiries

The activities of the Authority shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 TFEU.

Article 42

Cooperation with third countries and international organisations

1. In so far as is necessary in order to achieve the objectives set out in this Regulation, and without prejudice to the competence of the Member States and of the Union institutions, the Authority may cooperate with the competent authorities of third countries and with international organisations.

To that end, the Authority may, subject to the authorisation of the Management Board and after the approval of the Commission, establish working arrangements with the competent authorities of third countries and with international organisations. Those arrangements shall not create legal obligations on the Union or the Member States.

2. The Authority shall be open to the participation of third countries that have entered into agreements with the Union to that effect.

Under the relevant provisions of the agreements referred to in the first subparagraph, arrangements shall be developed specifying, in particular, the nature, extent and manner in which the third countries concerned are to participate in the work of the Authority, including provisions relating to participation in the initiatives carried out by the Authority, financial contributions and staff. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations and the Conditions of Employment.

3. The Commission shall ensure that the Authority operates within its mandate and the existing institutional framework by concluding an appropriate working arrangement with the Authority's Executive Director.

*Article 43***Headquarters agreement and operating conditions**

1. The necessary arrangements concerning the accommodation to be provided for the Authority in the host Member State, together with the specific rules applicable in the host Member State to the Executive Director, members of the Management Board, staff and members of their families, shall be laid down in a Headquarters agreement between the Authority and the Member State where the seat is located, to be concluded after obtaining the approval of the Management Board and no later than 1 August 2021.
2. The Authority's host Member State shall provide the best possible conditions to ensure the smooth and efficient functioning of the Authority, including multilingual, European-oriented schooling and appropriate transport connections.

*Article 44***Commencement of the Authority's activities**

1. The Authority shall become operational with the capacity to implement its own budget by 1 August 2021.
2. The Commission shall be responsible for the establishment and initial operation of the Authority until the Authority becomes operational. For that purpose:
 - (a) until the Executive Director takes up his or her duties following his or her appointment by the Management Board in accordance with Article 31, the Commission may designate a Commission official to act as interim Executive Director and exercise the duties assigned to the Executive Director;
 - (b) by derogation from point (k) of Article 18(1) and until the adoption of a decision as referred to in Article 18(2), the interim Executive Director shall exercise the appointing authority power;
 - (c) the Commission may offer assistance to the Authority, in particular by seconding Commission officials to carry out the activities of the Authority under the responsibility of the interim Executive Director or the Executive Director;
 - (d) the interim Executive Director may authorise all payments covered by appropriations entered in the Authority's budget after approval by the Management Board and may conclude contracts, including staff contracts, following the adoption of the Authority's establishment plan.

*Article 45***Amendments to Regulation (EC) No 883/2004**

Regulation (EC) No 883/2004 is amended as follows:

- (1) in Article 1, the following point is inserted:

'(na) "European Labour Authority" means the body established by Regulation (EU) 2019/1149 of the European Parliament and of the Council (*) and referred to in Article 74a;

(*) Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (OJ L 186, 11.7.2019, p. 21).;

(2) the following article is inserted:

'Article 74a

The European Labour Authority

1. Without prejudice to the tasks and activities of the Administrative Commission, the European Labour Authority shall support the application of this Regulation in accordance with its tasks set out in Regulation (EU) 2019/1149. The Administrative Commission shall cooperate with the European Labour Authority in order to coordinate the activities in mutual agreement and avoid any duplication. To that end, it shall conclude a cooperation agreement with the European Labour Authority.

2. The Administrative Commission may request the European Labour Authority to refer an issue concerning social security under mediation in accordance with the third subparagraph of Article 13(11) of Regulation (EU) 2019/1149.'

Article 46

Amendments to Regulation (EU) No 492/2011

Regulation (EU) No 492/2011 is amended as follows:

(1) in Article 26 the following paragraph is added:

'The European Labour Authority established by Regulation (EU) 2019/1149 of the European Parliament and of the Council (*) shall participate in the meetings of the Advisory Committee as an observer, providing technical input and expertise as relevant.

(*) Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (OJ L 186, 11.7.2019, p. 21).';

(2) Articles 29 to 34 are deleted with effect on the date when the Authority becomes operational in accordance with Article 44(1) of this Regulation;

(3) Article 35 is replaced by the following:

'Article 35

The rules of procedure of the Advisory Committee in force on 8 November 1968 shall continue to apply.;

(4) Article 39 is replaced by the following:

'Article 39

The administrative expenditure of the Advisory Committee shall be included in the general budget of the European Union in the section relating to the Commission.'

*Article 47***Amendments to Regulation (EU) 2016/589**

Regulation (EU) 2016/589 is amended as follows:

(1) Article 1 is amended as follows:

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

‘(a) the organisation of the EURES network between the Commission, the European Labour Authority and the Member States;’;

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

‘(b) cooperation between the Commission, the European Labour Authority and the Member States on sharing relevant available data on job vacancies, job applications and CVs;’;

(c) point (f) is replaced by the following:

‘(f) promotion of the EURES network at Union level through effective communication measures taken by the Commission, the European Labour Authority and the Member States.’;

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

‘(8) “European Labour Authority” means the body established pursuant to Regulation (EU) 2019/1149 of the European Parliament and of the Council (*)’

(*) Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (OJ L 186, 11.7.2019, p. 21).’;

(3) in Article 4, paragraph 2 is replaced by the following:

‘2. Accessibility for persons with disabilities to the information provided on the EURES portal and to support services available at national level shall be ensured. The Commission, the European Coordination Office and EURES Members and Partners shall determine the means to ensure this with regard to their respective obligations.’;

(4) Article 7(1) is amended as follows:

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

‘(a) a European Coordination Office, which shall be established within the European Labour Authority and which shall be responsible for assisting the EURES network in carrying out its activities;’;

(b) the following point is added:

‘(e) the Commission.’;

(5) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory wording is replaced by the following:

‘The European Coordination Office shall assist the EURES network in carrying out its activities, in particular by developing and conducting, in close cooperation with the NCOs and the Commission, the following activities:’;

(ii) in point (a), point (i) is replaced by the following:

‘(i) as the system owner for the EURES portal, and related IT services, the definition of user needs and business requirements to be transmitted to the Commission for the operation and development of the portal, including its systems and procedures for the exchange of job vacancies, job applications, CVs and supporting documents and other information, in cooperation with other relevant Union information and advisory services or networks, and initiatives;’;

(b) paragraph 2 is replaced by the following:

‘2. The European Coordination Office shall be managed by the European Labour Authority. The European Coordination Office shall establish a regular dialogue with the representatives of the social partners at Union level.’;

(c) paragraph 3 is replaced by the following:

‘3. The European Coordination Office shall, after consulting the Coordination Group referred to in Article 14 and the Commission, draw up its multiannual work programmes.’;

(6) in Article 9(2), point (b) is replaced by the following:

‘(b) cooperation with the Commission, the European Labour Authority and the Member States on the clearance within the framework set in Chapter III;’;

(7) in Article 14, paragraph 1 is replaced by the following:

‘1. The Coordination Group shall be composed of representatives at the appropriate level of the Commission, the European Coordination Office and the NCOs.’;

(8) in Article 16, paragraph 6 is replaced by the following:

‘6. Member States shall, together with the Commission and the European Coordination Office, examine every possibility of giving priority to citizens of the Union when filling job vacancies, in order to achieve a balance between labour supply and demand within the Union. Member States may adopt measures necessary for that purpose.’;

(9) in Article 19, paragraph 1 is replaced by the following:

‘1. Member States shall cooperate with each other, with the Commission and with the European Coordination Office regarding interoperability between national systems and the European classification developed by the Commission. The Commission shall keep the Member States informed about the development of the European classification.’;

(10) Article 29 is replaced by the following:

'Article 29

Exchange of information on flows and patterns

The Commission and the Member States shall monitor and make public labour-mobility flows and patterns in the Union on the basis of reports by the European Labour Authority, using Eurostat statistics and available national data.'

Article 48

Repeal

Decision (EU) 2016/344 is repealed with effect on the date when the Authority becomes operational in accordance with Article 44(1) of this Regulation.

References to the repealed Decision shall be construed as references to this Regulation.

Article 49

Entry into force

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

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

Done at Brussels, 20 June 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

ANNEX

ACTIVITIES OF THE PLATFORM ESTABLISHED IN ACCORDANCE WITH ARTICLE 16(2)

In supporting the objectives of the Authority in tackling undeclared work, the Platform shall, in particular, seek to:

- (1) improve the knowledge of undeclared work, including causes, regional differences and cross-border aspects thereof, by means of shared definitions and common concepts, evidence-based measurement tools and promotion of comparative analysis; develop mutual understanding of different systems and practices to tackle undeclared work and analysing the effectiveness of policy measures, including preventive measures and penalties;
 - (2) facilitate and evaluate different forms of cooperation between Member States, and where relevant third countries, such as the exchange of staff, use of databases, joint activities and joint trainings, and set up a system of information exchange for administrative cooperation using a specific module on undeclared work under the IMI system;
 - (3) establish tools, for instance a knowledge bank, for efficient sharing of information and experiences, and developing guidelines for enforcement, handbooks of good practices, shared principles of inspections to tackle undeclared work and common activities such as European campaigns; evaluate experiences of such tools;
 - (4) develop a peer learning programme for the identification of good practices in all areas relevant for tackling undeclared work and organising peer reviews to follow progress in tackling undeclared work in Member States choosing to participate in such reviews;
 - (5) exchange national authorities' experiences in applying Union law relevant to tackling undeclared work.
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REGULATION (EU) 2019/1150 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 20 June 2019
on promoting fairness and transparency for business users of online intermediation services
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) Online intermediation services are key enablers of entrepreneurship and new business models, trade and innovation, which can also improve consumer welfare and which are increasingly used by both the private and public sectors. They offer access to new markets and commercial opportunities allowing undertakings to exploit the benefits of the internal market. They allow consumers in the Union to exploit those benefits, in particular by increasing their choice of goods and services, as well as by contributing to offering competitive pricing online, but they also raise challenges that need to be addressed in order to ensure legal certainty.
- (2) Online intermediation services can be crucial for the commercial success of undertakings who use such services to reach consumers. To fully exploit the benefits of the online platform economy, it is therefore important that undertakings can trust online intermediation services with which they enter into commercial relationships. This is important mainly because the growing intermediation of transactions through online intermediation services, fuelled by strong data-driven indirect network effects, leads to an increased dependence of such business users, particularly micro, small and medium-sized enterprises (SMEs), on those services in order for them to reach consumers. Given that increasing dependence, the providers of those services often have superior bargaining power, which enables them to, in effect, behave unilaterally in a way that can be unfair and that can be harmful to the legitimate interests of their businesses users and, indirectly, also of consumers in the Union. For instance, they might unilaterally impose on business users practices which grossly deviate from good commercial conduct, or are contrary to good faith and fair dealing. This Regulation addresses such potential frictions in the online platform economy.
- (3) Consumers have embraced the use of online intermediation services. A competitive, fair, and transparent online ecosystem where companies behave responsibly is also essential for consumer welfare. Ensuring the transparency of, and trust in, the online platform economy in business-to-business relations could also indirectly help to improve consumer trust in the online platform economy. Direct impacts of the development of the online platform economy on consumers are, however, addressed by other Union law, especially the consumer acquis.

⁽¹⁾ OJ C 440, 6.12.2018, p. 177.

⁽²⁾ Position of the European Parliament of 17 April 2019 (not yet published in the Official Journal) and Decision of the Council of 14 June 2019.

- (4) Similarly, online search engines can be important sources of Internet traffic for undertakings which offer goods or services to consumers through websites and can therefore significantly affect the commercial success of such corporate website users offering their goods or services online in the internal market. In this regard, the ranking of websites by providers of online search engines, including of those websites through which corporate website users offer their goods and services to consumers, has an important impact on consumer choice and the commercial success of those corporate website users. Even in the absence of a contractual relationship with corporate website users, providers of online search engines can therefore, in effect, behave unilaterally in a way that can be unfair and that can be harmful to the legitimate interests of corporate website users and, indirectly, also of consumers in the Union.
- (5) The nature of the relationship between providers of online intermediation services and business users might also lead to situations in which business users often have limited possibilities to seek redress where unilateral actions of the providers of those services lead to a dispute. In many cases, those providers do not offer accessible and effective internal complaint-handling systems. Existing alternative out-of-court dispute settlement mechanisms can also be ineffective for a variety of reasons, including a lack of specialised mediators and business users' fear of retaliation.
- (6) Online intermediation services and online search engines, as well as the transactions facilitated by those services, have an intrinsic cross-border potential and are of particular importance for the proper functioning of the Union's internal market in today's economy. The potentially unfair and harmful commercial practices of certain providers of those services, and the lack of effective redress mechanisms, hamper the full realisation of that potential and negatively affect the proper functioning of the internal market.
- (7) A targeted set of mandatory rules should be established at Union level to ensure a fair, predictable, sustainable and trusted online business environment within the internal market. In particular, business users of online intermediation services should be afforded appropriate transparency, as well as effective redress possibilities, throughout the Union in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market and to address possible emerging fragmentation in the specific areas covered by this Regulation.
- (8) Those rules should also provide for appropriate incentives to promote fairness and transparency, especially as regards the ranking of corporate website users in the search results generated by online search engines. At the same time, those rules should recognise and safeguard the important innovation potential of the wider online platform economy and allow for healthy competition leading to increased consumer choice. It is appropriate to clarify that this Regulation should not affect national civil law, in particular contract law, such as the rules on the validity, formation, effects or termination of a contract, in so far as the national civil law rules are in conformity with Union law and to the extent that the relevant aspects are not covered by this Regulation. Member States should remain free to apply national laws which prohibit or sanction unilateral conduct or unfair commercial practices to the extent that the relevant aspects are not covered by this Regulation.
- (9) Since online intermediation services and online search engines typically have a global dimension, this Regulation should apply to providers of those services regardless of whether they are established in a Member State or outside the Union, provided that two cumulative conditions are met. Firstly, the business users or corporate website users should be established in the Union. Secondly, the business users or corporate website users should, through the provision of those services, offer their goods or services to consumers located in the Union at least for part of the transaction. In order to determine whether business users or corporate website users are offering goods or services to consumers located in the Union, it is necessary to ascertain whether it is apparent that the business users or corporate website users direct their activities to consumers located in one or more Member States. This criterion should be interpreted in accordance with the relevant case law of the Court of Justice of the European Union on point (c) of Article 17(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council ⁽³⁾ and point (b) of Article 6(1) of Regulation (EC) No 593/2008 of the European Parliament and of the Council ⁽⁴⁾. Such consumers should be located in the Union, but do not need to have their place of residence in the Union nor have the nationality of any Member State. Accordingly, this Regulation should not apply where business users or corporate websites users are not established in the Union or where they are established in the Union but where they use online intermediation services or online search engines to offer goods or services exclusively to consumers located outside the Union or to persons who are not consumers. Furthermore, this Regulation should apply irrespective of the law otherwise applicable to a contract.

⁽³⁾ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

⁽⁴⁾ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

- (10) A wide variety of business-to-consumer relations are intermediated online by providers operating multi-sided services that are essentially based on the same ecosystem-building business model. In order to capture the relevant services, online intermediation services should be defined in a precise and technologically-neutral manner. In particular, the services should consist of information society services, which are characterised by the fact that they aim to facilitate the initiating of direct transactions between business users and consumers, irrespective of whether the transactions are ultimately concluded online, on the online portal of the provider of online intermediation services in question or that of the business user, offline or in fact not at all, meaning that there should be no requirement for any contractual relationship between the business users and consumers as a precondition for online intermediation services falling within the scope of this Regulation. The mere inclusion of a service of a marginal character only should not be seen as making the aim of a website or service the facilitation of transactions within the meaning of online intermediation services. In addition, the services should be provided on the basis of contractual relationships between the providers and business users which offer goods or services to consumers. Such a contractual relationship should be deemed to exist where both parties concerned express their intention to be bound in an unequivocal manner on a durable medium, without an express written agreement necessarily being required.
- (11) Examples of online intermediation services covered by this Regulation should consequently include online e-commerce market places, including collaborative ones on which business users are active, online software applications services, such as application stores, and online social media services, irrespective of the technology used to provide such services. In this sense, online intermediation services could also be provided by means of voice assistant technology. It should also not be relevant whether those transactions between business users and consumers involve any monetary payment or whether they are concluded in part offline. However, this Regulation should not apply to peer-to-peer online intermediation services without the presence of business users, pure business-to-business online intermediation services which are not offered to consumers, online advertising tools and online advertising exchanges which are not provided with the aim of facilitating the initiation of direct transactions and which do not involve a contractual relationship with consumers. For the same reason, search engine optimisation software services as well as services which revolve around advertising-blocking software should not be covered by this Regulation. Technological functionalities and interfaces that merely connect hardware and applications should not be covered by this Regulation, as they normally do not fulfil the requirements for online intermediation services. However, such functionalities or interfaces can be directly connected or ancillary to certain online intermediation services and where this is the case, the relevant providers of online intermediation services should be subject to transparency requirements related to differentiated treatment based on these functionalities and interfaces. This Regulation should also not apply to online payment services, since they do not themselves meet the applicable requirements but are rather inherently auxiliary to the transaction for the supply of goods and services to the consumers concerned.
- (12) In line with the relevant case-law of the Court of Justice of the European Union and in the light of the fact that the dependent position of business users has been observed principally in respect of online intermediation services that serve as a gateway to consumers in the form of natural persons, the notion of consumer used to delineate the scope of this Regulation should be understood as referring solely to natural persons, where they are acting for purposes which are outside their trade, business, craft or profession.
- (13) Considering the quick pace of innovation, the definition of online search engine used in this Regulation should be technology-neutral. In particular, the definition should be understood to also encompass voice requests.
- (14) Providers of online intermediation services tend to use pre-formulated terms and conditions and in order to effectively protect business users where needed, this Regulation should apply where the terms and conditions of a contractual relationship, regardless of their name or form, are unilaterally determined by the provider of online intermediation services. Whether the terms and conditions were unilaterally determined should be evaluated case by case on the basis of an overall assessment. For that overall assessment, the relative size of the parties concerned, the fact that a negotiation took place, or that certain provisions thereof might have been subject to such a negotiation and determined together by the relevant provider and business user should not, in itself, be decisive. In addition, the obligation for providers of online intermediation services to make their terms and conditions easily available to business users, including in the pre-contractual stage of their commercial relationship, means that business users will not be deprived of the transparency resulting from this Regulation as a result of them being in any way able to successfully negotiate.

- (15) To ensure that the general terms and conditions of a contractual relationship enable business users to determine the commercial conditions for the use, termination and suspension of online intermediation services, and to achieve predictability regarding their business relationship, those terms and conditions should be drafted in plain and intelligible language. Terms and conditions should not be considered to have been drafted in plain and intelligible language where they are vague, unspecific or lack detail on important commercial issues and thus fail to give business users a reasonable degree of predictability on the most important aspects of the contractual relationship. Moreover, misleading language should not be considered to be plain and intelligible.
- (16) In order to ensure that business users have sufficient clarity regarding where, and to whom, their goods or services are being marketed, providers of online intermediation services should ensure, towards their business users, the transparency of any additional distribution channels and potential affiliate programmes that they might use to market those goods or services. Additional channels and affiliate programmes should be understood in a technologically neutral manner but could, *inter alia*, include other websites, apps or other online intermediation services used to market the goods or services offered by the business user.
- (17) The ownership and control of intellectual property rights online can have significant economic importance for both the providers of online intermediation services and their business users. To ensure clarity and transparency for business users and for their better understanding, providers of online intermediation services should within their terms and conditions include general, or more detailed, information if they so wish, regarding the overall effects, if any, of those terms and conditions on the ownership and control of intellectual property rights of the business user. Such information could, *inter alia*, include information such as the general usage of logos, trademarks or brand names.
- (18) Ensuring transparency in the general terms and conditions can be essential to promoting sustainable business relationships and to preventing unfair behaviour to the detriment of business users. Providers of online intermediation services should therefore also ensure that the terms and conditions are easily available at all stages of the commercial relationship, including to prospective business users at the pre-contractual phase, and that any changes to those terms are notified on a durable medium to business users concerned within a set notice period which is reasonable and proportionate in light of the specific circumstances and which is at least 15 days. Proportionate longer notice periods of more than 15 days should be given where the proposed changes to the terms and conditions require business users to make technical or commercial adaptations in order to comply with the change, for example by requiring them to make significant technical adjustments to their goods or services. That notice period should not apply where, and to the extent that, it is waived in an unambiguous manner by the business user concerned or where, and to the extent that, the need to implement the change without respecting the notice period stems from a legal or regulatory obligation incumbent on the service provider under Union or national law. However, proposed editorial changes should not be covered by the term 'change' in as far as they do not alter the content or meaning of terms and conditions. The requirement of notifying proposed changes on a durable medium should enable business users to review effectively these changes at a later stage. Business users should be entitled to terminate their contract within 15 days from the receipt of the notice of any change, unless a shorter period applies to the contract, for example as resulting from national civil law.
- (19) In general, submitting new goods or services, including software applications, to the online intermediation services should be considered to be clear affirmative action, resulting in the waiving, by the business user, of the notice period required for changes to the terms and conditions. However, in cases where the reasonable and proportionate notice period is longer than 15 days because the changes to the terms and conditions require the business user to make significant technical adjustments to its goods or services, the notice period should not be considered to be automatically waived where the business user submits new goods and services. The provider of online intermediation services should expect the changes to terms and conditions to require the business user to make significant technical adjustments where, for example, entire features of the online intermediation services that business users had access to are removed or added, or where business users might need to adapt their goods or reprogramme their services to be able to continue to operate through the online intermediation services.
- (20) In order to protect business users and to provide legal certainty for both sides, non-compliant terms and conditions should be null and void, that is, deemed to have never existed, with effects *erga omnes* and *ex tunc*. This should however only concern the specific provisions of the terms and conditions which are not compliant. The remaining provisions should remain valid and enforceable, in as far as they can be severed from the non-compliant provisions. Sudden changes to existing terms and conditions may significantly disrupt business users' operations. In order to limit such negative effects on business users, and to discourage such behaviour, changes made in contravention of the obligation to provide a set notice period should therefore be null and void, that is, deemed to have never existed, with effects *erga omnes* and *ex tunc*.

- (21) In order to ensure that business users can fully exploit the commercial opportunities offered by online intermediation services, providers of these services should not completely prevent their business users from featuring their trading identity as part of their offering or presence on the relevant online intermediation services. However, this prohibition of interference should not be understood as a right for business users to unilaterally determine the presentation of their offering or presence on the relevant online intermediation services.
- (22) A provider of online intermediation services can have legitimate reasons to decide to restrict, suspend or terminate the provision of its services to a given business user, including by delisting individual goods or services of a given business user or effectively removing search results. Short of being suspended, providers of online intermediation services can also restrict individual listings of business users; for example, through their demotion or by negatively affecting a business user's appearance ('dimming') which can include lowering its ranking. However, given that such decisions can significantly affect the interests of the business user concerned, they should be provided, prior to or at the time of the restriction or suspension taking effect, with a statement of reasons for that decision on a durable medium. To minimise the negative impact of such decisions on business users, providers of online intermediation services should also allow an opportunity to clarify the facts that led to that decision in the framework of the internal complaint-handling process, which will help the business user, where this is possible, to re-establish compliance. In addition, where the provider of online intermediation services revokes the decision to restrict, suspend or terminate, for example because the decision was made in error or the infringement of terms and conditions that led to this decision was not committed in bad faith and has been remedied in a satisfactory manner, the provider should reinstate the business user concerned without undue delay, including providing the business user with any access to personal or other data, or both, available prior to the decision.

