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I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2019/1154 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

on a multiannual recovery plan for Mediterranean swordfish and amending Council Regulation (EC) No 1967/2006 and Regulation (EU) 2017/2107 of the European Parliament and of the Council

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) 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) The objective of the Common Fisheries Policy ('CFP'), as set out in Regulation (EU) No 1380/2013 of the European Parliament and of the Council ([3]), is to ensure exploitation of marine biological resources that provides sustainable economic, environmental and social conditions.

(2) The Union is Party to the International Convention for the Conservation of Atlantic Tunas ('the ICCAT Convention').

(3) At the 2016 Annual Meeting of the International Commission for the Conservation of Atlantic Tunas ('ICCAT') in Vilamoura, Portugal, the ICCAT Contracting Parties and Cooperating non-Contracting Parties, Entities or Fishing Entities recognised the need to address the alarming situation of swordfish (*Xiphias gladius*) in the Mediterranean Sea ('Mediterranean swordfish'), which has been overfished over the last 30 years. To that end, including avoiding the collapse of the stock, and after analysing the scientific advice of the Standing Committee on Research and Statistics (SCRS), ICCAT adopted Recommendation 16-05 establishing a multiannual recovery plan for Mediterranean swordfish ('ICCAT recovery plan'). In view of the fact that the current biology, structure and dynamic of the Mediterranean swordfish stock does not allow the achievement of levels of biomass capable of producing the maximum sustainable yield (MSY) in the short term, even if drastic and urgent management measures such as a total closure of the fishery were adopted, the ICCAT recovery plan is to cover the period 2017–2031. ICCAT Recommendation 16-05 entered into force on 12 June 2017 and is binding on the Union.

([1]) OJ C 440, 6.12.2018, p. 174.
([2]) Position of the European Parliament of 4 April 2019 (not yet published in the Official Journal) and decision of the Council of 6 June 2019.
([3]) Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

(4) The Union informed the ICCAT Secretariat by letter, in December 2016, that certain measures laid down in ICCAT Recommendation 16-05 were to enter into force in the Union in January 2017, in particular in relation to the closure period established from 1 January to 31 March, and the allocation of quotas for Mediterranean swordfish fisheries. All other measures laid down in ICCAT Recommendation 16-05, together with some of the measures already implemented, should be included in the recovery plan set out in this Regulation.

(5) In accordance with Article 29(2) of Regulation (EU) No 1380/2013, the positions of the Union in regional fisheries management organisations are to be based on the best available scientific advice so as to ensure that fishery resources are managed in accordance with the objectives of the CFP, in particular with the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing MSY, even if in this particular case the date by which that objective has to be achieved is 2031, and with the objective of providing conditions for economically viable and competitive fishing capture and processing industry and land-based fishing related activity. At the same time account is taken of point (d) of Article 28(2) of Regulation (EU) No 1380/2013 which provides that a level playing field for Union operators vis-à-vis third-country operators is to be promoted.

(6) The ICCAT recovery plan takes into account the specificities of the different types of fishing gear and fishing techniques. When implementing the ICCAT recovery plan, the Union and Member States should endeavour to promote coastal fishing activities and the research on and use of fishing gear and techniques which are selective, so as to reduce by-catches of vulnerable species, and which have a reduced environmental impact, including gear and techniques used in traditional and artisanal fisheries, thereby contributing to a fair standard of living for local economies.

(7) Regulation (EU) No 1380/2013 establishes the concept of minimum conservation reference sizes. In order to ensure consistency, the ICCAT concept of minimum sizes should be implemented into Union law as minimum conservation reference sizes.

(8) Pursuant to ICCAT Recommendation 16-05, Mediterranean swordfish that have been caught and are below minimum conservation reference size have to be discarded. The same applies to catches of Mediterranean swordfish exceeding the by-catch limits established by Member States in their annual fishing plans. For the purpose of the Union's compliance with its international obligations under ICCAT, Article 5a of Commission Delegated Regulation (EU) 2015/98 ([4]) provides for derogations from the landing obligation for Mediterranean swordfish in accordance with Article 15(2) of Regulation (EU) No 1380/2013. Delegated Regulation (EU) 2015/98 implements certain provisions of ICCAT Recommendation 16-05 which lays down the obligation to discard Mediterranean swordfish for vessels that exceed their allocated quota or their maximum level of permitted by-catches. The scope of that Delegated Regulation includes vessels engaged in recreational fishing.

(9) Taking into consideration that the recovery plan set out in this Regulation will implement ICCAT Recommendation 16-05, the provisions of Regulation (EU) 2017/2107 of the European Parliament and of the Council ([5]) concerning Mediterranean swordfish should be deleted.

(10) Fishing activities using driftnets have in the past undergone a rapid increase in terms of fishing effort and lack of sufficient selectivity. The uncontrolled expansion of those activities posed a serious risk for the target species and their use was prohibited for catching highly migratory fish, including swordfish, by Council Regulation (EC) No 1239/98 ([6]).

([4]) Commission Delegated Regulation (EU) 2015/98 of 18 November 2014 on the implementation of the Union's international obligations, as referred to in Article 15(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council, under the International Convention for the Conservation of Atlantic Tunas and the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (OJ L 16, 23.1.2015, p. 23).

([5]) Regulation (EU) 2017/2107 of the European Parliament and of the Council of 15 November 2017 laying down management, conservation and control measures applicable in the Convention area of the International Commission for the Conservation of Atlantic Tunas (ICCAT), and amending Council Regulations (EC) No 1936/2001, (EC) No 1984/2003 and (EC) No 520/2007 (OJ L 315, 30.11.2017, p. 1).

([6]) Council Regulation (EC) No 1239/98 of 8 June 1998 amending Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources (OJ L 171, 17.6.1998, p. 1).

(11) To ensure compliance with the CFP, Union legislation has been adopted to establish a system of control, inspection and enforcement, which includes the fight against illegal, unreported and unregulated (IUU) fishing. In particular, Council Regulation (EC) No 1224/2009 ([7]) establishes a Union system for control, inspection and enforcement with a global and integrated approach so as to ensure compliance with all the rules of the CFP. Commission Implementing Regulation (EU) No 404/2011 ([8]) lays down detailed rules for the implementation of Regulation (EC) No 1224/2009. Council Regulation (EC) No 1005/2008 ([9]) establishes a Community system to prevent, deter and eliminate IUU fishing. Those Regulations already include provisions that cover a number of the measures laid down in ICCAT Recommendation 16-05. It is therefore not necessary to include those provisions in this Regulation.

(12) In arrangements for the chartering of fishing vessels, the relationships between the owner, the charterer and the flag State are often unclear. Some operators engaging in IUU activities evade controls by abusing those arrangements. Chartering is prohibited by Regulation (EU) 2016/1627 of the European Parliament and of the Council ([10]) in the context of bluefin tuna fisheries. It is appropriate, as a preventive measure to protect a stock under recovery and for sake of consistency with Union law, to adopt a similar prohibition in the recovery plan set out in this Regulation.

(13) Union legislation should implement ICCAT recommendations in order to place Union and third country fishermen on an equal footing and to ensure that the rules can be accepted by all.

(14) In order to swiftly implement into Union law future ICCAT recommendations amending or supplementing the ICCAT recovery plan, 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 the Annexes to this Regulation and certain provisions of this Regulation on deadlines for reporting information, time periods for closures, minimum conservation reference size, tolerance levels for incidental catches and by-catches, technical characteristics of fishing gear, percentage of quota uptake for the purpose of informing the Commission, as well as information to be provided on fishing vessels. 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 ([11]). 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.

(15) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the format for the annual report on the implementation of this Regulation submitted by the Member States. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([12]).

(16) The delegated acts and implementing acts provided for in this Regulation should be without prejudice to the implementation of future ICCAT recommendations into Union law through the ordinary legislative procedure.

([7]) Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

([8]) Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system, for ensuring compliance with the rules of the Common Fisheries Policy (OJ L 112, 30.4.2011, p. 1).

([9]) Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).

([10]) Regulation (EU) 2016/1627 of the European Parliament and of the Council of 14 September 2016 on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean, and repealing Council Regulation (EC) No 302/2009 (OJ L 252, 16.9.2016, p. 1).

([11]) 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 Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(17) Annex II to Council Regulation (EC) No 1967/2006 ([13]) allows for a maximum of 3 500 hooks that can be set or taken on board of vessels targeting swordfish, while ICCAT Recommendation 16-05 allows for a maximum of 2 500 hooks. In order to properly implement that recommendation into Union law it is necessary to amend Regulation (EC) No 1967/2006 accordingly.

(18) Section 2 of Chapter III of Regulation (EU) 2017/2107 lays down certain technical and control measures as regards Mediterranean swordfish. The measures laid down in ICCAT Recommendation 16-05, which are implemented into Union law by this Regulation, are more restrictive or more precise to allow the recovery of the stock. Section 2 of Chapter III of Regulation (EU) 2017/2107 should therefore be deleted and replaced by the relevant measures laid down in this Regulation,

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down general rules for the implementation by the Union of a multiannual recovery plan for swordfish (*Xiphias gladius*) in the Mediterranean Sea ('Mediterranean swordfish') adopted by ICCAT, starting from 2017 and continuing until 2031.

Article 2

Scope

This Regulation applies to:

(a) Union fishing vessels, and Union vessels engaged in recreational fisheries, which:

  (i) catch Mediterranean swordfish; or

  (ii) tranship or carry on board, including outside the ICCAT Convention area, Mediterranean swordfish;

(b) third country fishing vessels, and third country vessels engaged in recreational fisheries, which operate in Union waters and which catch Mediterranean swordfish;

(c) third country vessels which are inspected in Member States ports and which carry on board Mediterranean swordfish or fishery products originating from Mediterranean swordfish that have not been previously landed or transhipped at ports.

Article 3

Objective

By way of derogation from Article 2(2) of Regulation (EU) No 1380/2013, the objective of this Regulation is to achieve a biomass of Mediterranean swordfish corresponding to MSY by 2031, with at least a 60 % probability of achieving that objective.

Article 4

Relationship to other Union law

This Regulation applies in addition to the following Regulations or, where those Regulations so provide, by way of derogation therefrom:

(a) Regulation (EC) No 1224/2009;

(b) Regulation (EU) 2017/2403 of the European Parliament and of the Council ([14]);

(c) Regulation (EU) 2017/2107.

([13]) Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94 (OJ L 409, 30.12.2006, p. 11).

([14]) Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008 (OJ L 347, 28.12.2017, p. 81).

Article 5

Definitions

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

(1) 'fishing vessel' means any vessel equipped for commercial exploitation of marine biological resources;

(2) 'Union fishing vessel' means a fishing vessel flying the flag of a Member State and registered in the Union;

(3) 'ICCAT Convention area' means all waters of the Atlantic Ocean and adjacent seas;

(4) 'Mediterranean Sea' means maritime waters of the Mediterranean to the East of line 5°36′ West;

(5) 'CPCs' means Contracting Parties to the ICCAT Convention and Cooperating non-Contracting Parties, Entities or Fishing Entities;

(6) 'fishing authorisation' means an authorisation issued in respect of a Union fishing vessel entitling it to carry out specific fishing activities during a specified period, in a given area or for a given fishery under specific conditions;

(7) 'fishing opportunity' means a quantified legal entitlement to fish, expressed in terms of catches or fishing effort;

(8) 'stock' means a marine biological resource that occurs in a given management area;

(9) 'fishery products' means aquatic organisms resulting from any fishing activity or products derived therefrom;

(10) 'discards' means catches that are returned to the sea;

(11) 'recreational fisheries' means non-commercial fishing activities exploiting marine biological resources for recreation, tourism or sport;

(12) 'vessel monitoring system data' means data on the fishing vessel identification, geographical position, date, time, course and speed transmitted by satellite-tracking devices installed on board fishing vessels to the fisheries monitoring centre of the flag Member State;

(13) 'landing' means the initial unloading of any quantity of fisheries products from on board a fishing vessel to land;

(14) 'transhipment' means the unloading of all or any fisheries products on board a vessel to another vessel;

(15) 'chartering' means an arrangement by which a fishing vessel flying the flag of a Member State is contracted for a defined period by an operator in either another Member State or a third country without a change of flag;

(16) 'longlines' means a fishing gear which comprises a main line carrying numerous hooks on branch lines (snoods) of variable length and spacing depending on the target species;

(17) 'hook' means a bent, sharpened piece of steel wire;

(18) 'rod and line' means a fishing-line placed in a rod used by anglers and wound on a turning mechanism (reel) used to wind the line.

TITLE II

MANAGEMENT MEASURES, TECHNICAL CONSERVATION MEASURES AND CONTROL MEASURES

CHAPTER 1

Management measures

Article 6

Fishing effort

1. Each Member State shall take the necessary measures to ensure that the fishing effort of fishing vessels flying its flag is commensurate with the fishing opportunities for Mediterranean swordfish available to that Member State.

2. The carrying-over of any unused quota for Mediterranean swordfish shall be prohibited.

Article 7

Allocation of fishing opportunities

1. In accordance with Article 17 of Regulation (EU) No 1380/2013, when allocating the fishing opportunities available to them, Member States shall use transparent and objective criteria, including those of an environmental, social and economic nature, and shall also endeavour to distribute national quotas fairly among the various fleet segments, giving consideration to traditional and artisanal fishing, and to provide incentives to Union fishing vessels deploying selective fishing gear or using fishing techniques with reduced environmental impact.

2. Each Member State shall make provision for by-catch of swordfish within its Mediterranean swordfish quota and shall inform the Commission thereof when transmitting its annual fishing plan in accordance with Article 9. Such provision shall ensure that all dead Mediterranean swordfish are deducted from the quota.

3. Member States shall endeavour to allocate any increase in fishing opportunities resulting from the successful implementation of this Regulation to fishing vessels to which no quota for Mediterranean swordfish has previously been allocated and that fulfil the criteria for the allocation of fishing opportunities set out in Article 17 of Regulation (EU) No 1380/2013.

Article 8

Capacity limitations

1. A capacity limitation by fishing gear type for fishing vessels shall apply for the duration of the recovery plan set out in this Regulation. Member States shall limit by fishing gear type the number of fishing vessels flying their flag and authorised to catch Mediterranean swordfish to the average yearly number of vessels flying their flag that fished for, retained on board, transhipped, transported or landed Mediterranean swordfish during the period 2013-2016.

2. Notwithstanding paragraph 1, Member States may decide to use the number of vessels flying their flag that fished for, retained on board, transhipped, transported or landed Mediterranean swordfish in 2016 for the purpose of calculating the capacity limitation, if that number is lower than the average yearly number of vessels during the period 2013–2016. That capacity limitation shall be applied by gear type for fishing vessels.

3. Member States may apply a tolerance of 5 % to the capacity limitation referred to in paragraph 1 for the years 2018 and 2019.

4. Member States shall inform the Commission by 1 March of each year of the measures taken to limit the number of fishing vessels flying their flag and authorised to catch Mediterranean swordfish. That information shall be included in the transmission of the annual fishing plans in accordance with Article 9.

Article 9

Annual fishing plans

1. Member States shall submit their annual fishing plans to the Commission by 1 March of each year. Such annual fishing plans shall be submitted in the format set out in the ICCAT Guidelines for submitting data and information, and shall include detailed information regarding the quota for Mediterranean swordfish allocated by fishing gear type, including quota allocated to recreational fisheries, where relevant, and to by-catches.

2. The Commission shall compile the annual fishing plans referred to in paragraph 1 and integrate them into a Union fishing plan. The Commission shall transmit that Union fishing plan to the ICCAT Secretariat by 15 March each year.

CHAPTER 2

Technical conservation measures

Section 1

Fishing seasons

Article 10

Closure periods

1. Mediterranean swordfish shall not be caught, either as targeted species or as by-catch, retained on board, transhipped or landed during the closure period. The closure period shall be from 1 January to 31 March of each year.

2. In order to protect Mediterranean swordfish, a closure period shall apply to longline vessels targeting Mediterranean albacore (*Thunnus alalunga*) from 1 October to 30 November of each year.

3. Member States shall monitor the effectiveness of the closure periods referred to in paragraphs 1 and 2 and shall submit to the Commission, at least two months and 15 days before the ICCAT annual meeting each year, all relevant information on appropriate controls and inspections carried out the previous year to ensure compliance with this Article. The Commission shall forward that information to the ICCAT Secretariat at least two months before the ICCAT annual meeting each year.

Section 2

Minimum conservation reference size, incidental catch and by-catch

Article 11

Minimum conservation reference size for Mediterranean swordfish

1. By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, it shall be prohibited to catch, retain on board, tranship, land, transport, store, sell or display or offer for sale Mediterranean swordfish, including in recreational fisheries:

(a) measuring less than 100 cm lower jaw to fork length (LJFL); or

(b) weighing less than 11,4 kg of live weight, or 10,2 kg of gilled and gutted weight.

2. Only entire specimens of Mediterranean swordfish, without removal of any external part, or gilled and gutted specimens, may be retained on board, transhipped landed or carried in the first transport after landing.

Article 12

Incidental catches of Mediterranean swordfish below the minimum conservation reference size

Notwithstanding Article 11(1), fishing vessels targeting Mediterranean swordfish may retain on board, tranship, transfer, land, transport, store, sell or display or offer for sale incidental catches of Mediterranean swordfish below the minimum conservation reference size, provided such catches do not exceed 5 % by weight or number of specimens of the total Mediterranean swordfish catch of the fishing vessels concerned.

Article 13

By-catches

1. By-catches of Mediterranean swordfish shall not exceed at any time following a fishing operation the by-catch limit that Member States establish in their annual fishing plans for the total catch on board by weight or number of specimens.

2. By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, fishing vessels not targeting Mediterranean swordfish shall not retain on board Mediterranean swordfish exceeding that by-catch limit.

3. By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, if the quota for Mediterranean swordfish allocated to the flag Member State is exhausted, any Mediterranean swordfish caught alive shall be released.

4. Where the quota for Mediterranean swordfish allocated to the flag Member State is exhausted, the processing and commercialisation of dead Mediterranean swordfish shall be prohibited and all catches shall be recorded. Member States shall provide information on the quantity of such dead Mediterranean swordfish on an annual basis to the Commission which shall forward it to the ICCAT Secretariat, in accordance with Article 21.

Section 3

Technical characteristics of the fishing gear

Article 14

Technical characteristics of the fishing gear

1. The maximum number of hooks that may be set by or carried on board fishing vessels targeting Mediterranean swordfish shall be fixed at 2 500 hooks.

2. By way of derogation from paragraph 1, a replacement set of 2 500 rigged hooks shall be allowed on board fishing vessels for trips longer than two days provided that it is duly lashed and stowed in lower decks so that it may not readily be used.

3. The hook size shall not be smaller than 7 cm in height.

4. The length of the pelagic longlines shall not exceed 30 nautical miles (55,56 km).

CHAPTER 3

Control measures

Section 1

Record of vessels

Article 15

Fishing authorisations

1. Member States shall issue fishing authorisations to fishing vessels targeting Mediterranean swordfish and flying their flag, in accordance with the relevant provisions laid down in Regulation (EU) 2017/2403, in particular Articles 20 and 21 thereof.

2. Only Union vessels included in the ICCAT record of vessels, in accordance with the procedure laid down in Articles 16 and 17, shall be allowed to target, retain on board, tranship, land, transport or process Mediterranean swordfish, without prejudice to the provisions on by-catches laid down in Article 13.

3. Large-scale fishing vessels authorised by Member States shall be registered in the ICCAT record of vessels 20 metres in length overall or greater authorised to operate in the ICCAT Convention area.

Article 16

Information on vessels authorised to catch Mediterranean swordfish and albacore tuna in the current year

1. Member States shall submit electronically each year to the Commission the following information in the format set out in the ICCAT Guidelines for submitting data and information:

(a) by 1 January, the information on fishing vessels flying their flag and authorised to catch Mediterranean swordfish, as well as vessels authorised to catch Mediterranean swordfish in the context of recreational fisheries;

(b) by 1 March, the information on fishing vessels flying their flag and authorised to target Mediterranean albacore tuna.

The Commission shall send to the ICCAT Secretariat the information referred to in point (a) by 15 January of each year and the information referred to in point (b) by 15 March of each year.

The information on the fishing vessels referred to in points (a) and (b) of the first subparagraph of this paragraph shall contain the vessel's name and Union fleet register number (CFR) as defined in Annex I to Commission Implementing Regulation (EU) 2017/218 ([15]).

([15]) Commission Implementing Regulation (EU) 2017/218 of 6 February 2017 on the Union fishing fleet register (OJ L 34, 9.2.2017, p. 9).

2. In addition to the information referred to in paragraph 1, Member States shall notify the Commission of any modification of the information on fishing vessels referred to in paragraph 1 within 30 days of that modification. The Commission shall, within 45 days from the date of the modification, transmit that information to the ICCAT Secretariat.

3. In addition to any information transmitted to the ICCAT Secretariat in accordance with paragraphs 1 and 2 of this Article, the Commission shall where necessary, pursuant to Article 7(6) of Regulation (EU) 2017/2403, send updated details of the vessels referred to in paragraph 1 of this Article to the ICCAT Secretariat without delay.

Article 17

Information on vessels authorised to target Mediterranean swordfish using harpoons or pelagic longlines during the preceding year

1. By 30 June of each year, Member States shall submit electronically to the Commission the following information concerning fishing vessels flying their flag that were authorised to carry out pelagic longline fisheries or harpoon fisheries targeting Mediterranean swordfish during the preceding year:

(a) name of the vessel (in the absence of the name, the registry number without country initials);

(b) Union fleet register number (CFR) as defined in Annex I to Implementing Regulation (EU) 2017/218;

(c) ICCAT record number.

2. The information referred to in paragraph 1 shall be submitted in the format set out in the ICCAT Guidelines for submitting data and information.

3. The Commission shall send the information referred to in paragraph 1 to the ICCAT Secretariat by 31 July of each year.

Section 2

Monitoring and surveillance

Article 18

Vessel monitoring system

1. For control purposes, the transmission of vessel monitoring system (VMS) data from fishing vessels that are authorised to catch Mediterranean swordfish shall not be interrupted when those vessels are in port.

2. Member States shall ensure that their fisheries monitoring centres forward to the Commission and a body designated by it, in real time and using the format 'https data feed', the VMS messages received from the fishing vessels flying their flag. The Commission shall send those messages electronically to the ICCAT Secretariat.

3. Member States shall ensure that:

(a) VMS messages from the fishing vessels flying their flag are forwarded to the Commission at least every two hours;

(b) in the event of a technical malfunction of the VMS, alternative messages from the fishing vessel flying their flag received in accordance with Article 25(1) of Implementing Regulation (EU) No 404/2011 are forwarded to the Commission within 24 hours of receipt by their fisheries monitoring centres;

(c) VMS messages forwarded to the Commission are numbered sequentially (with a unique identifier) in order to avoid duplication;

(d) VMS messages forwarded to the Commission comply with Article 24(3) of Implementing Regulation (EU) No 404/2011.

4. Each Member State shall take the necessary measures to ensure that all VMS messages made available to its inspection vessels are treated in a confidential manner and are limited to inspection at sea operations.

Article 19

Chartering of Union fishing vessels

The chartering of Union fishing vessels for targeting Mediterranean swordfish shall be prohibited.

Article 20

National scientific observer programmes for pelagic longline vessels

1. Each Member State with a quota for Mediterranean swordfish shall implement a national scientific observer programme for pelagic longline vessels flying that Member State's flag and targeting Mediterranean swordfish in accordance with this Article. The national observer programme shall comply with the minimum standards laid down in Annex I.

2. Each Member State concerned shall ensure that national scientific observers are deployed on at least 10 % of pelagic longline vessels over 15 metres in length overall flying that Member State's flag and targeting Mediterranean swordfish. The percentage coverage shall be measured by number of fishing days, sets, vessels or trips.

3. Each Member State concerned shall design and implement a scientific monitoring approach to collect the information on the activities of pelagic longline vessels 15 metres in length overall and below flying that Member State's flag. Each flag Member State shall present the details of that scientific monitoring approach to the Commission in its annual fishing plan referred to in Article 9 by 2020.

4. The Commission shall immediately submit the details of the scientific monitoring approach referred to in paragraph 3 to the ICCAT Standing Committee on Research and Statistics (SCRS) for evaluation. Scientific monitoring approaches shall be subject to the approval of the ICCAT Commission at the ICCAT annual meeting prior to their implementation.

5. Member States shall issue their national scientific observers with an official identification document.

6. In addition to the tasks of scientific observers laid down in Annex I, Member States shall require scientific observers to assess and report the following data on Mediterranean swordfish:

(a) the level of discards of specimens below the minimum conservation reference size;

(b) region specific size and age at maturity;

(c) habitat use, for comparison of the availability of Mediterranean swordfish to various fisheries, including comparisons between traditional and mesopelagic longline fisheries;

(d) the impact of the mesopelagic longline fisheries in terms of catch composition, catch per unit effort series and size distribution of the catches; and

(e) monthly estimation of the proportion of spawners and recruits in the catches.

7. By 30 June of each year Member States shall submit to the Commission the information collected under their national scientific observer programmes of the previous year. The Commission shall forward that information to the ICCAT Secretariat by 31 July of each year.

Section 3

Control of catches

Article 21

Recording and reporting of catches

1. The master of each fishing vessel authorised to catch Mediterranean swordfish shall keep a fishing logbook in accordance with the requirements laid down in Annex II and shall submit the logbook information to the flag Member State.

2. Without prejudice to the reporting obligations for Member States established in Regulation (EC) No 1224/2009, Member States shall send quarterly reports to the Commission of all catches of Mediterranean swordfish made by authorised vessels flying their flag, unless such information is sent on a monthly basis. Those quarterly reports shall be sent using the aggregated catch data report format and no later than 15 days following the end of each quarter period (namely by 15 April, 15 July and 15 October of each year and by 15 January of the following year). The Commission shall send that information to the ICCAT Secretariat by 30 April, 30 July and 30 October of each year and by 30 January of the following year.

3. In addition to the information referred to in paragraph 1, Member States shall submit to the Commission, by 30 June of each year, the following information concerning Union fishing vessels that were authorised to carry out pelagic longline fisheries or harpoon fisheries targeting Mediterranean swordfish during the preceding year:

(a) information related to fishing activities by target species and area, based on sampling or on the whole fleet, including:

(i) fishing period(s) and total annual number of fishing days of the vessel;

(ii) geographical areas, by ICCAT statistical rectangles, for the fishing activities carried out by the vessel;

(iii) type of vessel;

(iv) number of hooks used by the vessel;

(v) number of longline units used by the vessel;

(vi) overall length of all longline units for the vessel;

(b) data on the catches, in the smallest time-area possible, including:

(i) size and, if possible, age distributions of the catches;

(ii) catches and catch composition per vessel;

(iii) fishing effort (average fishing days per vessel, average number of hooks per vessel, average longline units per vessel, average overall length of longline per vessel).

The Commission shall forward that information to the ICCAT Secretariat by 31 July of each year.

4. The information referred to in paragraphs 1, 2 and 3 shall be submitted in the format set out in the ICCAT Guidelines for submitting data and information.

Article 22

Data on quota uptake

1. Without prejudice to Article 34 of Regulation (EC) No 1224/2009, each Member State shall inform the Commission without delay when the uptake of the quota for Mediterranean swordfish allocated to a fishing gear type is deemed to have reached 80 %.

2. When accumulated catches of Mediterranean swordfish have reached 80 % of the national quota, the flag Member States shall send data on catches to the Commission on a weekly basis.

Section 4

Landings and transhipments

Article 23

Designated ports

1. Catches of Mediterranean swordfish, including by-catches and Mediterranean swordfish caught in the context of recreational fisheries with no tag affixed to each specimen as referred to in Article 30, shall only be landed or transhipped in designated ports.

2. Each Member State shall designate, in accordance with Article 43(5) of Regulation (EC) 1224/2009, ports in which landings and transhipments of Mediterranean swordfish referred to in paragraph 1 shall take place.

3. By 15 February of each year, Member States shall transmit a list of designated ports to the Commission. By 1 March of each year, the Commission shall transmit that list to the ICCAT Secretariat.

Article 24

Prior notification

1. Article 17 of Regulation (EC) No 1224/2009 shall apply to masters of Union fishing vessels of 12 metres in length overall or more, included in the list of vessels referred to in Article 16 of this Regulation. The prior notification referred to in Article 17 of Regulation (EC) No 1224/2009 shall be sent to the competent authority of the Member State or CPC whose ports or landing facility they intend to use, as well as to the flag Member State, if different from the port Member State.

2. Masters of Union fishing vessels under 12 metres in length overall included in the list of vessels referred to in Article 16 shall, at least four hours before the estimated time of arrival at the port, notify the competent authority of the Member State or the CPC whose ports or landing facility they wish to use, as well as the flag Member State, if different from the port Member State, the following information:

(a) estimated time of arrival;

(b) estimated quantity of Mediterranean swordfish retained on board; and

(c) the information on the geographical area where the catch was taken.

3. If the fishing grounds are less than four hours from the port, the estimated quantities of Mediterranean swordfish retained on board may be modified at any time prior to arrival.

4. The authorities of the port Member States shall maintain a record of all prior notifications for the current year.

Article 25

Transhipments

1. Transhipment at sea by Union vessels carrying on board Mediterranean swordfish, or by third country vessels in Union waters, shall be prohibited in all circumstances.

2. Without prejudice to Article 51, Article 52(2) and (3) and Articles 54 and 57 of Regulation (EU) 2017/2107, vessels shall only tranship Mediterranean swordfish in designated ports.

Section 5

Inspections

Article 26

Annual inspection plans

1. By 31 January each year, Member States shall transmit their annual inspection plans to the Commission. Those annual inspection plans shall be set up in accordance with:

(a) the objectives, priorities and procedures as well as benchmarks for inspection activities set out in Commission Implementing Decision (EU) 2018/1986 ([16]); and

(b) the national control action programme for Mediterranean swordfish established under Article 46 of Regulation (EC) No 1224/2009.

2. The Commission shall compile the national inspection plans and integrate them into the Union inspection plan. The Union inspection plan shall be transmitted by the Commission to the ICCAT Secretariat, for endorsement by ICCAT, together with the annual fishing plans referred to in Article 9.

([16]) Commission Implementing Decision (EU) 2018/1986 of 13 December 2018 establishing specific control and inspection programmes for certain fisheries and repealing Implementing Decisions 2012/807/EU, 2013/328/EU, 2013/305/EU and 2014/156/EU (OJ L 317, 14.12.2018, p. 29).

Article 27

ICCAT Scheme of Joint International Inspection

1. Joint international inspection activities shall be carried out in accordance with the ICCAT Scheme for Joint International Inspection ('the ICCAT Scheme') set out in Annex III.

2. Member States whose fishing vessels are authorised to catch Mediterranean swordfish shall assign inspectors and carry out inspections at sea under the ICCAT Scheme. The Commission or a body designated by it may assign Union inspectors to the ICCAT Scheme.

3. When, at any time, more than 50 fishing vessels flying the flag of a Member State are engaged in Mediterranean swordfish fisheries in the ICCAT Convention area, that Member State shall deploy an inspection vessel for the purpose of inspection and control at sea in the Mediterranean Sea throughout the period that those vessels are there. That obligation shall also be deemed to have been complied with where Member States cooperate to deploy an inspection vessel or where a Union inspection vessel is deployed in the Mediterranean Sea.

4. The Commission or a body designated by it shall coordinate the surveillance and inspection activities for the Union. The Commission may draw up, in coordination with the Member State concerned, joint inspection programmes to enable the Union to fulfil its obligation under the ICCAT Scheme. Member States whose fishing vessels are engaged in Mediterranean swordfish fisheries shall adopt the necessary measures to facilitate the implementation of those joint inspection programmes, in particular as regards the human and material resources required and the periods when and geographical areas where those resources are to be deployed.