The statement of reasons regarding the decision to restrict, suspend or terminate the provision of online intermediation services should allow business users to ascertain whether there is scope to challenge the decision, thereby improving the possibilities for business users to seek effective redress where necessary. The statement of reasons should identify the grounds for the decision, based on the grounds that the provider had set out in advance in its terms and conditions, and refer in a proportionate manner to the relevant specific circumstances, including third party notifications, that led to that decision. However, a provider of online intermediation services should not be required to provide a statement of reasons for restrictions, suspensions or terminations insofar as it would infringe a legal or regulatory obligation. Furthermore, a statement of reasons should not be required where a provider of online intermediation services can demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions, resulting in termination of the provision of the whole of the online intermediation services in question.

- (23) The termination of the whole of the online intermediation services and the related deletion of data provided for the use of, or generated through, the provision of online intermediation services represent a loss of essential information which could have a significant impact on business users and could also impair their ability to properly exercise other rights granted to them by this Regulation. Therefore, the provider of online intermediation services should provide the business user concerned with a statement of reasons on a durable medium, at least 30 days before the termination of the provision of the whole of its online intermediation services enters into effect. However, in cases where a legal or regulatory obligation requires a provider of online intermediation services to terminate the provision of the whole of its online intermediation services to a given business user, this notice period should not apply. Equally, the notice period of 30 days should not apply where a provider of online intermediation services invokes rights of termination under national law in compliance with Union law which allow immediate termination where, taking into account all the circumstances of the specific case and weighing the interests of both parties, it cannot reasonably be expected to continue the contractual relationship until the agreed end or until the expiry of a notice period. Finally, the notice period of 30 days should not apply where a provider of online intermediation services can demonstrate a repeated infringement of terms and conditions. The various exceptions to the 30-day notice period can in particular arise in connection with illicit or inappropriate content, the safety of a good or service, counterfeiting, fraud, malware, spam, data breaches, other cybersecurity risks or suitability of the good or service to minors. In order to ensure proportionality, providers of online intermediation services should, where reasonable and technically feasible, delist only individual goods or services of a business user. Termination of the whole of the online intermediation services constitutes the most severe measure.
- (24) The ranking of goods and services by the providers of online intermediation services has an important impact on consumer choice and, consequently, on the commercial success of the business users offering those goods and services to consumers. Ranking refers to the relative prominence of the offers of business users or relevance given to search results as presented, organised or communicated by providers of online intermediation services or by providers of online search engines, resulting from the use of algorithmic sequencing, rating or review mechanisms, visual highlights, or other saliency tools, or combinations thereof. Predictability entails that providers of online intermediation services determine ranking in a non-arbitrary manner. Providers should therefore outline the

main parameters determining ranking beforehand, in order to improve predictability for business users, to allow them to better understand the functioning of the ranking mechanism and to enable them to compare the ranking practices of various providers. The specific design of this transparency obligation is important for business users as it implies the identification of a limited set of parameters that are most relevant out of a possibly much larger number of parameters that have some impact on ranking. This reasoned description should help business users to improve the presentation of their goods and services, or some inherent characteristics of those goods or services. The notion of main parameter should be understood to refer to any general criteria, processes, specific signals incorporated into algorithms or other adjustment or demotion mechanisms used in connection with the ranking.

- (25) The description of the main parameters determining ranking should also include an explanation of any possibility for business users to actively influence ranking against remuneration, as well as an explanation of the relative effects thereof. Remuneration could, in this respect, refer to payments made with the main or sole aim to improve ranking, as well as indirect remuneration in the form of the acceptance by a business user of additional obligations of any kind which may have this as its practical effect, such as the use of services that are ancillary or of any premium features. The content of the description, including the number and type of main parameters, can accordingly vary strongly depending on the specific online intermediation services, but should provide business users with an adequate understanding of how the ranking mechanism takes account of the characteristics of the actual goods or services offered by the business user, and their relevance to the consumers of the specific online intermediation services. The indicators used for measuring the quality of goods or services of business users, the use of editors and their ability to influence the ranking of those goods or services, the amplitude of the impact of remuneration on ranking as well as elements that do not or only remotely relate to the good or service itself, such as presentational features of the online offer, could be examples of main parameters that, when included in a general description of the ranking mechanism in plain and intelligible language, should assist business users in obtaining the required adequate understanding of its functioning.
- (26) Similarly, the ranking of websites by the providers of online search engines, notably of those websites through which undertakings offer goods and services to consumers, has an important impact on consumer choice and the commercial success of corporate website users. Providers of online search engines should therefore provide a description of the main parameters determining the ranking of all indexed websites and the relative importance of those main parameters as opposed to other parameters, including those of corporate website users as well as other websites. In addition to the characteristics of the goods and services and their relevance for consumers, this description should in the case of online search engines also allow corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, certain design characteristics of the website used, such as their optimisation for display on mobile telecommunications devices, is taken into account. It should also include an explanation of any possibility for corporate website users to actively influence ranking against remuneration, as well as an explanation of the relative effects thereof. In the absence of a contractual relationship between providers of online search engines and corporate website users, that description should be available to the public in an obvious and easily accessible location on the relevant online search engine. Areas of websites that require users to log in or register should not be understood as easily and publicly available in this sense.

To ensure predictability for corporate website users, the description should also be kept up to date, including the possibility that any changes to the main parameters should be made easily identifiable. The existence of an up-to-date description of the main parameters would also benefit users other than corporate website users of the online search engine. In some cases, providers of online search engines can decide to influence the ranking in a specific case or delist a particular website from a ranking based on a third-party notification. Unlike providers of online intermediation services, providers of online search engines cannot, due to the lack of any contractual relationship between the parties, be expected to notify a corporate website user directly of a change in ranking order or a delisting due to a third party notification. Nevertheless, a corporate website user should be able to inspect the contents of the notification that has led to the change in ranking order in a specific case or to delisting of a particular website, by investigating the contents of the notification such as in a publicly accessible online database. That would help to mitigate potential abuses, by competitors, of notifications that could lead to delisting.

- (27) Providers of online intermediation services or of online search engines should not be required to disclose the detailed functioning of their ranking mechanisms, including algorithms, under this Regulation. Their ability to act against bad faith manipulation of ranking by third parties, including in the interest of consumers, should equally not be impaired. A general description of the main ranking parameters should safeguard those interests, while providing business users and corporate website users with an adequate understanding of the functioning of ranking in the context of their use of specific online intermediation services or online search engines. To ensure that the

objective of this Regulation is achieved, consideration of the commercial interests of providers of online intermediation services or online search engines should, therefore, never lead to a refusal to disclose the main parameters determining ranking. In this regard, whilst this Regulation is without prejudice to Directive (EU) 2016/943 of the European Parliament and of the Council⁽⁵⁾, the description given should at least be based on actual data on the relevance of the ranking parameters used.

- (28) The Commission should develop guidelines to assist providers of online intermediation services and providers of online search engines in applying the ranking transparency requirements laid down by this Regulation. This effort should help to optimise the manner in which the main parameters determining ranking are identified and presented to business users and corporate website users.
- (29) Ancillary goods and services should be understood as goods and services offered to the consumer immediately prior to the completion of a transaction initiated on online intermediation services to complement the primary good or service being offered by the business user. Ancillary goods and services refer to products that typically depend on, and are directly related to, the primary good or service in order to function. Therefore, the term should exclude goods and services that are merely being sold in addition to the primary good or service in question rather than being complementary in their nature. Examples of ancillary services include repair services for a specific good or financial products such as car rental insurance offered so as to complement the specific goods or services being offered by the business user. Likewise, ancillary goods might include goods that complement the specific product being offered by the business user by constituting an upgrade or a customisation tool linked to that specific product. Providers of online intermediation services offering goods or services to consumers that are ancillary to a good or service sold by a business user, using their online intermediation services, should set out in their terms and conditions a description of the type of ancillary goods and services being offered. Such a description should be available in the terms and conditions regardless of whether the ancillary good or service is being provided by the provider of online intermediation services itself or by a third party. Such a description should be comprehensive enough to allow a business user to understand whether any good or service is being sold as ancillary to the business user's good or service. The description should not necessarily include the specific good or service, but rather the type of product being offered as complementary to the primary product of the business user. Furthermore, this description should in all circumstances include whether and under what conditions a business user is allowed to offer its own ancillary good or service in addition to the primary good or service that it is offering through the online intermediation services.
- (30) Where a provider of online intermediation services itself offers certain goods or services to consumers through its own online intermediation services, or does so through a business user which it controls, that provider might compete directly with other business users of its online intermediation services which are not controlled by the provider, which might give the provider an economic incentive and the ability to use its control over the online intermediation services to provide technical or economic advantages to its own offering, or those offered through a business user which it controls, which it could deny to competing business users. Such behaviour could undermine fair competition and restrict consumer choice. In such situations, in particular, it is important that the provider of online intermediation services acts in a transparent manner and provides an appropriate description of, and sets out the considerations for any differentiated treatment, whether through legal, commercial or technical means, such as functionalities involving operating systems that it might give in respect of goods or services it offers itself compared to those offered by business users. To ensure proportionality, this obligation should apply at the level of the overall online intermediation services, rather than at the level of individual goods or services offered through those services.
- (31) Where a provider of an online search engine itself offers certain goods or services to consumers through its own online search engine, or does so through a corporate website user which it controls, that provider might compete directly with other corporate website users of its online search engine which are not controlled by the provider. In such situations, in particular, it is important that the provider of the online search engine acts in a transparent manner and provides a description of any differentiated treatment, whether through legal, commercial or technical means, that it might give in respect of goods or services it offers itself or through a corporate website user which it controls, compared to those offered by competing corporate website users. To ensure proportionality, this obligation should apply at the level of the overall online search engine, rather than at the level of individual goods or services offered through those services.

⁽⁵⁾ Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

- (32) Specific contractual terms should be addressed in this Regulation, in particular in situations of imbalances in bargaining power, in order to ensure that contractual relations are conducted in good faith and on the basis of fair dealing. Predictability and transparency require that business users are given a real opportunity to become acquainted with changes to terms and conditions, which should therefore not be imposed with retroactive effect unless they are based on a legal or regulatory obligation or are beneficial to those business users. Business users should in addition be offered clarity as to the conditions under which their contractual relationship with providers of online intermediation services can be terminated. Providers of online intermediation services should ensure that the conditions for termination are always proportionate and can be exercised without undue difficulty. Finally, business users should be fully informed of any access that providers of online intermediation services maintain, after the expiry of the contract, to the information that business users provide or generate in the context of their use of online intermediation services.
- (33) The ability to access and use data, including personal data, can enable important value creation in the online platform economy, both generally as well as for the business users and online intermediation services involved. Accordingly, it is important that providers of online intermediation services provide business users with a clear description of the scope, nature and conditions of their access to and use of certain categories of data. The description should be proportionate and might refer to general access conditions, rather than an exhaustive identification of actual data, or categories of data. However, identification of and specific access conditions to certain types of actual data that might be highly relevant to the business users could also be included in the description. Such data could include ratings and reviews accumulated by business users on the online intermediation services. Altogether, the description should enable business users to understand whether they can use the data to enhance value creation, including by possibly retaining third-party data services.
- (34) In the same vein, it is important for business users to understand whether the provider shares with third parties any data which has been generated through the use of the intermediation service by the business user. Business users should in particular be made aware of any sharing of data with third parties that occurs for purposes which are not necessary for the proper functioning of the online intermediation services; for example where the provider monetises data under commercial considerations. To allow business users to fully exercise available rights to influence such data sharing, providers of online intermediation services should also be explicit about possibilities to opt out from the data sharing where they exist under their contractual relationship with the business user.
- (35) Those requirements should not be understood as any obligation for providers of online intermediation services to either disseminate or not to disseminate personal or non-personal data to their business users. However, transparency measures could contribute to increased data sharing and enhance, as a key source of innovation and growth, the aims to create a common European data space. Processing of personal data should comply with the Union legal framework on the protection of natural persons with regard to the processing of personal data, and on respect for private life and the protection of personal data in electronic communications, in particular Regulation (EU) 2016/679 ⁽⁶⁾, Directive (EU) 2016/680 ⁽⁷⁾ and Directive 2002/58/EC ⁽⁸⁾ of the European Parliament and of the Council.
- (36) Providers of online intermediation services might in certain cases restrict in their terms and conditions the ability of business users to offer goods or services to consumers under more favourable conditions through other means than through those online intermediation services. In those cases, the providers concerned should set out the grounds for doing so, in particular with reference to the main economic, commercial or legal considerations for the restrictions. This transparency obligation should however not be understood as affecting the assessment of the legality of such restrictions under other acts of Union law or the law of Member States that is in accordance with Union law, including in the areas of competition and unfair commercial practices, and the application of such laws.

⁽⁶⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽⁷⁾ 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).

⁽⁸⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

- (37) In order to enable business users, including those whose use of the relevant online intermediation services might have been restricted, suspended or terminated, to have access to immediate, suitable and effective possibilities of redress, providers of online intermediation services should provide for an internal complaint-handling system. That internal complaint-handling system should be based on principles of transparency and equal treatment applied to equivalent situations, aimed at ensuring that a significant proportion of complaints can be solved bilaterally by the provider of online intermediation services and the relevant business user in a reasonable period of time. The providers of online intermediation services might maintain in force during the duration of the complaint the decision that they have taken. Any attempt to reach an agreement through the internal complaint handling-process does not affect the rights of providers of online intermediation services or business users to initiate judicial proceedings at any time during or after the internal complaint-handling process. In addition, providers of online intermediation services should publish and, at least annually, verify information on the functioning and effectiveness of their internal complaint-handling system to help business users to understand the main types of issues that can arise in the context of the provision of different online intermediation services and the possibility of reaching a quick and effective bilateral resolution.
- (38) The requirements of this Regulation regarding the internal complaint-handling systems aim to allow providers of online intermediation services a reasonable degree of flexibility when operating those systems and addressing individual complaints, so as to minimise any administrative burden. In addition, the internal complaint-handling systems should allow providers of online intermediation services to address, where necessary, in a proportionate manner any use in bad faith which certain business users might seek to make of those systems. In light of the costs of setting up and operating such systems, it is appropriate to exempt from those obligations any providers of online intermediation services which constitute small enterprises, in line with the relevant provisions of Commission Recommendation 2003/361/EC⁽⁹⁾. The consolidation rules laid down in that Recommendation ensure that any circumvention is prevented. That exemption should not affect the right of such enterprises to set up, on a voluntary basis, an internal complaint-handling system that complies with the criteria set out in this Regulation.
- (39) The use of the word 'internal' should not be understood as preventing the delegation of an internal complaint-handling system to an external service provider or other corporate structure, as long as such a provider or other corporate structure has full authority and the ability to ensure compliance of the internal complaint-handling system with the requirements in this Regulation.
- (40) Mediation can offer providers of online intermediation services and their business users a means to resolve disputes in a satisfactory manner, without having to use judicial proceedings which can be lengthy and costly. Therefore, providers of online intermediation services should facilitate mediation by, in particular, identifying at least two public or private mediators with which they are willing to engage. The aim of requiring the identification of a minimum number of mediators is to safeguard the mediators' neutrality. Mediators which provide their services from a location outside the Union should only be identified where it is guaranteed that the use of those services does not in any way deprive the business users concerned of any legal protection offered to them under Union law or the law of the Member States, including the requirements of this Regulation and the applicable law regarding protection of personal data and trade secrets. In order to be accessible, fair, and as swift, efficient and effective as possible, those mediators should meet certain set criteria. Nonetheless, providers of online intermediation services and their business users should remain free to jointly identify any mediator of their choice after a dispute has arisen between them. In line with Directive 2008/52/EC of the European Parliament and of the Council⁽¹⁰⁾, the mediation provided for in this Regulation should be a voluntary process in the sense that the parties are themselves in charge of the process and can start and terminate it at any time. Notwithstanding its voluntary nature, providers of online intermediation services should examine in good faith requests to engage in the mediation provided for in this Regulation.
- (41) Providers of online intermediation services should bear a reasonable proportion of the total costs of the mediation, taking into account all relevant elements of the case at hand. To that end, the mediator should suggest which proportion is reasonable in the individual case. In light of the costs and of the administrative burden associated with the necessity to identify mediators in terms and conditions, it is appropriate to exempt from that obligation any providers of online intermediation services which are small enterprises, in line with the relevant provisions of Recommendation 2003/361/EC. The consolidation rules laid down in that Recommendation ensure that any circumvention of that obligation is prevented. Nevertheless, this should not affect the right of such enterprises to identify mediators in their terms and conditions that comply with the criteria set out in this Regulation.

⁽⁹⁾ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

⁽¹⁰⁾ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3).

- (42) Since the providers of online intermediation services should always be required to identify mediators with which they are willing to engage, and should be obliged to engage in good faith throughout any mediation attempts conducted pursuant to this Regulation, these obligations should be established in a way that prevents abuse of the mediation system by business users. Business users should also be obliged to engage in mediation in good faith. Providers of online intermediation services should not be obliged to engage in mediation where a business user brings proceedings on a subject in relation to which that business user has previously brought proceedings seeking mediation and the mediator has determined in that case that the business user has not acted in good faith. Providers of online intermediation services should also not be obliged to engage in mediation with business users who have made repeated unsuccessful mediation attempts. These exceptional situations should not limit the business user's ability to submit a case to mediation where, as determined by the mediator, the subject matter of the mediation is not related to the previous cases.
- (43) In order to facilitate the settlement of disputes relating to the provision of online intermediation services using mediation in the Union, the Commission should, in close cooperation with the Member States, encourage the setting up of specialised mediation organisations, which are currently lacking. The involvement of mediators having specialist knowledge of online intermediation services as well as of the specific industry sectors within which those services are provided should add to the confidence both parties have in the mediation process and should increase the likelihood of that process leading to a swift, just and satisfactory outcome.
- (44) Various factors, such as limited financial means, a fear of retaliation and exclusive choice of law and forum provisions in terms and conditions, can limit the effectiveness of existing judicial redress possibilities, particularly those which require business users or corporate website users to act individually and identifiably. To ensure the effective application of this Regulation, organisations, associations representing business users or corporate website users, as well as certain public bodies set up in Member States, should be granted the possibility to take action before national courts in accordance with national law, including national procedural requirements. Such action before national courts should aim to stop or prohibit infringements of the rules set out in this Regulation and to prevent future damage that could undermine sustainable business relationships in the online platform economy. In order to ensure that such organisations or associations exercise that right effectively and in an appropriate manner, they should meet certain criteria. In particular, they must be properly established according to the law of a Member State, be of a non-profit making character and pursue their objectives on a sustained basis. Those requirements should prevent any ad hoc establishment of organisations or associations for the purpose of a specific action or specific actions, or for the sake of making profits. Furthermore, it should be ensured that there is no undue influence by any third party providers of financing on decision-making by those organisations or associations.

In order to avoid a conflict of interest, organisations or associations representing business users or corporate website users should, in particular, be prevented from being subject to undue influence from any providers of online intermediation services or of any online search engines. The full and public disclosure of information on membership and source of financing should facilitate national courts in assessing whether these eligibility criteria are met. Considering the particular status of the relevant public bodies in Member States where such bodies have been set up, it should only be required that those have been specifically charged, in accordance with the relevant rules of national law, with bringing such actions either in the collective interest of the parties concerned or in the general interest, without there being a need to apply those criteria to such public bodies. Any such actions should in no way affect the rights of the business users and corporate website users to take judicial action on an individual basis.

- (45) The identity of organisations, associations and public bodies which, in the view of the Member States, should be qualified to bring an action under this Regulation, should be communicated to the Commission. In the course of such a communication, Member States should make specific reference to the relevant national provisions according to which the organisation, association or public body was established and, where appropriate, refer to the relevant public register in which the organisation or association is registered. This additional option of a designation by Member States should provide for a certain level of legal certainty and predictability that business users and corporate website users can rely on. At the same time, it aims at making judicial procedures more efficient and shorter, which seems appropriate in this context. The Commission should ensure the publication of a list of those organisations, associations and public bodies in the *Official Journal of the European Union*. Inclusion on that list

should serve as refutable proof of the legal capacity of the organisation, association or public body bringing the action. Where there are any concerns regarding a designation, the Member State which designated an organisation, association or public body should investigate those concerns. Organisations, associations and public bodies that are not designated by a Member State should have the possibility to bring an action before national courts subject to examination of legal capacity according to the criteria set out in this Regulation.

- (46) Member States should be required to ensure adequate and effective enforcement of this Regulation. Different enforcement systems already exist in Member States, and they should not be obliged to set up new national enforcement bodies. Member States should have the option to entrust existing authorities, including courts, with the enforcement of this Regulation. This Regulation should not oblige Member States to provide for ex officio enforcement or to impose fines.
- (47) The Commission should continuously monitor the application of this Regulation in close cooperation with the Member States. In this context, the Commission should aim to establish a broad information exchange network by leveraging relevant expert bodies, centres of excellence as well as the Observatory on the Online Platform Economy. Member States should, upon request, provide any relevant information they have in this context to the Commission. Finally, this exercise should benefit from the overall enhanced transparency in commercial relations between business users and providers of online intermediation services and between corporate website users and online search engines that this Regulation aims to achieve. In order to carry out its monitoring and review duties effectively under this Regulation, the Commission should endeavour to gather information from providers of online intermediation services. Providers of online intermediation services should cooperate in good faith in facilitating the gathering of such data, where applicable.
- (48) Codes of conduct, drawn up either by the service providers concerned or by organisations or associations representing them, can contribute to the proper application of this Regulation and should therefore be encouraged. When drawing up such codes of conduct, in consultation with all relevant stakeholders, account should be taken of the specific features of the sectors concerned as well as of the specific characteristics of SMEs. Such codes of conduct should be worded in an objective and non-discriminatory way.
- (49) The Commission should periodically evaluate this Regulation and closely monitor its effects on the online platform economy, in particular with a view to determining the need for amendments in light of relevant technological or commercial developments. This evaluation should include the effects on business users which might result from the general use of exclusive choice of law and forum provisions in terms and conditions which are unilaterally determined by the provider of online intermediation services. In order to obtain a broad view of developments in the sector, the evaluation should take into account the experiences of Member States and relevant stakeholders. The group of experts for the Observatory on the Online Platform Economy established in accordance with the Commission Decision C(2018)2393 has a key role in informing the evaluation of this Regulation by the Commission. The Commission should therefore duly consider the opinions and reports presented to it by the group. Following the evaluation, the Commission should take appropriate measures. Further measures, including of a legislative nature, may be appropriate if and where the provisions established in this Regulation prove to be insufficient to adequately address imbalances and unfair commercial practices persisting in the sector.
- (50) When providing the information required under this Regulation, account should be taken as much as possible of the particular needs of persons with disabilities, in line with the objectives of the United Nations Convention on the Rights of Persons with Disabilities ⁽¹⁾.
- (51) Since the objective of this Regulation, namely to ensure a fair, predictable, sustainable and trusted online business environment within the internal market, 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 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 that objective.
- (52) This Regulation seeks to ensure full respect for the right to an effective remedy and to a fair trial as laid down in Article 47 of the Charter of Fundamental Rights of the European Union and promote the application of the freedom to conduct a business as laid down in Article 16 of the Charter,

⁽¹⁾ Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L 23, 27.1.2010, p. 37).

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down rules to ensure that business users of online intermediation services and corporate website users in relation to online search engines are granted appropriate transparency, fairness and effective redress possibilities.
2. This Regulation shall apply to online intermediation services and online search engines provided, or offered to be provided, to business users and corporate website users, respectively, that have their place of establishment or residence in the Union and that, through those online intermediation services or online search engines, offer goods or services to consumers located in the Union, irrespective of the place of establishment or residence of the providers of those services and irrespective of the law otherwise applicable.
3. This Regulation shall not apply to online payment services or to online advertising tools or online advertising exchanges, which are not provided with the aim of the facilitating the initiation of direct transactions and which do not involve a contractual relationship with consumers.
4. This Regulation shall be without prejudice to national rules which, in conformity with Union law, prohibit or sanction unilateral conduct or unfair commercial practices, to the extent that the relevant aspects are not covered by this Regulation. This Regulation shall not affect national civil law, in particular contract law, such as the rules on the validity, formation, effects or termination of a contract, in so far as the national civil law rules are in conformity with Union law, and to the extent that the relevant aspects are not covered by this Regulation.
5. This Regulation shall be without prejudice to Union law, in particular Union law applicable in the areas of judicial cooperation in civil matters, competition, data protection, trade secrets protection, consumer protection, electronic commerce and financial services.

Article 2

Definitions

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

- (1) 'business user' means any private individual acting in a commercial or professional capacity who, or any legal person which, through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession;
- (2) 'online intermediation services' means services which meet all of the following requirements:
 - (a) they constitute information society services within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council ⁽¹²⁾;
 - (b) they allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded;
 - (c) they are provided to business users on the basis of contractual relationships between the provider of those services and business users which offer goods or services to consumers;
- (3) 'provider of online intermediation services' means any natural or legal person which provides, or which offers to provide, online intermediation services to business users;

⁽¹²⁾ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

- (4) 'consumer' means any natural person who is acting for purposes which are outside this person's trade, business, craft or profession;
- (5) 'online search engine' means a digital service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found;
- (6) 'provider of online search engine' means any natural or legal person which provides, or which offers to provide, online search engines to consumers;
- (7) 'corporate website user' means any natural or legal person which uses an online interface, meaning any software, including a website or a part thereof and applications, including mobile applications, to offer goods or services to consumers for purposes relating to its trade, business, craft or profession;
- (8) 'ranking' means the relative prominence given to the goods or services offered through online intermediation services, or the relevance given to search results by online search engines, as presented, organised or communicated by the providers of online intermediation services or by providers of online search engines, respectively, irrespective of the technological means used for such presentation, organisation or communication;
- (9) 'control' means ownership of, or the ability to exercise decisive influence over, an undertaking, within the meaning of Article 3(2) of Council Regulation (EC) No 139/2004 ⁽¹³⁾;
- (10) 'terms and conditions' means all terms and conditions or specifications, irrespective of their name or form, which govern the contractual relationship between the provider of online intermediation services and its business users and are unilaterally determined by the provider of online intermediation services, that unilateral determination being evaluated on the basis of an overall assessment, for which the relative size of the parties concerned, the fact that a negotiation took place, or that certain provisions thereof might have been subject to such a negotiation and determined together by the relevant provider and business user is not, in itself, decisive;
- (11) 'ancillary goods and services' means goods and services offered to the consumer prior to the completion of a transaction initiated on the online intermediation services in addition to and complementary to the primary good or service offered by the business user through the online intermediation services;
- (12) 'mediation' means any structured process as defined in point (a) of Article 3 of Directive 2008/52/EC;
- (13) 'durable medium' means any instrument which enables business users to store information addressed personally to them in a way accessible for future reference and for a period of time adequate for the purposes of the information and allows the unchanged reproduction of the information stored.

Article 3

Terms and conditions

1. Providers of online intermediation services shall ensure that their terms and conditions:
 - (a) are drafted in plain and intelligible language;
 - (b) are easily available to business users at all stages of their commercial relationship with the provider of online intermediation services, including in the pre-contractual stage;

⁽¹³⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

- (c) set out the grounds for decisions to suspend or terminate or impose any other kind of restriction upon, in whole or in part, the provision of their online intermediation services to business users;
 - (d) include information on any additional distribution channels and potential affiliate programmes through which providers of online intermediation services might market goods and services offered by business users;
 - (e) include general information regarding the effects of the terms and conditions on the ownership and control of intellectual property rights of business users.
2. Providers of online intermediation services shall notify, on a durable medium, to the business users concerned any proposed changes of their terms and conditions.

The proposed changes shall not be implemented before the expiry of a notice period which is reasonable and proportionate to the nature and extent of the envisaged changes and to their consequences for the business user concerned. That notice period shall be at least 15 days from the date on which the provider of online intermediation services notifies the business users concerned about the proposed changes. Providers of online intermediation services shall grant longer notice periods when this is necessary to allow business users to make technical or commercial adaptations to comply with the changes.

The business user concerned shall have the right to terminate the contract with the provider of online intermediation services before the expiry of the notice period. Such termination shall take effect within 15 days from the receipt of the notice pursuant to the first subparagraph, unless a shorter period applies to the contract.

The business user concerned may, either by means of a written statement or a clear affirmative action, waive the notice period referred to in the second subparagraph at any moment from the receipt of the notice pursuant to the first subparagraph.

During the notice period, submitting new goods or services to the online intermediation services shall be considered clear affirmative action to waive the notice period, except in cases where the reasonable and proportionate notice period is longer than 15 days because the changes to the terms and conditions require the business user to make significant technical adjustments to its goods or services. In such cases, the notice period shall not be considered automatically to be waived where the business user submits new goods and services.

3. Terms and conditions, or specific provisions thereof, which do not comply with the requirements of paragraph 1, as well as changes to terms and conditions implemented by a provider of online intermediation services contrary to the provisions of paragraph 2 shall be null and void.
4. The notice period set out in the second subparagraph of paragraph 2 shall not apply where a provider of online intermediation services:
- (a) is subject to a legal or regulatory obligation which requires it to change its terms and conditions in a manner which does not allow it to respect the notice period referred to in the second subparagraph of paragraph 2;
 - (b) has exceptionally to change its terms and conditions to address an unforeseen and imminent danger related to defending the online intermediation services, consumers or business users from fraud, malware, spam, data breaches or other cybersecurity risks.
5. Providers of online intermediation services shall ensure that the identity of the business user providing the goods or services on the online intermediation services is clearly visible.

*Article 4***Restriction, suspension and termination**

1. Where a provider of online intermediation services decides to restrict or suspend the provision of its online intermediation services to a given business user in relation to individual goods or services offered by that business user, it shall provide the business user concerned, prior to or at the time of the restriction or suspension taking effect, with a statement of reasons for that decision on a durable medium.
2. Where a provider of online intermediation services decides to terminate the provision of the whole of its online intermediation services to a given business user, it shall provide the business user concerned, at least 30 days prior to the termination taking effect, with a statement of reasons for that decision on a durable medium.
3. In the case of restriction, suspension or termination, the provider of online intermediation services shall give the business user the opportunity to clarify the facts and circumstances in the framework of the internal complaint-handling process referred to in Article 11. Where the restriction, suspension or termination is revoked by the provider of online intermediation services, it shall reinstate the business user without undue delay, including providing the business user with any access to personal or other data, or both, that resulted from its use of the relevant online intermediation services prior to the restriction, suspension or termination having taken effect.
4. The notice period in paragraph 2 shall not apply where a provider of online intermediation services:
 - (a) is subject to a legal or regulatory obligation which requires it to terminate the provision of the whole of its online intermediation services to a given business user in a manner which does not allow it to respect that notice period; or
 - (b) exercises a right of termination under an imperative reason pursuant to national law which is in compliance with Union law;
 - (c) can demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions, resulting in the termination of the provision of the whole of the online intermediation services in question.

In cases where the notice period in paragraph 2 does not apply, the provider of online intermediation services shall provide the business user concerned, without undue delay, with a statement of reasons for that decision on a durable medium.

5. The statement of reasons referred to in paragraphs 1, and 2 and in the second subparagraph of paragraph 4 shall contain a reference to the specific facts or circumstances, including contents of third party notifications, that led to the decision of the provider of online intermediation services, as well as a reference to the applicable grounds for that decision referred to in point (c) of Article 3(1).

A provider of online intermediation services does not have to provide a statement of reasons where it is subject to a legal or regulatory obligation not to provide the specific facts or circumstances or the reference to the applicable ground or grounds, or where a provider of online intermediation services can demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions, resulting in termination of the provision of the whole of the online intermediation services in question.

*Article 5***Ranking**

1. Providers of online intermediation services shall set out in their terms and conditions the main parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters.
2. Providers of online search engines shall set out the main parameters, which individually or collectively are most significant in determining ranking and the relative importance of those main parameters, by providing an easily and publicly available description, drafted in plain and intelligible language, on the online search engines of those providers. They shall keep that description up to date.

3. Where the main parameters include the possibility to influence ranking against any direct or indirect remuneration paid by business users or corporate website users to the respective provider, that provider shall also set out a description of those possibilities and of the effects of such remuneration on ranking in accordance with the requirements set out in paragraphs 1 and 2.

4. Where a provider of an online search engine has altered the ranking order in a specific case or delisted a particular website following a third party notification, the provider shall offer the possibility for the corporate website user to inspect the contents of the notification.

5. The descriptions referred to in paragraphs 1, 2 and 3 shall be sufficient to enable the business users or corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, the ranking mechanism takes account of the following:

- (a) the characteristics of the goods and services offered to consumers through the online intermediation services or the online search engine;
- (b) the relevance of those characteristics for those consumers;
- (c) as regards online search engines, the design characteristics of the website used by corporate website users.

6. Providers of online intermediation services and providers of online search engines shall, when complying with the requirements of this Article, not be required to disclose algorithms or any information that, with reasonable certainty, would result in the enabling of deception of consumers or consumer harm through the manipulation of search results. This Article shall be without prejudice to Directive (EU) 2016/943.

7. To facilitate the compliance of providers of online intermediation services and providers of online search engines with and the enforcement of the requirements of this Article, the Commission shall accompany the transparency requirements set out in this Article with guidelines.

Article 6

Ancillary goods and services

Where ancillary goods and services, including financial products, are offered to consumers through the online intermediation services, either by the provider of online intermediation services or by third parties, the provider of online intermediation services shall set out in its terms and conditions a description of the type of ancillary goods and services offered and a description of whether and under which conditions the business user is also allowed to offer its own ancillary goods and services through the online intermediation services.

Article 7

Differentiated treatment

1. Providers of online intermediation services shall include in their terms and conditions a description of any differentiated treatment which they give, or might give, in relation to goods or services offered to consumers through those online intermediation services by, on the one hand, either that provider itself or any business users which that provider controls and, on the other hand, other business users. That description shall refer to the main economic, commercial or legal considerations for such differentiated treatment.

2. Providers of online search engines shall set out a description of any differentiated treatment which they give, or might give, in relation to goods or services offered to consumers through those online search engines by, on the one hand, either that provider itself or any corporate website users which that provider controls and, on the other hand, other corporate website users.

3. The descriptions referred to in paragraphs 1 and 2 shall cover in particular, where applicable, any differentiated treatment through specific measures taken by, or the behaviour of, the provider of online intermediation services or the provider of the online search engine relating to any of the following:

- (a) access that the provider, or that the business users or corporate website users which that provider controls, may have to any personal data or other data, or both, which business users, corporate website users or consumers provide for the use of the online intermediation services or the online search engines concerned or which are generated through the provision of those services;
- (b) ranking or other settings applied by the provider that influence consumer access to goods or services offered through those online intermediation services by other business users or through those online search engines by other corporate website users;
- (c) any direct or indirect remuneration charged for the use of the online intermediation services or online search engines concerned;
- (d) access to, conditions for, or any direct or indirect remuneration charged for the use of services or functionalities, or technical interfaces, that are relevant to the business user or the corporate website user and that are directly connected or ancillary to utilising the online intermediation services or online search engines concerned.

Article 8

Specific contractual terms

In order to ensure that contractual relations between providers of online intermediation services and business users are conducted in good faith and based on fair dealing, providers of online intermediation services shall:

- (a) not impose retroactive changes to terms and conditions, except when they are required to respect a legal or regulatory obligation or when the retroactive changes are beneficial for the business users;
- (b) ensure that their terms and conditions include information on the conditions under which business users can terminate the contractual relationship with the provider of online intermediation services; and
- (c) include in their terms and conditions a description of the technical and contractual access, or absence thereof, to the information provided or generated by the business user, which they maintain after the expiry of the contract between the provider of online intermediation services and the business user.

Article 9

Access to data

1. Providers of online intermediation services shall include in their terms and conditions a description of the technical and contractual access, or absence thereof, of business users to any personal data or other data, or both, which business users or consumers provide for the use of the online intermediation services concerned or which are generated through the provision of those services.

2. Through the description referred to in paragraph 1, providers of online intermediation services shall adequately inform business users in particular of the following:

- (a) whether the provider of online intermediation services has access to personal data or other data, or both, which business users or consumers provide for the use of those services or which are generated through the provision of those services, and if so, to which categories of such data and under what conditions;
- (b) whether a business user has access to personal data or other data, or both, provided by that business user in connection to the business user's use of the online intermediation services concerned or generated through the provision of those services to that business user and the consumers of the business user's goods or services, and if so, to which categories of such data and under what conditions;

- (c) in addition to point (b), whether a business user has access to personal data or other data, or both, including in aggregated form, provided by or generated through the provision of the online intermediation services to all of the business users and consumers thereof, and if so, to which categories of such data and under what conditions; and
 - (d) whether any data under point (a) is provided to third parties, along with, where the provision of such data to third parties is not necessary for the proper functioning of the online intermediation services, information specifying the purpose of such data sharing, as well as possibilities for business users to opt out from that data sharing.
3. This Article shall be without prejudice to the application of Regulation (EU) 2016/679, Directive (EU) 2016/680 and Directive 2002/58/EC.

Article 10

Restrictions to offer different conditions through other means

1. Where, in the provision of their services, providers of online intermediation services restrict the ability of business users to offer the same goods and services to consumers under different conditions through other means than through those services, they shall include the grounds for that restriction in their terms and conditions and make those grounds easily available to the public. Those grounds shall include the main economic, commercial or legal considerations for those restrictions.
2. The obligation set out in paragraph 1 shall not affect any prohibitions or limitations in respect of the imposition of such restrictions that result from the application of other acts of Union law or the law of Member States that is in accordance with Union law and to which the providers of online intermediation services are subject.

Article 11

Internal complaint-handling system

1. Providers of online intermediation services shall provide for an internal system for handling the complaints of business users.

That internal complaint-handling system shall be easily accessible and free of charge for business users and shall ensure handling within a reasonable time frame. It shall be based on the principles of transparency and equal treatment applied to equivalent situations, and treating complaints in a manner which is proportionate to their importance and complexity. It shall allow business users to lodge complaints directly with the provider concerned regarding any of the following issues:

- (a) alleged non-compliance by that provider with any obligations laid down in this Regulation which affects the business user lodging the complaint ('the complainant');
 - (b) technological issues which relate directly to the provision of online intermediation services, and which affect the complainant;
 - (c) measures taken by, or behaviour of, that provider which relate directly to the provision of the online intermediation services, and which affect the complainant.
2. As part of their internal complaint-handling system, providers of online intermediation services shall:
 - (a) duly consider complaints lodged and the follow-up which they may need to give to the complaint in order to adequately address the issue raised;
 - (b) process complaints swiftly and effectively, taking into account the importance and complexity of the issue raised;

(c) communicate to the complainant the outcome of the internal complaint-handling process, in an individualised manner and drafted in plain and intelligible language.

3. Providers of online intermediation services shall provide in their terms and conditions all relevant information relating to the access to and functioning of their internal complaint-handling system.

4. Providers of online intermediation services shall establish and make easily available to the public information on the functioning and effectiveness of their internal complaint-handling system. They shall verify the information at least annually and where significant changes are needed, they shall update that information.

That information shall include the total number of complaints lodged, the main types of complaints, the average time period needed to process the complaints and aggregated information regarding the outcome of the complaints.

5. The provisions of this Article shall not apply to providers of online intermediation services that are small enterprises within the meaning of the Annex to Recommendation 2003/361/EC.

Article 12

Mediation

1. Providers of online intermediation services shall identify in their terms and conditions two or more mediators with which they are willing to engage to attempt to reach an agreement with business users on the settlement, out of court, of any disputes between the provider and the business user arising in relation to the provision of the online intermediation services concerned, including complaints that could not be resolved by means of the internal complaint-handling system referred to in Article 11.

Providers of online intermediation services may only identify mediators providing their mediation services from a location outside the Union where it is ensured that the business users concerned are not effectively deprived of the benefit of any legal safeguards laid down in Union law or the law of the Member States as a consequence of the mediators providing those services from outside the Union.

2. The mediators referred to in paragraph 1 shall meet the following requirements:

- (a) they are impartial and independent;
- (b) their mediation services are affordable for business users of the online intermediation services concerned;
- (c) they are capable of providing their mediation services in the language of the terms and conditions which govern the contractual relationship between the provider of online intermediation services and the business user concerned;
- (d) they are easily accessible either physically in the place of establishment or residence of the business user, or remotely using communication technologies;
- (e) they are capable of providing their mediation services without undue delay;
- (f) they have a sufficient understanding of general business-to-business commercial relations, allowing them to contribute effectively to the attempt to settle the disputes.

3. Notwithstanding the voluntary nature of mediation, providers of online intermediation services and business users shall engage in good faith throughout any mediation attempts conducted pursuant to this Article.

4. Providers of online intermediation services shall bear a reasonable proportion of the total costs of mediation in each individual case. A reasonable proportion of those total costs shall be determined, on the basis of a suggestion by the mediator, by taking into account all relevant elements of the case at hand, in particular the relative merits of the claims of the parties to the dispute, the conduct of the parties, as well as the size and financial strength of the parties relative to one another.

5. Any attempt to reach an agreement through mediation on the settlement of a dispute in accordance with this Article shall not affect the rights of the providers of online intermediation services and of the business users concerned to initiate judicial proceedings at any time before, during or after the mediation process.

6. If requested by a business user, before entering into or during mediation, the provider of online intermediation services shall make available, to the business user, information on the functioning and effectiveness of mediation related to its activities.

7. The obligation set out in paragraph 1 shall not apply to providers of online intermediation services that are small enterprises within the meaning of the Annex to Recommendation 2003/361/EC.

Article 13

Specialised mediators

The Commission shall, in close cooperation with the Member States, encourage providers of online intermediation services as well as organisations and associations representing them to, individually or jointly, set up one or more organisations providing mediation services which meet the requirements specified in Article 12(2), for the specific purpose of facilitating the out-of-court settlement of disputes with business users arising in relation to the provision of those services, taking particular account of the cross-border nature of online intermediation services.

Article 14

Judicial proceedings by representative organisations or associations and by public bodies

1. Organisations and associations that have a legitimate interest in representing business users or in representing corporate website users, as well as public bodies set up in Member States, shall have the right to take action before competent national courts in the Union, in accordance with the rules of the law of the Member State where the action is brought, to stop or prohibit any non-compliance by providers of online intermediation services or by providers of online search engines, with the relevant requirements laid down in this Regulation.

2. The Commission shall encourage Member States to exchange best practices and information with other Member States, based on registries of unlawful acts which have been subject to injunction orders before national courts, where such registries are set up by relevant public bodies or authorities.

3. Organisations or associations shall have the right referred to in paragraph 1 only where they meet all of the following requirements:

(a) they are properly established in accordance with the law of a Member State;

(b) they pursue objectives that are in the collective interest of the group of business users or corporate website users that they represent on a sustained basis;

- (c) they are of a non-profit making character;
- (d) their decision-making is not unduly influenced by any third party providers of financing, in particular by providers of online intermediation services or of online search engines.

To this end, organisations or associations shall fully and publicly disclose information on their membership and source of financing.

4. In Member States where public bodies have been set up, those public bodies shall have the right referred to in paragraph 1, where they are charged with defending the collective interests of business users or corporate website users or with ensuring compliance with the requirements laid down in this Regulation, in accordance with the national law of the Member State concerned.

5. Member States may designate:

(a) organisations or associations established in their Member State that meet at least the requirements of paragraph 3 at the request of those organisations or associations;

(b) public bodies set up in their Member State that meet the requirements of paragraph 4

that are granted the right referred to in paragraph 1. Member States shall communicate to the Commission the name and purpose of any such designated organisations, associations or public bodies.

6. The Commission shall draw up a list of the organisations, associations and public bodies designated in accordance with paragraph 5. That list shall specify the purpose of those organisations, associations and public bodies. That list shall be published in the *Official Journal of the European Union*. Changes to the list shall be published without delay and, in any event, an updated list shall be drawn up and published every six months.

7. The court shall accept the list referred to in paragraph 6 as proof of the legal capacity of the organisation, association or public body, without prejudice to the court's right to examine whether the purpose of the claimant justifies its taking action in a specific case.

8. If a Member State or the Commission raises concerns regarding the compliance, by an organisation or association, with the criteria laid down in paragraph 3, or, by a public body, with the criteria laid down in paragraph 4, the Member State that designated that organisation, association or public body in accordance with paragraph 5 shall investigate the concerns and, where appropriate, revoke the designation if one or more of the criteria are not complied with.

9. The right referred to in paragraph 1 shall be without prejudice to the rights of business users and corporate website users to start any action before competent national courts, in accordance with the rules of the law of the Member State where the action is brought, which is based on individual rights and aims to stop any non-compliance, by providers of online intermediation services or providers of online search engines, with the relevant requirements laid down in this Regulation.

*Article 15***Enforcement**

1. Each Member State shall ensure adequate and effective enforcement of this Regulation.
2. Member States shall lay down the rules setting out the measures applicable to infringements of this Regulation and shall ensure that they are implemented. The measures provided for shall be effective, proportionate and dissuasive.

*Article 16***Monitoring**

The Commission, in close cooperation with Member States, shall closely monitor the impact of this Regulation on relationships between online intermediation services and their business users and between online search engines and corporate website users. To this end, the Commission shall gather relevant information to monitor changes in these relationships, including by carrying out relevant studies. Member States shall assist the Commission by providing, upon request, any relevant information gathered including about specific cases. The Commission may, for the purpose of this Article and Article 18, seek to gather information from providers of online intermediation services.

*Article 17***Codes of conduct**

1. The Commission shall encourage the drawing up of codes of conduct by providers of online intermediation services and by organisations and associations representing them, together with business users, including SMEs and their representative organisations, that are intended to contribute to the proper application of this Regulation, taking account of the specific features of the various sectors in which online intermediation services are provided, as well as of the specific characteristics of SMEs.
2. The Commission shall encourage providers of online search engines and organisations and associations representing them to draw up codes of conduct that are specifically intended to contribute to the proper application of Article 5.
3. The Commission shall encourage the providers of online intermediation services to adopt and implement sector-specific codes of conduct, where such sector-specific codes of conduct exist and are widely used.