5. Member States shall inform the Commission, by 1 December of each year, of the names of the inspectors and the inspection vessels they intend to assign to the ICCAT Scheme during the following year. Using that information, the Commission shall draw up, in collaboration with the Member States, an annual plan for the Union participation in the ICCAT Scheme, which it shall send to the ICCAT Secretariat by 1 January of each year.

Article 28

Inspections in case of infringements

Where a vessel flying the flag of a Member State has committed an infringement of the provisions of this Regulation, that Member State shall ensure that a physical inspection of that vessel takes place under its authority in its ports or, where the vessel is not in one of its ports, by a person designated by that Member State.

CHAPTER 4

Recreational fisheries

Article 29

Management measures

1. Each Member State allowing recreational fishing for Mediterranean swordfish shall make provision for a recreational fisheries quota within its national quota and shall inform the Commission thereof when transmitting its annual fishing plan in accordance with Article 9. Such provision shall ensure that all dead Mediterranean swordfish are deducted from the quota.

2. The Member States referred to in paragraph 1 of this Article shall, for the vessels flying their flag which are engaged in recreational fisheries for Mediterranean swordfish, ensure that the information on authorised vessels referred to in Article 30(2) includes those vessels. Vessels not included with that information shall not be authorised to fish for Mediterranean swordfish.

3. The selling and any other form of marketing of Mediterranean swordfish caught in recreational fisheries shall be prohibited.

4. Notwithstanding Article 15(1) of Regulation (EU) No 1380/2013, it shall be prohibited to catch, retain on board, tranship or land more than one Mediterranean swordfish per vessel per day for recreational fisheries. The Member States concerned shall take the necessary measures to ensure, to the greatest extent possible, and to facilitate the release of Mediterranean swordfish caught alive in the framework of recreational fishing, and may take more restrictive measures which improve the protection of Mediterranean swordfish.

Article 30

Control measures

1. Only 'rod and line' vessels shall be authorised to catch Mediterranean swordfish in recreational fisheries.

2. The information on authorised recreational vessels sent to the ICCAT Secretariat in accordance with point (a) of Article 16(1) shall include the following:

(a) name of the vessel (in the absence of the name, the registry number without country initials);

(b) previous name of the vessel, where applicable;

(c) vessel's length overall;

(d) name and address of owner(s) and operator(s) of the vessel.

3. Catch data, including length (LJFL) and live weight of each Mediterranean swordfish caught, retained on board and landed in the context of recreational fisheries shall be recorded and reported in accordance with Article 21.

4. Mediterranean swordfish may only be landed whole or gilled and gutted, and either in a designated port in accordance with Article 23, or with a tag affixed to each specimen. Each tag shall have a unique country specific number and be tamper proof.

5. Member States shall establish a tagging programme for the purposes of this Regulation and include the specifications of such programme in the annual fishing plans referred in Article 9.

6. Each Member State shall only authorise the use of tags as long as the accumulated catch amounts are within the quota allocated to it.

7. Each year Member States shall send to the Commission a report on the implementation of the tagging programme, at least two months and 15 days before the ICCAT annual meeting. The Commission shall compile the information from Member States and send it to the ICCAT Secretariat at least two months before the ICCAT annual meeting.

TITLE III

FINAL PROVISIONS

Article 31

Annual report

1. By 15 September of each year, Member States shall submit to the Commission a report, for the preceding calendar year, on their implementation of this Regulation, and any additional information as appropriate.

2. The annual report shall include information on the steps taken to mitigate by-catch and reduce discards of Mediterranean swordfish below the minimum conservation reference size, and on any relevant research in that field.

3. The Commission shall compile the information received pursuant to paragraphs 1 and 2, and shall forward it to the ICCAT Secretariat by 15 October of each year.

4. The Commission may adopt implementing acts as regards detailed requirements for the format of the annual report referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 36(2).

Article 32

Review

The Commission shall report to the European Parliament and to the Council on the functioning of the recovery plan set out in this Regulation by 31 December 2025.

Article 33

Financing

For the purposes of Regulation (EU) No 508/2014 of the European Parliament and of the Council ([17]), the recovery plan set out in this Regulation shall be deemed to be a multiannual plan within the meaning of Article 9 of Regulation (EU) No 1380/2013.

Article 34

Procedure for amendments

1. Where necessary in order to implement into Union law ICCAT recommendations amending or supplementing the ICCAT recovery plan which become binding on the Union, and insofar as amendments to Union law do not go beyond ICCAT recommendations, the Commission is empowered to adopt delegated acts in accordance with Article 35 for the purpose of amending:

(a) deadlines for reporting information as laid down in Article 9(1) and (2), Article 10(3), Article 16(1) and (3), Article 17(1) and (3), Article 21(2) and (3), Article 22(2), Article 23(3), Article 26(1), Article 27(5) and Article 31(1) and (3);

(b) closure periods as provided in Article 10(1) and (2);

(c) the minimum conservation reference size set out in Article 11(1);

(d) the tolerance levels referred to in Articles 12 and 13;

(e) the technical characteristics of the fishing gear laid down in Article 14(1) to (4);

(f) the percentage of quota uptake laid down in Article 22(1) and (2);

(g) the information on vessels referred to in Article 16(1) and (2), Article 17(1), Article 21(1), (2), (3) and (4) and Article 30(2); and

(h) Annexes I, II and III.

2. Any amendments adopted in accordance with paragraph 1 shall be strictly limited to the implementation of amendments or supplements to the corresponding ICCAT recommendations into Union law.

Article 35

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 34 shall be conferred on the Commission for a period of five years from 15 July 2019. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 34 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 act 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.

([17]) Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

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 34 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 36

Committee procedure

1. The Commission shall be assisted by the Committee for Fisheries and Aquaculture established by Article 47 of Regulation (EU) No 1380/2013. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 37

Amendments to Regulation (EU) 2017/2107

In Regulation (EU) 2017/2107, Articles 20 to 26 are deleted.

Article 38

Amendments to Regulation (EC) No 1967/2006

In Annex II to Regulation (EC) No 1967/2006, point 6(2) is replaced by the following:

'2. 2 500 hooks for vessels targeting swordfish (*Xiphias gladius*) where this species account for at least 70 % of the catch in live weight after sorting;'.

Article 39

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

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

Done at Brussels, 20 June 2019.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	G. CIAMBA

ANNEX I

ICCAT MINIMUM STANDARDS FOR FISHING VESSELS SCIENTIFIC OBSERVER PROGRAMMES

General Provisions

1. These are the minimum standards for fishing vessels scientific observer programmes laid down in ICCAT Recommendation 16-14.

Qualifications of Observers

2. Without prejudice to any training or technical qualifications recommended by the SCRS, CPCs shall ensure that their observers have the following minimum qualifications to accomplish their tasks:

   (a) sufficient knowledge and experience to identify ICCAT species and fishing gear configurations;

   (b) the ability to observe and record accurately the information to be collected under the programme;

   (c) the capability of performing the tasks set forth in paragraph 7 below;

   (d) the ability to collect biological samples; and

   (e) minimum and adequate training in safety and sea survival.

3. In addition, in order to ensure the integrity of their national observer programme, CPCs shall ensure the observers:

   (a) are not crew members of the fishing vessel being observed;

   (b) are not employees of the owner or beneficial owner of the fishing vessel being observed; and

   (c) do not have current financial or beneficial interests in the fisheries being observed.

Observer Coverage

4. Each CPC shall ensure the following with respect to its domestic observer programmes:

   (a) a minimum of 5 % observer coverage of fishing effort in each of the pelagic longline and as defined in the ICCAT glossary, baitboat, traps, gillnet and trawl fisheries. The percentage coverage will be measured:

      (i) for pelagic longline fisheries, by number of fishing days, sets, or trips;

      (ii) for baitboat and trap fisheries, in fishing days;

      (iii) for gillnet fisheries, in fishing hours or days; and

      (iv) for trawl fisheries, in fishing hauls or days;

   (b) Notwithstanding point (a), for vessels less than 15 metres in length overall, where an extraordinary safety concern may exist that precludes deployment of an onboard observer, a CPC may employ an alternative scientific monitoring approach that will collect data equivalent to that specified in ICCAT Recommendation 16-14 in a manner that ensures comparable coverage. In any such cases, the CPC wishing to avail itself of an alternative approach must present the details of the approach to the SCRS for evaluation. The SCRS will advise ICCAT on the suitability of the alternative approach for carrying out the data collection obligations set out in ICCAT Recommendation 16-14. Alternative approaches implemented pursuant to this provision shall be subject to the approval of ICCAT at the annual meeting prior to implementation;

   (c) representative temporal and spatial coverage of the operation of the fleet to ensure the collection of adequate and appropriate data as required under ICCAT Recommendation 16-14 and any additional domestic CPC observer programme requirements, taking into account characteristics of the fleets and fisheries;

   (d) data collection on pertinent aspects of the fishing operation, including catch, as detailed in paragraph 7.

5. CPCs may conclude bilateral arrangements whereby one CPC places its domestic observers on vessels flying the flag of another CPC, as long as all provisions of ICCAT Recommendation 16-14 are complied with.

6. CPCs shall endeavour to ensure that observers alternate vessels between their assignments.

Tasks of the Observer

7. CPCs shall require, *inter alia*, observers to:

   (a) Record and report upon the fishing activity of the observed vessel, which shall include at least the following:

      (i) data collection, that includes quantifying total target catch, discards and by-catch (including sharks, sea turtles, marine mammals, and seabirds), estimating or measuring size composition as practicable, disposition status (i.e., retained, discarded dead, released alive), the collection of biological samples for life history studies (e.g., gonads, otoliths, spines, scales);

      (ii) collect and report on all tags found;

      (iii) fishing operation information, including:

         — location of catch by latitude and longitude,

         — fishing effort information (e.g., number of sets, number of hooks, etc.),

         — date of each fishing operation, including, as appropriate, the start and stop times of the fishing activity,

         — use of fish aggregating objects, including fish aggregating devices (FADs), and

         — general condition of released animals related to survival rates (i.e. dead/alive, wounded, etc.);

   (b) observe and record the use of by-catch mitigation measures and other relevant information;

   (c) to the extent possible, observe and report environmental conditions (e.g., sea state, climate and hydrologic parameters, etc.);

   (d) observe and report on FADs, in accordance with the ICCAT Observer programme adopted under the multiannual conservation and management programme for tropical tuna; and

   (e) perform any other scientific tasks as recommended by SCRS and agreed by ICCAT.

Obligations of the observer

8. CPCs shall ensure that the observer:

   (a) does not interfere with the electronic equipment of the vessel;

   (b) is familiar with the emergency procedures aboard the vessel, including the location of life rafts, fire extinguishers and first aid kits;

   (c) communicates as needed with the master on relevant observer issues and tasks;

   (d) does not hinder or interfere with the fishing activities and the normal operations of the vessel;

   (e) participates in a debriefing session(s) with appropriate representatives of the scientific institute or the domestic authority responsible for implementing the observer programme.

Obligations of the master

9. CPCs shall ensure that the master of the vessel to which the observer is assigned:

   (a) permits appropriate access to the vessel and its operations;

   (b) allows the observer to carry out his/her responsibilities in an effective way, including by:

      (i) providing appropriate access to the vessel's gear, documentation (including electronic and paper logbooks), and catch;

      (ii) communicating at any time with appropriate representatives of the scientific institute or domestic authority;

      (iii) ensuring appropriate access to electronics and other equipment pertinent to fishing, including but not limited to:

         — satellite navigation equipment,

         — electronic means of communication;

(iv) ensuring that no one on board the observed vessel tampers with or destroys observer equipment or documentation; obstructs, interferes with, or otherwise acts in a manner that could unnecessarily prevent the observer from performing his or her duties; intimidates, harasses, or harms the observer in any way; or bribes or attempts to bribe the observer;

(c) provides accommodation to observers, including lodging, food and adequate sanitary and medical facilities, equal to those of officers;

(d) provides the observer adequate space on the bridge or pilot house to perform his/her tasks, as well as space on deck adequate for carrying out observer tasks.

Duties of the CPCs

10. Each CPC shall:

(a) require its vessels, when fishing for ICCAT species, to carry a scientific observer in accordance with the provisions of ICCAT Recommendation 16-14;

(b) oversee the safety of its observers;

(c) encourage, where feasible and appropriate, their scientific institute or domestic authority to enter into agreements with the scientific institutes or domestic authorities of other CPCs for the exchange of observer reports and observer data between them;

(d) provide in its annual report for use by ICCAT and the SCRS, specific information on the implementation of ICCAT Recommendation 16-14, which shall include:

(i) details on the structure and design of their scientific observer programmes, including, *inter alia*:

— the target level of observer coverage by fishery and gear type as well as how measured,

— data required to be collected,

— data collection and handling protocols in place,

— information on how vessels are selected for coverage to achieve the CPC's target level of observer coverage,

— observer training requirements, and

— observer qualification requirements;

(ii) the number of vessels monitored, the coverage level achieved by fishery and gear type; and

(iii) details on how those coverage levels were calculated;

(e) following the initial submission of the information required under paragraph 10(d)(i), report changes to the structure or design of its observer programmes in its annual reports only when such changes occur. CPCs shall continue to report the information required pursuant to paragraph 10(d)(ii) to ICCAT annually;

(f) each year, using the designated electronic formats that are developed by the SCRS, report to the SCRS information collected through domestic observer programmes for use by ICCAT, in particular for stock assessment and other scientific purposes, in line with procedures in place for other data reporting requirements and consistent with domestic confidentiality requirements;

(g) ensure implementation of robust data collection protocols by its observers, when carrying out their tasks referred to in paragraph 7, including, as necessary and appropriate, the use of photography.

Duties of the Executive Secretary

11. The Executive Secretary facilitates access by SCRS and ICCAT to relevant data and information submitted pursuant to ICCAT Recommendation 16-14.

Duties of the SCRS

12. The duties of the SCRS are to:

(a) develop, as needed and appropriate, an observer working manual for voluntary use by CPCs in their domestic observer programmes, that includes model data collection forms and standardised data collection procedures, taking into account observer manuals and related materials that may already exist through other sources, including CPCs, regional and sub-regional bodies, and other organisations;

(b) develop fisheries specific guidelines for electronic monitoring systems;

(c) provide ICCAT with a summary of the scientific data and information collected and reported pursuant to ICCAT Recommendation 16-14 and any relevant associated findings;

(d) make recommendations, as necessary and appropriate, on how to improve the effectiveness of scientific observer programmes in order to meet the data needs of ICCAT, including possible revisions to ICCAT Recommendation 16-14 or with respect to implementation of these minimum standards and protocols by CPCs.

Electronic Monitoring Systems

13. Where they have been determined by SCRS to be effective in a particular fishery, electronic monitoring systems may be installed on board fishing vessels to complement or, pending SCRS advice and an ICCAT decision, to replace the human observer on board.

14. CPCs should consider any applicable guidelines that are endorsed by SCRS on the use of electronic monitoring systems.

15. CPCs are encouraged to report to the SCRS their experiences in the use of electronic monitoring systems in their ICCAT fisheries to complement human observer programmes. CPCs who have not yet implemented such systems are encouraged to explore their use and report their findings to the SCRS.

ANNEX II

REQUIREMENTS FOR FISHING LOGBOOKS

Minimum specifications for fishing logbooks:

1. The logbook shall be numbered by sheet.
2. The logbook shall be completed every day (midnight) or before port arrival.
3. The logbook shall be completed in case of at-sea inspections.
4. One copy of the sheets shall remain attached to the logbook.
5. Logbooks shall be kept on board to cover a period of one year of operation.

Minimum standard information for fishing logbooks:

1. Master's name and address.
2. Dates and ports of departure, dates and ports of arrival.
3. Vessel's name, register number, ICCAT number, international radio call sign and IMO number (if available).
4. Fishing gear:
   (a) type FAO code;
   (b) dimension (e.g. length, mesh size, number of hooks).
5. Operations at sea with one line (minimum) per day of trip, providing:
   (a) activity (e.g. fishing, steaming);
   (b) position: exact daily positions (in degree and minutes), recorded for each fishing operation or at midday when no fishing has been conducted during that day;
   (c) record of catches, including:
      (i) FAO code;
      (ii) round (RWT) weight in kg per day;
      (iii) number of specimens per day.
6. Master's signature.
7. Means of weight measure: estimation, weighing on board.
8. The logbook shall be kept in equivalent live weight of fish and shall mention the conversion factors used in the evaluation.

Minimum information for fishing logbooks in case of landing or transhipment:

1. Dates and port of landing or transhipment.
2. Products:
   (a) species and presentation by FAO code;
   (b) number of fish or boxes and quantity in kg.
3. Signature of the master or vessel agent.
4. In case of transhipment: receiving vessel name, its flag and ICCAT number.

ANNEX III

ICCAT SCHEME OF JOINT INTERNATIONAL INSPECTION

Pursuant to paragraph 3 of Article IX of the ICCAT Convention, ICCAT recommends the establishment of the following arrangements for international control outside the waters under national jurisdiction for the purpose of ensuring the application of the ICCAT Convention and the measures in force thereunder:

I. Serious violations

1. For the purposes of these procedures, a serious violation means the following violations of the provisions of the ICCAT conservation and management measures adopted by ICCAT:

   (a) fishing without a license, permit or authorisation issued by the flag CPC;

   (b) failure to maintain sufficient records of catch and catch-related data in accordance with the ICCAT's reporting requirements or significant misreporting of such catch or catch-related data;

   (c) fishing in a closed area;

   (d) fishing during a closed season;

   (e) intentional taking or retention of species in contravention of any applicable conservation and management measure adopted by ICCAT;

   (f) significant violation of catch limits or quotas in force pursuant to the ICCAT rules;

   (g) using prohibited fishing gear;

   (h) falsifying or intentionally concealing the markings, identity or registration of a fishing vessel;

   (i) concealing, tampering with or disposing of evidence relating to investigation of a violation;

   (j) multiple violations which taken together constitute a serious disregard of measures in force pursuant to ICCAT;

   (k) assault, resist, intimidate, sexually harass, interfere with, or unduly obstruct or delay an authorised inspector or observer;

   (l) intentionally tampering with or disabling the VMS;

   (m) such other violations as may be determined by ICCAT, once these are included and circulated in a revised version of these procedures;

   (n) interference with the satellite monitoring system or operation of a vessel without a VMS;

   (o) transhipment at sea.

2. In the case of any boarding and inspection of a fishing vessel during which the authorised inspectors observe an activity or condition that would constitute a serious violation, as defined in paragraph 1, the authorities of the flag State of the inspection vessel shall immediately notify the flag State of the fishing vessel, directly as well as through the ICCAT Secretariat. In such situations, the inspector should, also inform any inspection vessel of the flag State of the fishing vessel known to be in the vicinity.

3. ICCAT inspectors shall register the inspections undertaken and the infringements detected (if any) in the fishing vessel logbook.

4. The flag State CPC shall ensure that, following the inspection referred to in paragraph 2, the fishing vessel concerned ceases all fishing activities. The flag State CPC shall require the fishing vessel to proceed within 72 hours to a port designated by it, where an investigation shall be initiated.

5. In the case where an inspection has detected an activity or condition that would constitute a serious violation, the vessel should be reviewed under the procedures described in ICCAT Recommendation 11-18 Further Amending Recommendation 09-10 Establishing a List of Vessels Presumed to Have Carried Out Illegal, Unreported and Unregulated Fishing Activities in the ICCAT Convention Area, taking into account any response actions and other follow up.

II. Conduct of inspections

6. Inspections shall be carried out by inspectors designated by the Contracting Governments. The names of the authorised government agencies and individual inspectors designated for that purpose by their respective governments shall be notified to the ICCAT Commission.

7. Inspection vessels carrying out international boarding and inspection duties in accordance with this Annex shall fly a special flag or pennant approved by the ICCAT Commission and issued by the ICCAT Secretariat. The names of the vessels so used shall be notified to the ICCAT Secretariat as soon as practical in advance of the commencement of inspection activities. The ICCAT Secretariat shall make information regarding designated inspection vessels available to all CPCs, including by posting on its password-protected website.

8. Inspectors shall carry appropriate identity documentation issued by the authorities of the flag State, which shall be in the form shown in paragraph 21.

9. Subject to the arrangements agreed under paragraph 16, a fishing vessel flagged to a Contracting Party and fishing for tuna or tuna-like fishes in the ICCAT Convention area outside waters under national jurisdiction shall stop when given the appropriate signal in the International Code of Signals by an inspection vessel flying the ICCAT pennant described in paragraph 7 and carrying an inspector unless the fishing vessel is actually carrying out fishing operations, in which case it shall stop immediately once it has finished such operations. The master of the fishing vessel shall permit the inspection party, as specified in paragraph 10, to board it and must provide a boarding ladder. The master shall enable the inspection party to make such examination of equipment, catch or gear and any relevant documents as an inspector deems necessary to verify compliance with ICCAT recommendations in force in relation to the flag State of the fishing vessel being inspected. Further, inspectors may ask for any explanations that they deem necessary.

10. The size of the inspection party shall be determined by the commanding officer of the inspection vessel taking into account relevant circumstances. The inspection party should be as small as possible to accomplish the duties set out in this Annex safely and securely.

11. Upon boarding the fishing vessel, inspectors shall produce the identity documentation described in paragraph 8. Inspectors shall observe generally accepted international regulations, procedures and practices relating to the safety of the fishing vessel being inspected and its crew, and shall minimise interference with fishing activities or stowage of product and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board. Inspectors shall limit their enquiries to the ascertainment of the observance of ICCAT recommendations in force in relation to the flag State of the fishing vessel concerned. In making the inspection, inspectors may ask the master of the fishing vessel for any assistance they may require. Inspectors shall draw up a report of the inspection in a form approved by the ICCAT Commission. Inspectors shall sign the report in the presence of the master of the fishing vessel who shall be entitled to add or have added to the report any observations which he or she may think suitable and must sign such observations.

12. Copies of the report shall be given to the master of the fishing vessel and to the government of the inspection party, which shall transmit copies to the appropriate authorities of the flag State of the inspected fishing vessel and to the ICCAT Commission. Where any infringement of ICCAT recommendations is discovered, the inspector should, where possible, also inform any inspection vessel of the flag State of the fishing vessel known to be in the vicinity.

13. Resistance to inspectors or failure to comply with their directions shall be treated by the flag State of the inspected fishing vessel in a manner similar to such conduct committed with respect to a national inspector.

14. Inspectors shall carry out their duties under these arrangements in accordance with the rules set out in this Regulation, but they shall remain under the operational control of their national authorities and shall be responsible to them.

15. Contracting Governments shall consider and act on inspection reports, sighting information sheets as per ICCAT Recommendation 94-09 and statements resulting from documentary inspections of foreign inspectors under these arrangements on a similar basis in accordance with their national legislation to the reports of national inspectors. The provisions of this paragraph shall not impose any obligation on a Contracting Government to give the report of a foreign inspector a higher evidential value than it would possess in the inspector's own country. Contracting Governments shall collaborate in order to facilitate judicial or other proceedings arising from a report of an inspector under these arrangements.

16. (a) Contracting Governments shall inform the ICCAT Commission by 1 January each year of their provisional plans for conducting inspection activities under ICCAT Recommendation 16-05 in that calendar year and the ICCAT Commission may make suggestions to Contracting Governments for the coordination of national operations in this field including the number of inspectors and inspection vessels carrying inspectors;

    (b) the arrangements set out in ICCAT Recommendation 16-05 and the plans for participation shall apply between Contracting Governments unless otherwise agreed between them, and such agreement shall be notified to the ICCAT Commission. Provided, however, that implementation of the scheme shall be suspended between any two Contracting Governments if either of them has notified the ICCAT Commission to that effect, pending completion of such an agreement.

17. (a) The fishing gear shall be inspected in accordance with the regulations in force for the subarea for which the inspection takes place. Inspectors will state the subarea for which the inspection took place, and a description of any violations found, in the inspection report;

    (b) inspectors shall have the authority to inspect all fishing gear in use or on board.

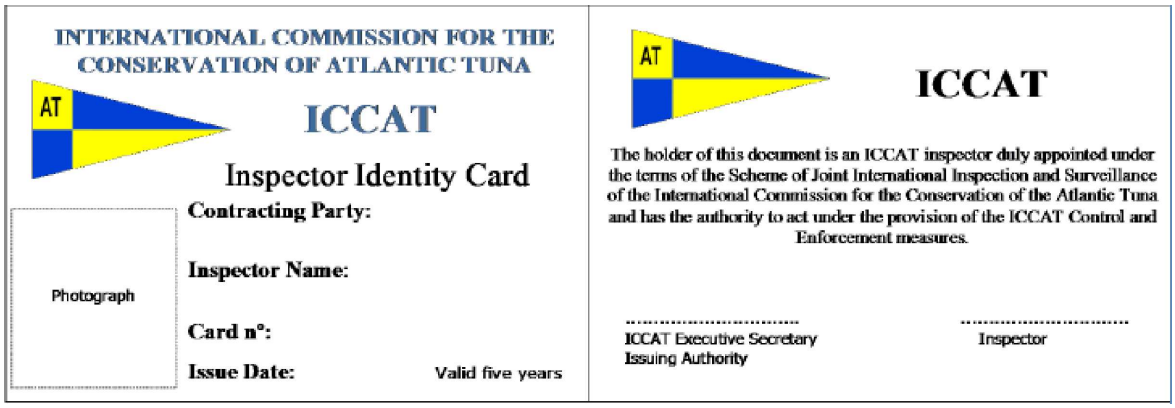
18. Inspectors shall affix an identification mark approved by the ICCAT Commission to any fishing gear inspected which appears to be in contravention of ICCAT recommendations in force in relation to the flag State of the fishing vessel concerned and shall record that fact in his/her report.

19. Inspectors may photograph the gears, equipment, documentation and any other element he/she considers necessary in such a way as to reveal those features which in their opinion are not in conformity with the regulation in force, in which case the subjects photographed should be listed in the report and copies of the photographs should be attached to the copy of the report to the flag State.

20. Inspectors shall, as necessary, inspect all catch on board to determine compliance with ICCAT recommendations.

21. The model Identity Card for inspectors is as follows:

    dimensions: width 10,4 cm, height 7 cm.



REGULATION (EU) 2019/1155 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(a) thereof,

Having regard to the proposal from the European Commission,

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

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

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

Whereas:

(1) The Union's common visa policy has been an integral part of the establishment of an area without internal borders. Visa policy should remain an essential tool for facilitating tourism and business, while helping counter security risks and the risk of irregular migration to the Union. The common visa policy should contribute to generating growth and be consistent with other Union policies, such as those concerning external relations, trade, education, culture and tourism.

(2) The Union should use its visa policy in its cooperation with third countries, and to ensure a better balance between migration and security concerns, economic considerations and general external relations.

(3) Regulation (EC) No 810/2009 of the European Parliament and of the Council ([3]) establishes the procedures and conditions for issuing visas for intended stays on the territory of Member States not exceeding 90 days in any 180-day period.

(4) Visa applications should be examined and decided on by consulates or, by way of derogation, central authorities. Member States should ensure that the consulates and central authorities have sufficient knowledge of local circumstances to ensure the integrity of the visa procedure.

(5) The application procedure should be as easy as possible for applicants. It should be clear which Member State is competent to examine an application, in particular where the applicant intends to visit several Member States. Where possible, Member States should allow for application forms to be completed and submitted electronically. It should also be possible for applicants to sign the application form electronically, where electronic signature is recognised by the competent Member State. Deadlines should be established for the various steps of the procedure, in particular to allow travellers to plan ahead and avoid peak seasons in consulates.

(6) Member States should not be required to maintain the possibility of direct access for the lodging of applications at the consulate in places where an external service provider has been mandated to collect applications on its behalf, without prejudice to the obligations imposed on Member States by Directive 2004/38/EC of the European Parliament and of the Council ([4]), in particular Article 5(2) thereof.

([1]) OJ C 440, 6.12.2018, p. 142.
([2]) Position of the European Parliament of 17 April 2019 (not yet published in the Official Journal) and decision of the Council of 6 June 2019.
([3]) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).
([4]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

(7) The visa fee should ensure that sufficient financial resources are available to cover the expenses of processing applications, including of appropriate structures and of sufficient staff to ensure the quality and integrity of the examination of applications, as well as the respect for deadlines. The amount of the visa fee should be revised every three years on the basis of objective assessment criteria.

(8) Third-country nationals subject to the visa requirement should be able to lodge their application in their place of residence even if the competent Member State has no consulate for the purpose of collecting applications, and is not represented by another Member State, in that third country. To that end, Member States should endeavour to cooperate with external service providers, who should be able to charge a service fee. That service fee should, in principle, not exceed the amount of the visa fee. Where that amount is not sufficient to provide a full service, the external service provider should however be able to charge a higher service fee, subject to the limit provided for in this Regulation.

(9) Representation arrangements should be streamlined and eased and obstacles to the conclusion of such arrangements among Member States should be avoided. The representing Member State should be responsible for the entire visa procedure without the involvement of the represented Member State.

(10) Where the jurisdiction of the consulate of the representing Member State covers more than the host country, it should be possible for the representation arrangement to cover those third countries.

(11) In order to lessen the administrative burden on consulates and to facilitate travel for frequent or regular travellers, multiple-entry visas with a long period of validity should be issued to applicants fulfilling the entry conditions during the entire period of validity of the issued visa according to objectively determined common criteria and not be limited to specific travel purposes or categories of applicants. In that context, Member States should have particular regard for persons travelling for the purpose of exercising their profession, such as business people, seafarers, artists and athletes. It should be possible to issue multiple-entry visas with a shorter period of validity if there are reasonable grounds to do so.

(12) Given the differences in local circumstances, notably with regard to migratory and security risks, as well as the relationships that the Union maintains with specific countries, consulates in individual locations should assess the need to adapt the rules on the issuing of multiple-entry visas to allow for a more favourable or more restrictive application. More favourable approaches in issuing multiple-entry visas with a long period of validity should take into account, in particular, the existence of trade agreements covering the mobility of business persons. On the basis of that assessment, the Commission should, by means of implementing acts, adopt rules regarding the conditions for the issuing of such visas to be applied in each jurisdiction.

(13) Where there is a lack of cooperation by certain third countries to readmit those of their nationals who have been apprehended in an irregular situation, and failure by those third countries to cooperate effectively in the return process, a restrictive and temporary application of certain provisions of Regulation (EC) No 810/2009 should, on the basis of a transparent mechanism based on objective criteria, be applied to enhance a given third country's cooperation on readmission of irregular migrants. The Commission should assess regularly, at least once a year, third countries' cooperation with regard to readmission, and should examine any notification by the Member States concerning the cooperation with a third country in the readmission of irregular migrants. The Commission should, in its assessment of whether a third country is cooperating sufficiently and whether action is needed, take into account the overall cooperation of that third country in the field of migration, in particular in the areas of border management, of prevention of and the fight against migrant smuggling and of prevention of transit of irregular migrants through its territory. Where the Commission considers that the third country is not cooperating sufficiently or where it is notified by a simple majority of Member States that a third country is not cooperating sufficiently, it should submit a proposal to the Council to adopt an implementing decision, while continuing its efforts to improve cooperation with the third country concerned. Also, where, as regards the level of cooperation of a third country with Member States on the readmission of irregular migrants, assessed on the basis of relevant and objective data, the Commission considers that a third country is cooperating sufficiently, it should be possible for the Commission to submit a proposal to the Council to adopt an implementing decision concerning applicants or categories of applicants who are nationals of that third country and who apply for a visa on the territory of that third country, providing for one or more visa facilitations.