*Article 18***Review**

1. By 13 January 2022, and subsequently every three years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.
2. The first evaluation of this Regulation shall be carried out, in particular, with a view to the following:
 - (a) assessing the compliance with, and impact on the online platform economy of, the obligations laid down in Articles 3 to 10;
 - (b) assessing the impact and effectiveness of any established codes of conduct to improve fairness and transparency;
 - (c) investigating further the problems caused by the dependence of business users on online intermediation services, and problems caused by unfair commercial practices by providers of online intermediation services, and to determine further to which extent those practices continue to be widespread;
 - (d) investigating whether the competition between goods or services offered by a business user and goods or services offered or controlled by a provider of online intermediation services constitutes fair competition and whether providers of online intermediation services misuse privileged data in this regard;

- (e) assessing the effect of this Regulation on any possible imbalances in the relationships between providers of operating systems and their business users;
- (f) assessing whether the scope of the Regulation, especially as regards the definition of 'business user', is suitable in that it does not encourage bogus self-employment.

The first and subsequent evaluations shall establish whether additional rules, including regarding enforcement, may be required to ensure a fair, predictable, sustainable and trusted online business environment within the internal market. Following the evaluations, the Commission shall take appropriate measures, which may include legislative proposals.

3. Member States shall provide any relevant information they have that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.

4. In carrying out the evaluation of this Regulation, the Commission shall take into account inter alia, the opinions and reports presented to it by the group of experts for the Observatory on the Online Platform Economy. It shall also take into account the content and functioning of any codes of conduct referred to in Article 17, where appropriate.

Article 19

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from 12 July 2020.

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

Done at Brussels, 20 June 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

DIRECTIVES

DIRECTIVE (EU) 2019/1151 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law

(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 50(1) and points (b), (c), (f) and (g) of Article 50(2) thereof,

Having regard to the proposal from the European Commission,

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

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

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

Whereas:

- (1) Directive (EU) 2017/1132 of the European Parliament and of the Council ⁽³⁾ lays down *inter alia* rules on disclosure and interconnection of central, commercial and companies registers of Member States.
- (2) The use of digital tools and processes to more easily, rapidly and time- and cost-effectively initiate economic activity by setting up a company or by opening a branch of that company in another Member State, and to provide comprehensive and accessible information on companies, is one of the prerequisites for the effective functioning, modernisation and administrative streamlining of a competitive internal market and for ensuring the competitiveness and trustworthiness of companies.
- (3) Ensuring that a legal and administrative environment equal to the new social and economic challenges of globalisation and digitalisation exists is essential, on the one hand, in order to provide the necessary safeguards against abuse and fraud and, on the other, in order to pursue objectives such as promotion of economic growth, creation of jobs and attracting investment to the Union, all of which would bring economic and social benefits to society as a whole.
- (4) There are currently significant differences between Member States when it comes to the availability of online tools enabling entrepreneurs and companies to communicate with authorities on matters of company law. eGovernment services vary between Member States. Some Member States provide comprehensive and user-friendly services entirely online, while others are unable to provide online solutions at certain major stages of a company's lifecycle. For example, some Member States only allow the formation of companies, or the filing of changes to documents and information with the register, to be done in person, some allow those actions to be done either in person or online, and in other Member States they can only be done online.

⁽¹⁾ OJ C 62, 15.2.2019, p. 24.

⁽²⁾ Position of the European Parliament of 18 April 2019 (not yet published in the Official Journal) and decision of the Council of 13 June 2019.

⁽³⁾ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

- (5) Furthermore, regarding access to company information, Union law stipulates that a minimum set of data always has to be provided free of charge. However, the scope of such information remains limited. Access to such information varies, with more information being made available free of charge in some Member States than in others, thus causing an imbalance in the Union.
- (6) The Commission, in its Communication 'A Digital Single Market Strategy for Europe' and in its Communication 'EU e-Government Action Plan 2016-2020: Accelerating the digital transformation of government', stressed the role of public administrations in helping businesses to easily start their activities, operate online and expand across borders. The EU e-Government Action Plan specifically recognised the importance of improving the use of digital tools when complying with company law-related requirements. Furthermore, in the 'Tallinn declaration on eGovernment' of 6 October 2017, Member States made a strong call to step up efforts for the provision of efficient, user-centric electronic procedures in the Union.
- (7) In June 2017, the interconnection of Member States' central, commercial and companies registers became operational thereby greatly facilitating cross-border access to company information in the Union and allowing registers in Member States to communicate with each other electronically in relation to certain cross-border operations which affect companies.
- (8) In order to facilitate the formation of companies and the registration of branches and to reduce the costs, time and administrative burdens associated with those processes, in particular by micro, small and medium-sized enterprises ('SMEs') as defined in Commission Recommendation 2003/361/EC ⁽⁴⁾, procedures should be put in place to enable the formation of companies and registration of branches to be completed fully online. This Directive should not oblige companies to use such procedures. Member States should, however, be able to decide to make some or all online procedures mandatory. The current costs and burdens associated with formation and registration procedures derive not only from administrative fees charged for forming a company or registering a branch, but also from other requirements which make the overall process longer to complete, in particular when the physical presence of the applicant is required. In addition, information on such procedures should be made available online and free of charge.
- (9) Regulation (EU) 2018/1724 of the European Parliament and of the Council ⁽⁵⁾, which establishes the Single Digital Gateway, provides for general rules for online provision of information, procedures and assistance services relevant for the functioning of the internal market. This Directive establishes specific rules relating to the online formation of limited liability companies, registration of branches, and filing of documents and information by companies and branches ('online procedures'), which are not covered by that Regulation. In particular, Member States should provide specific information about online procedures provided for in this Directive and models of instruments of constitution ('templates') on the websites accessible by means of the Single Digital Gateway.
- (10) Enabling the formation of companies, registration of branches and filing of documents and information to be done fully online would allow companies to use digital tools in their contacts with competent authorities of Member States. In order to enhance trust, Member States should ensure that secure electronic identification and the use of trust services is possible for national as well as cross-border users in accordance with Regulation (EU) No 910/2014 of the European Parliament and of the Council ⁽⁶⁾. Furthermore, in order to enable cross-border electronic identification, Member States should set up electronic identification schemes which provide for authorised electronic identification means. Such national schemes would be used as a basis for the recognition of electronic identification means issued in another Member State. In order to ensure that there is a high level of trust in cross-border situations, only electronic identification means which comply with Article 6 of Regulation (EU) No 910/2014 should be recognised. In any event, this Directive should only oblige Member States to enable online formation of companies, registration of branches and online filing of documents and information by applicants who are Union citizens, through the recognition of their electronic identification means. Member States should decide on the way in which the identification means that they recognise, including those not falling under Regulation (EU) No 910/2014, are made publicly available.

⁽⁴⁾ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

⁽⁵⁾ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

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

- (11) Member States should remain free to decide which person or persons are to be considered under national law as applicants with regard to online procedures, provided that that does not limit the scope and the objective of this Directive.
- (12) In order to facilitate online procedures for companies, Member States' registers should ensure that the rules on fees applicable to the online procedures provided for in this Directive are transparent and applied in a non-discriminatory manner. However, the requirement of transparency of rules on fees should be without prejudice to contractual freedom, where applicable, between applicants and persons who assist them in any part of the online procedures, including the freedom to negotiate an appropriate price for such services.
- (13) Fees charged by the registers for online procedures should be calculated on the basis of the costs of the services in question. Such fees could also cover, *inter alia*, the costs of minor services performed without charge. In calculating their amount, Member States should be entitled to take account of all the costs related to carrying out the online procedures, including the proportion of the overheads which can be attributed thereto. Furthermore, Member States should be allowed to impose flat-rate charges and fix the amount of such charges for an indefinite period, provided that they check at regular intervals that such charges continue not to exceed the average cost of the services in question. Any fees for online procedures charged by the register in the Member States should not exceed the recovery cost of providing such services. Moreover, where the completion of the procedure requires a payment, it should be possible that the payment can be made by means of widely available cross-border payment services, such as credit cards and bank transfers.
- (14) Member States should assist persons seeking to form a company or register a branch by providing certain information through the Single Digital Gateway and, where applicable, on the e-Justice Portal, in a concise and user-friendly way, concerning the procedures and requirements on the formation of limited liability companies, registration of branches and filing of documents and information, rules relating to the disqualification of directors and an outline of the powers and responsibilities of the administrative, management and supervisory bodies of companies.
- (15) It should be possible to form companies fully online. However, Member States should be allowed to limit online formation to certain types of limited liability companies, as specified in this Directive, due to the complexity of the formation of other types of companies in national law. In any event, Member States should lay down detailed rules for online formation. It should be possible to carry out online formation with the submission of documents or information in electronic form, without prejudice to Member States' material and procedural requirements, including those relating to legal procedures for drawing up instruments of constitution, and to the authenticity, accuracy, reliability, trustworthiness and appropriate legal form of documents or information that are submitted. However, those material and procedural requirements should not make online procedures, in particular those for the online formation of a company and online registration of a branch, impossible. Where obtaining electronic copies of documents satisfying the requirements of Member States is not technically possible, by way of exception, the documents in paper form could be required.
- (16) Where all formalities required for the online formation of a company are complied with, including the requirement for all documents and information to be correctly provided by the company, the online formation before any authorities or any persons or bodies mandated under national law to deal with any aspect of online procedures, should be fast. However, in cases where there are doubts about the fulfilment of necessary formalities, including concerning the identity of an applicant, the legality of the name of the company, the disqualification of a director or the compliance of any other information or document with legal requirements, or in cases of suspicion of fraud or abuse, the online formation might take longer and the deadline for the authorities should not commence until such formalities are complied with. In any event, where it is not possible to complete the procedure within the deadlines, Member States should ensure that the applicant is notified of the reasons for any delay.
- (17) In order to ensure the timely online formation of a company or online registration of a branch, Member States should not make that formation or registration conditional on obtaining any licence or authorisation before that formation or registration can be completed, unless national law so provides for the purpose of ensuring that there is a proper oversight of certain activities. After formation or registration, national law should govern the situations in which companies or branches are not allowed to carry out certain activities without obtaining a licence or authorisation.

- (18) In order to assist businesses, in particular, SMEs in setting-up, it should be possible to form a private limited liability company with the use of templates, which should be available online. Member States should ensure that such templates can be used for online formations, and should remain free to determine what their legal value is. Such templates could contain a pre-defined set of options in accordance with national law. The applicants should be able to choose between using templates or forming a company with bespoke instruments of constitution, and Member States should have the option of providing templates also for other types of companies.
- (19) In order to respect Member States' existing traditions regarding company law, it is important to allow flexibility as regards the manner in which they provide a fully online system for formation of companies, registration of branches and filing of documents and information, including in relation to the role of notaries or lawyers in any part of such online procedures. Matters concerning online procedures which are not regulated in this Directive should continue to be governed by national law.
- (20) Furthermore, in order to tackle fraud and company hijacking and to provide safeguards for the reliability and trustworthiness of documents and information contained within national registers, provisions concerning online procedures provided for in this Directive should also include controls on the identity and legal capacity of persons seeking to form a company or register a branch or to file documents or information. Those controls could be a part of the legality check required by some Member States. The means and methods for carrying out those controls should be left to Member States to develop and adopt. To that effect, Member States should be able to require the involvement of notaries or lawyers in any part of the online procedures. However, such involvement should not prevent the completion of the procedure in its entirety online.
- (21) Where justified by reason of the public interest in preventing identity misuse or alteration, or in ensuring that the rules on legal capacity and on applicants' authority to represent a company are complied with, Member States should be allowed to take measures, in accordance with national law, which could require the physical presence of the applicant before any authority or person or body mandated under national law to deal with any aspect of online procedures, of the Member State in which the company is to be formed or a branch is to be registered. However, such physical presence should not be required systematically, but only on a case-by-case basis where there are reasons to suspect identity falsification or non-compliance with the rules on legal capacity and on applicants' authority to represent a company. Such suspicion should be based on information available to the authorities or persons or bodies mandated under national law to perform such kinds of controls. In the event that physical presence is required, Member States should ensure that any other steps of the procedure can be completed online. The concept of legal capacity should be understood to include the capacity to act.
- (22) Member States should be allowed also to enable their competent authorities, persons or bodies to verify, by complementary electronic controls of identity, legal capacity and legality, whether all the conditions required for the formation of companies are met. Such controls could include, *inter alia*, video-conferences or other online means that provide a real-time audio-visual connection.
- (23) In order to ensure that all persons interacting with companies are protected, Member States should be able to prevent fraudulent or other abusive behaviour by refusing the appointment of a person as a director of a company, taking into account not only the former conduct of that person in their own territory, but, where so provided under national law, also information provided by other Member States. Member States should, therefore, be allowed to request information from other Member States. The reply could either consist of information on a disqualification in force or other information which is relevant for disqualification in the Member State that received the request. Such requests for information should be possible by means of the system of interconnection of registers. In that regard, Member States should be free to choose how to best collect this information, such as by gathering the relevant information from any registers or other places where it is stored in accordance with their national law or by creating dedicated registers or dedicated sections in business registers. Where further information, such as on the period and grounds of disqualification, is needed, Member States should be allowed to provide it through all available systems of exchange of information, in accordance with national law. However, this Directive should not create an obligation to request such information in every case. Moreover, being allowed to take into account information on disqualification in another Member State should not oblige Member States to recognise disqualifications in force in other Member States.

- (24) To ensure that all persons interacting with companies or branches are protected and that fraudulent or other abusive behaviour is prevented, it is important that competent authorities in Member States are able to verify whether the person to be appointed as a director is not prohibited from performing the duties of a director. To that end, competent authorities should also know whether the given person is recorded in any of the registers relevant for disqualification of directors in other Member States by means of the system of interconnection of business registers. The registers, the authorities or persons or bodies mandated under national law to deal with any aspect of online procedures should not store such personal data longer than is necessary to assess the eligibility of the person to be appointed as a director. However, such entities might need to store such information for a longer period of time for the purpose of a possible review of a negative decision. In any case, the retention period should not exceed the period laid down in national rules for retention of any personal data related to the formation of a company or the registration of a branch or related filing of documents and information.
- (25) The obligations provided for in this Directive relating to the online formation of companies and registration of branches should be without prejudice to any other, non-company law related, formalities that a company has to fulfil to start activity in accordance with Union and national law.
- (26) As with online formation of companies and registration of branches, in order to reduce the costs and burdens on companies, it should also be possible throughout the companies' lifecycle to submit documents and information fully online to national registers. At the same time, Member States should be free to allow documents and information to be filed by other means, including paper means. In addition, the disclosure of company information should be effected once that information is made publicly available in those national registers, since they are now interconnected and provide a comprehensive point of reference for users. In order to avoid disruption to existing means of disclosure, Member States should have the choice also of publishing either all or some company information in a national gazette, whilst at the same time ensuring that the information is sent electronically by the register to that national gazette. This Directive should not affect national rules relating to the legal value of the register and the role of a national gazette.
- (27) In order to facilitate the way in which the information stored by national registers can be searched for and exchanged with other systems, Member States should ensure that after the relevant transposition period has expired, all documents and information provided to any authority or person or body mandated under national law to deal with any aspect of the online procedures, as part of the online procedures provided for in this Directive, can be stored by the registers in a machine-readable and searchable format or as structured data. That means that the file format should be structured in such a way that software applications can easily identify, recognise and extract specific data and their internal structure. The requirement to ensure that the format of documents and information is searchable should not encompass scanned signatures or other data which are not suitable for machine-readability. As this could require changes to the existing information systems of Member States, there should be a longer transposition period for this requirement.
- (28) In order to cut costs and reduce administrative burden and the length of procedures for companies, Member States should apply the 'once-only' principle in the area of company law, which is established in the Union, as evidenced, *inter alia*, by Regulation (EU) 2018/1724, the European Commission eGovernment Action Plan or the Tallinn Declaration on eGovernment. Applying the once-only principle entails that companies are not asked to submit the same information to public authorities more than once. For example, companies should not have to submit the same information both to the national register and to the national gazette. Instead, the register should provide the information already submitted directly to the national gazette. Similarly, where a company is formed in one Member State and wants to register a branch in another Member State, it should be possible for the company to make use of the documents or information previously submitted to a register. Furthermore, where a company is formed in one Member State but has a branch in another Member State, it should be possible for the company to submit certain changes to their company information only to the register where the company is registered, without the need to submit the same information to the register where the branch is registered. Instead, information such as a change of company name or change of registered office of the company should be exchanged electronically, between the register where the company is registered and the register where the branch is registered using the system of interconnection of registers.

- (29) In order to ensure that consistent and up-to-date information is available about companies in the Union and to further increase transparency, it should be possible to use the interconnection of registers to exchange information about any type of company registered in the Member States' registers in accordance with national law. Member States should have the option of making electronic copies of the documents and information of those other types of companies available also through that system of interconnection of registers.
- (30) In the interest of transparency and protection of the interests of workers, creditors and minority shareholders, and to promote trust in business transactions, including those with a cross-border nature within the internal market, it is important that investors, stakeholders, business partners and authorities can easily access company information. To improve the accessibility of that information, more information should be available free of charge in all Member States. Such information should include the status of a company and information on its branches in other Member States, as well as information concerning the persons who, either as a body or as members of any such body, are authorised to represent the company. Furthermore, the price of obtaining a copy of all or part of the documents and information disclosed by the company, whether by paper or electronic means, should not exceed the administrative cost thereof, including the costs of development and maintenance of registers, provided that the price is not disproportionate with regard to the information sought.
- (31) It is currently possible for Member States to establish optional access points in relation to the system of interconnection of registers. However, it is not possible for the Commission to connect other stakeholders to the system of interconnection of registers. In order for other stakeholders to benefit from the interconnection of registers and ensure that their systems retain accurate, up-to-date and reliable information on companies, the Commission should be authorised to establish additional access points. Such access points should refer to systems developed and operated by the Commission or other Union institutions, bodies, offices or agencies in order to perform their administrative functions or to comply with provisions of Union law.
- (32) In order to help companies established in the internal market to expand their business activities cross-border more easily, it should be possible for them to open and register branches in another Member State online. Member States should, therefore, make possible, in a similar manner to companies, the online registration of branches and the online filing of documents and information, thereby helping to cut costs, while reducing the administrative burden and the length of time taken by formalities relating to cross-border expansion.
- (33) When registering a branch of a company registered in another Member State, Member States should also be able to verify certain information about the company through the system of interconnection of registers. Furthermore, where a branch is closed in one Member State, the register of that Member State should inform the Member State where the company is registered of such closure through the system of interconnection of registers and both registers should record this information.
- (34) To ensure consistency with Union and national law, it is necessary to delete the provision relating to the Contact Committee which has ceased to exist, and to update the types of companies set out in Annexes I and II to Directive (EU) 2017/1132.
- (35) In order to accommodate future changes in the laws of Member States and to Union legislation concerning company types, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to update the list of the types of companies contained in Annexes I, II and IIA to Directive (EU) 2017/1132. 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⁽⁷⁾. 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.
- (36) The provisions of this Directive, including the obligations for registration of companies, do not affect national law relating to tax measures of Member States, or their territorial and administrative subdivisions.

⁽⁷⁾ OJ L 123, 12.5.2016, p. 1.

- (37) The power of Member States to reject applications for the formation of companies and registration of branches in the event of fraud or abuse, and Member States' investigation and enforcement actions, including by the police or other competent authorities, should not be affected by this Directive. Other obligations under Union and national law, including those arising from anti-money laundering, counter terrorist financing and beneficial ownership rules, should also remain unaffected. This Directive does not affect the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council ⁽⁸⁾ addressing risks of money laundering and terrorist financing, in particular the obligations related to carrying out the appropriate customer due diligence measures on a risk-sensitive basis and to identifying and registering the beneficial owner of any newly created entity in the Member State of its incorporation.
- (38) This Directive should be applied in compliance with Union data protection law and the protection of privacy and personal data as enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. Any processing of the personal data of natural persons under this Directive is to be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽⁹⁾.
- (39) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁰⁾ and delivered an opinion on 26 July 2018.
- (40) Since the objective of this Directive, namely, to provide more digital solutions for companies in the internal market, cannot be sufficiently achieved by the Member States, but can rather, by reason of their 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 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (41) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽¹¹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (42) Given the complexity of the changes required to be made to national systems in order to comply with the provisions of this Directive, and the substantial differences currently existing among Member States with regard to the use of digital tools and processes in the area of company law, it is appropriate to provide that Member States that encounter particular difficulties in transposing certain provisions of this Directive can notify the Commission of their need to benefit from an extension of up to one year of the relevant implementation period. Member States should state their objective reasons for applying for such an extension.
- (43) The Commission should carry out an evaluation of this Directive. Pursuant to paragraph 22 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and value added and should provide the basis for impact assessments of possible further measures. Member States should help to carry out that evaluation by providing to the Commission the data that are available to them on how online formation of companies is working in practice, for example data on the number of online formations, the number of cases in which templates were used, or where physical presence was required and the average duration and costs of online formations.

⁽⁸⁾ 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).

⁽⁹⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽¹⁰⁾ 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).

⁽¹¹⁾ OJ C 369, 17.12.2011, p. 14.

- (44) Information should be collected in order to assess the performance of this Directive against the objective it pursues and in order to carry out an evaluation in accordance with paragraph 22 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
- (45) Directive (EU) 2017/1132 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive (EU) 2017/1132

Directive (EU) 2017/1132 is amended as follows:

- (1) in Article 1, the following indent is inserted after the second indent:

‘— the rules on online formation of companies, on online registration of branches and on online filing of documents and information by companies and branches, ’;

- (2) in Title I, the title of Chapter III is replaced by the following:

‘Online procedures (formation, registration and filing), disclosure and registers’;

- (3) Article 13 is replaced by the following:

Article 13

Scope

The coordination measures prescribed by this Section and by Section 1A shall apply to the laws, regulations and administrative provisions of the Member States relating to the types of companies listed in Annex II and, where specified, to the types of companies listed in Annexes I and IIA.’

- (4) the following Articles are inserted:

Article 13a

Definitions

For the purposes of this Chapter:

- (1) “electronic identification means” means an electronic identification means as defined in point (2) of Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council (*)
- (2) “electronic identification scheme” means an electronic identification scheme as defined in point (4) of Article 3 of Regulation (EU) No 910/2014;
- (3) “electronic means” means electronic equipment used for the processing, including digital compression, and the storage of data, and through which information is initially sent and received at its destination; that information being entirely transmitted, conveyed and received in a manner to be determined by Member States;

- (4) “formation” means the whole process of establishing a company in accordance with national law, including the drawing up of the company’s instrument of constitution and all the necessary steps for the entry of the company in the register;
- (5) “registration of a branch” means a process leading to disclosure of documents and information relating to a branch newly opened in a Member State;
- (6) “template” means a model for the instrument of constitution of a company which is drawn up by Member States in compliance with national law and is used for the online formation of a company in accordance with Article 13g.

Article 13b

Recognition of identification means for the purposes of online procedures

1. Member States shall ensure that the following electronic identification means can be used by applicants who are Union citizens in the online procedures referred to in this Chapter:

- (a) an electronic identification means issued under an electronic identification scheme approved by their own Member State;
- (b) an electronic identification means issued in another Member State and recognised for the purpose of cross-border authentication in accordance with Article 6 of Regulation (EU) No 910/2014.

2. Member States may refuse to recognise electronic identification means where the assurance levels of those electronic identification means do not comply with the conditions set out in Article 6(1) of Regulation (EU) No 910/2014.