(14) In order to ensure that all relevant factors and possible implications of the application of the measures to enhance a third country's cooperation on readmission are adequately taken into account, having regard to the particularly sensitive political nature of such measures and their horizontal implications for the Member States and the Union itself, in particular for their external relations and for the overall functioning of the Schengen area, implementing powers should be conferred on the Council, acting on a proposal from the Commission. Conferring such implementing powers on the Council adequately takes into account the potential politically sensitive nature of the implementation of the measures to enhance the cooperation of a third country on readmission, given also the facilitation agreements that Member States have in place with third countries.

(15) Applicants who have been refused a visa should have the right to appeal. The notification of the refusal should include detailed information on the reasons for the refusal and on the appeal procedure. During the appeal procedure, the applicants should be given access to all relevant information for their case, in accordance with national law.

(16) This Regulation respects fundamental rights and observes the rights and principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect of the right to protection of personal data, the right to respect for private and family life, the rights of the child, and the protection of vulnerable persons.

(17) Local Schengen cooperation is crucial for the harmonised application of the common visa policy and for proper assessment of migratory and security risks. Within that cooperation, Member States should assess the operational application of specific provisions in the light of local circumstances and migratory risk. Cooperation and exchanges among consulates in individual locations should be coordinated by Union delegations.

(18) Member States should closely and regularly monitor the operations of external service providers to ensure compliance with the legal instrument governing the responsibilities entrusted to them. Member States should report to the Commission annually on the cooperation with and monitoring of external service providers. Member States should ensure that the entire procedure for the processing of applications and the cooperation with external service providers is monitored by expatriate staff.

(19) Flexible rules should be established to allow Member States to optimise the sharing of resources and to increase consular coverage. Cooperation among Member States (Schengen Visa Centres) could take any form suited to local circumstances in order to increase geographical consular coverage, reduce Member States' costs, increase the visibility of the Union and improve the service offered to applicants.

(20) Electronic application systems are an important tool to facilitate application procedures. A common solution aiming at digitisation should be developed in the future, thereby making full use of the recent legal and technological developments, to allow applications to be lodged online to accommodate applicants' needs and to attract more visitors to the Schengen area. Straightforward and streamlined procedural guarantees should be strengthened and uniformly applied. Furthermore, where possible, interviews could be conducted using modern digital tools and remote means of communication, such as voice or video calls via internet. The fundamental rights of applicants should be guaranteed during the process.

(21) In order to provide for the possibility of revising the amount of the visa fees set out in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of amending this Regulation as regards the amount of the visa fees. 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 ([5]). 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.

([5]) OJ L 123, 12.5.2016, p. 1.

(22) In order to ensure uniform conditions for the implementation of Regulation (EC) No 810/2009, 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 ([6]).

(23) In accordance with Articles 1 and 2 of the Protocol No 22 on the Position of Denmark annexed to the Treaty on European Union and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(24) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC ([7]); the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(25) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ([8]); Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(26) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis* ([9]) which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC ([10]).

(27) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ([11]) which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ([12]).

(28) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ([13]) which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ([14]).

(29) As regards Cyprus, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis*, within the meaning of Article 3(2) of the 2003 Act of Accession.

([6]) 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).

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

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

([9]) OJ L 176, 10.7.1999, p. 36.

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

([11]) OJ L 53, 27.2.2008, p. 52.

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

([13]) OJ L 160, 18.6.2011, p. 21.

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

(30) As regards Bulgaria and Romania, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 4(2) of the 2005 Act of Accession.

(31) As regards Croatia, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 4(2) of the 2011 Act of Accession.

(32) Regulation (EC) No 810/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 810/2009 is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. This Regulation establishes the procedures and conditions for issuing visas for intended stays on the territory of the Member States not exceeding 90 days in any 180-day period.';

(b) the following paragraph is added:

'4. When applying this Regulation, Member States shall act in full compliance with Union law, including the Charter of Fundamental Rights of the European Union. In accordance with the general principles of Union law, decisions on applications under this Regulation shall be taken on an individual basis.';

(2) Article 2 is amended as follows:

(a) in point 2, point (a) is replaced by the following:

'(a) an intended stay on the territory of the Member States not exceeding 90 days in any 180-day period; or';

(b) point 7 is replaced by the following:

'7. "recognised travel document" means a travel document recognised by one or more Member States for the purpose of crossing the external borders and affixing a visa pursuant to Decision No 1105/2011/EU of the European Parliament and of the Council (*);

(*) Decision No 1105/2011/EU of the European Parliament and of the Council of 25 October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list (OJ L 287, 4.11.2011, p. 9).';

(c) the following points are added:

'12. "seafarer" means any person who is employed, engaged or works in any capacity on board a ship in maritime navigation or a ship navigating in international inland waters;

13. "electronic signature" means an electronic signature as defined in point (10) of Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council (*).

(*) 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).';

(3) in Article 3(5), points (b) and (c) are replaced by the following:

'(b) third-country nationals holding a valid residence permit issued by a Member State which does not take part in the adoption of this Regulation or by a Member State which does not yet apply the provisions of the Schengen *acquis* in full, or third-country nationals holding one of the valid residence permits listed in Annex V issued by Andorra, Canada, Japan, San Marino or the United States of America guaranteeing the holder's unconditional readmission, or holding a valid residence permit for one or more of the overseas countries and territories of the Kingdom of the Netherlands (Aruba, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba);

(c) third-country nationals holding a valid visa for a Member State which does not take part in the adoption of this Regulation, or for a Member State which does not yet apply the provisions of the Schengen *acquis* in full, or for a country which is a party to the Agreement on the European Economic Area, or for Canada, Japan or the United States of America, or holders of a valid visa for one or more of the overseas countries and territories of the Kingdom of the Netherlands (Aruba, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba), when travelling to the issuing country or to any other third country, or when, having used the visa, returning from the issuing country;';

(4) in Article 4, the following paragraph is inserted:

'1a. By way of derogation from paragraph 1, Member States may decide that applications are examined and decided on by central authorities. Member States shall ensure that those authorities have sufficient knowledge of local circumstances of the country where the application is lodged in order to assess the migratory and security risk, as well as sufficient knowledge of the language to analyse documents, and that consulates are involved, where necessary, to conduct additional examination and interviews.';

(5) in Article 5(1), point (b) is replaced by the following:

'(b) if the visit includes more than one destination, or if several separate visits are to be carried out within a period of two months, the Member State whose territory constitutes the main destination of the visit(s) in terms of the length of stay, counted in days, or the purpose of stay; or';

(6) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. A Member State may agree to represent another Member State that is competent in accordance with Article 5 for the purpose of examining and deciding on applications on behalf of that Member State. A Member State may also represent another Member State in a limited manner solely for the collection of applications and the enrolment of biometric identifiers.';

(b) paragraph 2 is deleted;

(c) paragraphs 3 and 4 are replaced by the following:

'3. Where the representation is limited in accordance with the second sentence of paragraph 1, the collection and the transmission of data to the represented Member State shall be carried out in compliance with the relevant data protection and security rules.

4. A bilateral arrangement shall be established between the representing Member State and the represented Member State. That arrangement:

(a) shall specify the duration of the representation, if only temporary, and the procedures for its termination;

(b) may, in particular where the represented Member State has a consulate in the third country concerned, provide for the provision of premises, staff and payments by the represented Member State.';

(d) paragraphs 7 and 8 are replaced by the following:

'7. The represented Member State shall notify the Commission of the representation arrangements or the termination of those arrangements at the latest 20 calendar days before they enter into force or are terminated, except in cases of *force majeure*.

8. The consulate of the representing Member State shall, at the same time as the notification referred to in paragraph 7 takes place, inform both the consulates of other Member States and the Union delegation in the jurisdiction concerned about the representation arrangements or the termination of such arrangements.';

(e) the following paragraphs are added:

'10. If a Member State is neither present nor represented in the third country where the applicant is to lodge the application, that Member State shall endeavour to cooperate with an external service provider, in accordance with Article 43, in that third country.

11. Where a consulate of a Member State in a given location experiences a prolonged technical *force majeure*, that Member State shall seek temporary representation by another Member State in that location for all or some categories of applicants.';

(7) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Applications shall be lodged no more than six months, and for seafarers in the performance of their duties no more than nine months, before the start of the intended visit, and, as a rule, no later than 15 calendar days before the start of the intended visit. In justified individual cases of urgency, the consulate or the central authorities may allow the lodging of applications later than 15 calendar days before the start of the intended visit.';

(b) paragraph 4 is replaced by the following:

'4. Without prejudice to Article 13, applications may be lodged:

(a) by the applicant;

(b) by an accredited commercial intermediary;

(c) by a professional, cultural, sports or educational association or institution on behalf of its members.';

(c) the following paragraph is added:

'5. An applicant shall not be required to appear in person at more than one location in order to lodge an application.';

(8) Article 10 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Applicants shall appear in person when lodging an application for the collection of fingerprints, in accordance with Article 13(2) and (3) and point (b) of Article 13(7). Without prejudice to the first sentence of this paragraph and to Article 45, applicants may lodge their applications electronically, where available.';

(b) paragraph 2 is deleted;

(9) Article 11 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

'1. Each applicant shall submit a manually or electronically completed application form, as set out in Annex I. The application form shall be signed. It may be signed manually or, where electronic signature is recognised by the Member State competent for examining and deciding on an application, electronically.';

(b) the following paragraphs are inserted:

'1a. Where the applicant signs the application form electronically, the electronic signature shall be a qualified electronic signature, within the meaning of point (12) of Article 3 of Regulation (EU) No 910/2014.

1b. The content of the electronic version of the application form, if applicable, shall be as set out in Annex I.';

(c) paragraph 3 is replaced by the following:

'3. The form shall, as a minimum, be available in the following languages:

(a) the official language(s) of the Member State for which a visa is requested or of the representing Member State; and

(b) the official language(s) of the host country.

In addition to the language(s) referred to in point (a), the form may be made available in any other official language(s) of the institutions of the Union.';

(d) paragraph 4 is replaced by the following:

'4. If the official language(s) of the host country is/are not integrated into the form, a translation into that/those language(s) shall be made available separately to applicants.';

(10) Article 14 is amended as follows:

(a) paragraphs 3 to 5 are replaced by the following:

'3. A non-exhaustive list of supporting documents which may be requested from the applicant in order to verify the fulfilment of the conditions listed in paragraphs 1 and 2 is set out in Annex II.

4. Member States may require applicants to present proof of sponsorship or of private accommodation, or of both, by completing a form drawn up by each Member State. That form shall indicate in particular:

(a) whether its purpose is proof of sponsorship or of private accommodation, or of both;

(b) whether the sponsor or inviting person is an individual, a company or an organisation;

(c) the identity and contact details of the sponsor or inviting person;

(d) the identity data (name and surname, date of birth, place of birth and nationality) of the applicant(s);

(e) the address of the accommodation;

(f) the length and purpose of the stay;

(g) possible family ties with the sponsor or inviting person;

(h) the information required pursuant to Article 37(1) of the VIS Regulation.

In addition to the Member State's official language(s), the form shall be drawn up in at least one other official language of the institutions of the Union. A specimen of the form shall be sent to the Commission.

5. Consulates shall, within local Schengen cooperation, assess the implementation of the conditions laid down in paragraph 1, to take account of local circumstances, and of migratory and security risks.';

(b) The following paragraph is inserted:

'5a. Where necessary in order to take account of local circumstances as referred to in Article 48, the Commission shall by means of implementing acts adopt a harmonised list of supporting documents to be used in each jurisdiction. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).';

(c) paragraph 6 is replaced by the following:

'6. The requirements of paragraph 1 of this Article may be waived in the case of an applicant known to the consulate or the central authorities for his integrity and reliability, in particular as regards the lawful use of previous visas, if there is no doubt that he will fulfil the requirements of Article 6(1) of Regulation (EU) 2016/399 of the European Parliament and of the Council (*) at the time of the crossing of the external borders of the Member States.

(*) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the Rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).';

(11) in Article 15(2), the first subparagraph is replaced by the following:

'2. Applicants for a multiple-entry visa shall prove that they are in possession of adequate and valid travel medical insurance covering the period of their first intended visit.';

(12) Article 16 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. Applicants shall pay a visa fee of EUR 80.

2. Children from the age of six years and below the age of 12 years shall pay a visa fee of EUR 40.';

(b) the following paragraph is inserted:

'2a. A visa fee of EUR 120 or EUR 160 shall apply if an implementing decision is adopted by the Council under point (b) of Article 25a(5). This provision shall not apply to children below the age of 12 years.';

(c) paragraph 3 is deleted;

(d) in paragraph 4, point (c) is replaced by the following:

'(c) researchers, as defined in point (2) of Article 3 of Directive (EU) 2016/801 of the European Parliament and of the Council (*), travelling for the purpose of carrying out scientific research or participating in a scientific seminar or conference;

(*) Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.5.2016, p. 21).';

(e) paragraph 5 is replaced by the following:

'5. The visa fee may be waived for:

(a) children from the age of six years and below the age of 18 years;

(b) holders of diplomatic and service passports;

(c) participants in seminars, conferences, sports, cultural or educational events organised by non-profit organisations, aged 25 years or less.';

(f) paragraph 6 is replaced by the following:

'6. In individual cases, the amount of the visa fee to be charged may be waived or reduced when to do so serves to promote cultural or sporting interests, interests in the field of foreign policy, development policy and other areas of vital public interest, or for humanitarian reasons or because of international obligations.';

(g) in paragraph 7, the second subparagraph is replaced by the following:

'When charged in a currency other than the euro, the amount of the visa fee charged in that currency shall be determined and regularly reviewed in application of the euro foreign exchange reference rate set by the European Central Bank. The amount charged may be rounded up and it shall be ensured under local Schengen cooperation that similar fees are charged.';

(h) the following paragraph is added:

'9. The Commission shall assess the need to revise the amount of the visa fees set out in paragraphs 1, 2 and 2a of this Article every three years, taking into account objective criteria, such as the general Union-wide inflation rate as published by Eurostat, and the weighted average of the salaries of Member States' civil servants. On the basis of those assessments, the Commission shall adopt, where appropriate, delegated acts in accordance with Article 51a concerning the amendment of this Regulation as regards the amount of the visa fees.';

(13) Article 17 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

'1. A service fee may be charged by an external service provider referred to in Article 43.';

(b) paragraph 3 is deleted;

(c) the following paragraphs are inserted:

'4a. By way of derogation from paragraph 4, the service fee shall, in principle, not exceed 80 EUR in third countries where the competent Member State has no consulate for the purpose of collecting applications and is not represented by another Member State.

4b. In exceptional circumstances where the amount referred to in paragraph 4a is not sufficient to provide a full service, a higher service fee of up to a maximum of 120 EUR may be charged. In such a case, the Member State concerned shall notify the Commission of its intention to allow for a higher service fee to be charged, at the latest three months before the start of its implementation. The notification shall specify the grounds for the determination of the level of the service fee, in particular the detailed costs leading to the determination of a higher amount.';

(d) paragraph 5 is replaced by the following:

'5. The Member State concerned may maintain the possibility for all applicants to lodge their applications directly at its consulates or at the consulate of a Member State with which it has a representation arrangement, in accordance with Article 8.';

(14) Article 19 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

'1. The competent consulate or the central authorities of the competent Member State shall verify whether:';

(b) in paragraph 2, the first subparagraph is replaced by the following:

'2. Where the competent consulate or the central authorities of the competent Member State find that the conditions referred to in paragraph 1 have been fulfilled, the application shall be admissible and the consulate or the central authorities shall:

— follow the procedures described in Article 8 of the VIS Regulation, and

— further examine the application.';

(c) paragraph 3 is replaced by the following:

'3. Where the competent consulate or the central authorities of the competent Member State find that the conditions referred to in paragraph 1 have not been fulfilled, the application shall be inadmissible and the consulate or central authorities shall without delay:

— return the application form and any documents submitted by the applicant,

— destroy the collected biometric data,

— reimburse the visa fee, and

— not examine the application.';

(d) paragraph 4 is replaced by the following:

'4. By way of derogation from paragraph 3, an application that does not meet the requirements set out in paragraph 1 may be considered admissible on humanitarian grounds, for reasons of national interest or because of international obligations.';

(15) Article 21 is amended as follows:

(a) paragraph 3 is amended as follows:

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

'3. While checking whether the applicant fulfils the entry conditions, the consulate or the central authorities shall verify:';

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

'(e) that the applicant is in possession of adequate and valid travel medical insurance, where applicable, covering the period of the intended stay, or, if a multiple-entry visa is applied for, the period of the first intended visit.';

(b) paragraph 4 is replaced by the following:

'4. The consulate or the central authorities shall, where applicable, verify the length of previous and intended stays in order to verify that the applicant has not exceeded the maximum duration of authorised stay in the territory of the Member States, irrespective of possible stays authorised under a national long-stay visa or a residence permit.';

(c) in paragraph 6, the introductory wording is replaced by the following:

'6. In the examination of an application for an airport transit visa, the consulate or the central authorities shall in particular verify:';

(d) paragraph 8 is replaced by the following:

'8. During the examination of an application, consulates or the central authorities may in justified cases carry out an interview with the applicant and request additional documents.';

(16) Article 22 is amended as follows

(a) paragraphs 1 to 3 are replaced by the following:

'1. On the grounds of a threat to public policy, internal security, international relations or public health, a Member State may require the central authorities of other Member States to consult its central authorities during the examination of applications lodged by nationals of specific third countries or specific categories of such nationals. Such consultation shall not apply to applications for airport transit visas.

2. The central authorities consulted shall reply definitively as soon as possible, but not later than seven calendar days after being consulted. The absence of a reply within that deadline shall mean that they have no grounds for objecting to the issuing of the visa.

3. Member States shall notify the Commission of the introduction or withdrawal of the requirement for prior consultation, as a rule, at the latest 25 calendar days before it becomes applicable. That information shall also be given under local Schengen cooperation in the jurisdiction concerned.';

(b) paragraph 5 is deleted;

(17) Article 23 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. That period may be extended up to a maximum of 45 calendar days in individual cases, notably when further scrutiny of the application is needed.';

(b) the following paragraph is inserted:

'2a. Applications shall be decided on without delay in justified individual cases of urgency.';

(c) paragraph 3 is deleted;

(d) paragraph 4 is amended as follows:

(i) the following point is inserted:

'(ba) issue an airport transit visa in accordance with Article 26; or';

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

'(c) refuse a visa in accordance with Article 32.';

(iii) point (d) is deleted;

(18) Article 24 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the third subparagraph is deleted;

(ii) the fourth subparagraph is replaced by the following:

'Without prejudice to point (a) of Article 12, the period of validity of a visa for one entry shall include a "period of grace" of 15 calendar days.';

(b) paragraph 2 is replaced by the following:

'2. Provided that the applicant fulfils the entry conditions set out in point (a) and points (c) to (e) of Article 6(1) of Regulation (EU) 2016/399, multiple-entry visas with a long validity shall be issued for the following validity periods, unless the validity of the visa would exceed that of the travel document:

(a) for a validity period of one year, provided that the applicant has obtained and lawfully used three visas within the previous two years;

(b) for a validity period of two years, provided that the applicant has obtained and lawfully used a previous multiple-entry visa valid for one year within the previous two years;

(c) for a validity period of five years, provided that the applicant has obtained and lawfully used a previous multiple-entry visa valid for two years within the previous three years.

Airport transit visas and visas with limited territorial validity issued in accordance with Article 25(1) shall not be taken into account for the issuing of multiple-entry visas.';

(c) the following paragraphs are inserted:

'2a. By way of derogation from paragraph 2, the validity period of the visa issued may be shortened in individual cases where there is reasonable doubt that the entry conditions will be met for the entire period.

2b. By way of derogation from paragraph 2, consulates shall, within local Schengen cooperation, assess whether the rules on the issuing of the multiple-entry visas set out in paragraph 2 need to be adapted to take account of local circumstances, and of migratory and security risks, in view of the adoption of more favourable or more restrictive rules in accordance with paragraph 2d.

2c. Without prejudice to paragraph 2, a multiple-entry visa valid for up to five years may be issued to applicants who prove the need or justify their intention to travel frequently or regularly, provided that they prove their integrity and reliability, in particular the lawful use of previous visas, their economic situation in the country of origin and their genuine intention to leave the territory of the Member States before the expiry of the visa for which they have applied.

2d. Where necessary, on the basis of the assessment referred to in paragraph 2b of this Article, the Commission shall, by means of implementing acts, adopt the rules regarding the conditions for the issuing of multiple-entry visas laid down in paragraph 2 of this Article, to be applied in each jurisdiction in order to take account of local circumstances, of the migratory and security risks, and of the Union's overall relations with the third country in question. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).';

(19) The following Article is inserted:

'*Article 25a*

Cooperation on readmission

1. Depending on the level of cooperation of a third country with Member States on the readmission of irregular migrants, assessed on the basis of relevant and objective data, Article 14(6), Article 16(1), point (b) of Article 16(5), Article 23(1), and Article 24(2) and (2c) shall not apply to applicants or categories of applicants who are nationals of a third country that is considered not to be cooperating sufficiently, in accordance with this Article.

2. The Commission shall regularly assess, at least once a year, third countries' cooperation with regard to readmission, taking account, in particular, of the following indicators:

(a) the number of return decisions issued to persons from the third country in question, illegally staying on the territory of the Member States;

(b) the number of actual forced returns of persons issued with return decisions as a percentage of the number of return decisions issued to nationals of the third country in question including, where appropriate, on the basis of Union or bilateral readmission agreements, the number of third country nationals who have transited through the territory of the third country in question;

(c) the number of readmission requests per Member State accepted by the third country as a percentage of the number of such requests submitted to it;

(d) the level of practical cooperation with regard to return in the different stages of the return procedure, such as:

(i) assistance provided in the identification of persons illegally staying on the territory of the Member States and in the timely issuance of travel documents;

(ii) acceptance of the European travel document for the return of illegally staying third-country nationals or laissez-passer;

(iii) acceptance of the readmission of persons who are to be legally returned to their country;

(iv) acceptance of return flights and operations.

Such an assessment shall be based on the use of reliable data provided by Member States, as well as by Union institutions, bodies, offices and agencies. The Commission shall regularly, at least once a year, report its assessment to the Council.

3. A Member State may also notify the Commission if it is confronted with substantial and persisting practical problems in the cooperation with a third country in the readmission of irregular migrants on the basis of the same indicators as those listed in paragraph 2. The Commission shall immediately inform the European Parliament and the Council of the notification.

4. The Commission shall examine any notification made pursuant to paragraph 3 within a period of one month. The Commission shall inform the European Parliament and the Council of the results of its examination.

5. Where, on the basis of the analysis referred to in paragraphs 2 and 4, and taking into account the steps taken by the Commission to improve the level of cooperation of the third country concerned in the field of readmission and the Union's overall relations with that third country, including in the field of migration, the Commission considers that a country is not cooperating sufficiently and that action is therefore needed, or where, within 12 months, a simple majority of Member States have notified the Commission in accordance with paragraph 3, the Commission, while continuing its efforts to improve the cooperation with the third country concerned, shall submit a proposal to the Council to adopt:

(a) an implementing decision temporarily suspending the application of any one or more of Article 14(6), point (b) of Article 16(5), Article 23(1), or Article 24(2) and (2c), to all nationals of the third country concerned or to certain categories thereof;

(b) where, following an assessment by the Commission, the measures applied in accordance with the implementing decision referred to in point (a) of this paragraph are considered ineffective, an implementing decision applying, on a gradual basis, one of the visa fees set out in Article 16(2a) to all nationals of the third country concerned or to certain categories thereof.

6. The Commission shall continuously assess and report on the basis of the indicators set out in paragraph 2 whether substantial and sustained improvement in the cooperation with the third country concerned on readmission of irregular migrants can be established and, taking also account of the Union's overall relations with that third country, may submit a proposal to the Council to repeal or amend the implementing decisions referred to in paragraph 5.

7. At the latest six months after the entry into force of the implementing decisions referred to in paragraph 5, the Commission shall report to the European Parliament and to the Council on progress achieved in that third country's cooperation on readmission.

8. Where, on the basis of the analysis referred to in paragraph 2 and taking account of the Union's overall relations with the third country concerned, especially in cooperation in the field of readmission, the Commission considers that the third country concerned is cooperating sufficiently, it may submit a proposal to the Council to adopt an implementing decision concerning applicants or categories of applicants who are nationals of that third country and who apply for a visa on the territory of that third country, providing for one or more of the following:

(a) reduction of the visa fee referred to in Article 16(1) to EUR 60;

(b) reduction of the time within which decisions on an application referred to in Article 23(1) are to be made to 10 days;

(c) increase in the period of validity of multiple-entry visas under Article 24(2).

That implementing decision shall apply for a maximum of one year. It may be renewed.';

(20) Article 27 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. The Commission shall, by means of implementing acts, adopt the rules for filling in the visa sticker. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).

2. Member States may add national entries in the "comments" section of the visa sticker. Those entries shall not duplicate the mandatory entries established in accordance with the procedure referred to in paragraph 1.';

(b) paragraph 4 is replaced by the following:

'4. A visa sticker for a visa for one entry may be filled in manually only in the case of technical *force majeure*. No changes shall be made to a manually filled in visa sticker.';

(21) Article 29 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The visa sticker shall be affixed to the travel document.';

(b) the following paragraph is inserted:

'1a. The Commission shall by means of implementing acts adopt the detailed rules for affixing the visa sticker. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).';

(22) Article 31 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. A Member State may require that its central authorities be informed of visas issued by other Member States to nationals of specific third countries or to specific categories of such nationals, except in the case of airport transit visas.

2. Member States shall notify the Commission of the introduction or withdrawal of the requirement for such information at the latest 25 calendar days before it becomes applicable. That information shall also be given under local Schengen cooperation in the jurisdiction concerned.';

(b) paragraph 4 is deleted;

(23) Article 32 is amended as follows:

(a) in paragraph 1, point (a), the following point is inserted:

'(iia) does not provide justification for the purpose and conditions of the intended airport transit;';

(b) paragraph 2 is replaced by the following:

'2. A decision on refusal and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex VI in the language of the Member State that has taken the final decision on the application and another official language of the institutions of the Union.';

(c) paragraph 4 is deleted;

(24) Article 36 is amended as follows:

(a) paragraph 2 is deleted;

(b) the following paragraph is inserted:

'2a. The Commission shall by means of implementing acts adopt operational instructions for issuing visas at the border to seafarers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).';

(25) in Article 37, paragraphs 2 and 3 are replaced by the following:

'2. The storage and handling of visa stickers shall be subject to adequate security measures to avoid fraud or loss. Each consulate shall keep an account of its stock of visa stickers and register how each visa sticker has been used. Any significant loss of blank visa stickers shall be reported to the Commission.

3. Consulates or central authorities shall keep archives of applications in paper or electronic format. Each individual file shall contain the relevant information allowing for a reconstruction, if need be, of the background for the decision taken on the application.

Individual application files shall be kept for a minimum of one year from the date of the decision on the application as referred to in Article 23(1) or, in the case of appeal, until the end of the appeal procedure, whichever is the longest. If applicable, the individual electronic application files shall be kept for the period of validity of the issued visa.';

(26) Article 38 is amended as follows:

(a) the heading is replaced by the following:

'**Resources for examining applications and monitoring visa procedures**';

(b) paragraph 1 is replaced by the following:

'1. Member States shall deploy appropriate staff in sufficient numbers in consulates to carry out the tasks relating to the examination of applications, in such a way as to ensure a reasonable and harmonised quality of service to the public.';

(c) the following paragraph is inserted:

'1a. Member States shall ensure that the entire visa procedure in consulates, including the lodging and handling of applications, the printing of visa stickers and the practical cooperation with external service providers, is monitored by expatriate staff to ensure the integrity of all stages of the procedure.';

(d) paragraph 3 is replaced by the following:

'3. Member States' central authorities shall provide adequate training to both expatriate staff and locally employed staff and shall be responsible for providing them with complete, precise and up-to-date information on the relevant Union and national law.';

(e) the following paragraphs are inserted:

'3a. Where applications are examined and decided on by central authorities as referred to in Article 4(1a), the Member States shall provide specific training to ensure that the staff of those central authorities have sufficient and updated country-specific knowledge of local socio-economic circumstances, and complete, precise and up-to-date information on relevant Union and national law.

3b. Member States shall also ensure that consulates have sufficient and adequately trained staff for assisting the central authorities in examining and deciding on applications, notably by participating in local Schengen cooperation meetings, exchanging information with other consulates and local authorities, gathering relevant information locally on migratory risk and fraudulent practices, and conducting interviews and additional examinations.';

(f) the following paragraph is added:

'5. Member States shall ensure that a procedure is in place which allows applicants to submit complaints regarding:

(a) the conduct of staff at consulates and, where applicable, of the external service providers; or

(b) the application process.

Consulates or central authorities shall keep a record of complaints and the follow-up given.

Member States shall make information on the procedure provided for in this paragraph available to the public.';

(27) in Article 39, paragraphs 2 and 3 are replaced by the following:

'2. Consular and central authorities' staff shall, in the performance of their duties, fully respect human dignity. Any measures taken shall be proportionate to the objectives pursued by such measures.

3. While performing their tasks, consular and central authorities' staff shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.';

(28) Article 40 is replaced by the following:

'*Article 40*

Consular organisation and cooperation

1. Each Member State shall be responsible for organising the procedures relating to applications.

2. Member States shall:

(a) equip their consulates and authorities responsible for issuing visas at the borders with the requisite material for the collection of biometric identifiers, as well as the offices of their honorary consuls, where they make use of them, to collect biometric identifiers in accordance with Article 42;

(b) cooperate with one or more other Member States under representation arrangements or any other form of consular cooperation.

3. A Member State may also cooperate with an external service provider in accordance with Article 43.

4. Member States shall notify to the Commission their consular organisation and cooperation in each consular location.

5. In the event of termination of cooperation with other Member States, Member States shall strive to assure the continuity of full service.';

(29) Article 41 is deleted;

(30) Article 43 is amended as follows:

(a) paragraph 3 is deleted;

(b) paragraph 5 is replaced by the following:

'5. External service providers shall not have access to the VIS under any circumstances. Access to the VIS shall be reserved exclusively to duly authorised staff of consulates or of the central authorities.';

(c) paragraph 6 is amended as follows:

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

'(a) providing general information on visa requirements, in accordance with points (a) to (c) of Article 47(1), and application forms;';

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

'(c) collecting data and applications (including collection of biometric identifiers) and transmitting the application to the consulate or the central authorities;';

(iii) points (e) and (f) are replaced by the following:

'(e) managing the appointments for the applicant, where applicable, at the consulate or at the premises of an external service provider.

(f) collecting the travel documents, including a refusal notification if applicable, from the consulate or the central authorities and returning them to the applicant.';

(d) paragraph 7 is replaced by the following:

'7. When selecting an external service provider, the Member State concerned shall assess the reliability and solvency of the organisation or company and ensure that there is no conflict of interests. The assessment shall include, as appropriate, scrutiny of the necessary licences, commercial registration, statutes and bank contracts.';

(e) paragraph 9 is replaced by the following:

'9. Member States shall be responsible for compliance with the rules on the protection of personal data and ensure that the external service provider is subject to monitoring by the data protection supervisory authorities pursuant to Article 51(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council (*).

(*) 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).';

(f) paragraph 11 is amended as follows:

(i) in the first subparagraph, points (a) and (b) are replaced by the following:

'(a) the general information on the criteria, conditions and procedures for applying for a visa, as set out in points (a) to (c) of Article 47(1), and the content of the application forms provided by the external service provider to applicants.

(b) all the technical and organisational security measures required to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the cooperation involves the transmission of files and data to the consulate or the central authorities of the Member State(s) concerned, and all other unlawful forms of processing personal data;';

(ii) the second subparagraph is replaced by the following:

'To this end, the consulate(s) or the central authorities of the Member State(s) concerned shall, on a regular basis and at least every nine months, carry out spot checks on the premises of the external service provider. Member States may agree to share the burden of this regular monitoring.';

(g) the following paragraph is inserted:

'11a. By 1 February each year, Member States shall report to the Commission on their cooperation with, and monitoring, as referred to in point C of Annex X, of external service providers worldwide.';

(31) Article 44 is replaced by the following:

'*Article 44*

Encryption and secure transfer of data

1. In the case of cooperation among Member States and cooperation with an external service provider and recourse to honorary consuls, the Member State(s) concerned shall ensure that data are fully encrypted, whether transferred electronically or physically on an electronic storage medium.

2. In third countries that prohibit the encrypted data to be electronically transferred, the Member State(s) concerned shall not allow data to be transferred electronically.

In such cases, the Member State(s) concerned shall ensure that the electronic data are transferred physically in fully encrypted form on an electronic storage medium by a consular officer of a Member State or, where such transfer would require disproportionate or unreasonable measures, in another safe and secure way, for example by using established operators experienced in transporting sensitive documents and data in the third country concerned.

3. In all cases the level of security for the transfer shall be adapted to the sensitive nature of the data.';

(32) Article 45 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Accredited commercial intermediaries shall be monitored regularly by spot checks involving face-to-face or telephone interviews with applicants, the verification of trips and accommodation, and wherever deemed necessary, the verification of the documents relating to group return.';

(b) in paragraph 5, the second subparagraph is replaced by the following:

'Each consulate and the central authorities shall make sure that the public is informed of the list of accredited commercial intermediaries with which they cooperate, where relevant.';

(33) Article 47(1) is amended as follows:

(a) the following points are inserted:

'(aa) the criteria for an application to be considered admissible, as provided for in Article 19(1);

(ab) that biometric data are, in principle, to be collected every 59 months, starting from the date of the first collection;';

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

'(c) where the application may be submitted (competent consulate or external service provider);';

(c) the following point is added:

'(j) information on the complaints procedure provided for in Article 38(5).';

(34) Article 48 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Consulates and the Union delegations shall cooperate within each jurisdiction to ensure a harmonised application of the common visa policy taking into account local circumstances.

To that end, in accordance with Article 5(3) of Council Decision 2010/427/EU (*), the Commission shall issue instructions to Union delegations to carry out the relevant coordination tasks provided for in this Article.

Where applications lodged in the jurisdiction concerned are examined and decided on by central authorities as referred to in Article 4(1a), Member States shall ensure the active involvement of those central authorities in local Schengen cooperation. The staff contributing to local Schengen cooperation shall be adequately trained and involved in the examination of applications in the jurisdiction concerned.

(*) Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, 3.8.2010, p. 30).';

(b) the following paragraph is inserted:

'1a. Member States and the Commission shall, in particular, cooperate in order to:

(a) prepare a harmonised list of supporting documents to be submitted by applicants, taking into account Article 14;

(b) prepare a local implementation of Article 24(2) regarding the issuing of multiple-entry visas;

(c) ensure a common translation of the application form, where relevant;

(d) establish the list of travel documents issued by the host country and update it regularly;

(e) draw up a common information sheet containing the information referred to in Article 47(1);

(f) monitor, where relevant, the implementation of Article 25a(5) and (6).';

(c) paragraph 2 is deleted;

(d) paragraph 3 is replaced by the following:

'3. Member States under local Schengen cooperation shall exchange the following information:

(a) quarterly statistics on uniform visas, visas with limited territorial validity, and airport transit visas applied for, issued, and refused;

(b) information with regard to the assessment of migratory and security risks, in particular on:

(i) the socio-economic structure of the host country;

(ii) sources of information at local level, including social security, health insurance, fiscal registers and entry-exit registrations;

(iii) the use of false, counterfeit or forged documents;

(iv) irregular immigration routes;

(v) trends in fraudulent behaviour;

(vi) trends in refusals;

(c) information on cooperation with external service providers and with transport companies;

(d) information on insurance companies providing adequate travel medical insurance, including verification of the type of coverage and possible excess amount.';

(e) in paragraph 5, the second subparagraph is deleted;

(f) the following paragraph is added:

'7. An annual report shall be drawn up within each jurisdiction by 31 December each year. On the basis of those reports, the Commission shall draw up an annual report on the state of local Schengen cooperation to be submitted to the European Parliament and to the Council.';

(35) Article 50 is deleted;

(36) Article 51 is replaced by the following:

'*Article 51*

Instructions on the practical application of this Regulation

The Commission shall by means of implementing acts adopt the operational instructions on the practical application of the provisions of this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52(2).';

(37) the following Article is inserted:

'*Article 51a*

Exercise of the delegation

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

2. The power to adopt delegated acts referred to in Article 16(9) shall be conferred on the Commission for a period of five years from 1 August 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 16(9) 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 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 act 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 16(9) 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.

(*) OJ L 123, 12.5.2016, p. 1.';

(38) Article 52 is replaced by the following:

'*Article 52*

Committee procedure

1. The Commission shall be assisted by a committee (the "Visa Committee"). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (*).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

(*) 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).';

(39) Annex I is replaced by the text set out in Annex I to this Regulation;

(40) Annex V is replaced by the text set out in Annex II to this Regulation;

(41) Annex VI is replaced by the text set out in Annex III to this Regulation;

(42) Annexes VII, VIII and IX are deleted;

(43) Annex X is replaced by the text set out in Annex IV to this Regulation.

Article 2

Monitoring and evaluation

1. By 2 August 2022, the Commission shall produce an evaluation of the application of Regulation (EC) No 810/2009, as amended by this Regulation. This overall evaluation shall include an examination of the results achieved against objectives and of the implementation of the provisions of Regulation (EC) No 810/2009, as amended by this Regulation.

2. The Commission shall transmit the evaluation referred to in paragraph 1 to the European Parliament and the Council. On the basis of the evaluation, the Commission shall submit, where necessary, appropriate proposals.

3. By 2 May 2020, the Member States shall provide the Commission with relevant available data on the use of the travel medical insurance referred to in Article 15 of Regulation (EC) No 810/2009 by visa holders during their stay on the territory of the Member States, as well as costs incurred by national authorities or providers of medical services for visa holders. On the basis of that data, the Commission shall, by 2 November 2020, produce a report to be transmitted to the European Parliament and to the Council.

Article 3

Entry into force

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 2 February 2020.

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

Done at Brussels, 20 June 2019.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	G. CIAMBA

ANNEX I

'ANNEX I

Harmonised application form

APPLICATION FOR SCHENGEN VISA

This application form is free

(1)

Family members of EU, EEA or CH citizens shall not fill in fields no. 21, 22, 30, 31 and 32 (marked with *).

Fields 1-3 shall be filled in in accordance with the data in the travel document.

<table>
<tr><td colspan="3">1. Surname (Family name):</td><td rowspan="3">FOR OFFICIAL USE ONLY
Date of application:
Application number:</td></tr>
<tr><td colspan="3">2. Surname at birth (Former family name(s)):</td></tr>
<tr><td colspan="3">3. First name(s) (Given name(s)):</td></tr>
<tr><td>4. Date of birth (day-month-year):</td><td>5. Place of birth:
6. Country of birth:</td><td>7. Current nationality:
Nationality at birth, if different:
Other nationalities:</td><td>Application lodged at:
☐ Embassy/consulate
☐ Service provider
☐ Commercial intermediary</td></tr>
<tr><td>8. Sex:
☐ Male ☐ Female</td><td colspan="2">9. Civil status:
☐ Single ☐ Married ☐ Registered Partnership ☐ Separated
☐ Divorced ☐ Widow(er) ☐ Other (please specify):</td><td>☐ Border (Name):
.....
.....
☐ Other:</td></tr>
<tr><td colspan="3">10. Parental authority (in case of minors) /legal guardian (surname, first name, address, if different from applicant's, telephone no., e-mail address, and nationality):</td><td>File handled by:</td></tr>
<tr><td colspan="3">11. National identity number, where applicable:</td><td>Supporting documents:
☐ Travel document
☐ Means of subsistence
☐ Invitation</td></tr>
</table>

(1) No logo is required for Norway, Iceland, Liechtenstein and Switzerland.

12. Type of travel document:

☐ Ordinary passport ☐ Diplomatic passport ☐ Service passport ☐ Official passport ☐ Special passport

☐ Other travel document (please specify):

13. Number of travel document:	14. Date of issue:	15. Valid until:	16. Issued by (country):

17. Personal data of the family member who is an EU, EEA or CH citizen if applicable

Surname (Family name):	First name(s) (Given name(s)):

Date of birth (day-month-year):	Nationality:	Number of travel document or ID card:

18. Family relationship with an EU, EEA or CH citizen if applicable:

☐ spouse ☐ child ☐ grandchild ☐ dependent ascendant

☐ Registered Partnership ☐ other:

19. Applicant's home address and e-mail address:	Telephone no.:

20. Residence in a country other than the country of current nationality:

☐ No

☐ Yes. Residence permit or equivalent ..... No ..... Valid until .....

*21. Current occupation:

*22. Employer and employer's address and telephone number. For students, name and address of educational establishment:

23. Purpose(s) of the journey:

☐ Tourism ☐ Business ☐ Visiting family or friends ☐ Cultural ☐ Sports ☐ Official visit ☐ Medical reasons ☐ Study ☐ Airport transit ☐ Other (please specify):

24. Additional information on purpose of stay:

25. Member State of main destination (and other Member States of destination, if applicable):	26. Member State of first entry:

27. Number of entries requested:

☐ Single entry ☐ Two entries ☐ Multiple entries

Intended date of arrival of the first intended stay in the Schengen area:

Intended date of departure from the Schengen area after the first intended stay:

☐ TMI

☐ Means of transport

☐ Other:

Visa decision:

☐ Refused

☐ Issued:

☐ A

☐ C

☐ LTV

☐ Valid:

From:

Until:

Number of entries:

☐ 1 ☐ 2 ☐ Multiple

Number of days:

28. Fingerprints collected previously for the purpose of applying for a Schengen visa: ☐ No ☐ Yes.
Date, if known ..... Visa sticker number, if known .....

29. Entry permit for the final country of destination, where applicable:
Issued by ..... Valid from ..... until .....

*30. Surname and first name of the inviting person(s) in the Member State(s). If not applicable, name of hotel(s) or temporary accommodation(s) in the Member State(s):

Address and e-mail address of inviting person(s)/hotel(s)/temporary accommodation(s):	Telephone no.:

*31. Name and address of inviting company/organisation:

Surname, first name, address, telephone no., and e-mail address of contact person in company/organisation:	Telephone no. of company/organisation:

*32. Cost of travelling and living during the applicant's stay is covered:

☐ by the applicant himself/herself Means of support: ☐ Cash ☐ Traveller's cheques ☐ Credit card ☐ Pre-paid accommodation ☐ Pre-paid transport ☐ Other (please specify):	☐ by a sponsor (host, company, organisation), please specify: ..... ☐ referred to in field 30 or 31 ..... ☐ other (please specify): Means of support: ☐ Cash ☐ Accommodation provided ☐ All expenses covered during the stay ☐ Pre-paid transport ☐ Other (please specify):

I am aware that the visa fee is not refunded if the visa is refused.

Applicable in case a multiple-entry visa is applied for:

I am aware of the need to have an adequate travel medical insurance for my first stay and any subsequent visits to the territory of Member States.

I am aware of and consent to the following: the collection of the data required by this application form and the taking of my photograph and, if applicable, the taking of fingerprints, are mandatory for the examination of the application; and any personal data concerning me which appear on the application form, as well as my fingerprints and my photograph will be supplied to the relevant authorities of the Member States and processed by those authorities, for the purposes of a decision on my application.

Such data as well as data concerning the decision taken on my application or a decision whether to annul, revoke or extend a visa issued will be entered into, and stored in the Visa Information System (VIS) for a maximum period of five years, during which it will be accessible to the visa authorities and the authorities competent for carrying out checks on visas at external borders and within the Member States, immigration and asylum authorities in the Member States for the purposes of verifying whether the conditions for the legal entry into, stay and residence on the territory of the Member States are fulfilled, of identifying persons who do not or who no longer fulfil these conditions, of examining an asylum application and of determining responsibility for such examination. Under certain conditions the data will be also available to designated authorities of the Member States and to Europol for the purpose of the prevention, detection and investigation of terrorist offences and of other serious criminal offences. The authority of the Member State responsible for processing the data is: [(.....)].

I am aware that I have the right to obtain, in any of the Member States, notification of the data relating to me recorded in the VIS and of the Member State which transmitted the data, and to request that data relating to me which are inaccurate be corrected and that data relating to me processed unlawfully be deleted. At my express request, the authority examining my application will inform me of the manner in which I may exercise my right to check the personal data concerning me and have them corrected or deleted, including the related remedies according to the national law of the Member State concerned. The national supervisory authority of that Member State [contact details: .....] will hear claims concerning the protection of personal data.

I declare that to the best of my knowledge all particulars supplied by me are correct and complete. I am aware that any false statements will lead to my application being rejected or to the annulment of a visa already granted and may also render me liable to prosecution under the law of the Member State which deals with the application.

I undertake to leave the territory of the Member States before the expiry of the visa, if granted. I have been informed that possession of a visa is only one of the prerequisites for entry into the European territory of the Member States. The mere fact that a visa has been granted to me does not mean that I will be entitled to compensation if I fail to comply with the relevant provisions of Article 6(1) of Regulation (EU) No 2016/399 (Schengen Borders Code) and I am therefore refused entry. The prerequisites for entry will be checked again on entry into the European territory of the Member States.

Place and date:	Signature: (signature of parental authority/legal guardian, if applicable):'.

ANNEX II

'ANNEX V

LIST OF RESIDENCE PERMITS ENTITLING THE HOLDER TO TRANSIT THROUGH THE AIRPORTS OF MEMBER STATES WITHOUT BEING REQUIRED TO HOLD AN AIRPORT TRANSIT VISA

ANDORRA:

— autorització temporal (temporary immigration permit – green),

— autorització temporal per a treballadors d'empreses estrangeres (temporary immigration permit for employees of foreign enterprises – green),

— autorització residència i treball (residence and work permit – green),

— autorització residència i treball del personal d'ensenyament (residence and work permit for teaching staff – green),

— autorització temporal per estudis o per recerca (temporary immigration permit for studies or research – green),

— autorització temporal en pràctiques formatives (temporary immigration permit for internships and trainings – green),

— autorització residència (residence permit – green).

CANADA:

— permanent resident (PR) card,

— permanent Resident Travel Document (PRTD).

JAPAN:

— residence card.

SAN MARINO:

— permesso di soggiorno ordinario (validity one year, renewable on expiry date),

— special residence permits for the following reasons (validity one year, renewable on expiry date): university attendance, sports, health care, religious reasons, persons working as nurses in public hospitals, diplomatic functions, cohabitation, permit for minors, humanitarian reasons, parental permit,

— seasonal and temporary working permits (validity 11 months, renewable on expiry date),

— identity card issued to people having an official residence "residenza" in San Marino (validity of 5 years).

UNITED STATES OF AMERICA:

— valid, unexpired immigrant visa; may be endorsed at the port of entry for one year as temporary evidence of residence, while the I-551 card is pending production,

— valid, unexpired Form I-551 (Permanent Resident Card); may be valid for up to 2 or 10 years – depending on the class of admission; if there is no expiration date on the card, the card is valid for travel,

— valid, unexpired Form I-327 (Re-entry Permit),

— valid, unexpired Form I-571 (Refugee Travel Document endorsed as "Permanent Resident Alien").'.

ANNEX III

'*ANNEX VI*


(1)

STANDARD FORM FOR NOTIFYING REASONS FOR REFUSAL, ANNULMENT OR REVOCATION OF A VISA

REFUSAL/ANNULMENT/REVOCATION OF VISA

Ms/Mr .....,

☐ The ..... embassy/consulate-general/consulate/[other competent authority] in ..... [on behalf of (name of represented Member State)];

☐ [Other competent authority] of .....;

☐ The authorities responsible for checks on persons at .....

has/have

☐ examined your application;

☐ examined your visa, number: ....., issued: ..... [date/month/year].

☐ The visa has been refused ☐ The visa has been annulled ☐ The visa has been revoked

This decision is based on the following reason(s):

1. ☐ a false/counterfeit/forged travel document was presented
2. ☐ justification for the purpose and conditions of the intended stay was not provided
3. ☐ you have not provided proof of sufficient means of subsistence, for the duration of the intended stay or for the return to the country of origin or residence, or for the transit to a third country into which you are certain to be admitted
4. ☐ you have not provided proof that you are in a position to lawfully acquire sufficient means of subsistence, for the duration of the intended stay or for the return to the country of origin or residence, or for the transit to a third country into which you are certain to be admitted
5. ☐ you have already stayed for 90 days during the current 180-day period on the territory of the Member States on the basis of a uniform visa or a visa with limited territorial validity
6. ☐ an alert has been issued in the Schengen Information System (SIS) for the purpose of refusing entry by ..... (indication of Member State)
7. ☐ one or more Member States consider you to be a threat to public policy or internal security
8. ☐ one or more Member States consider you to be a threat to public health as defined in point (21) of Article 2 of Regulation (EU) No 2016/399 (Schengen Borders Code)

(1) No logo is required for Norway, Iceland, Liechtenstein and Switzerland.

9. ☐ one or more Member States consider you to be a threat to their international relations

10. ☐ the information submitted regarding the justification for the purpose and conditions of the intended stay was not reliable

11. ☐ there are reasonable doubts as to the reliability of the statements made as regards ..... (please specify)

12. ☐ there are reasonable doubts as to the reliability, as to the authenticity of the supporting documents submitted or as to the veracity of their contents

13. ☐ there are reasonable doubts as to your intention to leave the territory of the Member States before the expiry of the visa

14. ☐ sufficient proof that you have not been in a position to apply for a visa in advance, justifying application for a visa at the border, was not provided

15. ☐ justification for the purpose and conditions of the intended airport transit was not provided

16 ☐ you have not provided proof of possession of adequate and valid travel medical insurance

17. ☐ revocation of the visa was requested by the visa holder ([2]).

Additional remarks:

.....

.....

.....

.....

.....

You may appeal against the decision to refuse/annul/revoke a visa.

The rules on appeal against decisions on refusal/annulment/revocation of a visa are set out in (reference to national law):

.....

Competent authority with which an appeal may be lodged (contact details):

.....

Information on the procedure to follow can be found at (contact details):

.....

An appeal must be lodged within (indication of time-limit):

.....

Date and stamp of embassy/consulate-general/consulate/of the authorities responsible for checks on persons/of other competent authorities:

Signature of person concerned ([3]): .....'.

([2]) Revocation of a visa based on this reason is not subject to the right of appeal.
([3]) If required by national law.

ANNEX IV

'ANNEX X

LIST OF MINIMUM REQUIREMENTS TO BE INCLUDED IN THE LEGAL INSTRUMENT IN THE CASE OF COOPERATION WITH EXTERNAL SERVICE PROVIDERS

A. The legal instrument shall:

(a) enumerate the tasks to be carried out by the external service provider, in accordance with Article 43(6) of this Regulation;

(b) indicate the locations where the external service provider is to operate and which consulate the individual application centre refers to;

(c) list the services covered by the mandatory service fee;

(d) instruct the external service provider to clearly inform the public that other charges cover optional services.

B. In relation to the performance of its activities, the external service provider shall, with regard to data protection:

(a) prevent at all times any unauthorised reading, copying, modification or deletion of data, in particular during their transmission to the consulate of the Member State(s) competent for processing an application;

(b) in accordance with the instructions given by the Member State(s) concerned, transmit the data:

— electronically, in encrypted form, or

— physically, in a secured way;

(c) transmit the data as soon as possible:

— in the case of physically transferred data, at least once a week,

— in the case of electronically transferred encrypted data, at the latest at the end of the day of their collection,

(d) ensure appropriate means of tracking individual application files to and from the consulate;

(e) delete the data at the latest seven days after their transmission and ensure that only the name and contact details of the applicant for the purposes of the appointment arrangements, as well as the passport number, are kept until the return of the passport to the applicant and deleted five days thereafter;

(f) ensure all the technical and organisational security measures required to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the cooperation involves the transmission of files and data to the consulate of the Member State(s) concerned, and all other unlawful forms of processing personal data;

(g) process the data only for the purposes of processing the personal data of applicants on behalf of the Member State(s) concerned;

(h) apply data protection standards at least equivalent to those set out in Regulation (EU) 2016/679;

(i) provide applicants with the information required pursuant to Article 37 of the VIS Regulation.

C. In relation to the performance of its activities, the external service provider shall, with regard to the conduct of staff:

(a) ensure that its staff are appropriately trained;

(b) ensure that its staff in the performance of their duties:

— receive applicants courteously,

— respect the human dignity and integrity of applicants, do not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, and

— respect the rules of confidentiality; those rules shall also apply once members of staff have left their job or after suspension or termination of the legal instrument;

(c) provide identification of the staff working for the external service provider at all times;

(d) prove that its staff do not have criminal records and have the requisite expertise.

D. In relation to the verification of the performance of its activities, the external service provider shall:

(a) provide for access by staff entitled by the Member State(s) concerned to its premises at all times without prior notice, in particular for inspection purposes;

(b) ensure the possibility of remote access to its appointment system for inspection purposes;

(c) ensure the use of relevant monitoring methods (e.g. test applicants; webcam);

(d) ensure access, by the Member State's national data protection supervisory authority, to proof of data protection compliance, including reporting obligations, external audits and regular spot checks;

(e) report in writing to the Member State(s) concerned without delay any security breaches or any complaints from applicants on data misuse or unauthorised access, and coordinate with the Member State(s) concerned in order to find a solution and give explanatory responses promptly to the complaining applicants.

E. In relation to general requirements, the external service provider shall:

(a) act under the instructions of the Member State(s) competent for processing the application;

(b) adopt appropriate anti-corruption measures (e.g. adequate staff remuneration; cooperation in the selection of staff members employed on the task; two-man-rule; rotation principle);

(c) respect fully the provisions of the legal instrument, which shall contain a suspension or termination clause, in particular in the event of breach of the rules established, as well as a revision clause with a view to ensuring that the legal instrument reflects best practice.'.

REGULATION (EU) 2019/1156 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014

(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) Divergent regulatory and supervisory approaches concerning the cross-border distribution of alternative investment funds (AIFs) as defined in Directive 2011/61/EU of the European Parliament and of the Council ([3]), including European venture capital funds (EuVECA) as defined in Regulation (EU) No 345/2013 of the European Parliament and of the Council ([4]), European social entrepreneurship funds (EuSEF) as defined in Regulation (EU) No 346/2013 of the European Parliament and of the Council ([5]), and European Long-Term Investment Funds (ELTIF) as defined in Regulation (EU) 2015/760 of the European Parliament and of the Council ([6]), as well as undertakings for collective investment in transferable securities (UCITS) within the meaning of Directive 2009/65/EC of the European Parliament and of the Council ([7]), result in fragmentation and barriers to cross-border marketing and access of AIFs and UCITS, which in turn could prevent them from being marketed in other Member States. A UCITS might be externally or internally managed, depending on its legal form. Any provisions of this Regulation relating to UCITS management companies should apply both to companies, the regular business of which is the management of UCITS and to any UCITS which has not designated a UCITS management company.

(2) In order to enhance the regulatory framework applicable to collective investment undertakings and to better protect investors, marketing communications addressed to investors in AIFs and UCITS should be identifiable as such, and should describe the risks and rewards of purchasing units or shares of an AIF or UCITS in an equally prominent manner. In addition, all information included in marketing communications addressed to investors should be presented in a manner that is fair, clear and not misleading. To safeguard investor protection and secure a level playing field between AIFs and UCITS, the standards for marketing communications should apply to marketing communications of AIFs and UCITS.

(3) Marketing communications addressed to investors in AIFs and UCITS should specify where, how and in which language investors can obtain summarised information on investor rights and they should clearly state that the AIFM, the EuVECA manager, the EuSEF manager or the UCITS management company (together, 'managers of collective investment undertakings'), has the right to terminate the arrangements made for marketing.

([1]) OJ C 367, 10.10.2018, p. 50.

([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]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

([4]) Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

([5]) Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

([6]) Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

([7]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

(4) In order to increase transparency and investor protection and facilitate access to information on national laws and regulations and administrative provisions applicable to marketing communications, competent authorities should publish such texts on their websites in, as a minimum, a language customary in the sphere of international finance, including their non-official summaries which would allow managers of collective investment undertakings to get a broad overview of those laws, regulations and administrative provisions. The publication should only be for information purposes and should not create legal obligations. For the same reasons, the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([8]) (ESMA) should create a central database containing summaries of national requirements for marketing communications and hyperlinks to the information published on the websites of competent authorities.

(5) In order to promote good practices of investor protection which are enshrined in the national requirements for fair and clear marketing communications, including on-line aspects of such marketing communications, ESMA should issue guidelines on the application of those requirements for marketing communications.

(6) Competent authorities should be able to require prior notification of marketing communications for the purpose of ex-ante verification of compliance of those communications with this Regulation and other applicable requirements, such as whether the marketing communications are identifiable as such, whether they describe the risks and rewards of purchasing units of a UCITS and, where a Member State allows marketing of AIFs to retail investors, the risks and rewards of purchasing units or shares of an AIF in an equally prominent manner and whether all information in the marketing communications is presented in a manner that is fair, clear and not misleading. That verification should be performed within a limited timeframe. Where competent authorities require prior notification, this should not prevent them from verifying marketing communications ex-post.

(7) Competent authorities should report to ESMA the results of those verifications, requests for amendments and any sanctions imposed on managers of collective investment undertakings. With a view to increasing awareness and transparency on the rules applicable to marketing communications, on the one hand, and ensuring investor protection, on the other hand, ESMA should every second year prepare and send to the European Parliament, the Council and the Commission a report on those rules and their practical application on the basis of ex-ante and ex-post verifications of marketing communications by competent authorities.

(8) To ensure equal treatment of managers of collective investment undertakings and to facilitate their decision-making regarding whether to engage in cross-border distribution of investment funds, it is important that fees and charges levied by competent authorities for supervision of cross-border activities are proportionate to the supervisory tasks carried out and publicly disclosed, and that, in order to enhance transparency, those fees and charges are published on the websites of the competent authorities. For the same reason, hyperlinks to the information published on the websites of competent authorities in relation to the fees and charges should be published on the ESMA website in order to have a central point for information. The ESMA website should also include an interactive tool enabling indicative calculations of those fees and charges levied by competent authorities.

(9) To ensure better recovery of fees or charges and to increase the transparency and clarity of the fees and charges structure, where such fees or charges are levied by the competent authorities, managers of collective investment undertakings should receive an invoice, an individual payment statement or a payment instruction clearly setting out the amount of fees or charges due and the means of payment.

(10) Since ESMA, in accordance with Regulation (EU) No 1095/2010, should monitor and assess market developments in the area of its competence, it is appropriate and necessary to enhance the knowledge of ESMA by enlarging ESMA's currently existing databases to include a central database listing all AIFs and UCITS that are marketed cross-border, the managers of those collective investment undertakings and the Member States in which the marketing takes place. For that purpose, and in order to enable ESMA to maintain the central database up-to-date, competent authorities should transmit to ESMA information on the notifications and notification letters and information that they have received under Directives 2009/65/EC and 2011/61/EU in relation to cross-border marketing activity as well as information about any changes which should be reflected in that database. In that respect, ESMA should establish a notification portal into which competent authorities should upload all documents regarding the cross-border distribution of UCITS and AIFs.

([8]) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(11) In order to ensure a level playing field between qualifying venture capital funds as defined in Regulation (EU) No 345/2013, or qualifying social entrepreneurship funds as defined in Regulation (EU) No 346/2013, on the one hand, and other AIFs, on the other hand, it is necessary to include in those Regulations rules on pre-marketing that are identical to the rules laid down in Directive 2011/61/EU on pre-marketing. Such rules should enable managers registered in accordance with those Regulations to target investors by testing their appetite for upcoming investment opportunities or strategies through qualifying venture capital funds and qualifying social entrepreneurship funds.

(12) In accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council ([9]), certain companies and persons referred to in Article 32 of that Regulation are exempt from the obligations under that Regulation until 31 December 2019. That Regulation also provides that the Commission is to review it by 31 December 2018, in order to assess, *inter alia*, whether that transitional exemption should be prolonged, or whether, following the identification of any necessary adjustments, the provisions on key investor information in Directive 2009/65/EC should be replaced by or considered equivalent to the key information document as laid down in that Regulation.

(13) In order to allow the Commission to conduct the review in accordance with Regulation (EU) No 1286/2014 as originally provided for, the deadline for that review should be extended by 12 months. The competent committee of the European Parliament should support the Commission's review process by organising a hearing on the topic with relevant stakeholders representing industry and consumer interests.

(14) In order to avoid investors receiving two different pre-disclosure documents, namely a key investor information document (KIID) as required by Directive 2009/65/EC and a key information document (KID) as required by Regulation (EU) No 1286/2014, for the same collective investment undertaking while the legislative acts resulting from the Commission's review in accordance with that Regulation are being adopted and implemented, the transitional exemption from the obligations under that Regulation should be prolonged by 24 months. Without prejudice to that prolongation, all institutions and supervisory authorities involved should endeavour to act as fast as possible to facilitate the termination of that transitional exemption.

(15) The Commission should be empowered to adopt implementing technical standards, developed by ESMA, with regard to the standard forms, templates and procedures for publication and notification by competent authorities of the national laws, regulations and administrative provisions and their summaries on marketing requirements applicable in their territories, the levels of fees or charges levied by them for cross-border activities, and, where applicable, relevant calculation methodologies. Furthermore, to improve the transmission to ESMA, implementing technical standards should also be adopted with respect to notifications, notification letters and information on cross-border marketing activities that are required by Directives 2009/65/EC and 2011/61/EU and the technical arrangements necessary for the functioning of the notification portal to be established by ESMA. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union (TFEU) and in accordance with Article 15 of Regulation (EU) No 1095/2010.

(16) It is necessary to specify the information to be communicated every quarter to ESMA, in order to keep the databases of all collective investment undertakings and their managers up to date.

(17) Any processing of personal data carried out within the framework of this Regulation, such as the exchange or transmission of personal data by the competent authorities, should be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council ([10]), and any exchange or transmission of information by ESMA should be undertaken in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council ([11]).

(18) In order to enable the competent authorities to exercise the functions attributed to them in this Regulation, Member States should ensure that those authorities have all the necessary supervisory and investigative powers.

([9]) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

([10]) 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).

([11]) 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).

(19) By 2 August 2024, the Commission should conduct an evaluation of the application of this Regulation. The evaluation should take account of market developments and assess whether the measures introduced have improved the cross-border distribution of collective investment undertakings.

(20) By 2 August 2021 the Commission should publish a report on reverse solicitation and demand on the own initiative of an investor, specifying the extent of that form of subscription to funds, its geographical distribution including in third countries, and its impact on the passporting regime.

(21) In order to ensure legal certainty, it is necessary to synchronise the application dates of national laws, regulations and administrative provisions implementing Directive (EU) 2019/1160 of the European Parliament and of the Council ([12]) and of this Regulation with regard to provisions on marketing communications and pre-marketing.