3. All identification means recognised by Member States shall be made publicly available.

4. Where justified by reason of the public interest in preventing identity misuse or alteration, Member States may, for the purposes of verifying an applicant’s identity, take measures which could require the physical presence of that applicant before any authority or person or body mandated under national law to deal with any aspect of the online procedures referred to in this Chapter, including the drawing up of the instrument of constitution of a company. Member States shall ensure that the physical presence of an applicant may only be required on a case-by-case basis where there are reasons to suspect identity falsification, and that any other steps of the procedure can be completed online.

Article 13c

General provisions on online procedures

1. This Directive shall be without prejudice to national laws that, in accordance with Member States’ legal systems and legal traditions, designate any authority or person or body mandated under national law to deal with any aspect of online formation of companies, online registration of branches and online filing of documents and information.

2. This Directive shall also be without prejudice to the procedures and requirements laid down by national law, including those relating to legal procedures for the drawing up of instruments of constitution, provided that online formation of a company, as referred to in Article 13g, and online registration of a branch, as referred to in Article 28a, as well as online filing of documents and information, as referred to in Articles 13j and 28b, is possible.

3. The requirements under applicable national law concerning the authenticity, accuracy, reliability, trustworthiness and the appropriate legal form of documents or information that are submitted shall remain unaffected by this Directive, provided that online formation, as referred to in Article 13g, and online registration of a branch, as referred to in Article 28a, as well as online filing of documents and information, as referred to in Articles 13j and 28b, is possible.

Article 13d

Fees for online procedures

1. Member States shall ensure that the rules on fees applicable to the online procedures referred to in this Chapter are transparent and are applied in a non-discriminatory manner.

2. Any fees for online procedures charged by the registers referred to in Article 16 shall not exceed the recovery of the costs of providing such services.

Article 13e

Payments

Where the completion of a procedure laid down in this Chapter requires a payment, Member States shall ensure that that payment can be made by means of a widely available online payment service that can be used for cross-border payments, that permits identification of the person that made the payment and is provided by a financial institution or payment service provider established in a Member State.

Article 13f

Information requirements

Member States shall ensure that concise and user-friendly information, provided free of charge and at least in a language broadly understood by the largest possible number of cross-border users, is made available on registration portals or websites that are accessible by means of the Single Digital Gateway to assist in the formation of companies and the registration of branches. The information shall cover at least the following:

- (a) rules on the formation of companies, including online procedures referred to in Articles 13g and 13j, and requirements relating to the use of templates and to other formation documents, identification of persons, the use of languages and to applicable fees;
- (b) rules on the registration of branches, including online procedures referred to in Articles 28a and 28b, and requirements relating to registration documents, identification of persons and the use of languages;
- (c) an outline of the applicable rules on becoming a member of the administrative body, the management body or the supervisory body of a company, including of the rules on disqualification of directors, and on the authorities or bodies responsible for keeping information about disqualified directors;
- (d) an outline of the powers and responsibilities of the administrative body, the management body and the supervisory body of a company, including the authority to represent a company in dealings with third parties.

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

(5) in Title I, Chapter III, the following Section is inserted:

‘Section 1 A

Online formation, online filing and disclosure

Article 13g

Online formation of companies

1. Member States shall ensure that the online formation of companies may be carried out fully online without the necessity for the applicants to appear in person before any authority or person or body mandated under national law to deal with any aspect of the online formation of companies, including drawing up the instrument of constitution of a company, subject to the provisions laid down in Article 13b(4) and paragraph (8) of this Article.

However, Member States may decide not to provide for online formation procedures for types of companies other than those listed in Annex IIA.

2. Member States shall lay down detailed rules for the online formation of companies, including rules on the use of templates as referred to in Article 13h, and on the documents and information required for the formation of a company. As part of those rules, Member States shall ensure that such online formation may be carried out by submitting documents or information in electronic form, including electronic copies of the documents and information referred to in Article 16a(4).

3. The rules referred to in paragraph 2 shall at least provide for the following:

- (a) the procedures to ensure that the applicants have the necessary legal capacity and have authority to represent the company;
- (b) the means to verify the identity of the applicants in accordance with Article 13b;
- (c) the requirements for the applicants to use trust services referred to in Regulation (EU) No 910/2014;
- (d) the procedures to verify the legality of the object of the company, insofar as such checks are provided for under national law;
- (e) the procedures to verify the legality of the name of the company, insofar as such checks are provided for under national law;
- (f) the procedures to verify the appointment of directors.

4. The rules referred to in paragraph 2 may, in particular, also provide for the following:

- (a) the procedures to ensure the legality of the company instruments of constitution, including verifying the correct use of templates;
- (b) the consequences of the disqualification of a director by the competent authority in any Member State;
- (c) the role of a notary or any other person or body mandated under national law to deal with any aspect of the online formation of a company;
- (d) the exclusion of online formation in cases where the share capital of the company is paid by way of contributions in kind.

5. Member States shall not make the online formation of a company conditional on obtaining a licence or authorisation before the company is registered, unless such a condition is indispensable for the proper oversight laid down in national law of certain activities.

6. Member States shall ensure that where the payment of share capital is required as part of the procedure to form a company, such payment can be made online, in accordance with Article 13e, to a bank account of a bank operating in the Union. In addition, Member States shall ensure that proof of such payments can also be provided online.

7. Member States shall ensure that the online formation is completed within five working days where a company is formed exclusively by natural persons who use the templates referred to in Article 13h, or within ten working days in other cases, from the later of the following:

- (a) the date of the completion of all formalities required for the online formation, including the receipt of all documents and information, which comply with national law, by an authority or a person or body mandated under national law to deal with any aspect of the formation of a company;
- (b) the date of the payment of a registration fee, the payment in cash for share capital, or the payment for the share capital by way of a contribution in kind, as provided for under national law.

Where it is not possible to complete the procedure within the deadlines referred to in this paragraph, Member States shall ensure that the applicant is notified of the reasons for the delay.

8. Where justified by reason of the public interest in ensuring compliance with the rules on legal capacity and on the authority of applicants to represent a company, any authority or person or body mandated under national law to deal with any aspect of the online formation of a company, including the drawing up of the instrument of constitution, may request the physical presence of the applicant. Member States shall ensure that, in such cases, the physical presence of an applicant may only be required on a case-by-case basis where there are reasons to suspect non-compliance with the rules referred to in point (a) of paragraph 3. Member States shall ensure that any other steps of the procedure can nonetheless be completed online.

Article 13h

Templates for online formation of companies

1. Member States shall make templates available, for the types of companies listed in Annex IIA, on registration portals or websites that are accessible by means of the Single Digital Gateway. Member States may also make templates available online for the formation of other types of companies.

2. Member States shall ensure that the templates, referred to in paragraph 1 of this Article, may be used by applicants as part of the online formation procedure referred to in Article 13g. Where those templates are used by applicants in compliance with the rules referred to in point (a) of Article 13g(4), the requirement to have the company instruments of constitution drawn up and certified in due legal form where preventive administrative or judicial control is not provided for, as laid down in Article 10, shall be deemed to have been fulfilled.

This Directive shall not affect any requirement under national law to have the drawing up of instruments of constitution done in due legal form, as long as the online formation referred to in Article 13g is possible.

3. Member States shall at least make the templates available in an official Union language broadly understood by the largest possible number of cross-border users. The availability of templates in languages other than the official language or languages of the Member State concerned shall be for information purposes only, unless that Member State decides that it is also possible to form a company with templates in such other languages.

4. The content of the templates shall be governed by national law.

Article 13i

Disqualified directors

1. Member States shall ensure that they have rules on disqualification of directors. Those rules shall include providing for the possibility to take into account any disqualification that is in force, or information relevant for disqualification, in another Member State. For the purpose of this Article, directors shall at least include the persons referred to in point (i) of Article 14(d).

2. Member States may require that persons applying to become directors declare whether they are aware of any circumstances which could lead to a disqualification in the Member State concerned.

Member States may refuse the appointment of a person as a director of a company where that person is currently disqualified from acting as a director in another Member State.

3. Member States shall ensure that they are able to reply to a request from another Member State for information relevant for the disqualification of directors under the law of the Member State replying to the request.

4. In order to reply to a request referred to in paragraph 3 of this Article, Member States shall at least make the necessary arrangements to ensure that they are able to provide without delay information on whether a given person is disqualified or is recorded in any of their registers that contain information relevant for disqualification of directors, by means of the system referred to in Article 22. Member States may also exchange further information, such as on the period and grounds of disqualification. Such exchange shall be governed by national law.

5. The Commission shall lay down detailed arrangements and technical details for the exchange of the information referred to in paragraph 4 of this Article, by means of the implementing acts referred to in Article 24.

6. Paragraphs 1 to 5 of this Article shall apply *mutatis mutandis* where a company files information concerning the appointment of a new director in the register referred to in Article 16.

7. The personal data of persons referred to in this Article shall be processed in accordance with Regulation (EU) 2016/679 and national law, in order to enable the authority or the person or body mandated under national law to assess necessary information relating to the disqualification of a person as a director, with a view to preventing fraudulent or other abusive behaviour and ensuring that all persons interacting with companies or branches are protected.

Member States shall ensure that the registers referred to in Article 16, authorities or persons or bodies mandated under national law to deal with any aspect of online procedures do not store personal data transmitted for the purposes of this Article any longer than is necessary, and in any event no longer than any personal data related to the formation of a company, the registration of a branch or a filing by a company or branch are stored.

Article 13j

Online filing of company documents and information

1. Member States shall ensure that documents and information referred to in Article 14, including any modification thereof, can be filed online with the register within the time limit provided by the laws of the Member State where the company is registered. Member States shall ensure that such filing can be completed online in its entirety without the necessity for an applicant to appear in person before any authority or person or body mandated under national law to deal with the online filing, subject to the provisions laid down in Article 13b(4) and, where applicable, Article 13g(8).

2. Member States shall ensure that the origin and integrity of the documents filed online may be verified electronically.

3. Member States may require that certain companies or that all companies file certain or all of the documents and information referred to in paragraph 1 online.

4. Article 13g (2) to (5) shall apply *mutatis mutandis* to online filing of documents and information.

5. Member States may continue to allow forms of filing other than those referred to in paragraph 1, including by electronic or by paper means, by companies, by notaries or by any other persons or bodies mandated under national law to deal with such forms of filing.;

(6) Article 16 is replaced by the following:

Article 16

Disclosure in the register

1. In each Member State, a file shall be opened in a central, commercial or companies register (“the register”), for each of the companies registered therein.

Member States shall ensure that companies have a European unique identifier (“EUID”), referred to in point (8) of the Annex to Commission Implementing Regulation (EU) 2015/884CCC (*), allowing them to be unequivocally identified in communications between registers through the system of interconnection of registers established in accordance with Article 22 (“the system of interconnection of registers”). That unique identifier shall comprise, at least, elements making it possible to identify the Member State of the register, the domestic register of origin and the company number in that register and, where appropriate, features to avoid identification errors.

2. All documents and information that are required to be disclosed pursuant to Article 14 shall be kept in the file referred to in paragraph 1 of this Article, or entered directly in the register, and the subject matter of the entries in the register shall be recorded in the file.

All documents and information referred to in Article 14, irrespective of the means by which they are filed, shall be kept in the file in the register or entered directly into it in electronic form. Member States shall ensure that all documents and information that are filed by paper means are converted by the register to electronic form as quickly as possible.

Member States shall ensure that documents and information referred to in Article 14 that were filed by paper means before 31 December 2006 are converted into electronic form by the register upon receipt of an application for disclosure by electronic means.

3. Member States shall ensure that the disclosure of the documents and information referred to in Article 14 is effected by making them publicly available in the register. In addition, Member States may also require that some or all of those documents and information are published in a national gazette designated for that purpose, or by equally effective means. Those means shall entail at least the use of a system whereby the documents or information published can be accessed in chronological order through a central electronic platform. In such cases, the register shall ensure that those documents and information are sent electronically by the register to the national gazette or to a central electronic platform.

4. Member States shall take the necessary measures to avoid any discrepancy between what is in the register and in the file.

Member States that require the publication of documents and information in a national gazette or on a central electronic platform shall take the necessary measures to avoid any discrepancy between what is disclosed in accordance with paragraph 3 and what is published in the gazette or on the platform.

In cases of any discrepancies under this Article, the documents and information made available in the register shall prevail.

5. The documents and information referred to in Article 14 may be relied on by the company as against third parties only after they have been disclosed in accordance with paragraph 3 of this Article, unless the company proves that the third parties had knowledge thereof.

However, with regard to transactions taking place before the sixteenth day following the disclosure, the documents and information shall not be relied on as against third parties who prove that it was impossible for them to have had knowledge thereof.

Third parties may always rely on any documents and information in respect of which the disclosure formalities have not yet been completed, save where non-disclosure causes such documents or information to have no effect.

6. Member States shall ensure that all documents and information submitted as part of the formation of a company, the registration of a branch, or a filing by a company or a branch, is stored by the registers in a machine-readable and searchable format or as structured data;

(*) Commission Implementing Regulation (EU) 2015/884 of 8 June 2015 establishing technical specifications and procedures required for the system of interconnection of registers established by Directive 2009/101/EC of the European Parliament and of the Council (OJ L 144, 10.6.2015, p. 1).'

(7) the following Article is inserted:

'Article 16a

Access to disclosed information

1. Member States shall ensure that copies of all or any part of the documents and information, referred to in Article 14, may be obtained from the register on application, and that such an application may be submitted to the register by either paper or electronic means.

However, Member States may decide that certain types or parts of the documents and information, which were filed by paper means on or before 31 December 2006, cannot be obtained by electronic means where a specified period has elapsed between the date of filing and the date of the application. Such a specified period shall not be less than 10 years.

2. The price of obtaining a copy of all or any part of the documents and information referred to in Article 14, whether by paper or electronic means, shall not exceed the administrative costs thereof, including the costs of development and maintenance of registers.

3. Electronic and paper copies supplied to an applicant shall be certified as "true copies" unless the applicant dispenses with such certification.

4. Member States shall ensure that electronic copies and extracts of the documents and information provided by the register have been authenticated by means of trust services referred to in Regulation (EU) No 910/2014, in order to guarantee that the electronic copies or extracts have been provided by the register and that their content is a true copy of the document held by the register or that it is consistent with the information contained therein.;

(8) in Article 17, paragraph 1 is replaced by the following:

‘1. Member States shall ensure that up-to-date information is made available explaining the provisions of national law pursuant to which third parties may rely on information and each type of document referred to in Article 14, in accordance with Article 16(3), (4) and (5).’;

(9) Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Electronic copies of the documents and information referred to in Article 14 shall also be made publicly available through the system of interconnection of registers. Member States may also make available documents and information referred to in Article 14 for types of companies other than those listed in Annex II.’;

(b) in paragraph 3, point (a) is replaced by the following:

‘(a) the documents and information referred to in Article 14, including for types of companies other than those listed in Annex II, where such documents are made available by Member States.’;

(10) Article 19 is replaced by the following:

‘Article 19

Fees chargeable for documents and information

1. The fees charged for obtaining documents and information referred to in Article 14 through the system of interconnection of registers shall not exceed the administrative costs thereof, including the costs of development and maintenance of registers.

2. Member States shall ensure that at least the following information and documents are available free of charge through the system of interconnection of registers:

- (a) the name or names and legal form of the company;
- (b) the registered office of the company and the Member State where it is registered;
- (c) the registration number of the company and its EUID;
- (d) details of the company website, where such details are recorded in the national register;
- (e) the status of the company, such as when it is closed, struck off the register, wound up, dissolved, economically active or inactive as defined in national law and where recorded in the national registers;
- (f) the object of the company, where it is recorded in the national register;
- (g) the particulars of any persons who either as a body or as members of any such body are currently authorised by the company to represent it in dealing with third parties and in legal proceedings and information as to whether the persons authorised to represent the company may do so alone or are required to act jointly;
- (h) information on any branches opened by the company in another Member State including the name, registration number, EUID and the Member State where the branch is registered.

3. The exchange of any information through the system of interconnection of registers shall be free of charge for the registers.

4. Member States may decide that the information referred to in points (d) and (f) is to be made available free of charge only for the authorities of other Member States.;

(11) Article 20(3) is deleted;

(12) Article 22 is amended as follows:

(a) in paragraph 4, the following subparagraph is added:

'The Commission may also establish optional access points to the system of interconnection of registers. Such access points shall consist of systems developed and operated by the Commission or other Union institutions, bodies, offices or agencies in order to perform their administrative functions or to comply with provisions of Union law. The Commission shall notify the Member States without undue delay of the establishment of such access points and of any significant changes to their operation.;

(b) paragraph 5 is replaced by the following:

'5. Access to information from the system of interconnection of registers shall be provided through the portal and through the optional access points established by the Member States and by the Commission.;

(13) Article 24 is amended as follows:

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

'(d) the technical specification defining the methods of exchange of information between the register of the company and the register of the branch as referred to in Articles 20, 28a, 28c, 30a and 34.;

(b) point (e) is replaced by the following:

'(e) the detailed list of data to be transmitted for the purpose of exchange of information between the registers, as referred to in Articles 20, 28a, 28c, 30a, 34 and 130.;

(c) point (n) is replaced by the following:

'(n) the procedure and technical requirements for the connection of the optional access points to the platform as referred to in Article 22.;

(d) the following point is added:

'(o) the detailed arrangements for and technical details of the exchange between registers of the information referred to in Article 13i.;

(e) at the end of the Article, the following paragraph is added:

'The Commission shall adopt the implementing acts pursuant to points (d), (e), (n) and (o) by 1 February 2021.;

(14) in Title I, Chapter III, Section 2, the title is replaced by the following:

'Registration and disclosure rules applicable to branches of companies from other Member States';

(15) in Title I, Chapter III, Section 2, the following Articles are inserted:

'Article 28a

Online registration of branches

1. Member States shall ensure that the registration in a Member State of a branch of a company that is governed by the law of another Member State may be fully carried out online without the necessity for the applicants to appear in person before any authority or any person or body mandated under national law to deal with any aspect of the application for registration of branches, subject to Article 13b(4) and *mutatis mutandis* to Article 13g(8).

2. Member States shall lay down detailed rules for the online registration of branches, including rules on the documents and information required to be submitted to a competent authority. As part of those rules, Member States shall ensure that online registration may be carried out by submitting information or documents in electronic form, including electronic copies of the documents and information referred to in Article 16a(4), or by making use of the information or documents previously submitted to a register.

3. The rules referred to in paragraph 2 shall at least provide for the following:

- (a) the procedure to ensure that the applicants have the necessary legal capacity and that they have authority to represent the company;
- (b) the means for verifying the identity of the person or persons registering the branch or their representatives;
- (c) the requirements for the applicants to use the trust services referred to in Regulation (EU) No 910/2014.

4. The rules referred to in paragraph 2 may also provide for procedures to do the following:

- (a) verify the legality of the object of the branch;
- (b) verify the legality of the name of the branch;
- (c) verify the legality of the documents and information submitted for the registration of the branch;
- (d) provide for the role of a notary or any other person or body involved in the process of registration of the branch under the applicable national provisions.

5. Member States may verify the information about the company by means of the system of interconnection of registers when registering a branch of a company established in another Member State.

Member States shall not make the online registration of a branch conditional on obtaining any licence or authorisation before the branch is registered, unless such a condition is indispensable for the proper oversight laid down in national law of certain activities.

6. Member States shall ensure that the online registration of a branch is completed within 10 working days of the completion of all formalities, including the receipt of all the necessary documents and information which comply with national law by an authority or a person or body mandated under national law to deal with any aspect of the registration of a branch.

Where it is not possible to register a branch within the deadlines referred to in this paragraph, Member States shall ensure that the applicant is notified of the reasons for the delay.

7. Following the registration of a branch of a company established under the laws of another Member State, the register of the Member State where that branch is registered shall notify the Member State where the company is registered that the branch has been registered by means of the system of interconnection of registers. The Member State where the company is registered shall acknowledge receipt of such notification and shall record the information in their register without delay.

Article 28b

Online filing of documents and information for branches

1. Member States shall ensure that documents and information referred to in Article 30 or any modification thereof may be filed online within the period provided by the laws of the Member State where the branch is established. Member States shall ensure that such filing may be completed online in its entirety without the necessity for the applicants to appear in person before any authority or person or body mandated under national law to deal with the online filing, subject to the provisions laid down in Article 13b(4) and *mutatis mutandis* in Article 13g(8).

2. Article 28a (2) to (5) shall apply *mutatis mutandis* to online filing for branches.

3. Member States may require that certain or all documents and information referred to in paragraph 1 are only filed online.

Article 28c

Closure of branches

Member States shall ensure that, upon receipt of the documents and information referred to in point (h) of Article 30(1), the register of a Member State where a branch of a company is registered informs, by means of the system of interconnection of registers, the register of the Member State where the company is registered that its branch has been closed and struck off the register. The register of the Member State of the company shall acknowledge receipt of such notification also by means of that system and shall record the information without delay.;

(16) the following Article is inserted:

'Article 30a

Changes to documents and information of the company

The Member State where a company is registered shall notify, by means of the system of interconnection of registers, without delay, the Member State where a branch of the company is registered, in the event that a change has been filed with regard to any of the following:

- (a) the company's name;
- (b) the company's registered office;
- (c) the company's registration number in the register;
- (d) the company's legal form;
- (e) the documents and information referred to in points (d) and (f) of Article 14.

Upon receipt of the notification referred to in the first paragraph of this Article, the register in which the branch is registered shall, by means of the system of interconnection of registers, acknowledge receipt of such notification and shall ensure that the documents and information referred to in Article 30(1) are updated without delay.;

(17) in Article 31, the following paragraph is added:

'Member States may provide that the mandatory disclosure of accounting documents referred to in point (g) of Article 30(1) may be considered fulfilled by the disclosure in the register of the Member State in which the company is registered in accordance with point (f) of Article 14.;

(18) Article 43 is deleted;

(19) Article 161 is replaced by the following:

'Article 161

Data protection

The processing of any personal data carried out in the context of this Directive shall be subject to Regulation (EU) 2016/679.;

(20) the following Article is inserted:

'Article 162a

Amendments to the Annexes

Member States shall inform the Commission without delay of any changes to the types of limited liability companies provided for in their national law which would affect the contents of Annexes I, II and IIA.

Where a Member State informs the Commission pursuant to the first paragraph of this Article, the Commission shall be empowered to adapt the list of the types of the companies contained in Annexes I, II and IIA in line with the information referred to in the first paragraph of this Article, by means of delegated acts in accordance with Article 163.;

(21) Article 163 is replaced by the following:

'Article 163

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 25(3) and Article 162a shall be conferred on the Commission for an indeterminate period of time from 31 July 2019.

3. The delegation of power referred to in Article 25(3) and Article 162a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

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

6. A delegated act adopted pursuant to Article 25(3) or Article 162a shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council;

(22) in Annex I, the twenty-seventh indent is replaced by the following:

— Sweden:

publikt aktiebolag;;

(23) in Annex II, the twenty-seventh indent is replaced by the following:

— Sweden:

privat aktiebolag

publikt aktiebolag;;

(24) Annex IIA, as set out in the Annex to this Directive, is inserted.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 August 2021. They shall immediately communicate to the Commission the text of those provisions.

2. Notwithstanding paragraph 1 of this Article, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with point (5) of Article 1 of this Directive, as regards Article 13i and Article 13j(2) of Directive (EU) 2017/1132, and point (6) of Article 1 of this Directive, as regards Article 16(6) of Directive (EU) 2017/1132, by 1 August 2023.