(22) Since the objective of this Regulation, namely to enhance market efficiency while establishing the capital markets union, cannot be sufficiently achieved by the Member States but can rather, by reason of its 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,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes uniform rules on the publication of national provisions concerning marketing requirements for collective investment undertakings and on marketing communications addressed to investors, as well as common principles concerning fees and charges levied on managers of collective investment undertakings in relation to their cross-border activities. It also provides for the establishment of a central database on the cross-border marketing of collective investment undertakings.

Article 2

Scope

This Regulation shall apply to:

(a) alternative investment fund managers;

(b) UCITS management companies, including any UCITS which has not designated a UCITS management company;

(c) EuVECA managers; and

(d) EuSEF managers.

Article 3

Definitions

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

(a) 'alternative investment funds' or 'AIFs' means AIFs as defined in point (a) of Article 4(1) of Directive 2011/61/EU, and include EuVECA, EuSEF and ELTIF;

(b) 'alternative investment fund managers' or 'AIFMs' means AIFMs as defined in point (b) of Article 4(1) of Directive 2011/61/EU and authorised in accordance with Article 6 of that Directive;

(c) 'EuVECA manager' means a manager of a qualifying venture capital fund as defined in point (c) of the first paragraph of Article 3 of Regulation (EU) No 345/2013 and registered in accordance with Article 14 of that Regulation;

(d) 'EuSEF manager' means a manager of a qualifying social entrepreneurship fund as defined in point (c) of Article 3(1) of Regulation (EU) No 346/2013 and registered in accordance with Article 15 of that Regulation;

([12]) Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings (see page 106 of this official journal).

(e) 'competent authorities' means competent authorities as defined in point (h) of Article 2(1) of Directive 2009/65/EC or in point (f) of Article 4(1) of Directive 2011/61/EU or competent authorities of the EU AIF as defined in point (h) of Article 4(1) of Directive 2011/61/EU;

(f) 'home Member State' means the Member State in which the AIFM, the EuVECA manager, the EuSEF manager or the UCITS management company has its registered office;

(g) 'UCITS' means a UCITS authorised in accordance with Article 5 of Directive 2009/65/EC;

(h) 'UCITS management company' means a management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC.

Article 4

Requirements for marketing communications

1. AIFMs, EuVECA managers, EuSEF managers and UCITS management companies shall ensure that all marketing communications addressed to investors are identifiable as such and describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading.

2. UCITS management companies shall ensure that marketing communications that contain specific information about a UCITS do not contradict or diminish the significance of the information contained in the prospectus referred to in Article 68 of Directive 2009/65/EC or the key investor information referred to in Article 78 of that Directive. UCITS management companies shall ensure that all marketing communications indicate that a prospectus exists and that the key investor information is available. Such marketing communications shall specify where, how and in which language investors or potential investors can obtain the prospectus and the key investor information and shall provide hyperlinks to or website addresses for those documents.

3. Marketing communications referred to in paragraph 2 shall specify where, how and in which language investors or potential investors can obtain a summary of investor rights and shall provide a hyperlink to such a summary, which shall include, as appropriate, information on access to collective redress mechanisms at Union and national level in the event of litigation.

Such marketing communications shall also contain clear information that the manager or management company referred to in paragraph 1 of this Article may decide to terminate the arrangements made for the marketing of its collective investment undertakings in accordance with Article 93a of Directive 2009/65/EC and Article 32a of Directive 2011/61/EU.

4. AIFMs, EuVECA managers and EuSEF managers shall ensure that marketing communications comprising an invitation to purchase units or shares of an AIF that contain specific information about an AIF do not contradict the information which is to be disclosed to the investors in accordance with Article 23 of Directive 2011/61/EU, with Article 13 of Regulation (EU) No 345/2013 or with Article 14 of Regulation (EU) No 346/2013, or diminish its significance.

5. Paragraph 2 of this Article shall apply *mutatis mutandis* to AIFs which publish a prospectus in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council ([13]), or in accordance with national law, or apply rules on the format and content of the key investor information referred to in Article 78 of Directive 2009/65/EC.

6. By 2 August 2021, ESMA shall issue guidelines, and thereafter update those guidelines periodically, on the application of the requirements for marketing communications referred to in paragraph 1, taking into account on-line aspects of such marketing communications.

([13]) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

Article 5

Publication of national provisions concerning marketing requirements

1. Competent authorities shall publish and maintain on their websites up-to-date and complete information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof, in, as a minimum, a language customary in the sphere of international finance.

2. Competent authorities shall notify to ESMA the hyperlinks to the websites of competent authorities where the information referred to in paragraph 1 is published.

Competent authorities shall notify ESMA of any change in the information provided under the first subparagraph of this paragraph without undue delay.

3. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the publications and notifications under this Article.

ESMA shall submit those draft implementing standards to the Commission by 2 February 2021.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 6

ESMA central database on national provisions concerning marketing requirements

By 2 February 2022, ESMA shall publish and maintain on its website a central database containing the summaries referred to in Article 5(1), and the hyperlinks to the websites of competent authorities referred to in Article 5(2).

Article 7

Ex-ante verification of marketing communications

1. For the sole purpose of verifying compliance with this Regulation and with national provisions concerning marketing requirements, competent authorities may require prior notification of marketing communications which UCITS management companies intend to use directly or indirectly in their dealings with investors.

The requirement for prior notification referred to in the first subparagraph shall not constitute a prior condition for the marketing of units of UCITS and shall not be part of the notification procedure referred to in Article 93 of Directive 2009/65/EC.

Where competent authorities require prior notification as referred to in the first subparagraph, they shall, within 10 working days of receipt of marketing communications, inform the UCITS management company of any request to amend its marketing communications.

The prior notification referred to in the first subparagraph may be required on a systematic basis or in accordance with any other verification practices and shall be without prejudice to any supervisory powers to verify marketing communications ex-post.

2. Competent authorities that require prior notification of marketing communications shall establish, apply, and publish on their websites, procedures for such prior notification. The internal rules and procedures shall ensure transparent and non-discriminatory treatment of all UCITS, regardless of the Member States in which the UCITS are authorised.

3. Where AIFMs, EuVECA managers or EuSEF managers market units or shares of their AIFs to retail investors, paragraphs 1 and 2 shall apply *mutatis mutandis* to those AIFMs, EuVECA managers or EuSEF managers.

Article 8

ESMA report on marketing communications

1. By 31 March 2021 and every second year thereafter, competent authorities shall report the following information to ESMA:

(a) the number of requests for amendments of marketing communications made on the basis of ex-ante verification, where applicable;

(b) the number of requests for amendments and decisions taken on the basis of ex-post verifications, clearly distinguishing the most frequent breaches, including a description and the nature of those breaches;

(c) a description of the most frequent breaches of the requirements referred to in Article 4; and

(d) one example of each of the breaches referred to in points (b) and (c).

2. By 30 June 2021 and every second year thereafter, ESMA shall submit a report to the European Parliament, the Council and the Commission which presents an overview of marketing requirements referred to in Article 5(1) in all Member States and contains an analysis of the effects of national laws, regulations and administrative provisions governing marketing communications based also on the information received in accordance with paragraph 1 of this Article.

Article 9

Common principles concerning fees or charges

1. Where fees or charges are levied by competent authorities for carrying out their duties in relation to the cross-border activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies, such fees or charges shall be consistent with the overall cost relating to the performance of the functions of the competent authority.

2. For the fees or charges referred to in paragraph 1 of this Article, competent authorities shall send an invoice, an individual payment statement or a payment instruction, clearly setting out the means of payment and the date when payment is due, to the address referred to in the third subparagraph of Article 93(1) of Directive 2009/65/EC or point (i) of Annex IV of Directive 2011/61/EU.

Article 10

Publication of national provisions concerning fees and charges

1. By 2 February 2020, competent authorities shall publish and maintain up-to-date information on their websites listing the fees or charges referred to in Article 9(1), or, where applicable, the calculation methodologies for those fees or charges, in, as a minimum, a language customary in the sphere of international finance.

2. Competent authorities shall notify to ESMA the hyperlinks to the websites of competent authorities where the information referred to in paragraph 1 is published.

3. ESMA shall develop draft implementing technical standards to determine the standard forms, templates and procedures for the publications and notifications under this Article.

ESMA shall submit those draft implementing standards to the Commission by 2 February 2021.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 11

ESMA publication on fees and charges

1. By 2 February 2022, ESMA shall publish on its website hyperlinks to the websites of competent authorities as referred to in Article 10(2). Those hyperlinks shall be kept up to date.

2. By 2 February 2022, ESMA shall develop and make available on its website an interactive tool publicly accessible in, as a minimum, a language customary in the sphere of international finance that provides an indicative calculation of the fees or charges referred to in Article 9(1). That tool shall be kept up to date.

Article 12

ESMA central database on cross-border marketing of AIFs and UCITS

1. By 2 February 2022, ESMA shall publish on its website a central database on cross-border marketing of AIFs and UCITS, publicly accessible in a language customary in the sphere of international finance, listing:

(a) all AIFs that are marketed in a Member State other than the home Member State, their AIFM, EuSEF manager or EuVECA manager, and the Member States in which they are marketed; and

(b) all UCITS that are marketed in a Member State other than the UCITS home Member State as defined in point (e) of Article 2(1) of Directive 2009/65/EC, their UCITS management company and the Member States in which they are marketed.

That central database shall be kept up to date.

2. The obligations in this Article and in Article 13 related to the database referred to in paragraph 1 of this Article shall be without prejudice to the obligations related to the list referred to in the second subparagraph of Article 6(1) of Directive 2009/65/EC, to the central public register referred to in the second subparagraph of Article 7(5) of Directive 2011/61/EU, to the central database referred to in Article 17 of Regulation (EU) No 345/2013 and to the central database referred to in Article 18 of Regulation (EU) No 346/2013.

Article 13

Standardisation of notifications to ESMA

1. On a quarterly basis, competent authorities of home Member States shall communicate to ESMA the information which is necessary for the creation and maintenance of the central database referred to in Article 12 of this Regulation regarding any notification, notification letter or information referred to in Article 93(1) and Article 93a(2) of Directive 2009/65/EC and in Article 31(2), Article 32(2) and Article 32a(2) of Directive 2011/61/EU, and any changes to that information, if such changes would result in a change to the information in that central database.

2. ESMA shall establish a notification portal into which each competent authority shall upload all documents referred to in paragraph 1.

3. ESMA shall develop draft implementing technical standards to specify the information to be communicated, as well as the forms, templates and procedures for communication of the information by the competent authorities for the purposes of paragraph 1, and the technical arrangements necessary for the functioning of the notification portal referred to in paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by 2 February 2021.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 14

Powers of competent authorities

1. Competent authorities shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.

2. The powers conferred on competent authorities pursuant to Directives 2009/65/EC and 2011/61/EU, Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) 2015/760, including those related to penalties or other measures, shall also be exercised with respect to the managers referred to in Article 4 of this Regulation.

Article 15

Amendments to Regulation (EU) No 345/2013

Regulation (EU) No 345/2013 is amended as follows:

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

'(o) "pre-marketing" means provision of information or communication, direct or indirect, on investment strategies or investment ideas by a manager of a qualifying venture capital fund, or on its behalf, to potential investors domiciled or with a registered office in the Union in order to test their interest in a qualifying venture capital fund which is not yet established, or in a qualifying venture capital fund which is established, but not yet notified for marketing in accordance with Article 15, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that qualifying venture capital fund.';

(2) the following Article is inserted:

'*Article 4a*

1. A manager of a qualifying venture capital fund may engage in pre-marketing in the Union, except where the information presented to potential investors:

(a) is sufficient to allow investors to commit to acquiring units or shares of a particular qualifying venture capital fund;

(b) amounts to subscription forms or similar documents whether in a draft or a final form; or

(c) amounts to constitutional documents, a prospectus or offering documents of a not-yet-established qualifying venture capital fund in a final form.

Where a draft prospectus or offering documents are provided, they shall not contain information sufficient to allow investors to take an investment decision and shall clearly state that:

(a) they do not constitute an offer or an invitation to subscribe to units or shares of a qualifying venture capital fund; and

(b) the information presented therein should not be relied upon because it is incomplete and may be subject to change.

2. Competent authorities shall not require a manager of a qualifying venture capital fund to notify the competent authorities of the content or of the addressees of pre-marketing, or to fulfil any conditions or requirements other than those set out in this Article, before it engages in pre-marketing.

3. Managers of qualifying venture capital funds shall ensure that investors do not acquire units or shares in a qualifying venture capital fund through pre-marketing and that investors contacted as part of pre-marketing may only acquire units or shares in that qualifying venture capital fund through marketing permitted under Article 15.

Any subscription by professional investors, within 18 months of the manager of a qualifying venture capital fund having begun pre-marketing, to units or shares of a qualifying venture capital fund referred to in the information provided in the context of pre-marketing, or of a qualifying venture capital fund established as a result of the pre-marketing, shall be considered to be the result of marketing and shall be subject to the applicable notification procedures referred to in Article 15.

4. Within two weeks of having begun pre-marketing, a manager of a qualifying venture capital fund shall send an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State. That letter shall specify the Member States in which and the periods during which the pre-marketing is taking or has taken place, a brief description of the pre-marketing including information on the investment strategies presented and, where relevant, a list of the qualifying venture capital funds which are or were the subject of pre-marketing. The competent authorities of the home Member State of the manager of a qualifying venture capital fund shall promptly inform the competent authorities of the Member States in which the manager of a qualifying venture capital fund is or was engaged in pre-marketing. The competent authorities of the Member State in which pre-marketing is taking or has taken place may request the competent authorities of the home Member State of the manager of a qualifying venture capital fund to provide further information on the pre-marketing that is taking or has taken place on its territory.

5. A third party shall only engage in pre-marketing on behalf of an authorised manager of qualifying venture capital fund where it is authorised as an investment firm in accordance with Directive 2014/65/EU of the European Parliament and of the Council (*), as a credit institution in accordance with Directive 2013/36/EU of the European Parliament and of the Council (**), as a UCITS management company in accordance with Directive 2009/65/EC, as an alternative investment fund manager in accordance with Directive 2011/61/EU, or acts as a tied agent in accordance with Directive 2014/65/EU. Such a third party shall be subject to the conditions set out in this Article.

6. A manager of a qualifying venture capital fund shall ensure that pre-marketing is adequately documented.

(*) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(**) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).'.

Article 16

Amendments to Regulation (EU) No 346/2013

Regulation (EU) No 346/2013 is amended as follows:

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

'(o) "pre-marketing" means provision of information or communication, direct or indirect, on investment strategies or investment ideas by a manager of a qualifying social entrepreneurship fund, or on its behalf, to potential investors domiciled or with a registered office in the Union in order to test their interest in a qualifying social entrepreneurship fund which is not yet established, or in a qualifying social entrepreneurship fund which is established, but not yet notified for marketing in accordance with Article 16, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that qualifying social entrepreneurship fund.';

(2) the following Article is inserted:

'*Article 4a*

1. A manager of a qualifying social entrepreneurship fund may engage in pre-marketing in the Union, except where the information presented to potential investors:

(a) is sufficient to allow investors to commit to acquiring units or shares of a particular qualifying social entrepreneurship fund;

(b) amounts to subscription forms or similar documents whether in a draft or a final form; or

(c) amounts to constitutional documents, a prospectus or offering documents of a not-yet-established qualifying social entrepreneurship fund in a final form.

Where a draft prospectus or offering documents are provided, they shall not contain information sufficient to allow investors to take an investment decision and shall clearly state that:

(a) they do not constitute an offer or an invitation to subscribe to units or shares of a qualifying social entrepreneurship fund; and

(b) the information presented therein should not be relied upon because it is incomplete and may be subject to change.

2. Competent authorities shall not require a manager of a qualifying social entrepreneurship fund to notify the competent authorities of the content or of the addressees of pre-marketing, or to fulfil any conditions or requirements other than those set out in this Article, before it engages in pre-marketing.

3. Managers of qualifying social entrepreneurship funds shall ensure that investors do not acquire units or shares in a qualifying social entrepreneurship fund through pre-marketing and that investors contacted as part of pre-marketing may only acquire units or shares in that qualifying social entrepreneurship fund through marketing permitted under Article 16.

Any subscription by professional investors, within 18 months of the manager of a qualifying social entrepreneurship fund having begun pre-marketing, to units or shares of a qualifying social entrepreneurship fund referred to in the information provided in the context of pre-marketing, or of a qualifying social entrepreneurship fund established as a result of the pre-marketing, shall be considered to be the result of marketing and shall be subject to the applicable notification procedures referred to in Article 16.

4. Within two weeks of having begun pre-marketing, a manager of a qualifying social entrepreneurship fund shall send an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State. That letter shall specify the Member States in which and the periods during which the pre-marketing is taking or has taken place, a brief description of the pre-marketing including information on the investment strategies presented and, where relevant, a list of the qualifying social entrepreneurship funds which are or were the subject of pre-marketing. The competent authorities of the home Member State of the manager of a qualifying social entrepreneurship fund shall promptly inform the competent authorities of the Member States in which the manager of a qualifying social entrepreneurship fund is or was engaged in pre-marketing. The competent authorities of the Member State in which pre-marketing is taking or has taken place may request the competent authorities of the home Member State of the manager of a qualifying social entrepreneurship fund to provide further information on the pre-marketing that is taking or has taken place on its territory.

5. A third party shall only engage in pre-marketing on behalf of an authorised manager of a qualifying social entrepreneurship fund where it is authorised as an investment firm in accordance with Directive 2014/65/EU of the European Parliament and of the Council (*), as a credit institution in accordance with Directive 2013/36/EU of the European Parliament and of the Council (**), as a UCITS management company in accordance with Directive 2009/65/EC, as an alternative investment fund manager in accordance with Directive 2011/61/EU, or acts as a tied agent in accordance with Directive 2014/65/EU. Such a third party shall be subject to the conditions set out in this Article.

6. A manager of a qualifying social entrepreneurship fund shall ensure that pre-marketing is adequately documented.

(*) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(**) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).'.

Article 17

Amendments to Regulation (EU) No 1286/2014

Regulation (EU) No 1286/2014 is amended as follows:

(1) in Article 32(1), '31 December 2019' is replaced by '31 December 2021';

(2) Article 33 is amended as follows:

(a) in the first subparagraph of paragraph 1, '31 December 2018' is replaced by '31 December 2019';

(b) in the first subparagraph of paragraph 2, '31 December 2018' is replaced by '31 December 2019';

(c) in the first subparagraph of paragraph 4, '31 December 2018' is replaced by '31 December 2019'.

Article 18

Evaluation

By 2 August 2024 the Commission shall, on the basis of a public consultation and in light of discussions with ESMA and competent authorities, conduct an evaluation of the application of this Regulation.

By 2 August 2021 the Commission shall, on the basis of a consultation of competent authorities, ESMA and other relevant stakeholders, submit a report to the European Parliament and to the Council on reverse solicitation and demand on the own initiative of an investor, specifying the extent of that form of subscription to funds, its geographical distribution, including in third countries, and its impact on the passporting regime. That report shall also examine whether the notification portal established in accordance with Article 13(2) should be developed so that all transfers of documents between competent authorities take place through it.

Article 19

Entry into force and application

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

It shall apply from 1 August 2019.

However, Article 4(1) to (5), Article 5(1) and (2), Article 15 and Article 16 shall apply from 2 August 2021.

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	*For the Council*
The President	*The President*
A. TAJANI	G. CIAMBA

REGULATION (EU) 2019/1157 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement

(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 21(2) thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

(1) The Treaty on the European Union (TEU) resolved to facilitate the free movement of persons while ensuring the safety and security of the peoples of Europe, by establishing an area of freedom, security and justice, in accordance with the provisions of the TEU and of the Treaty on the Functioning of the European Union (TFEU).

(2) Citizenship of the Union confers on every citizen of the Union the right of free movement, subject to certain limitations and conditions. Directive 2004/38/EC of the European Parliament and of the Council ([3]) gives effect to that right. Article 45 of the Charter of Fundamental Rights of the European Union (the Charter) also provides for freedom of movement and residence. Freedom of movement entails the right to exit and enter Member States with a valid identity card or passport.

(3) Pursuant to Directive 2004/38/EC, Member States are to issue and renew identity cards or passports to their nationals in accordance with national laws. Furthermore, that Directive provides that Member States may require Union citizens and their family members to register with the relevant authorities. Member States are required to issue registration certificates to Union citizens under the conditions set out therein. Pursuant to that Directive, Member States are also required to issue residence cards to family members who are not nationals of a Member State and, on application, to issue documents certifying permanent residence and to issue permanent residence cards.

(4) Directive 2004/38/EC provides that Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by that Directive in the case of abuse of rights or fraud. Document forgery or false presentation of a material fact concerning the conditions attached to the right of residence have been identified as typical cases of fraud under that Directive.

(5) Considerable differences exist between the security levels of national identity cards issued by Member States and residence permits for Union nationals residing in another Member State and their family members. Those differences increase the risk of falsification and document fraud and also give rise to practical difficulties for citizens when they wish to exercise their right of free movement. Statistics from the European Document Fraud Risk Analysis Network show that incidents of fraudulent identity cards have increased over time.

([1]) OJ C 367, 10.10.2018, p. 78.

([2]) Position of the European Parliament of 4 April 2019 (not yet published in the Official Journal) and decision of the Council of 6 June 2019.

([3]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

(6) In its Communication of 14 September 2016 entitled 'Enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders', the Commission stressed that secure travel and identity documents are crucial whenever it is necessary to establish without doubt a person's identity, and announced that it would be presenting an action plan to tackle travel document fraud. According to that Communication, an improved approach relies on robust systems to prevent abuses and threats to internal security arising from failings in document security, in particular related to terrorism and cross-border crime.

(7) According to the Commission's Action Plan of 8 December 2016 to strengthen the European response to travel document fraud (the 2016 Action Plan), at least three quarters of fraudulent documents detected at the external borders, but also in the area without controls at internal borders, purport to have been issued by Member States and the Schengen associated countries. Less secure national identity cards issued by Member States are the most frequently detected false documents used for intra-Schengen travel.

(8) In order to deter identity fraud, Member States should ensure that the falsification and counterfeiting of identification documents and the use of such falsified or counterfeit documents are adequately penalised by their national law.

(9) The 2016 Action Plan addressed the risk from fraudulent identity cards and residence documents. The Commission, in the 2016 Action Plan, and in its 2017 EU Citizenship Report, committed itself to analysing policy options to improve the security of identity cards and residence documents.

(10) According to the 2016 Action Plan, issuing authentic and secure identity cards requires a reliable identity registration process and secure 'breeder' documents to support the application process. The Commission, the Member States and the relevant Union agencies should continue to work together to make breeder documents less vulnerable to fraud, given the increased use of false breeder documents.

(11) This Regulation does not require Member States to introduce identity cards or residence documents where they are not provided for under national law, nor does it affect the competence of the Member States to issue, under national law, other residence documents which fall outside the scope of Union law, for example residence cards issued to all residents on the territory regardless of their nationality.

(12) This Regulation does not prevent Member States from accepting, in a non-discriminatory manner, documents other than travel documents, for identification purposes, such as driving licences.

(13) Identification documents issued to citizens whose rights of free movement have been restricted in accordance with Union or national law, and which expressly indicate that they cannot be used as travel documents, should not be considered as falling within the scope of this Regulation.

(14) Travel documents compliant with part 5 of International Civil Aviation Organization (ICAO) Document 9303 on Machine Readable Travel Documents, (seventh edition, 2015) ('ICAO Document 9303'), which do not serve identification purposes in the issuing Member States, such as the passport card issued by Ireland, should not be considered as falling within the scope of this Regulation.

(15) This Regulation does not affect the use of identity cards and residence documents with eID function by Member States for other purposes, nor does it affect the rules laid down in Regulation (EU) No 910/2014 of the European Parliament and of the Council ([4]), which provides for Union-wide mutual recognition of electronic identifications in access to public services and which helps citizens who are moving to another Member State, by requiring mutual recognition of electronic identification means subject to certain conditions. Improved identity cards should ensure easier identification and contribute to better access to services.

([4]) 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) Proper verification of identity cards and residence documents requires that Member States use the correct title for each type of document covered by this Regulation. In order to facilitate the checking of documents covered by this Regulation in other Member States, the document title should also appear in at least one additional official language of the institutions of the Union. Where Member States already use, for identity cards, well-established designations other than the title 'identity card', they should be able to continue to do so in their official language or languages. However, no new designations should be introduced in the future.

(17) Security features are necessary to verify if a document is authentic and to establish the identity of a person. The establishment of minimum security standards and the integration of biometric data in identity cards and in residence cards of family members who are not nationals of a Member State are important steps in rendering their use in the Union more secure. The inclusion of such biometric identifiers should allow Union citizens to fully benefit from their rights of free movement.

(18) The storage of a facial image and two fingerprints ('biometric data') on identity and residence cards, as already provided for in respect of biometric passports and residence permits for third-country nationals, represents an appropriate combination of reliable identification and authentication with a reduced risk of fraud, for the purpose of strengthening the security of identity and residence cards.

(19) As a general practice, Member States should, for the verification of the authenticity of the document and the identity of the holder, primarily verify the facial image and, where necessary to confirm without doubt the authenticity of the document and the identity of the holder, Member States should also verify the fingerprints.

(20) Members States should ensure that, in cases where a verification of biometric data does not confirm the authenticity of the document or the identity of its holder, a compulsory manual check is carried out by qualified staff.

(21) This Regulation does not provide a legal basis for setting up or maintaining databases at national level for the storage of biometric data in Member States, which is a matter of national law that needs to comply with Union law regarding data protection. Moreover, this Regulation does not provide a legal basis for setting up or maintaining a centralised database at Union level.

(22) Biometric identifiers should be collected and stored in the storage medium of identity cards and residence documents for the purposes of verifying the authenticity of the document and the identity of the holder. Such a verification should only be carried out by duly authorised staff and only when the document is required to be produced by law. Moreover, biometric data stored for the purpose of the personalisation of identity cards or residence documents should be kept in a highly secure manner and only until the date of collection of the document and, in any case, no longer than 90 days from the date of issue of the document. After that period, those biometric data should be immediately erased or destroyed. This should be without prejudice to any other processing of these data in accordance with Union and national law regarding data protection.

(23) The specifications of ICAO Document 9303 which ensure global interoperability including in relation to machine readability and use of visual inspection should be taken into account for the purpose of this Regulation.

(24) Member States should be able to decide whether to include a person's gender on a document covered by this Regulation. Where a Member State includes a person's gender on such a document, the specifications of ICAO Document 9303 'F', 'M' or 'X' or the corresponding single initial used in the language or languages of that Member State should be used, as appropriate.

(25) Implementing powers should be conferred on the Commission in order to ensure that future security standards and technical specifications adopted pursuant to Council Regulation (EC) No 1030/2002 ([5]) are duly taken into account, where appropriate, for identity cards and residence cards. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([6]). To that end, the Commission should be assisted by the Committee established by Article 6 of Council Regulation (EC) No 1683/95 ([7]). Where necessary, it should be possible for the implementing acts adopted to remain secret in order to prevent the risk of counterfeiting and falsifications.

([5]) Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).

([6]) 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).

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

(26) Member States should ensure that appropriate and effective procedures for the collection of biometric identifiers are in place and that such procedures comply with the rights and principles set out in the Charter, the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe and the United Nations Convention on the Rights of the Child. Member States should ensure that the best interest of the child is a primary consideration throughout the collection procedure. To that end, qualified staff should receive appropriate training on child-friendly practices for the collecting of biometric identifiers.

(27) Where difficulties are encountered in the collection of biometric identifiers, Member States should ensure that appropriate procedures are in place to respect the dignity of the person concerned. Therefore, specific considerations relating to gender, and to the specific needs of children and of vulnerable persons should be taken into account.

(28) The introduction of minimum security and format standards for identity cards should allow Member States to rely on the authenticity of those documents when Union citizens exercise their right of free movement. The introduction of reinforced security standards should provide sufficient guarantees to public authorities and private entities to enable them to rely on the authenticity of identity cards when used by Union citizens for identification purposes.

(29) A distinguishing sign in the form of the two-letter country code of the Member State issuing the document, printed in negative in a blue rectangle and encircled by 12 yellow stars, facilitates the visual inspection of the document, in particular when the holder is exercising the right of free movement.

(30) While the option to provide for additional national features is maintained, Member States should ensure that those features do not diminish the efficiency of the common security features or negatively affect the cross-border compatibility of the identity cards, such as the capability that the identity cards can be read by machines used by Member States other than those which issue the identity cards.

(31) The introduction of security standards in identity cards and in residence cards of family members who are not nationals of a Member State should not result in a disproportionate increase in fees for Union citizens or third-country nationals. Member States should take this principle into consideration when issuing calls for tender.

(32) Member States should take all necessary steps to ensure that biometric data correctly identify the person to whom an identity card is issued. To this end, Member States could consider collecting biometric identifiers, particularly the facial image, by means of live enrolment by the national authorities issuing identity cards.

(33) Member States should exchange with each other such information as is necessary to access, authenticate and verify the information contained on the secure storage medium. The formats used for the secure storage medium should be interoperable, including in respect of automated border crossing points.

(34) Directive 2004/38/EC addresses the situation where Union citizens, or family members of Union citizens who are not nationals of a Member State, who do not have the necessary travel documents are to be given every reasonable opportunity to prove by other means that they are covered by the right of free movement. Such means can include identification documents used on a provisional basis and residence cards issued to such family members.

(35) This Regulation respects the obligations set out in the Charter and in the United Nations Convention on the Rights of Persons with Disabilities. Therefore, Member States are encouraged to work with the Commission to integrate additional features that render identity cards more accessible and user-friendly to people with disabilities, such as visually impaired persons. Member States are to explore the use of solutions, such as mobile registration devices, for the issuance of identity cards to persons incapable of visiting the authorities responsible for issuing identity cards.

(36) Residence documents issued to citizens of the Union should include specific information to ensure that they are identified as such in all Member States. This should facilitate the recognition of the Union citizen's use of the right of free movement and of the rights inherent to this use, but harmonisation should not go beyond what is appropriate to address the weaknesses of current documents. Member States are free to select the format in which these documents are issued and could issue them in a format complying with the specifications of ICAO Document 9303.

(37) As regards residence documents issued to family members who are not nationals of a Member State, it is appropriate to make use of the same format and security features as those provided for in Regulation (EC) No 1030/2002 as amended by Regulation (EU) 2017/1954 of the European Parliament and of the Council ([8]). In addition to proving the right of residence, those documents also exempt their holders who are otherwise subject to a visa obligation from the requirement to obtain a visa when accompanying or joining the Union citizen within the Union territory.

(38) Directive 2004/38/EC provides that documents issued to family members who are not nationals of a Member State are to be called 'Residence card of a family member of a Union citizen'. In order to facilitate their identification, residence cards of a family member of a Union citizen should bear a standardised title and code.

(39) Taking into account both the security risk and the costs incurred by Member States, identity cards as well as residence cards of a family member of a Union citizen with insufficient security standards should be phased out. In general, a phasing-out period of ten years for identity cards and five years for residence cards should be sufficient to strike a balance between the frequency with which documents are usually replaced and the need to fill the existing security gap within the Union. However, for cards which do not have important security features, or are not machine readable, a shorter phasing-out period is necessary on security grounds.

(40) Regulation (EU) 2016/679 of the European Parliament and of the Council ([9]) applies with regard to the personal data to be processed in the context of the application of this Regulation. It is necessary to further specify safeguards applicable to the processed personal data and in particular to sensitive data such as biometric identifiers. Data subjects should be made aware of the existence in their documents of the storage medium containing their biometric data including its accessibility in contactless form as well as of all instances where the data contained in their identity cards and residence documents are used. In any case, data subjects should have access to personal data processed in their identity cards and residence documents and should have the right to have them rectified by way of issuance of a new document where such data is erroneous or incomplete. The storage medium should be highly secure and effectively protect personal data stored on it from unauthorised access.

(41) Member States should be responsible for the proper processing of biometric data, from collection to integration of the data on the highly secure storage medium, in accordance with Regulation (EU) 2016/679.

(42) Member States should exercise particular caution when cooperating with an external service provider. Such cooperation should not exclude any liability of the Member States arising under Union or national law for breaches of obligations with regard to personal data.

(43) It is necessary to specify in this Regulation the basis for the collection and storage of data on the storage medium of identity cards and residence documents. In accordance with Union or national law and respecting the principles of necessity and proportionality, Member States should be able to store other data on a storage medium for electronic services or for other purposes relating to the identity card or residence document. The processing of such other data including their collection and the purposes for which they can be used should be authorised by Union or national law. All national data should be physically or logically separated from biometric data referred to in this Regulation and should be processed in accordance with Regulation (EU) 2016/679.

(44) Member States should apply this Regulation at the latest 24 months after the date of its entry into force. As from the date of application of this Regulation, Member States should only issue documents which respect the requirements set out in this Regulation.

([8]) Regulation (EU) 2017/1954 of the European Parliament and of the Council of 25 October 2017 amending Council Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals (OJ L 286, 1.11.2017, p. 9).

([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).

(45) The Commission should report on the implementation of this Regulation two years, and 11 years, respectively, after its date of application, including on the appropriateness of the level of security, taking into account its impact on fundamental rights and data protection principles. In accordance with the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ([10]), the Commission should, six years after the date of application of this Regulation, and every six years thereafter, carry out an evaluation of this Regulation on the basis of information gathered through specific monitoring arrangements, in order to assess the actual effects of this Regulation and the need for any further action. For the purpose of monitoring, Member States should collect statistics on the number of identity cards and residence documents which they issued.

(46) Since the objectives of this Regulation, namely to enhance security and to facilitate the exercise of the rights of free movement by Union citizens and their family members cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(47) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter including human dignity, the right to the integrity of the person, the prohibition of inhuman or degrading treatment, the right to equality before the law and non-discrimination, the rights of children, the rights of the elderly, respect for private and family life, the right to the protection of personal data, the right of free movement and the right to an effective remedy. Member States should comply with the Charter when implementing this Regulation.

(48) The European Data Protection Supervisor and the Fundamental Rights Agency issued opinions on 10 August 2018 ([11]) and on 5 September 2018 ([12]) respectively,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation strengthens the security standards applicable to identity cards issued by Member States to their nationals and to residence documents issued by Member States to Union citizens and their family members when exercising their right to free movement.

Article 2

Scope

This Regulation applies to:

(a) identity cards issued by Member States to their own nationals as referred to in Article 4(3) of Directive 2004/38/EC;

This Regulation shall not apply to identification documents issued on a provisional basis with a period of validity of less than six months.

(b) registration certificates issued in accordance with Article 8 of Directive 2004/38/EC to Union citizens residing for more than three months in a host Member State and documents certifying permanent residence issued in accordance with Article 19 of Directive 2004/38/EC to Union citizens upon application;

(c) residence cards issued in accordance with Article 10 of Directive 2004/38/EC to family members of Union citizens who are not nationals of a Member State and permanent residence cards issued in accordance with Article 20 of Directive 2004/38/EC to family members of Union citizens who are not nationals of a Member State.

([10]) OJ L 123, 12.5.2016, p. 1.
([11]) OJ C 338, 21.9.2018, p. 22.
([12]) Not yet published.

CHAPTER II

NATIONAL IDENTITY CARDS

Article 3

Security standards/format/specifications

1. Identity cards issued by Member States shall be produced in ID-1 format and shall contain a machine-readable zone (MRZ). Such identity cards shall be based on the specifications and minimum security standards set out in ICAO Document 9303 and shall comply with the requirements set out in points (c), (d), (f) and (g) of the Annex to Regulation (EC) No 1030/2002 as amended by Regulation (EU) 2017/1954.

2. The data elements included on identity cards shall comply with the specifications set out in part 5 of ICAO document 9303.

By way of derogation from the first subparagraph, the document number may be inserted in zone I and the designation of a person's gender shall be optional.

3. The document shall bear the title 'Identity card' or another well-established national designation in the official language or languages of the issuing Member State, and the words 'Identity card' in at least one other official language of the institutions of the Union.

4. The identity card shall contain, on the front side, the two-letter country code of the Member State issuing the card, printed in negative in a blue rectangle and encircled by 12 yellow stars.

5. Identity cards shall include a highly secure storage medium which shall contain a facial image of the holder of the card and two fingerprints in interoperable digital formats. For the capture of biometric identifiers, Member States shall apply the technical specifications as established by Commission Implementing Decision C(2018) 7767 ([13]).

6. The storage medium shall have sufficient capacity and capability to guarantee the integrity, the authenticity and the confidentiality of the data. The data stored shall be accessible in contactless form and secured as provided for in Implementing Decision C(2018) 7767. Member States shall exchange the information necessary to authenticate the storage medium and to access and verify the biometric data referred to in paragraph 5.

7. Children under the age of 12 years may be exempt from the requirement to give fingerprints.

Children under the age of 6 years shall be exempt from the requirement to give fingerprints.

Persons in respect of whom fingerprinting is physically impossible shall be exempt from the requirement to give fingerprints.

8. When necessary and proportionate to the aim to be achieved, Member States may enter such details and observations for national use as may be required in accordance with national law. The efficiency of minimum security standards and the cross-border compatibility of identity cards shall not be diminished as a result.

9. Where Member States incorporate a dual interface or a separate storage medium in the identity card, the additional storage medium shall comply with the relevant ISO standards and shall not interfere with the storage medium referred to in paragraph 5.

10. Where Member States store data for electronic services such as e-government and e-business in the identity cards, such national data shall be physically or logically separated from the biometric data referred to in paragraph 5.

11. Where Member States add additional security features to identity cards, the cross-border compatibility of such identity cards and the efficiency of the minimum security standards shall not be diminished as a result.

([13]) Commission Implementing Decision C(2018) 7767 of 30 November 2018 laying down the technical specifications for the uniform format for residence permits for third country nationals and repealing Decision C(2002) 3069.

Article 4

Period of validity

1. Identity cards shall have a minimum period of validity of five years and a maximum period of validity of ten years.

2. By way of derogation from paragraph 1, Member States may provide for a period of validity of:

(a) less than five years, for identity cards issued to minors;

(b) in exceptional cases, less than five years, for identity cards issued to persons in special and limited circumstances and where their period of validity is limited in compliance with Union and national law;

(c) more than 10 years, for identity cards issued to persons aged 70 and above.

3. Member States shall issue an identity card having a validity of 12 months or less where it is temporarily physically impossible to take fingerprints of any of the fingers of the applicant.

Article 5

Phasing out

1. Identity cards which do not meet the requirements set out in Article 3 shall cease to be valid at their expiry or by 3 August 2031, whichever is earlier.

2. By way of derogation from paragraph 1:

(a) identity cards which do not meet the minimum security standards set out in part 2 of ICAO document 9303 or which do not include a functional MRZ, as defined in paragraph 3, shall cease to be valid at their expiry or by 3 August 2026, whichever is earlier;

(b) identity cards of persons aged 70 and above at 2 August 2021, which meet the minimum security standards set out in part 2 of ICAO document 9303 and which have a functional MRZ, as defined in paragraph 3, shall cease to be valid at their expiry.

3. For the purpose of paragraph 2, a functional MRZ shall mean:

(a) a machine-readable zone compliant with part 3 of ICAO document 9303; or

(b) any other machine-readable zone for which the issuing Member State notifies the rules required for reading and displaying the information contained therein, unless a Member State notifies the Commission, by 2 August 2021, of its lack of capacity to read and display this information.

Upon receipt of a notification as referred to in point (b) of the first subparagraph, the Commission shall inform the Member State concerned and the Council accordingly.

CHAPTER III

RESIDENCE DOCUMENTS FOR UNION CITIZENS

Article 6

Minimum information to be indicated

Residence documents when issued by Member States to Union citizens, shall indicate at a minimum the following:

(a) the title of the document in the official language or languages of the Member State concerned and in at least one other official language of the institutions of the Union;

(b) a clear reference that the document is issued to a Union citizen in accordance with Directive 2004/38/EC;

(c) the document number;

(d) the name (surname and forename(s)) of the holder;

(e) the date of birth of the holder;

(f) the information to be included on registration certificates and documents certifying permanent residence, issued in accordance with Articles 8 and 19 of Directive 2004/38/EC, respectively;

(g) the issuing authority;

(h) on the front-side, the two-letter country code of the Member State issuing the document, printed in negative in a blue rectangle and encircled by twelve yellow stars.

If a Member State decides to take fingerprints, Article 3(7) shall apply accordingly.

Persons in respect of whom fingerprinting is physically impossible shall be exempt from the requirement to give fingerprints.

CHAPTER IV

RESIDENCE CARDS FOR FAMILY MEMBERS WHO ARE NOT NATIONALS OF A MEMBER STATE

Article 7

Uniform format

1. When issuing residence cards to family members of Union citizens who are not nationals of a Member State, Member States shall use the same format as established by Regulation (EC) No 1030/2002 as amended by Regulation (EU) 2017/1954, and as implemented by Implementing Decision C(2018) 7767.

2. By way of derogation from paragraph 1, a card shall bear the title 'Residence card' or 'Permanent residence card'. Member States shall indicate that these documents are issued to a family member of a Union citizen in accordance with Directive 2004/38/EC. For this purpose, Member States shall use the standardised code 'Family Member EU Art 10 DIR 2004/38/EC' or 'Family Member EU Art 20 DIR 2004/38/EC', in data field [10], as referred to in the Annex to Regulation (EC) No 1030/2002 as amended by Regulation (EU) 2017/1954.

3. Member States may enter data for national use in accordance with national law. When entering and storing such data, Member States shall respect the requirements set out in the second paragraph of Article 4 of Regulation (EC) No 1030/2002 as amended by Regulation (EU) 2017/1954.

Article 8

Phasing out of existing residence cards

1. Residence cards of family members of Union citizens who are not nationals of a Member State, which do not meet the requirements of Article 7 shall cease to be valid at their expiry or by 3 August 2026, whichever is earlier.

2. By way of derogation from paragraph 1, residence cards of family members of Union citizens who are not nationals of a Member State, which do not meet the minimum security standards set out in part 2 of ICAO document 9303 or which do not include a functional MRZ compliant with part 3 of ICAO document 9303, shall cease to be valid at their expiry or by 3 August 2023, whichever is earlier.

CHAPTER V

COMMON PROVISIONS

Article 9

Contact point

1. Each Member State shall designate at least one central authority as a contact point for the implementation of this Regulation. Where a Member State has designated more than one central authority, it shall designate which of those authorities will be the contact point for the implementation of this Regulation. It shall communicate the name of that authority to the Commission and the other Member States. If a Member State changes its designated authority, it shall inform the Commission and the other Member States accordingly.

2. Member States shall ensure that the contact points are aware of relevant information and assistance services at Union level included in the Single Digital Gateway set out in Regulation (EU) 2018/1724 of the European Parliament and of the Council ([14]) and that they are able to cooperate with such services.

Article 10

Collection of biometric identifiers

1. The biometric identifiers shall be collected solely by qualified and duly authorised staff designated by the authorities responsible for issuing identity cards or residence cards, for the purpose of being integrated into the highly secure storage medium provided for in Article 3(5) for identity cards and in Article 7(1) for residence cards. By way of derogation from the first sentence, fingerprints shall be collected solely by qualified and duly authorised staff of such authorities, except in the case of applications submitted to the diplomatic and consular authorities of the Member State.

With a view to ensuring the consistency of biometric identifiers with the identity of the applicant, the applicant shall appear in person at least once during the issuance process for each application.

2. Member States shall ensure that appropriate and effective procedures for the collection of biometric identifiers are in place and that those procedures comply with the rights and principles set out in the Charter, the Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Convention on the Rights of the Child.

Where difficulties are encountered in the collection of biometric identifiers, Member States shall ensure that appropriate procedures are in place to respect the dignity of the person concerned.

3. Other than where required for the purpose of processing in accordance with Union and national law, biometric identifiers stored for the purpose of personalisation of identity cards or residence documents shall be kept in a highly secure manner and only until the date of collection of the document and, in any case, no longer than 90 days from the date of issue. After this period, these biometric identifiers shall be immediately erased or destroyed.

Article 11

Protection of personal data and liability

1. Without prejudice to Regulation (EU) 2016/679, Member States shall ensure the security, integrity, authenticity and confidentiality of the data collected and stored for the purpose of this Regulation.

2. For the purpose of this Regulation, the authorities responsible for issuing identity cards and residence documents shall be considered as the controller referred to in Article 4(7) of Regulation (EU) 2016/679 and shall have responsibility for the processing of personal data.

3. Member States shall ensure that supervisory authorities can fully exercise their tasks as referred to in Regulation (EU) 2016/679, including access to all personal data and all necessary information as well as access to any premises or data processing equipment of the competent authorities.

4. Cooperation with external service providers shall not exclude any liability on the part of a Member State which may arise under Union or national law in respect of breaches of obligations with regard to personal data.

5. Information in machine-readable form shall only be included in an identity card or residence document in accordance with this Regulation and the national law of the issuing Member State.

6. Biometric data stored in the storage medium of identity cards and residence documents shall only be used in accordance with Union and national law, by the duly authorised staff of competent national authorities and Union agencies, for the purpose of verifying:

(a) the authenticity of the identity card or residence document;

(b) the identity of the holder by means of directly available comparable features where the identity card or residence document is required to be produced by law.

([14]) 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).

7. Member States shall maintain, and communicate annually to the Commission, a list of the competent authorities with access to the biometric data stored on the storage medium referred to in Article 3(5) of this Regulation. The Commission shall publish online a compilation of such national lists.

Article 12

Monitoring

By 2 August 2020, the Commission shall establish a detailed programme for monitoring the outputs, results and impact of this Regulation, including its impact on fundamental rights.

The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence are to be collected. It shall specify the action to be taken by the Commission and by 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 such monitoring.

Article 13

Reporting and Evaluation

1. Two years, and 11 years, respectively, after the date of application of this Regulation, the Commission shall report to the European Parliament, to the Council and to the European Economic and Social Committee on its implementation, in particular on the protection of fundamental rights and personal data.

2. Six years after the date of application of this Regulation, and every subsequent six years, 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 report shall in particular focus on:

(a) the impact of this Regulation on fundamental rights;

(b) the mobility of Union citizens;

(c) the effectiveness of biometric verification in ensuring the security of travel documents;

(d) a possible use of residence cards as travel documents;

(e) a possible further visual harmonisation of identity cards;

(f) the necessity of introducing common security features of identification documents used on a provisional basis in view of their better recognition.

3. Member States and relevant Union agencies shall provide the Commission with the information necessary for the preparation of these reports.

Article 14

Additional technical specifications

1. In order to ensure, where appropriate, that identity cards and residence documents referred to in points (a) and (c) of Article 2 comply with future minimum security standards, the Commission shall establish, by means of implementing acts, additional technical specifications, relating to the following:

(a) additional security features and requirements, including enhanced anti-forgery, counterfeiting and falsification standards;

(b) technical specifications for the storage medium of the biometric features referred to in Article 3(5) and their security, including prevention of unauthorised access and facilitation of validation;

(c) requirements for quality and common technical standards for the facial image and the fingerprints.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).

2. In accordance with the procedure referred to in Article 15(2), it may be decided that the specifications referred to in this Article are to be secret and are not to be published. In such a case, they shall be made available only to the bodies designated by the Member States as responsible for printing and to persons duly authorised by a Member State or by the Commission.

3. Each Member State shall designate one body having responsibility for printing identity cards, and one body having responsibility for printing residence cards of family members of Union citizens, and shall communicate the names of such bodies to the Commission and to the other Member States. Member States shall be entitled to change such designated bodies and shall inform the Commission and the other Member States accordingly.

Member States may also decide to designate a single body having responsibility for printing both identity cards and residence cards of family members of Union citizens and shall communicate the name of this body to the Commission and to the other Member States.

Two or more Member States may also decide to designate a single body for those purposes and shall inform the Commission and the other Member States accordingly.

Article 15

Committee procedure

1. The Commission shall be assisted by the Committee established by Article 6 of Regulation (EC) No 1683/95. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee does not deliver an opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 16

Entry into force

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

It shall apply from 2 August 2021.

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	*For the Council*
The President	*The President*
A. TAJANI	G. CIAMBA

DIRECTIVES

DIRECTIVE (EU) 2019/1158 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

on work-life balance for parents and carers and repealing Council Directive 2010/18/EU

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 (i) 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) Point (i) of Article 153(1) of the Treaty on the Functioning of the European Union (TFEU) provides that the Union is to support and complement the activities of the Member States in the area of equality between men and women with regard to labour market opportunities and treatment at work.

(2) Equality between men and women is a fundamental principle of the Union. The second subparagraph of Article 3(3) of the Treaty on European Union (TEU) provides that the Union is to promote equality between women and men. Similarly, Article 23 of the Charter of Fundamental Rights of the European Union (Charter) requires equality between men and women to be ensured in all areas, including employment, work and pay.

(3) Article 33 of the Charter provides for the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child, to reconcile family and professional life.

(4) The Union has ratified the 2006 United Nations Convention on the Rights of Persons with Disabilities. That Convention is thus an integral part of the Union legal order, and Union legal acts must, as far as possible, be interpreted in a manner that is consistent with the Convention. The Convention provides, in particular in Article 7(1), that parties thereto are to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

(5) The Member States have ratified the 1989 United Nations Convention on the Rights of the Child. Article 18(1) of the Convention provides that both parents have common responsibilities for the upbringing and development of the child and that the best interests of the child should be the parents' basic concern.

(6) Work-life balance policies should contribute to the achievement of gender equality by promoting the participation of women in the labour market, the equal sharing of caring responsibilities between men and women, and the closing of the gender gaps in earnings and pay. Such policies should take into account demographic changes including the effects of an ageing population.

([1]) OJ C 129, 11.4.2018, p. 44.
([2]) OJ C 164, 8.5.2018, p. 62.
([3]) Position of the European Parliament of 4 April 2019 (not yet published in the Official Journal) and decision of the Council of 13 June 2019.

(7) In light of the challenges that arise from demographic change, together with the resultant pressure on public expenditure in some Member States, the need for informal care is expected to increase.

(8) At Union level, several directives in the areas of gender equality and working conditions already address certain issues that are relevant for work-life balance, in particular Directives 2006/54/EC ([4]) and 2010/41/EU ([5]) of the European Parliament and of the Council, and Council Directives 92/85/EEC ([6]), 97/81/EC ([7]) and 2010/18/EU ([8]).

(9) The principles of gender equality and work-life balance are reaffirmed in Principles 2 and 9 of the European Pillar of Social Rights, which was proclaimed by the European Parliament, the Council and the Commission on 17 November 2017.

(10) However, work-life balance remains a considerable challenge for many parents and workers with caring responsibilities, in particular because of the increasing prevalence of extended working hours and changing work schedules, which has a negative impact on women's employment. A major factor contributing to the underrepresentation of women in the labour market is the difficulty of balancing work and family obligations. When they have children, women are likely to work fewer hours in paid employment and to spend more time fulfilling unpaid caring responsibilities. Having a sick or dependent relative has also been shown to have a negative impact on women's employment and results in some women dropping out of the labour market entirely.

(11) The current Union legal framework provides limited incentives for men to assume an equal share of caring responsibilities. The lack of paid paternity and parental leave in many Member States contributes to the low take-up of leave by fathers. The imbalance in the design of work-life balance policies between women and men reinforces gender stereotypes and differences between work and care. Policies on equal treatment should aim to address the issue of stereotypes in both men's and women's occupations and roles, and the social partners are encouraged to act upon their key role in informing both workers and employers and raising their awareness of tackling discrimination. Furthermore, the use of work-life balance arrangements by fathers, such as leave or flexible working arrangements, has been shown to have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment.

(12) In implementing this Directive, Member States should take into consideration that the equal uptake of family-related leave between men and women also depends on other appropriate measures, such as the provision of accessible and affordable childcare and long-term care services, which are crucial for the purpose of allowing parents, and other persons with caring responsibilities to enter, remain in, or return to the labour market. Removing economic disincentives can also encourage second earners, the majority of whom are women, to participate fully in the labour market.

(13) In order to assess the impact of this Directive, the Commission and the Member States should continue to cooperate with one another in order to develop comparable statistics that are disaggregated by sex.

(14) The Commission has consulted management and labour in a two-stage process with regard to challenges related to work-life balance, in accordance with Article 154 TFEU. There was no agreement among the social partners to enter into negotiations with regard to those matters, including with regard to parental leave. It is, however, important to take action in that area by modernising and adapting the current legal framework, taking into account the outcome of those consultations, as well as of the public consultation carried out to seek the views of stakeholders and citizens.

([4]) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

([5]) Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010, p. 1).

([6]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1).

([7]) Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ L 14, 20.1.1998, p. 9).

([8]) Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68, 18.3.2010, p. 13).

(15) Directive 2010/18/EU regulates parental leave by putting into effect a framework agreement concluded between the social partners. This Directive builds on the rules laid down in Directive 2010/18/EU and complements them by strengthening existing rights and by introducing new rights. Directive 2010/18/EU should be repealed and replaced by this Directive.

(16) This Directive lays down minimum requirements related to paternity leave, parental leave and carers' leave, and to flexible working arrangements for workers who are parents, or carers. By facilitating the reconciliation of work and family life for such parents and carers, this Directive should contribute to the Treaty-based goals of equality between men and women with regard to labour market opportunities, equal treatment at work and the promotion of a high level of employment in the Union.

(17) This Directive applies to all workers who have employment contracts or other employment relationships, including contracts relating to the employment or the employment relationships of part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency, as previously provided for by Directive 2010/18/EU. Taking into account the case-law of the Court of Justice of the European Union (Court of Justice) regarding the criteria for determining the status of a worker, it is for Member States to define employment contracts and employment relationships.

(18) Member States have the competence to define marital and family status, as well as to establish which persons are to be considered to be a parent, a mother and a father.

(19) In order to encourage a more equal sharing of caring responsibilities between women and men, and to allow for the early creation of a bond between fathers and children, a right to paternity leave for fathers or, where and insofar as recognised by national law, for equivalent second parents, should be introduced. Such paternity leave should be taken around the time of the birth of the child and should be clearly linked to the birth for the purposes of providing care. Member States are also able to grant paternity leave in the case of a stillbirth. It is for Member States to determine whether to allow part of the paternity leave to be taken before the birth of the child or to require all of it to be taken thereafter, the time frame within which paternity leave is to be taken, and whether and under which conditions to allow paternity leave to be taken on a part-time basis, in alternating periods, such as for a number of consecutive days of leave separated by periods of work, or in other flexible ways. Member States are able to specify whether paternity leave is expressed in working days, weeks or other time units, taking into account that ten working days correspond to two calendar weeks. In order to take account of differences between Member States, the right to paternity leave should be granted irrespective of marital or family status, as defined by national law.

(20) As most fathers do not avail themselves of their right to parental leave, or transfer a considerable proportion of their leave entitlement to mothers, this Directive extends from one to two months the minimum period of parental leave which cannot be transferred from one parent to the other in order to encourage fathers to take parental leave, while maintaining the right of each parent to take at least four months of parental leave as provided for in Directive 2010/18/EU. The purpose of ensuring that at least two months of parental leave is available to each parent exclusively and that cannot be transferred to the other parent, is to encourage fathers to make use of their right to such leave. It also promotes and facilitates the reintegration of mothers in the labour market after they have taken a period of maternity and parental leave.

(21) A minimum period of four months of parental leave is guaranteed under this Directive to workers who are parents. Member States are encouraged to grant the right to parental leave to all workers who exercise parental responsibilities in accordance with national legal systems.

(22) Member States should be able to specify the period of notice to be given by the worker to the employer when applying for parental leave and should be able to decide whether the right to parental leave is subject to a certain period of service. In view of the growing diversity of contractual arrangements, the sum of successive fixed-term contracts with the same employer should be taken into account for the purpose of calculating such a period of service. To balance the needs of workers with those of employers, Member States should also be able to decide whether to allow employers to postpone the granting of parental leave under certain circumstances, subject to the requirement that the employers should provide reasons for such a postponement in writing.

(23) Given that flexibility makes it more likely that each parent, in particular fathers, will take up their entitlement to parental leave, workers should be able to request that parental leave be granted on a full-time or a part-time basis, in alternating periods, such as for a number of consecutive weeks of leave separated by periods of work, or in other flexible ways. The employer should be able to accept or refuse such a request for parental leave in ways other than on a full-time basis. Member States should assess whether the conditions of access to and the detailed arrangements for parental leave should be adapted to the specific needs of parents in particularly disadvantaged situations.

(24) The period within which workers should be entitled to take parental leave should be linked to the age of the child. That age should be set in such a way as to enable both parents to effectively take up their full entitlement to parental leave under this Directive.

(25) In order to facilitate the return to work following a period of parental leave, workers and employers are encouraged to maintain voluntary contact during the period of leave and can make arrangements for any appropriate measures to facilitate reintegration into the work place. Such contact and arrangements are to be decided between the parties concerned, taking into account national law, collective agreements or practice. Workers should be informed of promotion processes and internal vacancies and should be able to participate in such processes and to apply for such vacancies.

(26) Studies demonstrate that Member States that provide a significant portion of parental leave to fathers and that pay the worker a payment or allowance during that leave at a relatively high replacement rate, experience a higher take-up rate by fathers and a positive trend in the rate of employment of mothers. It is therefore appropriate to allow such systems to continue provided that they meet certain minimum criteria, instead of providing the payment or allowance for paternity leave as provided for in this Directive.

(27) In order to provide men and women with caring responsibilities with greater opportunities to remain in the workforce, each worker should have the right to carers' leave of five working days per year. Member States may decide that such leave can be taken in periods of one or more working days per case. In order to take account of divergent national systems, Member States should be able to allocate carers' leave on the basis of a period other than a year, by reference to the person in need of care or support, or by case. A continued rise in care needs is predicted, because of an ageing population and, consequentially, the concomitant increase in the prevalence of age-related impairments. The rise in care needs should be taken into account by Member States when they develop their care policies, including with regard to carers' leave. Member States are encouraged to make the right to carers' leave available with regard to additional relatives, such as grandparents and siblings. Member States can require prior medical certification of the need for significant care or support for a serious medical reason.

(28) In addition to the right to carers' leave provided for in this Directive, all workers should retain their right to take time off from work without the loss of employment rights that have been acquired or that are in the process of being acquired, on the grounds of *force majeure* for urgent and unexpected family reasons, as provided for in Directive 2010/18/EU, in accordance with the conditions established by the Member States.

(29) To increase incentives to workers who are parents, and to men in particular, to take the periods of leave provided for in this Directive, workers should be provided with a right to an adequate allowance while on leave.

(30) Member States should therefore set a level for the payment or allowance with respect to the minimum period of paternity leave that is at least equivalent to the level of national sick pay. Since granting rights to paternity and maternity leave pursue similar objectives, namely creating a bond between the parent and the child, Member States are encouraged to provide for a payment or an allowance for paternity leave that is equal to the payment or allowance provided for maternity leave at national level.

(31) Member States should set the payment or allowance for the minimum non-transferable period of parental leave guaranteed under this Directive at an adequate level. When setting the level of the payment or allowance provided for the minimum non-transferable period of parental leave, Member States should take into account that the take-up of parental leave often results in a loss of income for the family and that first earners in a family are able to make use of their right to parental leave only if it is sufficiently well remunerated, with a view to allowing for a decent living standard.

(32) Although Member States are free to decide whether to provide a payment or an allowance for carers' leave, they are encouraged to introduce such a payment or an allowance in order to guarantee the effective take-up of the right by carers, in particular by men.

(33) This Directive is without prejudice to the coordination of social security systems under Regulations (EC) No 883/2004 ([9]) and (EU) No 1231/2010 ([10]) of the European Parliament and of the Council and Council Regulation (EC) No 859/2003 ([11]). The Member State competent for the social security of a worker is determined by those Regulations.

(34) In order to encourage workers who are parents, and carers to remain in the work force, such workers should be able to adapt their working schedules to their personal needs and preferences. To that end and with a focus on workers' needs, they have the right to request flexible working arrangements for the purpose of adjusting their working patterns, including, where possible, through the use of remote working arrangements, flexible working schedules, or a reduction in working hours, for the purposes of providing care.

(35) In order to address the needs of both workers and employers, it should be possible for Member States to limit the duration of flexible working arrangements, including any reduction in working hours or any remote working arrangements. While working part-time has been shown to be useful in allowing some women to remain in the labour market after having children or caring for relatives with care or support needs, long periods of reduced working hours can lead to lower social security contributions and thus reduced or non-existing pension entitlements.

(36) When considering requests for flexible working arrangements, employers should be able to take into account, inter alia, the duration of the flexible working arrangements requested and the employers' resources and operational capacity to offer such arrangements. The employer should be able to decide whether to accept or refuse a worker's request for flexible working arrangements. Specific circumstances underlying the need for flexible working arrangements can change. Workers should therefore have the right not only to return to their original working pattern at the end of a mutually agreed period, but should also be able to request to do so earlier where required on the basis of a change in the underlying circumstances.

(37) Notwithstanding the requirement to assess whether the conditions of access to and the detailed arrangements for parental leave should be adapted to the specific needs of parents in particularly disadvantaged situations, Member States are encouraged to assess whether conditions for access to, and the detailed arrangements for, exercising the right to paternity leave, carers' leave and flexible working arrangements should be adapted to particular needs, such as of those of single parents, adoptive parents, parents with a disability, parents of children with a disability or a long-term illness, or parents in particular circumstances, such as those related to multiple births and premature births.

(38) Leave arrangements are intended to support workers who are parents, and carers during a specific period of time, and aim to maintain and promote the workers' continued attachment to the labour market. It is therefore appropriate to make express provision for the protection of the employment rights of workers who take the types of leave covered by this Directive. In particular, this Directive protects the right of workers to return to the same or to an an equivalent post after taking such leave and the right not to be subject to any detriment in the terms and conditions of their contract of employment or employment relationship as a result of taking such leave. Workers should retain their entitlement to relevant rights that are already acquired, or that are in the process of being acquired, until the end of such leave.

([9]) 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).

([10]) 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).

([11]) 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).

(39) As provided for in Directive 2010/18/EU, Member States are required to define the status of the employment contract or employment relationship for the period of parental leave. According to the case-law of the Court of Justice, the employment relationship between the worker and the employer is maintained during the period of leave and, as a result, the beneficiary of such leave remains, during that period, a worker for the purposes of Union law. When defining the status of the employment contract or employment relationship during the period of the types of leave covered by this Directive, including with regard to the entitlement to social security, the Member States should therefore ensure that the employment relationship is maintained.

(40) Workers who exercise their right to take leave or to request flexible working arrangements as provided for in this Directive should be protected against discrimination or any less favourable treatment on that ground.

(41) Workers who exercise their right to take leave or to request flexible working arrangements as provided for in this Directive should enjoy protection from dismissal and any preparatory steps for a possible dismissal on the grounds that they have applied for, or have taken, such leave or that they have exercised their right to request such flexible working arrangements in accordance with the case law of the Court of Justice, including its judgment in Case C-460/06 ([12]). Workers who consider that they have been dismissed on the basis that they have exercised such rights should be able to ask the employer to provide duly substantiated grounds for the dismissal. Where a worker has applied for, or has taken, paternity leave, parental leave or carers' leave as referred to in this Directive, the employer should provide the grounds for dismissal in writing.