3. By way of derogation from paragraph 1, Member States which encounter particular difficulties in transposing this Directive shall be entitled to benefit from an extension of the period provided for in paragraph 1 of up to one year. They shall provide objective reasons for the need for such extension. Member States shall notify the Commission of their intention to avail of such an extension by 1 February 2021.

4. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

Reporting, review and data collection

1. The Commission shall, no later than 1 August 2024, or if any Member State makes use of the derogation provided for in Article 2(3) no later than 1 August 2025, carry out an evaluation of the provisions introduced by this Directive into Directive (EU) 2017/1132 and present a report on the findings to the European Parliament, to the Council and to the European Economic and Social Committee, except as regards the provisions referred to in Article 2(2) for which the evaluation and report shall be carried out no later than 1 August 2026.

Member States shall provide the Commission with the information necessary for the preparation of the reports, namely by providing data on the number of online registrations and related costs.

2. The report of the Commission shall evaluate, *inter alia*, the following:
 - (a) the feasibility of providing for fully online registration of the types of companies other than those listed in Annex IIA;
 - (b) the feasibility of providing templates by Member States for all types of limited liability companies and the need and feasibility of providing a harmonised template across the Union to be used by all Member States for the types of companies listed in Annex IIA;
 - (c) the practical experience with the application of the rules on disqualification of directors referred to in Article 13i;
 - (d) the methods of online filing and online access, including the use of application programming interfaces;
 - (e) the need for and feasibility of making more information available free of charge than that required in Article 19(2) and ensuring unencumbered access to such information;
 - (f) the need for and feasibility of further application of the once-only principle.
3. The report shall be accompanied, if appropriate, by proposals for amendment of Directive (EU) 2017/1132.
4. With a view to providing a reliable evaluation of the provisions introduced by this Directive into Directive (EU) 2017/1132, Member States shall collect data on how online formation is working in practice. Normally, this information should comprise the number of online formations, the number of cases in which templates were used or where physical presence was required and the average duration and costs of online formations. They shall notify this information to the Commission twice, not later than two years after the date of transposition.

Article 4

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 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 20 June 2019.

For the European Parliament
The President
A. TAJANI

For the Council
The President
G. CIAMBA

ANNEX

‘ANNEX IIA

TYPES OF COMPANIES

REFERRED TO IN ARTICLES 13, 13f, 13g, 13h, and 162a

- Belgium:
 - société privée à responsabilité limitée/besloten vennootschap met beperkte aansprakelijkheid,
 - société privée à responsabilité limitée unipersonnelle/Eenpersoons besloten vennootschap met beperkte aansprakelijkheid;
- Bulgaria:
 - дружество с ограничена отговорност,
 - еднолично дружество с ограничена отговорност;
- Czech Republic:
 - společnost s ručením omezeným;
- Denmark:
 - Anpartsselskab;
- Germany:
 - Gesellschaft mit beschränkter Haftung;
- Estonia:
 - osüühing;
- Ireland:
 - private company limited by shares or by guarantee/cuideachta phríobháideach faoi theorainn scaireanna nó ráthaíochta,
 - designated activity company/cuideachta ghníomhaíochta ainmnithe;
- Greece:
 - εταιρεία περιορισμένης ευθύνης,
 - ιδιωτική κεφαλαιουχική εταιρεία;
- Spain:
 - sociedad de responsabilidad limitada;
- France:
 - société à responsabilité limitée,
 - entreprise unipersonnelle à responsabilité limitée,

société par actions simplifiée,

société par actions simplifiée unipersonnelle;

— Croatia:

društvo s ograničenom odgovornošću,

jednostavno društvo s ograničenom odgovornošću;

— Italy:

società a responsabilità limitata,

società a responsabilità limitata semplificata;

— Cyprus:

ιδιωτική εταιρεία περιορισμένης ευθύνης με μετοχές ή/και με εγγύηση;

— Latvia:

sabiedrība ar ierobežotu atbildību;

— Lithuania:

uždaroji akcinė bendrovė;

— Luxembourg:

société à responsabilité limitée;

— Hungary:

korlátolt felelősségű társaság;

— Malta:

private limited liability company/kumpannija privata;

— Netherlands:

besloten vennootschap met beperkte aansprakelijkheid;

— Austria:

Gesellschaft mit beschränkter Haftung;

— Poland:

spółka z ograniczoną odpowiedzialnością;

— Portugal:

sociedade por quotas;

— Romania:

societate cu răspundere limitată;

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- Slovenia:
družba z omejeno odgovornostjo;
 - Slovakia:
spoločnosť s ručením obmedzeným;
 - Finland:
yksityinen osakeyhtiö/privat aktiebolag;
 - Sweden:
privat aktiebolag;
 - United Kingdom:
private company limited by shares or guarantee.'
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DIRECTIVE (EU) 2019/1152 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 20 June 2019
on transparent and predictable working conditions in the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (b) of Article 153(2), in conjunction with point (b) of Article 153(1) thereof,

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

- (1) Article 31 of the Charter of Fundamental Rights of the European Union provides that every worker has the right to working conditions which respect his or her health, safety and dignity, to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.
- (2) Principle No 5 of the European Pillar of Social Rights, proclaimed at Gothenburg on 17 November 2017, provides that, regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training, and that the transition towards open-ended forms of employment is to be fostered; that, in accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context is to be ensured; that innovative forms of work that ensure quality working conditions are to be fostered, that entrepreneurship and self-employment are to be encouraged and that occupational mobility is to be facilitated; and that employment relationships that lead to precarious working conditions are to be prevented, including by prohibiting abuse of atypical contracts, and that any probationary period is to be of a reasonable duration.
- (3) Principle No 7 of the European Pillar of Social Rights provides that workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including any probationary period; that prior to any dismissal they are entitled to be informed of the reasons and given a reasonable period of notice; and that they have the right to access to effective and impartial dispute resolution and, in the case of unjustified dismissal, a right to redress, including adequate compensation.

⁽¹⁾ OJ C 283, 10.8.2018, p. 39.

⁽²⁾ OJ C 387, 25.10.2018, p. 53.

⁽³⁾ Position of the European Parliament of 16 April 2019 (not yet published in the Official Journal) and decision of the Council of 13 June 2019.

- (4) Since the adoption of Council Directive 91/533/EEC ⁽⁴⁾, labour markets have undergone far-reaching changes due to demographic developments and digitalisation leading to the creation of new forms of employment, which have enhanced innovation, job creation and labour market growth. Some new forms of employment vary significantly from traditional employment relationships with regard to predictability, creating uncertainty with regard to the applicable rights and the social protection of the workers concerned. In this evolving world of work, there is therefore an increased need for workers to be fully informed about their essential working conditions, which should occur in a timely manner and in written form to which workers have easy access. In order adequately to frame the development of new forms of employment, workers in the Union should also be provided with a number of new minimum rights aiming to promote security and predictability in employment relationships while achieving upward convergence across Member States and preserving labour market adaptability.
- (5) Pursuant to Directive 91/533/EEC, the majority of workers in the Union have the right to receive written information about their working conditions. Directive 91/533/EEC does not however apply to all workers in the Union. Moreover, gaps in protection have emerged for new forms of employment created as a result of labour market developments since 1991.
- (6) Minimum requirements relating to information on the essential aspects of the employment relationship and relating to working conditions that apply to every worker should therefore be established at Union level in order to guarantee all workers in the Union an adequate degree of transparency and predictability as regards their working conditions, while maintaining reasonable flexibility of non-standard employment, thus preserving its benefits to workers and employers.
- (7) The Commission has undertaken a two-phase consultation with the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union, on the improvement of the scope and effectiveness of Directive 91/533/EEC and the broadening of its objectives in order to establish new rights for workers. This did not result in an agreement among the social partners to enter into negotiations on those matters. However, as confirmed by the outcome of the open public consultations that sought the views of various stakeholders and citizens, it is important to take action at Union level in this area by modernising and adapting the current legal framework to new developments.
- (8) In its case law, the Court of Justice of the European Union (Court of Justice) has established criteria for determining the status of a worker ⁽⁵⁾. The interpretation of the Court of Justice of those criteria should be taken into account in the implementation of this Directive. Provided that they fulfil those criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices could fall within the scope of this Directive. Genuinely self-employed persons should not fall within the scope of this Directive since they do not fulfil those criteria. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship.

⁽⁴⁾ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32).

⁽⁵⁾ Judgments of the Court of Justice of 3 July 1986, *Deborah Lawrie-Blum v Land Baden-Württemberg*, C-66/85, ECLI:EU:C:1986:284; 14 October 2010, *Union Syndicale Solidaires Isère v Premier ministre and Others*, C-428/09, ECLI:EU:C:2010:612; 9 July 2015, *Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH*, C-229/14, ECLI:EU:C:2015:455; 4 December 2014, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, C-413/13, ECLI:EU:C:2014:2411; and 17 November 2016, *Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH*, C-216/15, ECLI:EU:C:2016:883.

- (9) It should be possible for Member States to provide, where justified on objective grounds, for certain provisions of this Directive not to apply to certain categories of civil servants, public emergency services, the armed forces, police authorities, judges, prosecutors, investigators or other law enforcement services, given the specific nature of the duties that they are called on to perform or of their employment conditions.
- (10) The requirements laid down in this Directive with regard to the following matters should not apply to seafarers or sea fishermen, given the specificities of their employment conditions: parallel employment where incompatible with the work performed on board ships or fishing vessels, minimum predictability of work, the sending of workers to another Member State or to a third country, transition to another form of employment, and providing information on the identity of the social security institutions receiving the social contributions. For the purposes of this Directive, seafarers and sea fishermen as defined, respectively, in Council Directives 2009/13/EC ⁽⁶⁾ and (EU) 2017/159 ⁽⁷⁾ should be considered to be working in the Union when they work on board ships or fishing vessels registered in a Member State or flying the flag of a Member State.
- (11) In view of the increasing number of workers excluded from the scope of Directive 91/533/EEC on the basis of exclusions made by Member States under Article 1 of that directive, it is necessary to replace those exclusions with a possibility for Member States not to apply the provisions of this Directive to an employment relationship with predetermined and actual working hours that amount to an average of three hours per week or less in a reference period of four consecutive weeks. The calculation of those hours should include all time actually worked for an employer, such as overtime or work supplementary to that guaranteed or anticipated in the employment contract or employment relationship. From the moment when a worker crosses that threshold, the provisions of this Directive apply to him or her, regardless of the number of working hours that the worker works subsequently or the number of working hours provided for in the employment contract.
- (12) Workers who have no guaranteed working time, including those on zero-hour and some on-demand contracts, are in a particularly vulnerable situation. Therefore, the provisions of this Directive should apply to them regardless of the number of hours they actually work.
- (13) Several different natural or legal persons or other entities may in practice assume the functions and responsibilities of an employer. Member States should remain free to determine more precisely the persons who are considered to be wholly or partly responsible for the execution of the obligations that this Directive lays down for employers, as long as all those obligations are fulfilled. Member States should also be able to decide that some or all of those obligations are to be assigned to a natural or legal person who is not party to the employment relationship.
- (14) Member States should be able to establish specific rules to exclude individuals acting as employers for domestic workers in the household from the requirements laid down in this Directive, with regard to the following matters: to consider and respond to requests for different types of employment, to provide mandatory training that is free of cost, and to provide for redress mechanisms that are based on favourable presumptions in the case of information that is missing from the documentation that is to be provided to the worker under this Directive.
- (15) Directive 91/533/EEC introduced a list of essential aspects of the employment contract or employment relationship of which workers are to be informed in writing. It is necessary to adapt that list, which Member States can enlarge, in order to take account of developments in the labour market, in particular the growth of non-standard forms of employment.
- (16) Where the worker has no fixed or main place of work, he or she should receive information about arrangements, if any, for travel between the workplaces.

⁽⁶⁾ Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (OJ L 124, 20.5.2009, p. 30).

⁽⁷⁾ Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche) (OJ L 25, 31.1.2017, p. 12).

- (17) It should be possible for information on the training entitlement provided by the employer to take the form of information that includes the number of training days, if any, to which the worker is entitled per year, and information about the employer's general training policy.
- (18) It should be possible for information on the procedure to be observed by the employer and the worker if their employment relationship is terminated to include the deadline for bringing an action contesting dismissal.
- (19) Information on working time should be consistent with Directive 2003/88/EC of the European Parliament and of the Council ⁽⁸⁾, and should include information on breaks, daily and weekly rest periods and the amount of paid leave, thereby ensuring the protection of the safety and health of workers.
- (20) Information on remuneration to be provided should include all elements of the remuneration indicated separately, including, if applicable, contributions in cash or kind, overtime payments, bonuses and other entitlements, directly or indirectly received by the worker in respect of his or her work. The provision of such information should be without prejudice to the freedom for employers to provide for additional elements of remuneration such as one-off payments. The fact that elements of remuneration due by law or collective agreement have not been included in that information should not constitute a reason for not providing them to the worker.
- (21) If it is not possible to indicate a fixed work schedule because of the nature of the employment, such as in the case of an on-demand contract, employers should inform workers how their working time is to be established, including the time slots in which they may be called to work and the minimum notice period that they are to receive before the start of a work assignment.
- (22) Information on social security systems should include information on the identity of the social security institutions receiving the social security contributions, where relevant, with regard to sickness, maternity, paternity and parental benefits, benefits for accidents at work and occupational diseases, and old-age, invalidity, survivors', unemployment, pre-retirement and family benefits. Employers should not be required to provide that information where the worker chooses the social security institution. Information on the social security protection provided by the employer should include, where relevant, the fact of coverage by supplementary pension schemes within the meaning of Directive 2014/50/EU of the European Parliament and of the Council ⁽⁹⁾ and Council Directive 98/49/EC ⁽¹⁰⁾.
- (23) Workers should have the right to be informed about their rights and obligations resulting from the employment relationship in writing at the start of employment. The basic information should therefore reach them as soon as possible and at the latest within a calendar week from their first working day. The remaining information should reach them within one month from their first working day. The first working day should be understood to be the actual start of performance of work by the worker in the employment relationship. Member States should aim to have the relevant information on the employment relationship provided by the employers before the end of the initially agreed duration of the contract.
- (24) In light of the increasing use of digital communication tools, information that is to be provided in writing under this Directive can be provided by electronic means.
- (25) In order to help employers to provide timely information, Member States should be able to provide templates at national level including relevant and sufficiently comprehensive information on the legal framework applicable. Those templates could be further developed at sectoral or local level, by national authorities and the social partners. The Commission will support Member States in developing templates and models and make them widely available, as appropriate.

⁽⁸⁾ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).

⁽⁹⁾ Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights (OJ L 128, 30.4.2014, p. 1).

⁽¹⁰⁾ Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community (OJ L 209, 25.7.1998, p. 46).

- (26) Workers sent abroad should receive additional information specific to their situation. For successive work assignments in several Member States or third countries, it should be possible for the information for several assignments to be collated before the first departure and subsequently modified in the case of any changes. Workers who qualify as posted workers under Directive 96/71/EC of the European Parliament and of the Council ⁽¹¹⁾ should also be notified of the single official national website developed by the host Member State where they are able to find the relevant information on the working conditions applying to their situation. Unless Member States provide otherwise, those obligations apply if the duration of the work period abroad is longer than four consecutive weeks.
- (27) Probationary periods allow the parties to the employment relationship to verify that the workers and the positions for which they were engaged are compatible while providing workers with accompanying support. An entry into the labour market or a transition to a new position should not be subject to prolonged insecurity. As established in the European Pillar of Social Rights, probationary periods should therefore be of a reasonable duration.
- (28) A substantial number of Member States have established a general maximum duration of probation of between three and six months, which should be considered to be reasonable. Exceptionally, it should be possible for probationary periods to last longer than six months, where justified by the nature of the employment, such as for managerial or executive positions or public service posts, or where in the interests of the worker, such as in the context of specific measures promoting permanent employment, in particular for young workers. It should also be possible for probationary periods to be extended correspondingly in cases where the worker has been absent from work during the probationary period, for instance because of sickness or leave, to enable the employer to assess the suitability of the worker for the task in question. In the case of fixed-term employment relationships of less than 12 months, Member States should ensure that the length of the probationary period is adequate and proportionate to the expected duration of the contract and the nature of the work. Where provided for in national law or practice, workers should be able to accrue employment rights during the probationary period.
- (29) An employer should neither prohibit a worker from taking up employment with other employers, outside the work schedule established with that employer, nor subject a worker to adverse treatment for doing so. It should be possible for Member States to lay down conditions for the use of incompatibility restrictions, which are to be understood as restrictions on working for other employers for objective reasons, such as for the protection of the health and safety of workers including by limiting working time, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interests.
- (30) Workers whose work pattern is entirely or mostly unpredictable should benefit from a minimum level of predictability where the work schedule is determined mainly by the employer, be it directly, such as by allocating work assignments, or indirectly, such as by requiring the worker to respond to clients' requests.
- (31) Reference hours and days, which are to be understood as time slots during which work can take place at the request of the employer, should be established in writing at the start of the employment relationship.
- (32) A reasonable minimum notice period, which is to be understood as the period of time between the moment when a worker is informed of a new work assignment and the moment when the assignment starts, constitutes another necessary element of predictability of work for employment relationships with work patterns which are entirely or mostly unpredictable. The length of the notice period may vary according to the needs of the sector concerned, while ensuring the adequate protection of workers. The minimum notice period applies without prejudice to Directive 2002/15/EC of the European Parliament and of the Council ⁽¹²⁾.
- (33) Workers should have the possibility to refuse a work assignment if it falls outside of the reference hours and days or if they were not notified of the work assignment in accordance with the minimum notice period, without suffering adverse consequences for this refusal. Workers should also have the possibility to accept the work assignment if they so wish.

⁽¹¹⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

⁽¹²⁾ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).

- (34) Where a worker whose work pattern is entirely or mostly unpredictable has agreed with his or her employer to undertake a specific work assignment, the worker should be able to plan accordingly. The worker should be protected against loss of income resulting from the late cancellation of an agreed work assignment by means of adequate compensation.
- (35) On-demand or similar employment contracts, including zero-hour contracts, under which the employer has the flexibility of calling the worker to work as and when needed, are particularly unpredictable for the worker. Member States that allow such contracts should ensure that effective measures to prevent their abuse are in place. Such measures could take the form of limitations to the use and duration of such contracts, of a rebuttable presumption of the existence of an employment contract or employment relationship with a guaranteed amount of paid hours based on hours worked in a preceding reference period, or of other equivalent measures that ensure the effective prevention of abusive practices.
- (36) Where employers have the possibility to offer full-time or open-ended employment contracts to workers in non-standard forms of employment, a transition to more secure forms of employment should be promoted in accordance with the principles established in the European Pillar of Social Rights. Workers should be able to request another more predictable and secure form of employment, where available, and receive a reasoned written response from the employer, which takes into account the needs of the employer and of the worker. Member States should have the possibility to limit the frequency of such requests. This Directive should not prevent Member States from establishing that, in the case of public service positions for which entry is by competitive examination, those positions are not to be considered to be available on the simple request of the worker, and so fall outside the scope of the right to request a form of employment with more predictable and secure working conditions.
- (37) Where employers are required by Union or national law or collective agreements to provide training to workers to carry out the work for which they are employed, it is important to ensure that such training is provided equally to all workers, including to those in non-standard forms of employment. The costs of such training should not be charged to the worker or withheld or deducted from the worker's remuneration. Such training should count as working time and, where possible, should be carried out during working hours. That obligation does not cover vocational training or training required for workers to obtain, maintain or renew a professional qualification as long as the employer is not required by Union or national law or collective agreement to provide it to the worker. Member States should take the necessary measures to protect workers from abusive practices regarding training.
- (38) The autonomy of the social partners and their capacity as representatives of workers and employers should be respected. It should therefore be possible for the social partners to consider that in specific sectors or situations different provisions are more appropriate, for the pursuit of the purpose of this Directive, than certain minimum standards set out in this Directive. Member States should therefore be able to allow the social partners to maintain, negotiate, conclude and enforce collective agreements which differ from certain provisions contained in this Directive, provided that the overall level of protection of workers is not lowered.
- (39) The public consultation on the European Pillar of Social Rights showed the need to strengthen enforcement of Union labour law to ensure its effectiveness. The evaluation of Directive 91/533/EEC conducted under the Commission's Regulatory Fitness and Performance Programme confirmed that strengthened enforcement mechanisms could improve the effectiveness of Union labour law. The consultation showed that redress systems based solely on claims for damages are less effective than systems that also provide for penalties, such as lump sums or loss of permits, for employers who fail to issue written statements. It also showed that employees rarely seek redress during the employment relationship, which jeopardises the goal of the provision of the written statement, which is to ensure that workers are informed about the essential features of the employment relationship. It is therefore necessary to introduce enforcement provisions which ensure the use of favourable presumptions where information about the employment relationship is not provided, or of a procedure under which the employer may be required to provide the missing information and may be subject to a penalty if the employer does not do so, or both. It should be possible for such favourable presumptions to include a presumption that the worker has an open-ended employment relationship, that there is no probationary period or that the worker has a full-time position, where the relevant information is missing. Redress could be subject to a procedure by which the employer is notified by the worker or by a third party such as a worker's representative or other competent authority or body that information is missing and to supply complete and correct information in a timely manner.

- (40) An extensive system of enforcement provisions for the social *acquis* in the Union has been adopted since Directive 91/533/EEC, in particular in the fields of equal treatment, elements of which should be applied to this Directive in order to ensure that workers have access to effective and impartial dispute resolution, such as a civil or labour court and a right to redress, which may include adequate compensation, reflecting the Principle No 7 of the European Pillar of Social Rights.
- (41) Specifically, having regard to the fundamental nature of the right to effective legal protection, workers should continue to enjoy such protection even after the end of the employment relationship giving rise to an alleged breach of the worker's rights under this Directive.
- (42) The effective implementation of this Directive requires adequate judicial and administrative protection against any adverse treatment as a reaction to an attempt to exercise rights provided for under this Directive, any complaint to the employer or any legal or administrative proceedings aimed at enforcing compliance with this Directive.
- (43) Workers exercising rights provided for in this Directive should enjoy protection from dismissal or equivalent detriment, such as an on-demand worker no longer being assigned work, or any preparations for a possible dismissal, on the grounds that they sought to exercise such rights. Where workers consider that they have been dismissed or have suffered equivalent detriment on those grounds, workers and competent authorities or bodies should be able to require the employer to provide duly substantiated grounds for the dismissal or equivalent measure.
- (44) The burden of proof with regard to establishing that there has been no dismissal or equivalent detriment on the grounds that workers have exercised their rights provided for in this Directive, should fall on employers when workers establish, before a court or other competent authority or body, facts from which it may be presumed that they have been dismissed, or have been subject to measures with equivalent effect, on such grounds. It should be possible for Member States not to apply that rule in proceedings, in which it would be for a court or other competent authority or body to investigate the facts, in particular in systems where dismissal has to be approved beforehand by such authority or body.
- (45) Member States should provide for effective, proportionate and dissuasive penalties for breaches of the obligations under this Directive. Penalties can include administrative and financial penalties, such as fines or the payment of compensation, as well as other types of penalties.
- (46) Since the objective of this Directive, namely to improve working conditions by promoting more transparent and predictable employment while ensuring labour market adaptability, cannot be sufficiently achieved by the Member States but can rather, by reason of the need to establish common minimum requirements, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (47) This Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain more favourable provisions. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union or national law in this field, nor can it constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Directive. In particular, it should not serve as grounds for the introduction of zero-hour contracts or similar types of employment contracts.
- (48) In implementing this Directive Member States should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of micro, small and medium-sized enterprises. Member States are therefore invited to assess the impact of their transposition act on small and medium-sized enterprises in order to ensure that they are not disproportionately affected, giving specific attention to micro-enterprises and to the administrative burden, and to publish the results of such assessments.

- (49) The Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive. They should also, in accordance with national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing the provisions of this Directive.
- (50) Member States should take any adequate measure to ensure fulfilment of the obligations arising from this Directive, for example by carrying out inspections, as appropriate.
- (51) In view of the substantial changes introduced by this Directive with regard to the purpose, scope and content of Directive 91/533/EEC, it is not appropriate to amend that directive. Directive 91/533/EEC should therefore be repealed.
- (52) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁽¹³⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose, subject matter and scope

1. The purpose of this Directive is to improve working conditions by promoting more transparent and predictable employment while ensuring labour market adaptability.
2. This Directive lays down minimum rights that apply to every worker in the Union who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case-law of the Court of Justice.
3. Member States may decide not to apply the obligations in this Directive to workers who have an employment relationship in which their predetermined and actual working time is equal to or less than an average of three hours per week in a reference period of four consecutive weeks. Time worked with all employers forming or belonging to the same enterprise, group or entity shall count towards that three-hour average.
4. Paragraph 3 shall not apply to an employment relationship where no guaranteed amount of paid work is predetermined before the employment starts.

⁽¹³⁾ OJ C 369, 17.12.2011, p. 14.

5. Member States may determine which persons are responsible for the execution of the obligations for employers laid down by this Directive as long as all those obligations are fulfilled. They may also decide that all or part of those obligations are to be assigned to a natural or legal person who is not party to the employment relationship.

This paragraph is without prejudice to Directive 2008/104/EC of the European Parliament and of the Council⁽¹⁴⁾.

6. Member States may provide, on objective grounds, that the provisions laid down in Chapter III are not to apply to civil servants, public emergency services, the armed forces, police authorities, judges, prosecutors, investigators or other law enforcement services.

7. Member States may decide not to apply the obligations set out in Articles 12 and 13 and in point (a) of Article 15(1) to natural persons in households acting as employers where work is performed for those households.

8. Chapter II of this Directive applies to seafarers and sea fishermen without prejudice to Directives 2009/13/EC and Directive (EU) 2017/159, respectively. The obligations set out in points (m) and (o) of Article 4(2), and Articles 7, 9, 10 and 12 shall not apply to seafarers or sea fishermen.

Article 2

Definitions

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

- (a) 'work schedule' means the schedule determining the hours and days on which performance of work starts and ends;
- (b) 'reference hours and days' means time slots in specified days during which work can take place at the request of the employer;
- (c) 'work pattern' means the form of organisation of the working time and its distribution according to a certain pattern determined by the employer.

Article 3

Provision of information

The employer shall provide each worker with the information required pursuant to this Directive in writing. The information shall be provided and transmitted on paper or, provided that the information is accessible to the worker, that it can be stored and printed, and that the employer retains proof of transmission or receipt, in electronic form.

⁽¹⁴⁾ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

CHAPTER II

INFORMATION ABOUT THE EMPLOYMENT RELATIONSHIP

*Article 4***Obligation to provide information**

1. Member States shall ensure that employers are required to inform workers of the essential aspects of the employment relationship.
2. The information referred to in paragraph 1 shall include at least the following:
 - (a) the identities of the parties to the employment relationship;
 - (b) the place of work; where there is no fixed or main place of work, the principle that the worker is employed at various places or is free to determine his or her place of work, and the registered place of business or, where appropriate, the domicile of the employer;
 - (c) either:
 - (i) the title, grade, nature or category of work for which the worker is employed or
 - (ii) a brief specification or description of the work;
 - (d) the date of commencement of the employment relationship;
 - (e) in the case of a fixed-term employment relationship, the end date or the expected duration thereof;
 - (f) in the case of temporary agency workers, the identity of the user undertakings, when and as soon as known;
 - (g) the duration and conditions of the probationary period, if any;
 - (h) the training entitlement provided by the employer, if any;
 - (i) the amount of paid leave to which the worker is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;
 - (j) the procedure to be observed by the employer and the worker, including the formal requirements and the notice periods, where their employment relationship is terminated or, where the length of the notice periods cannot be indicated when the information is given, the method for determining such notice periods;
 - (k) the remuneration, including the initial basic amount, any other component elements, if applicable, indicated separately, and the frequency and method of payment of the remuneration to which the worker is entitled;
 - (l) if the work pattern is entirely or mostly predictable, the length of the worker's standard working day or week and any arrangements for overtime and its remuneration and, where applicable, any arrangements for shift changes;

- (m) if the work pattern is entirely or mostly unpredictable, the employer shall inform the worker of:
- (i) the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours;
 - (ii) the reference hours and days within which the worker may be required to work;
 - (iii) the minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation referred to in Article 10(3);
- (n) any collective agreements governing the worker's conditions of work or in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of such bodies or institutions within which the agreements were concluded;
- (o) where it is the responsibility of the employer, the identity of the social security institutions receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer.
3. The information referred to in paragraph 2(g) to (l) and (o) may, where appropriate, be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those points.

Article 5

Timing and means of information

1. Where not previously provided, the information referred to in points (a) to (e), (g), (k), (l) and (m) of Article 4(2) shall be provided individually to the worker in the form of one or more documents during a period starting on the first working day and ending no later than the seventh calendar day. The other information referred to in Article 4(2) shall be provided individually to the worker in the form of a document within one month of the first working day.
2. Member States may develop templates and models for the documents referred to in paragraph 1 and put them at the disposal of worker and employer including by making them available on a single official national website or by other suitable means.
3. Member States shall ensure that the information on the laws, regulations and administrative or statutory provisions or universally applicable collective agreements governing the legal framework applicable which are to be communicated by employers is made generally available free of charge in a clear, transparent, comprehensive and easily accessible way at a distance and by electronic means, including through existing online portals.

Article 6

Modification of the employment relationship

1. Member States shall ensure that any change in the aspects of the employment relationship referred to in Article 4(2) and any change to the additional information for workers sent to another Member State or to a third country referred to in Article 7 shall be provided in the form of a document by the employer to the worker at the earliest opportunity and at the latest on the day on which it takes effect.

2. The document referred to in paragraph 1 shall not apply to changes that merely reflect a change in the laws, regulations and administrative or statutory provisions or collective agreements cited in the documents referred to in Article 5(1), and, where relevant, in Article 7.

Article 7

Additional information for workers sent to another Member State or to a third country

1. Member States shall ensure that, where a worker is required to work in a Member State or third country other than the Member State in which he or she habitually works, the employer shall provide the documents referred to in Article 5(1) before the worker's departure and the documents shall include at least the following additional information:

- (a) the country or countries in which the work abroad is to be performed and its anticipated duration;
- (b) the currency to be used for the payment of remuneration;
- (c) where applicable, the benefits in cash or kind relating to the work assignments;
- (d) information as to whether repatriation is provided for, and if so, the conditions governing the worker's repatriation.

2. Member States shall ensure that a posted worker covered by Directive 96/71/EC shall in addition be notified of:

- (a) the remuneration to which the worker is entitled in accordance with the applicable law of the host Member State;
- (b) where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging;
- (c) the link to the single official national website developed by the host Member State pursuant to Article 5(2) of Directive 2014/67/EU of the European Parliament and of the Council⁽¹⁵⁾.

3. The information referred to in point (b) of paragraph 1 and point (a) of paragraph 2 may, where appropriate, be given in the form of a reference to specific provisions of laws, regulations and administrative or statutory acts or collective agreements governing that information.

4. Unless Member States provide otherwise, paragraphs 1 and 2 shall not apply if the duration of each work period outside the Member State in which the worker habitually works is four consecutive weeks or less.

CHAPTER III

MINIMUM REQUIREMENTS RELATING TO WORKING CONDITIONS

Article 8

Maximum duration of any probationary period

1. Member States shall ensure that, where an employment relationship is subject to a probationary period as defined in national law or practice, that period shall not exceed six months.

2. In the case of fixed-term employment relationships, Member States shall ensure that the length of such a probationary period is proportionate to the expected duration of the contract and the nature of the work. In the case of the renewal of a contract for the same function and tasks, the employment relationship shall not be subject to a new probationary period.

⁽¹⁵⁾ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

3. Member States may, on an exceptional basis, provide for longer probationary periods where justified by the nature of the employment or in the interest of the worker. Where the worker has been absent from work during the probationary period, Member States may provide that the probationary period can be extended correspondingly, in relation to the duration of the absence.

Article 9

Parallel employment

1. Member States shall ensure that an employer neither prohibits a worker from taking up employment with other employers, outside the work schedule established with that employer, nor subjects a worker to adverse treatment for doing so.

2. Member States may lay down conditions for the use of incompatibility restrictions by employers, on the basis of objective grounds, such as health and safety, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interests.

Article 10

Minimum predictability of work

1. Member States shall ensure that where a worker's work pattern is entirely or mostly unpredictable the worker shall not be required to work by the employer unless both of the following conditions are fulfilled:

(a) the work takes place within predetermined reference hours and days as referred to in point (m)(ii) of Article 4(2); and

(b) the worker is informed by his or her employer of a work assignment within a reasonable notice period established in accordance with national law, collective agreements or practice as referred to in point (m)(iii) of Article 4(2).

2. Where one or both of the requirements laid down in paragraph 1 is not fulfilled, a worker shall have the right to refuse a work assignment without adverse consequences.

3. Where Member States allow an employer to cancel a work assignment without compensation, Member States shall take the measures necessary, in accordance with national law, collective agreements or practice, to ensure that the worker is entitled to compensation if the employer cancels, after a specified reasonable deadline, the work assignment previously agreed with the worker.

4. Member States may lay down modalities for the application of this Article, in accordance with national law, collective agreements or practice.

Article 11

Complementary measures for on-demand contracts

Where Member States allow for the use of on-demand or similar employment contracts, they shall take one or more of the following measures to prevent abusive practices:

(a) limitations to the use and duration of on-demand or similar employment contracts;

(b) a rebuttable presumption of the existence of an employment contract with a minimum amount of paid hours based on the average hours worked during a given period;

(c) other equivalent measures that ensure effective prevention of abusive practices.

Member States shall inform the Commission of such measures.

Article 12

Transition to another form of employment

1. Member States shall ensure that a worker with at least six months' service with the same employer, who has completed his or her probationary period, if any, may request a form of employment with more predictable and secure working conditions where available and receive a reasoned written reply. Member States may limit the frequency of requests triggering the obligation under this Article.

2. Member States shall ensure that the employer provides the reasoned written reply referred to in paragraph 1 within one month of the request. With respect to natural persons acting as employers and micro, small, or medium enterprises, Member States may provide for that deadline to be extended to no more than three months and allow for an oral reply to a subsequent similar request submitted by the same worker if the justification for the reply as regards the situation of the worker remains unchanged.

Article 13

Mandatory training

Member States shall ensure that where an employer is required by Union or national law or by collective agreements to provide training to a worker to carry out the work for which he or she is employed, such training shall be provided to the worker free of cost, shall count as working time and, where possible, shall take place during working hours.

Article 14

Collective agreements

Member States may allow the social partners to maintain, negotiate, conclude and enforce collective agreements, in conformity with the national law or practice, which, while respecting the overall protection of workers, establish arrangements concerning the working conditions of workers which differ from those referred to in Articles 8 to 13.

CHAPTER IV

HORIZONTAL PROVISIONS

Article 15

Legal presumptions and early settlement mechanism

1. Member States shall ensure that, where a worker has not received in due time all or part of the documents referred to in Article 5(1) or Article 6, one or both of the following shall apply:

- (a) the worker shall benefit from favourable presumptions defined by the Member State, which employers shall have the possibility to rebut;
- (b) the worker shall have the possibility to submit a complaint to a competent authority or body and to receive adequate redress in a timely and effective manner.

2. Member States may provide that the application of the presumptions and mechanism referred to in paragraph 1 is subject to the notification of the employer and the failure of the employer to provide the missing information in a timely manner.

*Article 16***Right to redress**

Member States shall ensure that workers, including those whose employment relationship has ended, have access to effective and impartial dispute resolution and a right to redress in the case of infringements of their rights arising from this Directive.

*Article 17***Protection against adverse treatment or consequences**

Member States shall introduce the measures necessary to protect workers, including those who are workers' representatives, from any adverse treatment by the employer and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive.

*Article 18***Protection from dismissal and burden of proof**

1. Member States shall take the necessary measures to prohibit the dismissal or its equivalent and all preparations for dismissal of workers, on the grounds that they have exercised the rights provided for in this Directive.
2. Workers who consider that they have been dismissed, or have been subject to measures with equivalent effect, on the grounds that they have exercised the rights provided for in this Directive, may request the employer to provide duly substantiated grounds for the dismissal or the equivalent measures. The employer shall provide those grounds in writing.
3. Member States shall take the necessary measures to ensure that, when workers referred to in paragraph 2 establish, before a court or other competent authority or body, facts from which it may be presumed that there has been such a dismissal or equivalent measures, it shall be for the employer to prove that the dismissal was based on grounds other than those referred to in paragraph 1.
4. Paragraph 3 shall not prevent Member States from introducing rules of evidence which are more favourable to workers.
5. Member States shall not be required to apply paragraph 3 to proceedings in which it is for the court or other competent authority or body to investigate the facts of the case.
6. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by the Member State.

*Article 19***Penalties**

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive or the relevant provisions already in force concerning the rights which are within the scope of this Directive. The penalties provided for shall be effective, proportionate and dissuasive.

CHAPTER V

FINAL PROVISIONS*Article 20***Non-regression and more favourable provisions**

1. This Directive shall not constitute valid grounds for reducing the general level of protection already afforded to workers within Member States.

2. This Directive shall not affect Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to encourage or permit the application of collective agreements which are more favourable to workers.
3. This Directive is without prejudice to any other rights conferred on workers by other legal acts of the Union.

Article 21

Transposition and implementation

1. Member States shall take the necessary measures to comply with this Directive by 1 August 2022. They shall immediately inform the Commission thereof.
2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
3. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.
4. Member States shall, in accordance with their national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing this Directive.
5. Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that Member States take all necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

Article 22

Transitional arrangements

The rights and obligations set out in this Directive shall apply to all employment relationships by 1 August 2022. However, an employer shall provide or complement the documents referred to in Article 5(1) and in Articles 6 and 7 only upon the request of a worker who is already employed on that date. The absence of such a request shall not have the effect of excluding a worker from the minimum rights established in Articles 8 to 13.

Article 23

Review by the Commission

By 1 August 2027, the Commission shall, after consulting the Member States and the social partners at Union level and taking into account the impact on micro, small and medium-sized enterprises, review the implementation of this Directive and propose, where appropriate, legislative amendments.

Article 24

Repeal

Directive 91/533/EEC shall be repealed with effect from 1 August 2022. References to the repealed Directive shall be construed as references to this Directive.

*Article 25***Entry into force**

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

*Article 26***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 20 June 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

DIRECTIVE (EU) 2019/1153 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 20 June 2019

laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 87(2) thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) Facilitating the use of financial information is necessary to prevent, detect, investigate or prosecute serious crime.
- (2) In order to enhance security, improve prosecution of financial crimes, combat money laundering and prevent tax crimes in the Member States and across the Union, it is necessary to improve access to information by Financial Intelligence Units ('FIUs') and public authorities responsible for the prevention, detection, investigation or prosecution of serious crime, to enhance their ability to conduct financial investigations and to improve cooperation between them.
- (3) Pursuant to Article 4(3) of the Treaty on European Union (TEU), the Union and the Member States are to assist each other. They should also commit to cooperate in a loyal and expeditious manner.
- (4) In its communication of 2 February 2016 on an 'Action Plan to strengthen the fight against terrorist financing', the Commission committed to explore the possibility of a distinct self-standing legal instrument to broaden the access to centralised bank and payment account registers by Member States' authorities, including by authorities competent for the prevention, detection, investigation or prosecution of criminal offences, by Asset Recovery Offices, by tax authorities and by anti-corruption authorities. Moreover, that Action Plan also called for a mapping of obstacles to the access to, exchange and use of information as well as to operational cooperation between FIUs.

⁽¹⁾ OJ C 367, 10.10.2018, p. 84.

⁽²⁾ Position of the European Parliament of 17 April 2019 (not yet published in the Official Journal) and decision of the Council of 14 June 2019.

- (5) Combating serious crime, including financial fraud and money laundering, remains a priority for the Union.
- (6) Directive (EU) 2015/849 of the European Parliament and of the Council ⁽³⁾ requires Member States to put in place centralised bank account registries or data retrieval systems allowing the timely identification of the persons holding bank and payment accounts and safe-deposit boxes.
- (7) Pursuant to Directive (EU) 2015/849, the information held in such centralised bank account registries is to be directly accessible to FIUs and also accessible to national authorities competent for the prevention of money laundering, the associated predicate offences and terrorist financing.
- (8) Immediate and direct access to the information held in centralised bank account registries is often indispensable for the success of a criminal investigation or for the timely identification, tracing and freezing of related assets in view of their confiscation. Direct access is the most immediate type of access to the information held in centralised bank account registries. This Directive should therefore lay down rules granting direct access to information held in centralised bank account registries to designated Member States' authorities competent for the prevention, detection, investigation or prosecution of criminal offences. Where a Member State provides access to bank account information through a central electronic data retrieval system, that Member State should ensure that the authority operating the retrieval system reports search results in an immediate and unfiltered way to the designated competent authorities. This Directive should not affect channels for exchanging information between competent authorities or their powers to obtain information from obliged entities, under Union or national law. Any access to information held in centralised registries by the national authorities for purposes other than those of this Directive or with respect to criminal offences other than those covered by this Directive falls outside the scope thereof.
- (9) Given that in each Member State there are numerous authorities or bodies which are competent for the prevention, detection, investigation or prosecution of criminal offences, and in order to ensure proportionate access to financial and other information under this Directive, Member States should be required to designate which authorities or bodies are empowered to have access to the centralised bank account registries and which are able to request information from FIUs for the purposes of this Directive. When implementing this Directive, Member States should take into account the nature, organisational status, tasks and prerogatives of such authorities and bodies as established by their national law, including existing mechanisms for the protection of financial systems against money laundering and terrorist financing.
- (10) Asset Recovery Offices should be designated from amongst the competent authorities and have direct access to the information held in centralised bank account registries when preventing, detecting or investigating a specific serious criminal offence or supporting a specific criminal investigation, including the identification, tracing and freezing of assets.
- (11) To the extent that tax authorities and anti-corruption agencies are competent for the prevention, detection, investigation or prosecution of criminal offences under national law, they should also be considered authorities that can be designated for the purposes of this Directive. Administrative investigations other than those conducted by the FIUs in the context of preventing, detecting and effectively combatting money laundering and terrorist financing should not be covered by this Directive.

⁽³⁾ 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).

- (12) The perpetrators of criminal offences, in particular criminal groups and terrorists, often operate across different Member States and their assets, including bank accounts, are often located in other Member States. Given the cross-border dimension of serious crimes, including terrorism, and of the related financial activities, it is often necessary for competent authorities carrying out criminal investigations in one Member State to access information on bank accounts held in other Member States.
- (13) The information acquired by competent authorities from national centralised bank account registries can be exchanged with competent authorities located in another Member State, in accordance with Council Framework Decision 2006/960/JHA ⁽⁴⁾, Directive 2014/41/EU of the European Parliament and the Council ⁽⁵⁾ and with applicable data protection rules.
- (14) Directive (EU) 2015/849 has substantially enhanced the Union legal framework that governs the activity and cooperation of FIUs, including the assessment by the Commission of the possibility of establishing a coordination and support mechanism. The legal status of FIUs varies across Member States from an administrative or a law enforcement status to hybrid ones. The powers of FIUs include the right to access the financial, administrative and law enforcement information that they require to prevent, detect and combat money laundering, the associated predicate offences and terrorist financing. Nevertheless, Union law does not lay down all specific tools and mechanisms that FIUs should have at their disposal in order to access such information and accomplish their tasks. Since Member States are entirely responsible for setting up and deciding on the organisational nature of FIUs, different FIUs have varying degrees of access to regulatory databases, which leads to an insufficient exchange of information between law enforcement or prosecution services and FIUs.
- (15) In order to enhance legal certainty and operational effectiveness, this Directive should lay down rules to strengthen the FIUs' ability to share financial information and financial analysis with the designated competent authorities in their Member State for all serious criminal offences. More precisely, FIUs should be required to cooperate with the designated competent authorities of their Member States and be able to reply, in a timely manner, to reasoned requests for financial information or financial analysis by those designated competent authorities, where that financial information or financial analysis is necessary, on a case-by-case basis and when such requests are motivated by concerns relating to the prevention, detection, investigation or prosecution of serious criminal offences, subject to the exemptions provided for in Article 32(5) of Directive (EU) 2015/849. That requirement should not preclude the autonomy of the FIUs under Directive (EU) 2015/849. In particular, in cases where the information requested originates from the FIU of another Member State, any restrictions and conditions imposed by that FIU for the use of that information should be complied with. Any use for purposes beyond those originally approved should be made subject to the prior consent of that FIU. FIUs should appropriately explain any refusal to reply to a request for information or analysis. This Directive should not affect the operational independence and autonomy of the FIUs under Directive (EU) 2015/849, including the autonomy of the FIUs to spontaneously disseminate information on their own initiative for the purposes of this Directive.
- (16) This Directive should also set out a clearly defined legal framework to enable FIUs to request relevant data stored by designated competent authorities in their Member State in order to enable them to prevent, detect and combat money laundering, the associated predicate offences and terrorist financing effectively.
- (17) FIUs should endeavour to exchange financial information or financial analysis promptly in exceptional and urgent cases, where such information or analysis is related to terrorism or organised crime associated with terrorism.

⁽⁴⁾ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p. 89).

⁽⁵⁾ Directive 2014/41/EU of the European Parliament and the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

- (18) Such exchange should not hamper a FIU's active role under Directive (EU) 2015/849 in disseminating its analysis to other FIUs where that analysis reveals facts, conduct or suspicion of money laundering and terrorist financing of direct interest to those other FIUs. Financial analysis covers operational analysis which focuses on individual cases and specific targets or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use of the information after dissemination, as well as strategic analysis addressing money laundering and terrorist financing trends and patterns. However, this Directive should be without prejudice to the organisational status and role conferred to FIUs under the national law of Member States.
- (19) Given the sensitivity of financial data that should be analysed by FIUs and the necessary data protection safeguards, this Directive should specifically set out the type and scope of information that can be exchanged between FIUs, between FIUs and designated competent authorities and between designated competent authorities of different Member States. This Directive should not change currently agreed methods of data collection. However, Member States should be able to decide to broaden the scope of financial information and bank account information that can be exchanged between the FIUs and designated competent authorities. Member States should also be able to facilitate access by designated competent authorities to financial information and bank account information for the prevention, detection, investigation or prosecution of criminal offences other than serious criminal offences. This Directive should not derogate from the applicable data protection rules.
- (20) Under the specific competences and tasks of the Agency for Law Enforcement Cooperation ('Europol') established by Regulation (EU) 2016/794 of the European Parliament and of the Council ⁽⁶⁾, as laid down in that Regulation, Europol provides support to cross-border investigations by Member States' into the money laundering activities of transnational criminal organisations. In that context, Europol should notify the Member States of any information and connections between criminal offences concerning those Member States. According to that Regulation, the Europol national units are the liaison bodies between Europol and the Member States' authorities that are competent to investigate criminal offences. To provide Europol with the information necessary to carry out its tasks, each Member State should allow its FIU to reply to requests for financial information and financial analysis made by Europol through the Europol national unit of that Member State or, where appropriate, by direct contacts. Member States should also provide that their Europol national unit and, where appropriate, their designated competent authorities, are entitled to reply to requests for information on bank accounts by Europol. Requests made by Europol should be duly justified. They should be made on a case-by case basis, within the limits of Europol's responsibilities and for the performance of its tasks. The operational independence and autonomy of FIUs should not be jeopardised and the decision whether to provide the requested information or analysis should remain with the FIUs. In order to ensure quick and effective cooperation, FIUs should reply to requests by Europol in a timely manner. In accordance with Regulation (EU) 2016/794, Europol should continue its current practice of providing feedback to the Member States about the use made of the information or analysis provided under this Directive.
- (21) This Directive should also take into consideration the fact that, where applicable, in accordance with Article 43 of Council Regulation (EU) 2017/1939 ⁽⁷⁾, the European Delegated Prosecutors of the European Public Prosecution Office (EPPO) are empowered to obtain any relevant information stored in national criminal investigation and law enforcement databases, as well as other relevant registers of public authorities, including centralised bank account registries and data retrieval systems, under the same conditions as those that apply under national law in similar cases.