(42) The burden of proving that there has been no dismissal on the grounds that workers have applied for, or have taken, paternity leave, parental leave or carers' leave as referred to in this Directive should be on the employer where a worker has established, before a court or another competent authority, facts capable of giving rise to a presumption that the worker has been dismissed on such grounds.

(43) Member States should provide for effective, proportionate and dissuasive penalties in the event of infringements of national provisions adopted pursuant to this Directive or national provisions that are already in force on the date of entry into force of this Directive and that relate to the rights which are within its scope. Such penalties can include administrative and financial penalties, such as fines or the payment of compensation, as well as other types of penalties.

(44) The effective implementation of the principles of equal treatment and equal opportunities requires the adequate judicial protection of workers against adverse treatment or adverse consequences resulting from a complaint or from proceedings relating to the rights under this Directive. It is possible that victims are deterred from exercising their rights on account of the risk of retaliation and therefore should be protected from any adverse treatment where they exercise their rights provided for in this Directive. Such protection is particularly relevant as regards the representatives of workers in the exercise of their functions.

(45) With a view to further improving the level of protection of the rights provided for in this Directive, national equality bodies should be competent in regard to issues relating to discrimination that fall within the scope of this Directive, including the task of providing independent assistance to victims of discrimination in pursuing their complaints.

(46) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining provisions that are more favourable to workers. Allowing one parent to transfer to the other parent more than two months out of the four months of parental leave provided for in this Directive does not constitute a provision that is more favourable to the worker than the minimum provisions laid down in this Directive. Rights that are already acquired on the date of entry into force of this Directive should continue to apply unless this Directive provides for more favourable provisions. The implementation of this Directive should neither be used to reduce existing Union law rights, nor constitute valid grounds for reducing the general level of protection provided to workers, in the areas covered by this Directive.

([12]) Judgment of the Court of Justice of 11 October 2007, *Nadine Paquay v Société d'architectes Hoet + Minne SPRL*, C-460/06, ECLI:EU:C:2007:601.

(47) In particular, nothing in this Directive should be interpreted as reducing the rights provided for in Directives 2010/18/EU, 92/85/EEC and 2006/54/EC, including Article 19 of Directive 2006/54/EC.

(48) Micro, small and medium-sized enterprises (SMEs) as defined in the Annex to Commission Recommendation 2003/361/EC ([13]), which represent the large majority of enterprises in the Union, can have limited financial, technical and human resources. In implementing this Directive, Member States should strive to avoid imposing administrative, financial or legal constraints in a manner which would amount to a disincentive to the creation and development of SMEs or an excessive burden to employers. Member States are therefore invited to thoroughly assess the impact of their implementing measures on SMEs in order to ensure the equal treatment of all workers, that SMEs are not disproportionately affected by the measures, with particular focus on microenterprises, and that any unnecessary administrative burden is avoided. Member States are encouraged to provide incentives, guidance and advice to SMEs to assist them in complying with their obligations pursuant to this Directive.

(49) Any kind of family-related time off work, in particular maternity leave, paternity leave, parental leave and carers' leave, that is available under national law or collective agreements should count towards fulfilling the requirements of one or more of the types of leave provided for in this Directive and in Directive 92/85/EEC, provided that the minimum requirements of those directives are fulfilled and that the general level of protection provided to workers in the areas covered by them is not reduced. In implementing this Directive, Member States are not required to rename or otherwise change the different types of family-related leave that are provided for under national law or collective agreements and which count towards compliance with this Directive.

(50) Member States are encouraged, in accordance with national practice, to promote a social dialogue with the social partners with a view to fostering the reconciliation of work and private life, including by promoting work-life balance measures in the workplace, establishing voluntary certification systems, providing vocational training, raising awareness, and carrying out information campaigns. In addition, Member States are encouraged to engage in a dialogue with relevant stakeholders, such as non-governmental organisations, local and regional authorities and service providers, in order to promote work-life balance policies in accordance with national law and practice.

(51) The social partners should be encouraged to promote voluntary certification systems assessing work-life balance at the workplace.

(52) Since the objectives of this Directive, namely to ensure the implementation of the principle of equality between men and women with regard to labour market opportunities and treatment at work across the Union, 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 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down minimum requirements designed to achieve equality between men and women with regard to labour market opportunities and treatment at work, by facilitating the reconciliation of work and family life for workers who are parents, or carers.

To that end, this Directive provides for individual rights related to the following:

(a) paternity leave, parental leave and carers' leave;

(b) flexible working arrangements for workers who are parents, or carers.

([13]) 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).

Article 2

Scope

This Directive applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, taking into account the case-law of the Court of Justice.

Article 3

Definitions

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

(a) 'paternity leave' means leave from work for fathers or, where and insofar as recognised by national law, for equivalent second parents, on the occasion of the birth of a child for the purposes of providing care;

(b) 'parental leave' means leave from work for parents on the grounds of the birth or adoption of a child to take care of that child;

(c) 'carers' leave' means leave from work for workers in order to provide personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason, as defined by each Member State;

(d) 'carer' means a worker providing personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason, as defined by each Member State;

(e) 'relative' means a worker's son, daughter, mother, father, spouse or, where such partnerships are recognised by national law, partner in civil partnership;

(f) 'flexible working arrangements' means the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or reduced working hours.

2. The reference to working days in Articles 4 and 6 shall be understood as referring to the full-time working pattern, as defined in the Member State in question.

A worker's entitlement to leave may be calculated proportionally to the worker's working time, in accordance with the working pattern specified in the worker's contract of employment or employment relationship.

Article 4

Paternity leave

1. Member States shall take the necessary measures to ensure that fathers or, where and insofar as recognised by national law, equivalent second parents, have the right to paternity leave of 10 working days that is to be taken on the occasion of the birth of the worker's child. Member States may determine whether to allow paternity leave to be taken partly before or only after the birth of the child and whether to allow such leave to be taken in flexible ways.

2. The right to paternity leave shall not be made subject to a period of work qualification or to a length of service qualification.

3. The right to paternity leave shall be granted irrespective of the worker's marital or family status, as defined by national law.

Article 5

Parental leave

1. Member States shall take the necessary measures to ensure that each worker has an individual right to parental leave of four months that is to be taken before the child reaches a specified age, up to the age of eight, to be specified by each Member State or by collective agreement. That age shall be determined with a view to ensuring that each parent is able to exercise their right to parental leave effectively and on an equal basis.

2. Member States shall ensure that two months of parental leave cannot be transferred.

3. Member States shall establish a reasonable period of notice that is to be given by workers to employers where they exercise their right to parental leave. In doing so, Member States shall take into account the needs of both the employers and the workers.

Member States shall ensure that the worker's request for parental leave specifies the intended beginning and end of the period of leave.

4. Member States may make the right to parental leave subject to a period of work qualification or to a length of service qualification, which shall not exceed one year. In the case of successive fixed-term contracts within the meaning of Council Directive 1999/70/EC ([14]) with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.

5. Member States may establish the circumstances in which an employer, following consultation in accordance with national law, collective agreements or practice, is allowed to postpone the granting of parental leave for a reasonable period of time on the grounds that the taking of parental leave at the time requested would seriously disrupt the good functioning of the employer. Employers shall provide reasons for such a postponement of parental leave in writing.

6. Member States shall take the necessary measures to ensure that workers have the right to request that they take parental leave in flexible ways. Member States may specify the modalities of application thereof. The employer shall consider and respond to such requests, taking into account the needs of both the employer and the worker. The employer shall provide reasons for any refusal to accede to such a request in writing within a reasonable period after the request.

7. Member States shall take the necessary measures to ensure that when considering requests for full-time parental leave, employers shall, prior to any postponement in accordance with paragraph 5, offer, to the extent possible, flexible ways of taking parental leave pursuant to paragraph 6.

8. Member States shall assess the need for the conditions of access to and the detailed arrangements for the application of parental leave to be adapted to the needs of adoptive parents, parents with a disability and parents with children with a disability or a long-term illness.

Article 6

Carers' leave

1. Member States shall take the necessary measures to ensure that each worker has the right to carers' leave of five working days per year. Member States may determine additional details regarding the scope and conditions of carers' leave in accordance with national law or practice. The use of that right may be subject to appropriate substantiation, in accordance with national law or practice.

2. Member States may allocate carers' leave on the basis of a reference period other than a year, per person in need of care or support, or per case.

Article 7

Time off from work on grounds of force majeure

Member States shall take the necessary measures to ensure that each worker has the right to time off from work on grounds of *force majeure* for urgent family reasons in the case of illness or accident making the immediate attendance of the worker indispensable. Member States may limit the right of each worker to time off from work on grounds of *force majeure* to a certain amount of time each year or by case, or both.

([14]) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43).

Article 8

Payment or allowance

1. In accordance with national circumstances, such as national law, collective agreements or practice, and taking into account the powers delegated to the social partners, Member States shall ensure that workers who exercise their right to leave provided for in Article 4(1) or Article 5(2) receive a payment or an allowance in accordance with paragraphs 2 and 3 of this Article.

2. With regard to paternity leave as referred to in Article 4(1), such payment or allowance shall guarantee an income at least equivalent to that which the worker concerned would receive in the event of a break in the worker's activities on grounds connected with the worker's state of health, subject to any ceiling laid down in national law. Member States may make the right to a payment or an allowance subject to periods of previous employment, which shall not exceed six months immediately prior to the expected date of the birth of the child.

3. With regard to parental leave as referred to in Article 5(2), such payment or allowance shall be defined by the Member State or the social partners and shall be set in such a way as to facilitate the take-up of parental leave by both parents.

Article 9

Flexible working arrangements

1. Member States shall take the necessary measures to ensure that workers with children up to a specified age, which shall be at least eight years, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.

2. Employers shall consider and respond to requests for flexible working arrangements as referred to in paragraph 1 within a reasonable period of time, taking into account the needs of both the employer and the worker. Employers shall provide reasons for any refusal of such a request or for any postponement of such arrangements.

3. When flexible working arrangements as referred to in paragraph 1 are limited in duration, the worker shall have the right to return to the original working pattern at the end of the agreed period. The worker shall also have the right to request to return to the original working pattern before the end of the agreed period where justified on the basis of a change of circumstances. The employer shall consider and respond to a request for an early return to the original working pattern, taking into account the needs of both the employer and the worker.

4. Member States may make the right to request flexible working arrangements subject to a period of work qualification or to a length of service qualification, which shall not exceed six months. In the case of successive fixed-term contracts within the meaning of Directive 1999/70/EC with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.

Article 10

Employment rights

1. Rights that have been acquired or that are in the process of being acquired by workers on the date on which leave provided for in Articles 4, 5 and 6 or time off from work provided for in Article 7 starts shall be maintained until the end of such leave or time off from work. At the end of such leave or time off from work, those rights, including any changes arising from national law, collective agreements or practice, shall apply.

2. Member States shall ensure that, at the end of leave provided for in Articles 4, 5 and 6, workers are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled had they not taken the leave.

3. Member States shall define the status of the employment contract or employment relationship for the period of leave provided for in Articles 4, 5 and 6, or time off from work provided for in Article 7, including as regards entitlements to social security, including pension contributions, while ensuring that the employment relationship is maintained during that period.

Article 11

Discrimination

Member States shall take the necessary measures to prohibit less favourable treatment of workers on the ground that they have applied for, or have taken, leave provided for in Articles 4, 5 and 6 or time off from work provided for in Article 7, or that they have exercised the rights provided for in Article 9.

Article 12

Protection from dismissal and burden of proof

1. Member States shall take the necessary measures to prohibit the dismissal and all preparations for the dismissal of workers, on the grounds that they have applied for, or have taken, leave provided for in Articles 4, 5 and 6, or have exercised the right to request flexible working arrangements referred to in Article 9.

2. Workers who consider that they have been dismissed on the grounds that they have applied for, or have taken, leave provided for in Articles 4, 5 and 6, or have exercised the right to request flexible working arrangements as referred to in Article 9, may request the employer to provide duly substantiated reasons for their dismissal. With respect to the dismissal of a worker who has applied for, or has taken, leave provided for in Article 4, 5 or 6, the employer shall provide reasons for the dismissal in writing.

3. Member States shall take the measures necessary to ensure that where workers who consider that they have been dismissed on the grounds that they have applied for, or have taken, leave provided for in Articles 4, 5 and 6 establish, before a court or other competent authority, facts capable of giving rise to a presumption that they have been dismissed on such grounds, it shall be for the employer to prove that the dismissal was based on other grounds.

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 competent body to investigate the facts of the case.

6. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by the Member States.

Article 13

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, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Article 14

Protection against adverse treatment or consequences

Member States shall introduce measures necessary to protect workers, including workers who are employees' representatives, from any adverse treatment by the employer or adverse consequences resulting from a complaint lodged within the undertaking or any legal proceedings for the purpose of enforcing compliance with the requirements laid down in this Directive.

Article 15

Equality bodies

Without prejudice to the competence of labour inspectorates or other bodies that enforce the rights of workers, including the social partners, Member States shall ensure that the body or bodies designated, pursuant to Article 20 of Directive 2006/54/EC, for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex, are competent with regard to issues relating to discrimination falling within the scope of this Directive.

Article 16

Level of protection

1. Member States may introduce or maintain provisions that are more favourable to workers than those laid down in this Directive.

2. The implementation of this Directive shall not constitute grounds for justifying a reduction in the general level of protection of workers in the areas covered by this Directive. The prohibition of such a reduction in the level of protection shall be without prejudice to the right of Member States and the social partners to lay down, in light of changing circumstances, legislative, regulatory or contractual arrangements other than those in force on 1 August 2019, provided that the minimum requirements laid down in this Directive are complied with.

Article 17

Dissemination of information

Member States shall ensure that the national measures transposing this Directive, together with the relevant provisions already in force relating to the subject matter as set out in Article 1, are brought to the attention of workers and employers, including employers that are SMEs, by all appropriate means throughout their territory.

Article 18

Reporting and review

1. By 2 August 2027, Member States shall communicate to the Commission all information concerning the implementation of this Directive that is necessary for the Commission to draw up a report. That information shall include available aggregated data on the take-up of different types of leave and flexible working arrangements, by men and women pursuant to this Directive, for the purposes of allowing the proper monitoring and assessment of the implementation of this Directive, in particular with regard to gender equality.

2. The Commission shall submit the report referred to in paragraph 1 to the European Parliament and to the Council. The report shall, if appropriate, be accompanied by a legislative proposal.

The report shall also be accompanied by:

(a) a study of the interaction between the different types of leave provided for in this Directive as well as other types of family-related leave, such as adoption leave; and

(b) a study of the rights to family-related leave that are granted to self-employed persons.

Article 19

Repeal

1. Directive 2010/18/EU is repealed with effect from 2 August 2022. References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in the Annex.

2 Notwithstanding the repeal of Directive 2010/18/EU pursuant to paragraph 1 of this Article, any period or separate cumulative periods of parental leave taken or transferred by a worker pursuant to that Directive before 2 August 2022 may be deducted from that worker's parental leave entitlement under Article 5 of this Directive.

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 August 2022. They shall immediately inform the Commission thereof.

2. Notwithstanding paragraph 1 of this Article, for the payment or allowance corresponding to the last two weeks of parental leave as provided for in Article 8(3), Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 August 2024. They shall immediately inform the Commission thereof.

3. When Member States adopt the measures referred to in paragraphs 1 and 2, 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.

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

5. The detailed rules and modalities for applying this Directive shall be established in accordance with national law, collective agreements or practice, as long as the minimum requirements and the objectives of this Directive are respected.

6. For the purposes of complying with Articles 4, 5, 6 and 8 of this Directive and with Directive 92/85/EEC, Member States may take into account any period of, and payment or allowance with respect to, family-related time off work, in particular maternity leave, paternity leave, parental leave and carers' leave, available at national level which is above the minimum standards provided for in this Directive or in Directive 92/85/EEC, provided that the minimum requirements for such leave are met and that the general level of protection provided to workers in the areas covered by those Directives is not reduced.

7. Where Member States ensure a payment or an allowance of at least 65 % of the worker's net wage, which may be subject to a ceiling, for at least six months of parental leave for each parent, they may decide to maintain such system rather than provide for the payment or allowance referred to in Article 8(2).

8. Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so, provided that Member States take all the necessary steps to ensure that the results sought by this Directive are guaranteed at all times.

Article 21

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 22

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 20 June 2019.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	G. CIAMBA

ANNEX

CORRELATION TABLE

Directive 2010/18/EU	This Directive
Clause 1(1)	Article 1
Clause 1(2)	Article 2
Clause 1(3)	Article 2
Clause 2(1)	Article 5(1)
Clause 2(2)	Article 5(1) and (2)
Clause 3(1)(a)	Article 5(6)
Clause 3(1)(b)	Article 5(4)
Clause 3(1)(c)	Article 5(5)
Clause 3(1)(d)	—
Clause 3(2)	Article 5(3)
Clause 3(3)	Article 5(8)
Clause 4(1)	Article 5(8)
Clause 5(1)	Article 10(2)
Clause 5(2)	Article 10(1)
Clause 5(3)	Article 10(3)
Clause 5(4)	Article 11
Clause 5(5) first subparagraph	Article 10(3)
Clause 5(5) second subparagraph	Article 8(3)
Clause 6(1)	Article 9
Clause 6(2)	Recital 25
Clause 7(1)	Article 7
Clause 7(2)	Article 7
Clause 8(1)	Article 16(1)
Clause 8(2)	Article 16(2)
Clause 8(3)	—
Clause 8(4)	—
Clause 8(5)	—
Clause 8(6)	—
Clause 8(7)	—

DIRECTIVE (EU) 2019/1159 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

amending Directive 2008/106/EC on the minimum level of training of seafarers and repealing Directive 2005/45/EC on the mutual recognition of seafarers' certificates issued by the Member States

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

(1) In order to maintain, and to aim to improve, the high level of maritime safety and pollution prevention at sea, it is essential to maintain and possibly to improve the level of knowledge and skills of Union seafarers by developing maritime training and certification in line with international rules and technological progress, as well as to take further action to enhance the European maritime skills base.

(2) The training and certification of seafarers is regulated at international level by the International Maritime Organization's International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (the 'STCW Convention'), which was last subject to a major revision in 2010. Amendments to the STCW Convention were adopted in 2015 on the training and qualification requirements for seafarers working on board ships subject to the International Code of Safety for Ships using Gases or other Low-flashpoint Fuels (the 'IGF Code'). In 2016, amendments to the STCW Convention were adopted in relation to training and qualification of seafarers working on board passenger ships and on board ships operating in polar waters.

(3) Directive 2008/106/EC of the European Parliament and of the Council ([3]) incorporates the STCW Convention into Union law. All Member States are signatories to the STCW Convention and thus a harmonized implementation of their international commitments is to be achieved through the alignment of the Union rules on training and certification of seafarers with the STCW Convention. Therefore, several provisions of Directive 2008/106/EC should be amended in order to reflect the latest amendments to the STCW Convention regarding training and qualification of seafarers working on board ships falling under the IGF Code, on board passenger ships and on board ships operating in polar waters.

(4) The Seafarers' Training, Certification and Watchkeeping Code, as adopted by Resolution 2 of the 1995 STCW Conference of Parties, in its up-to-date version (the 'STCW Code') already contains guidance on the prevention of fatigue (Section B-VIII/1) as well as on fitness for duty (Section A-VIII/1). In the interest of safety, it is imperative that the requirements of Article 15 of Directive 2008/106/EC are enforced and followed without exception and that due account is taken of that guidance.

([1]) OJ C 110, 22.3.2019, p. 125.
([2]) Position of the European Parliament of 4 April 2019 (not yet published in the Official Journal) and decision of the Council of 6 June 2019.
([3]) Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers (OJ L 323, 3.12.2008, p. 33).

(5) One of the objectives of the common transport policy in the field of maritime transport is to facilitate the movement of seafarers within the Union. Such movement contributes, among other things, to making the Union maritime transport sector attractive to future generations, thereby avoiding a situation in which the European maritime cluster is faced with a shortage of competent staff with the right mix of skills and competencies. The mutual recognition of seafarers' certificates issued by Member States is essential to facilitate the free movement of seafarers. In the light of the right to good administration, Member States' decisions in respect of acceptance of certificates of proficiency issued to seafarers by other Member States for the purpose of issuing national certificates of competency should be based on reasons that are capable of being ascertained by the seafarer concerned.

(6) Directive 2008/106/EC also contains a centralised system for the recognition of seafarers' certificates issued by third countries. The Regulatory Fitness Programme (REFIT) evaluation showed that significant cost savings for the Member States were achieved since the introduction of the centralised system. However, the evaluation also revealed that, with regard to some of the recognised third countries, only a very limited number of endorsements attesting the recognition of certificates were issued by Member States in relation to certificates of competency or certificates of proficiency issued by those third countries. Therefore, in order to use the available human and financial resources in a more efficient way, the procedure for the recognition of third countries should be based on an analysis of the need for such recognition, including but not limited to an indication of the estimated number of masters, officers and radio operators originating from that country who are likely to be serving on ships flying the flags of Member States. That analysis should be submitted for examination to the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS).

(7) In view of the experience gained in applying the procedure for the recognition of third countries, the REFIT evaluation revealed that the current 18-month time frame does not take into account the complexity of the process which includes an on field inspection conducted by the European Maritime Safety Agency. The necessary diplomatic arrangements to plan and carry out such an inspection require more time. Furthermore, the 18-month time frame is not sufficient where the third country has to implement corrective actions and undertake legal changes in its system in order to comply with the requirements of the STCW Convention. On those grounds, the deadline for the adoption of a Commission decision should be extended from 18 to 24 months and, where considerable corrective actions, including amendments to legal provisions, have to be implemented by the third country, the deadline should be further extended to 36 months. In addition, the possibility for the requesting Member State to provisionally recognise the third country's system for standards of training, certification and watchkeeping for seafarers should be kept so as to maintain the flexibility of the recognition procedure.

(8) In order to ensure the right of all seafarers to decent employment and in order to limit distortions of competition in the internal market, future recognition of third countries should consider whether those third countries have ratified the Maritime Labour Convention, 2006.

(9) In order to further increase the efficiency of the centralised system for the recognition of third countries, the reassessment of third countries which provide a low number of seafarers to ships flying the flags of Member States should be performed at longer intervals which should be increased to ten years. However, this longer period of reassessment of the system of such third countries should be combined with priority criteria which take into account safety concerns, balancing the need for efficiency with an effective safeguard mechanism in case of deterioration of the quality of seafarers' training provided in the relevant third countries.

(10) Information on the seafarers employed from third countries has become available at Union level through the communication by Member States of the relevant information kept in their national registers regarding issued certificates and endorsements. That information should be used for statistical and policy-making purposes, in particular for the purpose of improving the efficiency of the centralised system for the recognition of third countries. Based on the information communicated by the Member States, the recognition of third countries which have not provided seafarers to ships flying the flags of Member States for a period of at least eight years should be re-examined. The re-examination process should cover the possibility of retaining or withdrawing the recognition of the relevant third country. In addition, the information communicated by the Member States should also be used in order to prioritise the reassessment of the recognised third countries.

(11) In order to take account of developments at international level and to ensure the timely adaptation of Union rules to such developments, 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 incorporating amendments to the STCW Convention and Part A of the STCW Code by updating the technical requirements on training and certification of seafarers and by aligning all the relevant provisions of Directive 2008/106/EC in relation to the digital certificates for seafarers. 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 ([4]). 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.

(12) In order to ensure uniform conditions for the implementation of the provisions of this Directive concerning the recognition of third countries, 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 ([5]).

(13) The provisions for recognition of professional qualifications set out in Directive 2005/36/EC of the European Parliament and of the Council ([6]) are not applicable with regard to the recognition of certificates of seafarers under Directive 2008/106/EC. Directive 2005/45/EC of the European Parliament and of the Council ([7]) regulated the mutual recognition of seafarers' certificates issued by the Member States. However, the definitions of seafarers' certificates referred to in Directive 2005/45/EC have become obsolete following the 2010 amendments to the STCW Convention. Therefore, the mutual recognition scheme of seafarers' certificates issued by Member States should be amended in order to reflect the international amendments and the definitions of seafarers' certificates included in Directive 2008/106/EC. In addition, the seafarers' medical certificates issued under the authority of Member States should also be included in the mutual recognition scheme. In order to remove ambiguity and the risk of inconsistencies between Directives 2005/45/EC and 2008/106/EC, the mutual recognition of seafarers' certificates should be regulated by Directive 2008/106/EC only. Furthermore, in order to reduce the administrative burden on Member States, an electronic system for the presentation of seafarers' qualifications should be introduced once relevant amendments to the STCW Convention have been adopted.

(14) Digitalisation of data is part and parcel of technological progress in the area of data collection and communication with a view to helping to bring down costs and making efficient use of human resources. The Commission should consider measures in order to enhance the effectiveness of port State control, including, inter alia, an evaluation of the feasibility and added value of setting up and managing a central database of seafarers' certificates which would be linked to the inspection database referred to in Article 24 of Directive 2009/16/EC of the European Parliament and of the Council ([8]), and to which all Member States will be connected. That central database should contain all the information set out in Annex V to Directive 2008/106/EC on certificates of competency and endorsements attesting the recognition of certificates of proficiency issued in accordance with Regulations V/1-1 and V/1-2 of the STCW Convention.

(15) The education and training of European seafarers to be masters and officers should be supported by exchanges of students between maritime education and training institutions across the Union. In order to cultivate and develop the skills and qualifications of seafarers under a European flag, an exchange of good practices between Member States is necessary. The education and training of seafarers should fully benefit from the opportunities provided by the Erasmus+ programme.

([4]) OJ L 123, 12.5.2016, p. 1.
([5]) 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).
([6]) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).
([7]) Directive 2005/45/EC of the European Parliament and of the Council of 7 September 2005 on the mutual recognition of seafarers' certificates issued by the Member States and amending Directive 2001/25/EC (OJ L 255, 30.9.2005, p. 160).
([8]) Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

(16) The Commission should establish a dialogue with social partners and Member States to develop maritime training initiatives additional to the internationally agreed minimum level of training of seafarers, and which could be mutually recognised by Member States as European Maritime Diplomas of Excellence. Those initiatives should build upon, and be developed in line with, the recommendations of the ongoing pilot projects and strategies in the Commission's Blueprint for sectoral cooperation on skills.

(17) In order to increase legal clarity and consistency, Directive 2005/45/EC should be repealed.

(18) Directive 2008/106/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2008/106/EC

Directive 2008/106/EC is amended as follows:

(1) In Article 1, the following points are added:

'43. "host Member State" means the Member State in which seafarers seek acceptance or recognition of their certificates of competency, certificates of proficiency or documentary evidence;

44. "IGF Code" means the International Code of Safety for Ships using Gases or other Low-flashpoint Fuels, as defined in SOLAS 74 Regulation II-1/2.29;

45. "Polar Code" means the International Code for Ships Operating in Polar Waters, as defined in SOLAS 74 Regulation XIV/1.1;

46. "Polar waters" means Arctic waters and/or the Antarctic area, as defined in SOLAS 74 Regulations XIV/1.2 to XIV/1.4.'.

(2) Article 2 is amended as follows:

(a) in the sole paragraph, the introductory wording is replaced by the following:

'1. This Directive applies to the seafarers mentioned in this Directive serving on board seagoing ships flying the flag of a Member State with the exception of:';

(b) the following paragraph is added:

'2. Article 5b applies to seafarers who hold a certificate issued by a Member State, regardless of their nationality.'.

(3) Article 5 is amended as follows:

(a) paragraph 10 is replaced by the following:

'10. Subject to Article 19(7), any certificate required by this Directive shall be kept available in its original form on board the ship on which the holder is serving, in a hard copy or in a digital format, the authenticity and validity of which may be verified under the procedure laid down in point (b) of paragraph 12 of this Article.';

(b) paragraph 13 is replaced by the following:

'13. When relevant amendments to the STCW Convention and Part A of the STCW Code related to digital certificates for seafarers come into force, the Commission is empowered to adopt delegated acts in accordance with Article 27a to amend this Directive by aligning all the relevant provisions thereof with those amendments to the STCW Convention and Part A of the STCW Code in order to digitalise the seafarers' certificates and endorsements.'.

(4) Article 5a is replaced by the following:

'*Article 5a*

Information to the Commission

For the purposes of Article 20(8) and Article 21(2) and exclusively for use by the Member States and the Commission for policy-making and statistical purposes, Member States shall submit to the Commission, on a yearly basis, the information listed in Annex V to this Directive on certificates of competency and endorsements attesting the recognition of certificates of competency. They may also provide, on a voluntary basis, information on certificates of proficiency issued to ratings in accordance with Chapters II, III and VII of the Annex to the STCW Convention, such as the information indicated in Annex V to this Directive.'.

(5) The following Article is inserted:

'*Article 5b*

Mutual recognition of seafarers' certificates issued by Member States

1. Every Member State shall accept certificates of proficiency and documentary evidence issued by another Member State, or under its authority, in hard copy or in digital format, for the purpose of allowing seafarers to serve on ships flying its flag.

2. Every Member State shall recognise certificates of competency issued by another Member State or certificates of proficiency issued by another Member State to masters and officers in accordance with Regulations V/1-1 and V/1-2 of Annex I to this Directive, by endorsing those certificates to attest their recognition. The endorsement attesting the recognition shall be limited to the capacities, functions and levels of competency or proficiency prescribed therein. The endorsement shall only be issued if all requirements of the STCW Convention have been complied with, in accordance with Regulation I/2, paragraph 7, of the STCW Convention. The form of the endorsement used shall be that set out in Section A-I/2, paragraph 3, of the STCW Code.

3. Every Member State shall accept, for the purpose of allowing seafarers to serve on ships flying its flag, medical certificates issued under the authority of another Member State in accordance with Article 11.

4. The host Member States shall ensure that the decisions referred to in paragraphs 1, 2 and 3 are issued within a reasonable time. The host Member States shall also ensure that seafarers have the right to appeal against any refusal to endorse or accept a valid certificate, or the absence of any response, in accordance with national legislation and procedures and that seafarers are provided with adequate advice and assistance regarding such appeals in accordance with established national legislation and procedures.

5. Without prejudice to paragraph 2 of this Article, the competent authorities of a host Member State may impose further limitations on capacities, functions and levels of competence or proficiency relating to near-coastal voyages, as referred to in Article 7, or alternative certificates issued under Regulation VII/1 of Annex I.

6. Without prejudice to paragraph 2, a host Member State may, where necessary, allow a seafarer to serve, for a period not exceeding three months on board a ship flying its flag, while holding an appropriate and valid certificate issued and endorsed by another Member State, but not yet endorsed for recognition by the host Member State concerned.

Documentary proof that an application for endorsement has been submitted to the competent authorities shall be readily available.

7. A host Member State shall ensure that seafarers who present for recognition certificates for functions at management level have appropriate knowledge of the maritime legislation of that Member State relevant to the functions that they are permitted to perform.'.