⁽⁶⁾ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

⁽⁷⁾ Council Regulation (EU) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecution Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

- (22) To strengthen the cooperation between FIUs, the Commission should carry out an impact assessment in the near future to evaluate the possibility and appropriateness of establishing a coordination and support mechanism, such as an 'EU FIU'.
- (23) To achieve the appropriate balance between efficiency and a high level of data protection, Member States should be required to ensure that the processing of sensitive financial information that could reveal sensitive data concerning a person's racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, or of data concerning a natural person's health, sex life or sexual orientation should be allowed only by specifically authorised persons and in accordance with the applicable data protection rules.
- (24) This Directive respects fundamental rights and observes the principles recognised by Article 6 TEU and by the Charter of Fundamental Rights of the European Union, in particular the right to respect for one's private and family life, the right to the protection of personal data, the prohibition of discrimination, the freedom to conduct a business, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence and the principles of the legality and proportionality of criminal offences and penalties, as well as the fundamental rights and principles provided for in international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions, in their respective fields of application.
- (25) It is essential to ensure that processing of personal data under this Directive fully respects the right to protection of personal data. Any such processing is subject to Regulation (EU) 2016/679⁽⁸⁾ and to Directive (EU) 2016/680⁽⁹⁾ of the European Parliament and of the Council, in their respective scope of application. As far as the access of Asset Recovery Offices to centralised bank account registries and data retrieval systems is concerned, Directive (EU) 2016/680 applies while Article 5(2) of Council Decision 2007/845/JHA⁽¹⁰⁾ does not apply. As far as Europol is concerned, Regulation (EU) 2016/794 applies. Specific and additional safeguards and conditions for ensuring the protection of personal data should be laid down in this Directive in respect of mechanisms to ensure the processing of sensitive data and records of information requests.
- (26) Any personal data obtained under this Directive should only be processed in accordance with the applicable data protection rules by competent authorities where it is necessary and proportionate for the purposes of the prevention, detection, investigation or prosecution of serious crime.
- (27) Furthermore, in order to respect the right to the protection of personal data and the right to privacy, and to limit the impact of access to the information contained in centralised bank account registries and data retrieval systems, it is essential to provide for conditions limiting such access. In particular, Member States should ensure that appropriate data protection policies and measures apply to access to personal data by competent authorities for the purposes of this Directive. Only authorised staff should have access to information containing personal data which can be obtained from the centralised bank account registries or through authentication processes. Staff granted access to such sensitive data should receive training on security practices with regard to the exchange and handling of the data.

⁽⁸⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽⁹⁾ 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).

⁽¹⁰⁾ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (OJ L 332, 18.12.2007, p. 103).

- (28) The transfer of financial data to third countries and international partners for the purposes of this Directive should only be allowed under the conditions laid down in Chapter V of Regulation (EU) 2016/679 or Chapter V of Directive (EU) 2016/680.
- (29) The Commission should report on the implementation of this Directive three years after its date of transposition, and every three years thereafter. In accordance with the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽¹¹⁾ the Commission should also carry out an evaluation of this Directive on the basis of information collected through specific monitoring arrangements in order to assess the actual effects of the Directive and the need for any further action.
- (30) This Directive aims to ensure that rules are adopted to provide Union citizens with a higher level of security by preventing and combating crime, pursuant to Article 67 of the Treaty on the Functioning of the European Union (TFEU). Due to their transnational nature, terrorist and criminal threats affect the Union as a whole and require a Union-wide response. Criminals could exploit, and would benefit from, the lack of an efficient use of bank account information and financial information in a Member State, which could in turn have consequences in another Member State.
- (31) Since the objective of this Directive, namely to improve access to information by FIUs and public authorities responsible for the prevention, detection, investigation or prosecution of serious crime, to enhance their ability to conduct financial investigations and to improve cooperation between them, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.
- (32) In order to ensure uniform conditions for the implementation of this Directive regarding the authorisation of Member States to provisionally apply or to conclude agreements with third countries that are contracting parties of the European Economic Area, on matters falling within the scope of Chapter II of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹²⁾.
- (33) Council Decision 2000/642/JHA should be repealed since its subject matter is regulated by other Union acts and it is no longer needed.
- (34) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TF EU, United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.
- (35) 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.
- (36) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹³⁾ and delivered an opinion on 10 September 2018,

⁽¹¹⁾ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

⁽¹²⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁽¹³⁾ 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 on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Directive lays down measures to facilitate access to and the use of financial information and bank account information by competent authorities for the prevention, detection, investigation or prosecution of serious criminal offences. It also lays down measures to facilitate access to law enforcement information by Financial Intelligence Units ('FIUs') for the prevention and combating of money laundering, associate predicate offences and terrorist financing and measures to facilitate cooperation between FIUs.

2. This Directive is without prejudice to:

- (a) Directive (EU) 2015/849 and the related provisions of national law, including the organisational status conferred on FIUs under national law as well as their operational independence and autonomy;
- (b) channels for the exchange of information between competent authorities or the powers of competent authorities under Union or national law to obtain information from obliged entities;
- (c) Regulation (EU) 2016/794;
- (d) the obligations resulting from Union instruments on mutual legal assistance or on mutual recognition of decisions regarding criminal matters and from Framework Decision 2006/960/JHA.

Article 2

Definitions

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

- (1) 'centralised bank account registries' means the centralised automated mechanisms, such as central registries or central electronic data retrieval systems, put in place in accordance with Article 32a(1) of Directive (EU) 2015/849;
- (2) 'Asset Recovery Offices' means the national offices set up or designated by each Member State pursuant to Decision 2007/845/JHA;
- (3) 'Financial Intelligence Unit ("FIU")' means an FIU as established pursuant to Article 32 of Directive (EU) 2015/849;
- (4) 'obliged entities' means the entities set out in Article 2(1) of Directive (EU) 2015/849;
- (5) 'financial information' means any type of information or data, such as data on financial assets, movements of funds or financial business relationships, which is already held by FIUs to prevent, detect and effectively combat money laundering and terrorist financing;

(6) 'law enforcement information' means:

- (i) any type of information or data which is already held by competent authorities in the context of preventing, detecting, investigating or prosecuting criminal offences;
- (ii) any type of information or data which is held by public authorities or by private entities in the context of preventing, detecting, investigating or prosecuting criminal offences and which is available to competent authorities without the taking of coercive measures under national law;

such information can be, inter alia, criminal records, information on investigations, information on the freezing or seizure of assets or on other investigative or provisional measures and information on convictions and on confiscations;

(7) 'bank account information' means the following information on bank and payment accounts and safe-deposit boxes contained in the centralised bank account registries:

- (i) as regards the customer-account holder and any person purporting to act on behalf of the customer: the name, complemented by either the other identification data required under the national provisions transposing point (a) of Article 13(1) of Directive (EU) 2015/849 or a unique identification number;
- (ii) as regards the beneficial owner of the customer-account holder: the name, complemented by either the other identification data required under the national provisions transposing point (b) of Article 13(1) of Directive (EU) 2015/849 or a unique identification number;
- (iii) as regards the bank or payment account: the IBAN number and the date of account opening and closing;
- (iv) as regards the safe-deposit box: the name of the lessee, complemented by the other identification data required under the national provisions transposing Article 13(1) of Directive (EU) 2015/849 or a unique identification number, and the duration of the lease period;

(8) 'money laundering' means the conduct defined in Article 3 of Directive (EU) 2018/1673 of the European Parliament and of the Council ⁽¹⁴⁾;

(9) 'associated predicate offences' means the offences referred to in point (1) of Article 2 of Directive (EU) 2018/1673;

(10) 'terrorist financing' means the conduct defined in Article 11 of Directive (EU) 2017/541 of the European Parliament and of the Council ⁽¹⁵⁾;

(11) 'financial analysis' means the results of operational and strategic analysis that has already been carried out by the FIUs in the performance of their tasks, pursuant to Directive (EU) 2015/849;

(12) 'serious criminal offences' means the forms of crime listed in Annex I to Regulation (EU) 2016/794.

⁽¹⁴⁾ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22).

⁽¹⁵⁾ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

*Article 3***Designation of competent authorities**

1. Each Member State shall designate, among its authorities competent for the prevention, detection, investigation or prosecution of criminal offences, the competent authorities empowered to access and search its national centralised bank account registry. Those competent authorities shall include at least the Asset Recovery Offices.
2. Each Member State shall designate, among its authorities competent for the prevention, detection, investigation or prosecution of criminal offences, the competent authorities that can request and receive financial information or financial analysis from the FIU.
3. Each Member State shall notify the Commission of its competent authorities designated pursuant to paragraphs 1 and 2 by 2 December 2021, and shall notify the Commission of any amendment thereto. The Commission shall publish the notifications in the *Official Journal of the European Union*.

CHAPTER II

ACCESS BY COMPETENT AUTHORITIES TO BANK ACCOUNT INFORMATION*Article 4***Access to and searches of bank account information by competent authorities**

1. Member States shall ensure that the competent national authorities designated pursuant to Article 3(1) have the power to access and search, directly and immediately, bank account information when necessary for the performance of their tasks for the purposes of preventing, detecting, investigating or prosecuting a serious criminal offence or supporting a criminal investigation concerning a serious criminal offence, including the identification, tracing and freezing of the assets related to such investigation. Access and searches shall be considered to be direct and immediate, inter alia, where the national authorities operating the central bank account registries transmit the bank account information expeditiously by an automated mechanism to competent authorities, provided that no intermediary institution is able to interfere with the requested data or the information to be provided.
2. The additional information that Member States consider essential and include in the centralised bank account registries pursuant to Article 32a(4) of Directive (EU) 2015/849 shall not be accessible and searchable by competent authorities pursuant to this Directive.

*Article 5***Conditions for access and for searches by competent authorities**

1. Access to and searches of bank account information in accordance with Article 4 shall be performed only on a case-by-case basis by the staff of each competent authority that have been specifically designated and authorised to perform those tasks.
2. Member States shall ensure that staff of the designated competent authorities maintain high professional standards of confidentiality and data protection, that they are of high integrity and are appropriately skilled.
3. Member States shall ensure that technical and organisational measures are in place to ensure the security of the data to high technological standards for the purposes of the exercise by competent authorities of the power to access and search bank account information in accordance with Article 4.

*Article 6***Monitoring access and searches by competent authorities**

1. Member States shall provide that the authorities operating the centralised bank account registries ensure that logs are kept each time designated competent authorities access and search bank account information. The logs shall include, in particular, the following:

- (a) the national file reference;
- (b) the date and time of the query or search;
- (c) the type of data used to launch the query or search;
- (d) the unique identifier of the results;
- (e) the name of the designated competent authority consulting the registry;
- (f) the unique user identifier of the official who made the query or performed the search and, where applicable, of the official who ordered the query or search and, as far as possible, the unique user identifier of the recipient of the results of the query or search.

2. The data protection officers for the centralised bank account registries shall check the logs regularly. The logs shall be made available, on request, to the competent supervisory authority established in accordance with Article 41 of Directive (EU) 2016/680.

3. The logs shall be used only for data protection monitoring, including checking the admissibility of a request and the lawfulness of data processing, and for ensuring data security. They shall be protected by appropriate measures against unauthorised access and shall be erased five years after their creation, unless they are required for monitoring procedures that are ongoing.

4. Member States shall ensure that authorities operating centralised bank account registries take appropriate measures so that staff are aware of applicable Union and national law, including the applicable data protection rules. Such measures shall include specialised training programmes.

CHAPTER III

EXCHANGE OF INFORMATION BETWEEN COMPETENT AUTHORITIES AND FIUS, AND BETWEEN FIUS*Article 7***Requests for information by competent authorities to an FIU**

1. Subject to national procedural safeguards, each Member State shall ensure that its national FIU is required to cooperate with its designated competent authorities referred to in Article 3(2) and to be able to reply, in a timely manner, to reasoned requests for financial information or financial analysis by those designated competent authorities in their respective Member State, where that financial information or financial analysis is necessary on a case-by-case basis and where the request is motivated by concerns relating to the prevention, detection, investigation or prosecution of serious criminal offences.

2. Where there are objective grounds for assuming that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purposes for which it has been requested, the FIU shall be under no obligation to comply with the request for information.
3. Any use for purposes beyond those originally approved shall be made subject to the prior consent of that FIU. FIUs shall appropriately explain any refusal to reply to a request made under paragraph 1.
4. The decision on conducting the dissemination of information shall remain with the FIU.
5. The designated competent authorities may process the financial information and financial analysis received from the FIU for the specific purposes of preventing, detecting, investigating or prosecuting serious criminal offences other than the purposes for which personal data are collected in accordance with Article 4(2) of Directive (EU) 2016/680.

Article 8

Requests of information by an FIU to competent authorities

Subject to national procedural safeguards and in addition to the access to information by FIUs as provided for in Article 32(4) of Directive (EU) 2015/849, each Member State shall ensure that its designated competent authorities are required to reply in a timely manner to requests for law enforcement information made by the national FIU on a case-by-case basis, where the information is necessary for the prevention, detection and combating of money laundering, associate predicate offences and terrorist financing.

Article 9

Exchange of information between FIUs of different Member States

1. Member States shall ensure that in exceptional and urgent cases, their FIUs are entitled to exchange financial information or financial analysis that may be relevant for the processing or analysis of information related to terrorism or organised crime associated with terrorism.
2. Member States shall ensure that in the cases referred to in paragraph 1 and subject to their operational limitations, FIUs endeavour to exchange such information promptly.

Article 10

Exchange of information between competent authorities of different Member States

1. Subject to national procedural safeguards, each Member State shall ensure that its competent authorities designated pursuant to Article 3(2) are able to exchange financial information or financial analysis obtained from the FIU of their Member State, upon request and on a case-by-case basis, with a designated competent authority in another Member State, where that financial information or financial analysis is necessary for the prevention, detection and combating of money laundering, associate predicate offences and terrorist financing.

Each Member State shall ensure that its designated competent authorities use the financial information or financial analysis exchanged pursuant to this Article only for the purpose for which it was sought or provided.

Each Member State shall ensure that any dissemination of financial information or financial analysis obtained by its designated competent authorities from the FIU of that Member State to any other authority, agency or department or any use of that information for purposes other than those originally approved is made subject to the prior consent of the FIU providing the information.

2. Member States shall ensure that a request made pursuant to this Article and its response are transmitted using dedicated secure electronic communications ensuring a high level of data security.

CHAPTER IV

EXCHANGE OF INFORMATION WITH EUROPOL

Article 11

Provision of bank account information to Europol

Each Member State shall ensure that its competent authorities are entitled to reply, through the Europol national unit or, if allowed by that Member State, by direct contacts with Europol, to duly justified requests related to bank account information made by Europol on a case-by-case basis within the limits of its responsibilities and for the performance of its tasks. Article 7(6) and (7) of Regulation (EU) 2016/794 apply.

Article 12

Exchange of information between Europol and FIUs

1. Each Member State shall ensure that its FIU is entitled to reply to duly justified requests made by Europol through the Europol national unit or, if allowed by that Member State, by direct contacts between the FIU and Europol. Such requests shall be related to financial information and financial analysis and made on a case-by-case basis within the limits of the responsibilities of Europol and for the performance of its tasks.

2. Article 32(5) of Directive (EU) 2015/849 and Article 7(6) and (7) of Regulation (EU) 2016/794 apply to the exchanges made pursuant to this Article.

3. Member States shall ensure that any failure to comply with a request is appropriately explained.

Article 13

Detailed arrangements for the exchange of information

1. Member States shall ensure that the exchanges of information pursuant to Articles 11 and 12 of this Directive take place in accordance with Regulation (EU) 2016/794 electronically through:

(a) SIENA or its successor, in the language applicable to SIENA; or

(b) where applicable, FIU.Net or its successor.

2. Member States shall ensure that the exchange of information under Article 12 is carried out in a timely manner and that in that regard the requests for information made by Europol are treated as if they originate from another FIU.

*Article 14***Data protection requirements**

1. The processing of personal data related to bank account information, financial information and financial analysis referred to in Articles 11 and 12 of this Directive shall be performed in accordance with Article 18 of Regulation (EU) 2016/794 and only by the staff of Europol who have been specifically designated and authorised to perform those tasks.
2. Europol shall inform the data protection officer appointed in accordance with Article 41 of Regulation (EU) 2016/794 of each exchange of information pursuant to Articles 11, 12 and 13 of this Directive.

CHAPTER V

ADDITIONAL PROVISIONS RELATED TO THE PROCESSING OF PERSONAL DATA*Article 15***Scope**

This Chapter applies only to designated competent authorities and FIUs in respect of the exchange of information pursuant to Chapter III and in respect of the exchange of financial information and financial analysis involving the Europol national units pursuant to Chapter IV.

*Article 16***Processing of sensitive personal data**

1. The processing of personal data revealing a person's racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership or of data concerning a natural person's health, sex life or sexual orientation shall only be allowed subject to appropriate safeguards for the rights and freedoms of the data subject, in accordance with the applicable data protection rules.
2. Only staff who have been specifically trained and who have been specifically authorised by the controller may access and process the data referred to in paragraph 1 under the guidance of the data protection officer.

*Article 17***Records of information requests**

Member States shall ensure that records are kept relating to requests for information pursuant to this Directive. Those records shall contain at least the following information:

- (a) the name and contact details of the organisation and of the staff member requesting the information and, as far as possible, of the recipient of the results of the query or search;
- (b) the reference to the national case in relation to which the information is requested;
- (c) the subject matter of the requests; and
- (d) any executing measures of such requests.

The records shall be kept for a period of five years after their creation and shall be used solely for the purpose of checking the lawfulness of the processing of personal data. The authorities concerned shall make all records available to the national supervisory authority upon its request.

*Article 18***Restrictions to data subjects' rights**

Member States may adopt legislative measures restricting, in whole or in part, data subjects' right of access to personal data relating to them processed under this Directive, in accordance with Article 23(1) of Regulation (EU) 2016/679 or with Article 15(1) of Directive (EU) 2016/680, as applicable.

CHAPTER VI

FINAL PROVISIONS*Article 19***Monitoring**

1. Member States shall review the effectiveness of their systems to combat serious criminal offences by maintaining comprehensive statistics.

2. By 1 February 2020, the Commission shall establish a detailed programme for monitoring the outputs, results and impact of this Directive.

That programme shall set out the means by which, and the intervals at which, the data and other necessary evidence will be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence.

Member States shall provide the Commission with the data and other evidence necessary for the monitoring.

3. In any event, the statistics referred to in paragraph 1 shall include the following information:
 - (a) the number of searches carried out by designated competent authorities in accordance with Article 4;
 - (b) data measuring the volume of requests issued by each authority under this Directive, the follow-up given to those requests, the number of cases investigated, the number of persons prosecuted and the number of persons convicted for serious criminal offences, where such information is available;
 - (c) data measuring the time it takes an authority to respond to a request after the receipt of the request;
 - (d) if available, data measuring the cost of human or IT resources that are dedicated to domestic and cross-border requests falling under this Directive.

4. Member States shall organise the production and gathering of the statistics and shall transmit the statistics referred to in paragraph 3 to the Commission on an annual basis.

*Article 20***Relationship to other instruments**

1. This Directive shall not preclude Member States from maintaining or concluding bilateral or multilateral agreements or arrangements between themselves on the exchange of information between competent authorities, insofar as such agreements or arrangements are compatible with Union law, in particular with this Directive.

2. This Directive is without prejudice to any obligations and commitments of Member States or of the Union under existing bilateral or multilateral agreements with third countries.

3. Without prejudice to the division of competences between the Union and the Member States, in accordance with Union law, Member States shall notify the Commission of their intention to enter into negotiations on, and to conclude, agreements between Member States and third countries that are contracting parties of the European Economic Area on matters falling within the scope of Chapter II of this Directive.

If, within two months of receipt of notification of a Member State's intention to enter into the negotiations referred to in the first subparagraph, the Commission concludes that the negotiations are likely to undermine relevant Union policies or to lead to an agreement which is incompatible with Union law, it shall inform the Member State accordingly.

Member States shall keep the Commission regularly informed of any such negotiations and, where appropriate, invite the Commission to participate as an observer.

Member States shall be authorised to apply provisionally or to conclude agreements referred to in the first subparagraph, provided that they are compatible with Union law and do not harm the object and purpose of the relevant policies of the Union. The Commission shall adopt such authorisation decisions by implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 22.

Article 21

Evaluation

1. By 2 August 2024, and every three years thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and to the Council. The report shall be made public.

2. In accordance with Article 65(2) of Directive (EU) 2015/849, the Commission shall assess the obstacles to and opportunities for enhancing cooperation between FIUs in the Union, including the possibility and appropriateness of establishing a coordination and support mechanism.

3. By 2 August 2024, the Commission shall issue a report to the European Parliament and to the Council to assess the need for, and proportionality of, extending the definition of financial information to any type of information or data which are held by public authorities or by obliged entities and which are available to FIUs without the taking of coercive measures under national law, and shall present a legislative proposal, if appropriate.

4. By 2 August 2024, the Commission shall carry out an assessment of the opportunities and challenges regarding an extension of the exchange of financial information or financial analysis between FIUs within the Union to cover exchanges relating to serious criminal offences other than terrorism or organised crime associated with terrorism.

5. No sooner than 2 August 2027, the Commission shall carry out an evaluation of this Directive and present a report on the main findings to the European Parliament and the Council. The report shall also include an evaluation of how fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union have been respected.

6. For the purposes of paragraphs 1 to 4 of this Article, Member States shall provide the Commission with necessary information. The Commission shall take into account the statistics submitted by Member States under Article 19 and may request additional information from Member States and supervisory authorities.

*Article 22***Committee procedure**

1. The Commission shall be assisted by a committee. This committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

*Article 23***Transposition**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 August 2021. They shall immediately inform the Commission thereof.

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

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 24***Repeal of Decision 2000/642/JHA**

Decision 2000/642/JHA is repealed with effect from 1 August 2021.

*Article 25***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 26***Addressees**

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

Done at Brussels, 20 June 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

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