(6) Article 12 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Every master, officer and radio operator holding a certificate issued or recognised under any chapter of Annex I other than Regulation V/3 of Chapter V or Chapter VI, who is serving at sea or intends to return to sea after a period ashore, shall, in order to continue to qualify for seagoing service, be required at intervals not exceeding five years:

(a) to meet the standards of medical fitness prescribed by Article 11; and

(b) to establish continued professional competence in accordance with Section A-I/11 of the STCW Code.';

(b) the following paragraph is inserted:

'2b. Every master or officer shall, for continuing seagoing service on board ships operating in polar waters, meet the requirements of paragraph 1 of this Article and shall be required, at intervals not exceeding five years, to establish continued professional competence for ships operating in polar waters in accordance with Section A-I/11, paragraph 4, of the STCW Code.';

(c) paragraph 3 is replaced by the following:

'3. Each Member State shall compare the standards of competence which are required of candidates for certificates of competency and/or certificates of proficiency issued until 1 January 2017 with those specified for the relevant certificate of competency and/or proficiency in Part A of the STCW Code, and shall determine the need to require the holders of such certificates of competency and/or certificates of proficiency to undergo appropriate refresher and updating training or assessment.';

(d) the following paragraph is inserted:

'3a. Every Member State shall compare the standards of competence which it required of persons serving on gas-fuelled ships before 1 January 2017 with the standards of competence in Section A-V/3 of the STCW Code, and shall determine the need, if any, for requiring those persons to update their qualifications.'.

(7) In Article 19, paragraphs 2 and 3 are replaced by the following:

'2. A Member State which intends to recognise, by endorsement, the certificates of competency or the certificates of proficiency referred to in paragraph 1 of this Article issued by a third country to a master, officer or radio operator, for service on ships flying its flag, shall submit a request to the Commission for the recognition of that third country, accompanied by a preliminary analysis of the third country's compliance with the requirements of the STCW Convention by collecting the information referred to in Annex II to this Directive. In that preliminary analysis, further information on the reasons for recognition of the third country shall be provided by the Member State, in support of its request.

Following the submission of such a request by a Member State, the Commission shall process without delay that request and shall decide, in accordance with the examination procedure referred to in Article 28(2), on the initiation of the assessment of the training and certification system in the third country within a reasonable time with due regard to the time limit set out in paragraph 3 of this Article.

When a positive decision for initiating the assessment has been adopted, the Commission, assisted by the European Maritime Safety Agency and with the possible involvement of the Member State submitting the request and any other interested Member States, shall collect the information referred to in Annex II to this Directive and shall carry out an assessment of the training and certification systems in the third country for which the request for recognition was submitted, in order to verify that the country concerned meets all the requirements of the STCW Convention and that appropriate measures have been taken to prevent issuance of fraudulent certificates, and to consider whether it has ratified the Maritime Labour Convention, 2006.

3. Where, as a result of the assessment referred to in paragraph 2 of this Article, the Commission concludes that all those requirements are fulfilled, it shall adopt implementing acts laying down its decision on the recognition of a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2), within 24 months of the submission of the request by a Member State referred to in paragraph 2 of this Article.

In case the third country concerned needs to implement major corrective actions, including amendments to its legislation, its education, training and certification system in order to meet the requirements of the STCW Convention, the implementing acts referred to in the first subparagraph of this paragraph shall be adopted within 36 months of the submission of the request by a Member State referred to in paragraph 2 of this Article.

The Member State submitting that request may decide to recognise the third country unilaterally until an implementing act is adopted pursuant to this paragraph. In case of such a unilateral recognition, the Member State shall communicate to the Commission the number of endorsements attesting recognition issued in relation to certificates of competency and certificates of proficiency referred to in paragraph 1, issued by the third country until the implementing act regarding the recognition of that third country is adopted.'.

(8) In Article 20, the following paragraph is added:

'8. If there are no endorsements attesting recognition issued by a Member State in relation to certificates of competency or certificates of proficiency, referred to in Article 19(1), issued by a third country for a period of more than eight years, the recognition of that country's certificates shall be re-examined. The Commission shall adopt implementing acts laying down its decision following that re-examination. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2), after notifying the Member States as well as the third country concerned at least six months in advance.'.

(9) In Article 21, paragraphs 1 and 2 are replaced by the following:

'1. The third countries that have been recognised under the procedure referred to in the first subparagraph of Article 19(3), including those referred to in Article 19(6), shall be reassessed by the Commission, with the assistance of the European Maritime Safety Agency, on a regular basis and at least within ten years of the last assessment, to verify that they fulfil the relevant criteria set out in Annex II and whether the appropriate measures have been taken to prevent issuance of fraudulent certificates.

2. The Commission, with the assistance of the European Maritime Safety Agency, shall carry out the reassessment of the third countries based on priority criteria. Those priority criteria shall include the following:

(a) performance data by the port State control pursuant to Article 23;

(b) the number of endorsements attesting recognition in relation to certificates of competency, or certificates of proficiency issued in accordance with Regulations V/1-1 and V/1-2 of the STCW Convention, issued by the third country;

(c) the number of maritime education and training institutions accredited by the third country;

(d) the number of seafarers' training and professional development programmes approved by the third country;

(e) the date of the Commission's last assessment of the third country and the number of deficiencies in critical processes identified during that assessment;

(f) any significant change in the maritime training and certification system of the third country;

(g) the overall numbers of seafarers certified by the third country, serving on ships flying the flags of Member States and the level of training and qualifications of those seafarers;

(h) information concerning education and training standards in the third country provided by any concerned authorities or other stakeholders, if available.

In case of non-compliance of a third country with the requirements of the STCW Convention in accordance with Article 20 of this Directive, the reassessment of that third country shall take priority in relation to the other third countries.'.

(10) In Article 25a, paragraph 1 is replaced by the following:

'1. The Member States shall communicate the information referred to in Annex V to the Commission for the purposes of Article 20(8) and Article 21(2) and for use by the Member States and the Commission in policy making.'.

(11) Article 26 is replaced by the following:

'*Article 26*

Evaluation report

No later than 2 August 2024 the Commission shall submit to the European Parliament and to the Council an evaluation report, including suggestions for follow up actions to be taken in the light of that evaluation. In that evaluation report, the Commission shall analyse the implementation of the mutual recognition scheme of seafarers' certificates issued by Member States, and any developments regarding digital certificates for seafarers at international level. The Commission shall also evaluate any developments regarding a future consideration of the European Maritime Diplomas of Excellence, as underpinned by the recommendations provided by the social partners.'.

(12) Article 27 is replaced by the following:

'*Article 27*

Amendment

1. The Commission is empowered to adopt delegated acts in accordance with Article 27a amending Annex I to this Directive and the related provisions of this Directive in order to align that Annex and those provisions with the amendments to the STCW Convention and Part A of the STCW Code.

2. The Commission is empowered to adopt delegated acts in accordance with Article 27a amending Annex V to this Directive with respect to specific and relevant content and details of the information that needs to be reported by Member States provided that such acts are limited to taking into account the amendments to the STCW Convention and Part A of the STCW Code and respect the safeguards on data protection. Such delegated acts shall not change the provisions on anonymisation of data set out in Article 25a(3).'.

(13) Article 27a is replaced by the following:

'*Article 27a*

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 5(13) and Article 27 shall be conferred on the Commission for a period of five years from 1 August 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 5(13) and Article 27 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 5(13) and Article 27 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'.

(14) Annex I to Directive 2008/106/EC is amended in accordance with the Annex to this Directive.

Article 2

Repeal

Directive 2005/45/EC is repealed.

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 August 2021. They shall immediately inform the Commission thereof.

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

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

Article 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	*For the Council*
The President	*The President*
A. TAJANI	G. CIAMBA

ANNEX

In Annex I to Directive 2008/106/EC, Chapter V is amended as follows:

(1) Regulation V/2 is replaced by the following:

'Regulation V/2

Mandatory minimum requirements for the training and qualifications of masters, officers, ratings and other personnel on passenger ships

1. This Regulation applies to masters, officers, ratings and other personnel serving on board passenger ships engaged on international voyages. Member States shall determine the applicability of these requirements to personnel serving on passenger ships engaged on domestic voyages.

2. Before being assigned shipboard duties, all persons serving on a passenger ship shall meet the requirements of Section A-VI/1, paragraph 1, of the STCW Code.

3. Masters, officers, ratings and other personnel serving on board passenger ships shall complete the training and familiarization required by paragraphs 5 to 9 below, in accordance with their capacity, duties and responsibilities.

4. Masters, officers, ratings and other personnel who are required to be trained in accordance with paragraphs 7 to 9 below shall, at intervals not exceeding five years, undertake appropriate refresher training or be required to provide evidence of having achieved the required standard of competence within the previous five years.

5. Personnel serving on board passenger ships shall complete passenger ship emergency familiarization appropriate to their capacity, duties and responsibilities as specified in Section A-V/2, paragraph 1, of the STCW Code.

6. Personnel providing direct service to passengers in passenger spaces on board passenger ships shall complete the safety training specified in Section A-V/2, paragraph 2, of the STCW Code.

7. Masters, officers, ratings qualified in accordance with Chapters II, III and VII of this Annex and other personnel designated on the muster list to assist passengers in emergency situations on board passenger ships, shall complete passenger ship crowd management training as specified in Section A-V/2, paragraph 3, of the STCW Code.

8. Masters, chief engineer officers, chief mates, second engineer officers and any person designated on the muster list of having responsibility for the safety of passengers in emergency situations on board passenger ships shall complete approved training in crisis management and human behaviour as specified in Section A-V/2, paragraph 4, of the STCW Code.

9. Masters, chief engineer officers, chief mates, second engineer officers and every person assigned immediate responsibility for embarking and disembarking passengers, for loading, discharging or securing cargo, or for closing hull openings on board ro-ro passenger ships, shall complete approved training in passenger safety, cargo safety and hull integrity as specified in Section A-V/2, paragraph 5, of the STCW Code.

10. Member States shall ensure that documentary evidence of the training which has been completed is issued to every person found qualified in accordance with paragraphs 6 to 9 of this Regulation.'.

(2) The following Regulations are added:

'Regulation V/3

Mandatory minimum requirements for the training and qualifications of masters, officers, ratings and other personnel on ships subject to the IGF Code

1. This Regulation applies to masters, officers and ratings and other personnel serving on board ships subject to the IGF Code.

2. Prior to being assigned shipboard duties on board ships subject to the IGF Code, seafarers shall have completed the training required by paragraphs 4 to 9 below in accordance with their capacity, duties and responsibilities.

3. All seafarers serving on board ships subject to the IGF Code shall, prior to being assigned shipboard duties, receive appropriate ship and equipment specific familiarization as specified in point (d) of Article 14(1) of this Directive.

4. Seafarers responsible for designated safety duties associated with the care, use or in emergency response to the fuel on board ships subject to the IGF Code shall hold a certificate in basic training for service on ships subject to the IGF Code.

5. Every candidate for a certificate in basic training for service on ships subject to the IGF Code shall have completed basic training in accordance with the provisions of Section A-V/3, paragraph 1, of the STCW Code.

6. Seafarers responsible for designated safety duties associated with the care, use or in emergency response to the fuel on board ships subject to the IGF Code who have been qualified and certified according to Regulation V/1-2, paragraphs 2 and 5, or Regulation V/1-2, paragraphs 4 and 5, on liquefied gas tankers, shall be considered to have met the requirements specified in Section A-V/3, paragraph 1, of the STCW Code for basic training for service on ships subject to the IGF Code.

7. Masters, engineer officers and all personnel with immediate responsibility for the care and use of fuels and fuel systems on ships subject to the IGF Code shall hold a certificate in advanced training for service on ships subject to the IGF Code.

8. Every candidate for a certificate in advanced training for service on ships subject to the IGF Code shall, while holding the certificate of proficiency described in paragraph 4, have:

   8.1. completed approved advanced training for service on ships subject to the IGF Code and meet the standard of competence as specified in Section A-V/3, paragraph 2, of the STCW Code; and

   8.2. completed at least one month of approved seagoing service that includes a minimum of three bunkering operations on board ships subject to the IGF Code. Two of the three bunkering operations may be replaced by approved simulator training on bunkering operations as part of the training in paragraph 8.1 above.

9. Masters, engineer officers and any person with immediate responsibility for the care and use of fuels on ships subject to the IGF Code who have been qualified and certified according to the standards of competence specified in Section A–V/1-2, paragraph 2, of the STCW Code for service on liquefied gas tankers shall be considered to have met the requirements specified in Section A-V/3, paragraph 2, of the STCW Code for advanced training for ships subject to the IGF Code, provided they have also:

   9.1. met the requirements of paragraph 6;

   9.2. met the bunkering requirements of paragraph 8.2 or have participated in conducting three cargo operations on board the liquefied gas tanker; and

   9.3. completed sea going service of three months in the previous five years on board:

      9.3.1. ships subject to the IGF Code;

      9.3.2. tankers carrying as cargo, fuels covered by the IGF Code; or

      9.3.3. ships using gases or low flashpoint fuel as fuel.

10. Member States shall ensure that a certificate of proficiency is issued to seafarers, who are qualified in accordance with paragraph 4 or 7, as appropriate.

11. Seafarers holding certificates of proficiency in accordance with paragraph4 or 7 above shall, at intervals not exceeding five years, undertake appropriate refresher training or be required to provide evidence of having achieved the required standard of competence within the previous five years.

Regulation V/4

Mandatory minimum requirements for the training and qualifications of masters and deck officers on ships operating in polar waters

1. Masters, chief mates and officers in charge of a navigational watch on ships operating in polar waters shall hold a certificate in basic training for ships operating in polar waters, as required by the Polar Code.

2. Every candidate for a certificate in basic training for ships operating in polar waters shall have completed an approved basic training for ships operating in polar waters and meet the standard of competence specified in Section A-V/4, paragraph 1, of the STCW Code.

3. Masters and chief mates on ships operating in polar waters shall hold a certificate in advanced training for ships operating in polar waters, as required by the Polar Code.

4. Every candidate for a certificate in advanced training for ships operating in polar waters shall:

   4.1. meet the requirements for certification in basic training for ships in polar waters;

   4.2. have at least two months of approved seagoing service in the deck department, at management level or while performing watchkeeping duties at the operational level, within polar waters or other equivalent approved seagoing service; and

   4.3. have completed approved advanced training for ships operating in polar waters and meet the standard of competence specified in Section A-V/4, paragraph 2, of the STCW Code.

5. Member States shall ensure that a certificate of proficiency is issued to seafarers who are qualified in accordance with paragraph 2 or 4, as appropriate.

6. Until 1 July 2020, seafarers who commenced approved seagoing service in polar waters prior to 1 July 2018 shall be able to establish that they meet the requirements of paragraph 2 by:

   6.1. having completed approved seagoing service on board a ship that operates in polar waters or equivalent approved seagoing service, performing duties in the deck department at the operational or management level, for a period of at least three months in total during the preceding five years; or

   6.2. having successfully completed a training course organised in accordance with the training guidance established by the International Maritime Organization for ships operating in polar waters.

7. Until 1 July 2020, seafarers who commenced approved seagoing service in polar waters prior to 1 July 2018 shall be able to establish that they meet the requirements of paragraph 4 by:

   7.1. having completed approved seagoing service on board a ship operating in polar waters or equivalent approved seagoing service, performing duties in the deck department at management level, for a period of at least three months in total during the preceding five years; or

   7.2. having successfully completed a training course meeting the training guidance established by the International Maritime Organization for ships operating in polar waters and having completed approved seagoing service on board a ship operating in polar waters or equivalent approved seagoing service, performing duties in the deck department at the management level, for a period of at least two months in total during the preceding five years.'.

DIRECTIVE (EU) 2019/1160 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings

(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 53(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]),

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

Whereas:

(1) Common objectives of Directive 2009/65/EC of the European Parliament and of the Council ([3]) and Directive 2011/61/EU of the European Parliament and of the Council ([4]) include ensuring a level playing field among collective investment undertakings and removing restrictions to the free movement of units and shares of collective investment undertakings in the Union, at the same time ensuring more uniform protection for investors. While those objectives have been largely achieved, certain barriers still hamper the ability of fund managers to fully benefit from the internal market.

(2) This Directive is complemented by Regulation (EU) 2019/1156 of the European Parliament and of the Council ([5]). That Regulation lays down additional rules and procedures concerning undertakings for collective investment in transferable securities (UCITS) and alternative investment fund managers (AIFMs). That Regulation and this Directive should collectively further coordinate the conditions for fund managers operating in the internal market and facilitate cross-border distribution of the funds they manage.

(3) It is necessary to fill in the regulatory gap and align the procedure for notifying competent authorities of changes regarding UCITS with the notification procedure laid down in Directive 2011/61/EU.

(4) Regulation (EU) 2019/1156 further strengthens the principles applicable to marketing communications governed by Directive 2009/65/EC and extends the application of those principles to AIFMs, thereby resulting in a high standard of investor protection, regardless of the type of investor. The corresponding provisions of Directive 2009/65/EC relating to marketing communications and accessibility of national laws and regulations relevant to the arrangement of marketing units of UCITS are therefore no longer necessary and should be deleted.

(5) The provisions of Directive 2009/65/EC which require UCITS to provide facilities to investors, as implemented by certain national legal systems, have proven to be burdensome. In addition, local facilities are rarely used by investors in the manner intended by that Directive. The preferred method of contact has shifted to direct

([1]) OJ C 367, 10.10.2018, p. 50.
([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]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).
([4]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).
([5]) Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 (see page 55 of this Official Journal).

interaction between investors and fund managers, either electronically or by telephone, whereas payments and redemptions are executed through other channels. While those local facilities are currently used for administrative purposes such as cross-border recovery of regulatory fees, such issues should be addressed via other means including cooperation between competent authorities. Consequently, rules should be established which modernise and specify the requirements for providing facilities to retail investors, and Member States should not require a local physical presence for the provision of such facilities. In any case, those rules should ensure that investors have access to the information to which they are entitled.

(6) In order to ensure the consistent treatment of retail investors, it is necessary that the requirements relating to facilities be also applied to AIFMs where Member States allow them to market units or shares of alternative investment funds (AIFs) to retail investors in their territories.

(7) The absence of clear and uniform conditions for the discontinuation of marketing of units or shares of a UCITS or an AIF in a host Member State creates economic and legal uncertainty for fund managers. Therefore, Directives 2009/65/EC and 2011/61/EU should set out clear conditions under which de-notification of the arrangements made for marketing as regards some or all of the units or shares could take place. Those conditions should balance, on the one hand, the ability of collective investment undertakings or their managers to terminate their arrangements made for marketing of their shares or units when the established conditions are met and, on the other hand, the interests of investors in such undertakings.

(8) The possibility to cease marketing UCITS or AIFs in a particular Member State should neither come at a cost to investors nor diminish their safeguards under Directive 2009/65/EC or Directive 2011/61/EU, in particular with regard to their right to accurate information on the continued activities of those funds.

(9) There are cases where an AIFM wishing to test investor appetite for a particular investment idea or investment strategy is faced with diverging treatment of pre-marketing in different national legal systems. The definition of pre-marketing and the conditions under which it is permitted vary considerably between those Member States in which it is permitted, whereas in other Member States there is no concept of pre-marketing at all. To address those divergences, a harmonised definition of pre-marketing should be provided and the conditions under which an EU AIFM can engage in pre-marketing should be established.

(10) For pre-marketing to be recognised as such under Directive 2011/61/EU, it should be addressed to potential professional investors and concern an investment idea or investment strategy in order to test their interest in an AIF or a compartment which is not yet established, or which is established, but not yet notified for marketing in accordance with that Directive. Accordingly, during the course of pre-marketing, it should not be possible for investors to subscribe to the units or shares of an AIF and the distribution of subscription forms or similar documents to potential professional investors, whether in draft or final form, should not be permitted. EU AIFMs should ensure that investors do not acquire units or shares in an AIF through pre-marketing and that investors contacted as part of pre-marketing can only acquire units or shares in that AIF through marketing permitted under Directive 2011/61/EU.

Any subscription by professional investors, within 18 months of the EU AIFM having begun pre-marketing, to units or shares of an AIF referred to in the information provided in the context of pre-marketing, or of an AIF established as a result of the pre-marketing, should be considered to be the result of marketing and should be subject to the applicable notification procedures referred to in Directive 2011/61/EU. To ensure that national competent authorities can exercise control over pre-marketing in their Member State, an EU AIFM should send, within two weeks of having begun pre-marketing, an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State, specifying inter alia in which Member States it is or has engaged in pre-marketing, the periods during which the pre-marketing is taking or has taken place and including, where relevant, a list of its AIFs and compartments of AIFs which are or were the subject of pre-marketing. The competent authorities of the home Member State of the EU AIFM should promptly inform the competent authorities of the Member States in which the EU AIFM is or has engaged in pre-marketing thereof.

(11) EU AIFMs should ensure that their pre-marketing is adequately documented.

(12) National laws, regulations and administrative provisions necessary to comply with Directive 2011/61/EU and, in particular, with harmonised rules on pre-marketing, should not in any way disadvantage EU AIFMs vis-à-vis non-EU AIFMs. This concerns both the current situation in which non-EU AIFMs do not have passporting rights, and a situation in which the provisions on such passporting in Directive 2011/61/EU become applicable.

(13) In order to ensure legal certainty, it is necessary to synchronise the application dates of national laws, regulations and administrative provisions implementing this Directive and Regulation (EU) 2019/1156 with regard to relevant provisions on marketing communications and pre-marketing.

(14) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ([6]), 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:

Article 1

Amendments to Directive 2009/65/EC

Directive 2009/65/EC is amended as follows:

(1) in Article 17(8), the following subparagraphs are added:

'Where, pursuant to a change as referred to in the first subparagraph, the management company would no longer comply with this Directive, the competent authorities of the management company's home Member State shall inform the management company within 15 working days of receipt of all the information referred to in the first subparagraph that it is not to implement that change. In that case, the competent authorities of the management company's home Member State shall inform the competent authorities of the management company's host Member State accordingly.

Where a change referred to in the first subparagraph is implemented after information has been transmitted in accordance with the second subparagraph and pursuant to that change the management company no longer complies with this Directive, the competent authorities of the management company's home Member State shall take all appropriate measures in accordance with Article 98 and shall notify the competent authorities of the management company's host Member State without undue delay of the measures taken.';

(2) Article 77 is deleted;

(3) in Article 91, paragraph 3 is deleted;

(4) Article 92 is replaced by the following:

'*Article 92*

1. Member States shall ensure that a UCITS makes available, in each Member State where it intends to market its units, facilities to perform the following tasks:

(a) process subscription, repurchase and redemption orders and make other payments to unit-holders relating to the units of the UCITS, in accordance with the conditions set out in the documents required pursuant to Chapter IX;

(b) provide investors with information on how orders referred to in point (a) can be made and how repurchase and redemption proceeds are paid;

(c) facilitate the handling of information and access to procedures and arrangements referred to in Article 15 relating to the investors' exercise of their rights arising from their investment in the UCITS in the Member State where the UCITS is marketed;

(d) make the information and documents required pursuant to Chapter IX available to investors under the conditions laid down in Article 94, for the purposes of inspection and obtaining copies thereof;

(e) provide investors with information relevant to the tasks that the facilities perform in a durable medium; and

(f) act as a contact point for communicating with the competent authorities.

([6]) OJ C 369, 17.12.2011, p. 14.

2. Member States shall not require a UCITS to have a physical presence in the host Member State or to appoint a third party for the purposes of paragraph 1.

3. The UCITS shall ensure that the facilities to perform the tasks referred to in paragraph 1, including electronically, are provided:

(a) in the official language or one of the official languages of the Member State where the UCITS is marketed or in a language approved by the competent authorities of that Member State;

(b) by the UCITS itself, by a third party which is subject to regulation and supervision governing the tasks to be performed, or by both.

For the purposes of point (b), where the tasks are to be performed by a third party, the appointment of that third party shall be evidenced by a written contract, which specifies which of the tasks referred to in paragraph 1 are not to be performed by the UCITS and that the third party will receive all the relevant information and documents from the UCITS.';

(5) Article 93 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

'The notification letter shall also include the details necessary, including the address, for the invoicing or for the communication of any applicable regulatory fees or charges by the competent authorities of the host Member State and information on the facilities for performing the tasks referred to in Article 92(1).';

(b) paragraph 8 is replaced by the following:

'8. In the event of a change to the information in the notification letter submitted in accordance with paragraph 1, or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to the competent authorities of both the UCITS home Member State and the UCITS host Member State at least one month before implementing that change.

Where, pursuant to a change as referred to in the first subparagraph, the UCITS would no longer comply with this Directive, the competent authorities of the UCITS home Member State shall inform the UCITS within 15 working days of receipt of all the information referred to in the first subparagraph that it is not to implement that change. In that case, the competent authorities of the UCITS home Member State shall notify the competent authorities of the UCITS host Member State accordingly.

Where a change referred to in the first subparagraph is implemented after information has been transmitted in accordance with the second subparagraph and pursuant to that change the UCITS no longer complies with this Directive, the competent authorities of the home Member State of the UCITS shall take all appropriate measures in accordance with Article 98, including, where necessary, the express prohibition of marketing of the UCITS and shall notify the competent authorities of the UCITS host Member State without undue delay of the measures taken.';

(6) the following article is inserted:

'*Article 93a*

1. Member States shall ensure that a UCITS may de-notify arrangements made for marketing as regards units, including, where relevant, in respect of share classes, in a Member State in respect of which it has made a notification in accordance with Article 93, where all the following conditions are fulfilled:

(a) a blanket offer is made to repurchase or redeem, free of any charges or deductions, all such units held by investors in that Member State, is publicly available for at least 30 working days, and is addressed, directly or through financial intermediaries, individually to all investors in that Member State whose identity is known;

(b) the intention to terminate arrangements made for marketing such units in that Member State is made public by means of a publicly available medium, including by electronic means, which is customary for marketing UCITS and suitable for a typical UCITS investor;

(c) any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units identified in the notification referred to in paragraph 2.

The information referred to in points (a) and (b) of the first subparagraph shall clearly describe the consequences for investors if they do not accept the offer to redeem or repurchase their units.

The information referred to in points (a) and (b) of the first subparagraph shall be provided in the official language or one of the official languages of the Member State in respect of which the UCITS has made a notification in accordance with Article 93 or in a language approved by the competent authorities of that Member State. As of the date referred to in point (c) of the first subparagraph, the UCITS shall cease any new or further, direct or indirect, offering or placement of its units which were the subject of de-notification in that Member State.

2. The UCITS shall submit a notification to the competent authorities of its home Member State containing the information referred to in points (a), (b) and (c) of the first subparagraph of paragraph 1.

3. The competent authorities of the UCITS home Member State shall verify whether the notification submitted by the UCITS in accordance with paragraph 2 is complete. The competent authorities of the UCITS home Member State shall, no later than 15 working days from the receipt of a complete notification, transmit that notification to the competent authorities of the Member State identified in the notification referred to in paragraph 2, and to ESMA.

Upon transmission of the notification pursuant to the first subparagraph, the competent authorities of the UCITS home Member State shall promptly notify the UCITS of that transmission.

4. The UCITS shall provide investors who remain invested in the UCITS as well as the competent authorities of the UCITS home Member State with the information required under Articles 68 to 82 and under Article 94.

5. The competent authorities of the UCITS home Member State shall transmit to the competent authorities of the Member State identified in the notification referred to in paragraph 2 of this Article information on any changes to the documents referred to in Article 93(2).

6. The competent authorities of the Member State identified in the notification referred to in paragraph 2 of this Article shall have the same rights and obligations as the competent authorities of the UCITS host Member State as set out in Article 21(2), Article 97(3) and Article 108. Without prejudice to other monitoring activities and supervisory powers as referred to in Article 21(2) and Article 97, as from the date of transmission under paragraph 5 of this Article, the competent authorities of the Member State identified in the notification referred to in paragraph 2 of this Article shall not require the UCITS concerned to demonstrate compliance with national laws, regulations and administrative provisions governing marketing requirements referred to in Article 5 of Regulation (EU) 2019/1156 of the European Parliament and of the Council (*).

7. Member States shall allow for the use of any electronic or other distance communication means for the purposes of paragraph 4, provided that the information and communication means are available for investors in the official language or one of the official languages of the Member State where the investor is located or in a language approved by the competent authorities of that Member State.

(*) Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 (OJ L 188, 12.7.2019, p. 55).';

(7) in Article 95(1), point (a) is deleted.

Article 2

Amendments to Directive 2011/61/EU

Directive 2011/61/EU is amended as follows:

(1) in Article 4(1), the following point is inserted:

'(aea) "pre-marketing" means provision of information or communication, direct or indirect, on investment strategies or investment ideas by an EU AIFM or on its behalf, to potential professional investors domiciled or with a registered office in the Union in order to test their interest in an AIF or a compartment which is not yet established, or which is established, but not yet notified for marketing in accordance with Article 31 or 32, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or compartment;';

(2) the following article is inserted at the beginning of Chapter VI:

'*Article 30a*

Conditions for pre-marketing in the Union by an EU AIFM

1. Member States shall ensure that an authorised EU AIFM may engage in pre-marketing in the Union, except where the information presented to potential professional investors:

(a) is sufficient to allow investors to commit to acquiring units or shares of a particular AIF;

(b) amounts to subscription forms or similar documents whether in a draft or a final form; or

(c) amounts to constitutional documents, a prospectus or offering documents of a not-yet-established AIF in a final form.

Where a draft prospectus or offering documents are provided, they shall not contain information sufficient to allow investors to take an investment decision and shall clearly state that:

(a) they do not constitute an offer or an invitation to subscribe to units or shares of an AIF; and

(b) the information presented therein should not be relied upon because it is incomplete and may be subject to change.

Member States shall ensure that an EU AIFM is not required to notify the competent authorities of the content or of the addressees of pre-marketing, or to fulfil any conditions or requirements other than those set out in this Article, before it engages in pre-marketing.

2. EU AIFMs shall ensure that investors do not acquire units or shares in an AIF through pre-marketing and that investors contacted as part of pre-marketing may only acquire units or shares in that AIF through marketing permitted under Article 31 or 32.

Any subscription by professional investors, within 18 months of the EU AIFM having begun pre-marketing, to units or shares of an AIF referred to in the information provided in the context of pre-marketing, or of an AIF established as a result of the pre-marketing, shall be considered to be the result of marketing and shall be subject to the applicable notification procedures referred to in Articles 31 and 32.

Member States shall ensure that an EU AIFM sends, within two weeks of it having begun pre-marketing, an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State. That letter shall specify the Member States in which and the periods during which the pre-marketing is taking or has taken place, a brief description of the pre-marketing including information on the investment strategies presented and, where relevant, a list of the AIFs and compartments of AIFs which are or were the subject of pre-marketing. The competent authorities of the home Member State of the EU AIFM shall promptly inform the competent authorities of the Member States in which the EU AIFM is or was engaged in pre-marketing. The competent authorities of the Member State in which pre-marketing is taking or has taken place may request the competent authorities of the home Member State of the EU AIFM to provide further information on the pre-marketing that is taking or has taken place on its territory.

3. A third party shall only engage in pre-marketing on behalf of an authorised EU AIFM where it is authorised as an investment firm in accordance with Directive 2014/65/EU of the European Parliament and of the Council (*), as a credit institution in accordance with Directive 2013/36/EU of the European Parliament and of the Council (**), as a UCITS management company in accordance with Directive 2009/65/EC, as an AIFM in accordance with this Directive, or acts as a tied agent in accordance with Directive 2014/65/EU. Such a third party shall be subject to the conditions set out in this Article.

4. An EU AIFM shall ensure that pre-marketing is adequately documented.

(*) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(**) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).';

(3) in Article 32(7), the second, third and fourth subparagraphs are replaced by the following:

'If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Directive or the AIFM would otherwise no longer comply with this Directive, the relevant competent authorities of the home Member State of the AIFM shall inform the AIFM within 15 working days of receipt of all the information referred to in the first subparagraph that it is not to implement the change. In that case, the competent authorities of the home Member State of the AIFM shall notify the competent authorities of the host Member State of the AIFM accordingly.

If a planned change is implemented notwithstanding the first and second subparagraphs, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with this Directive or the AIFM otherwise would no longer comply with this Directive, the competent authorities of the home Member State of the AIFM shall take all due measures in accordance with Article 46, including, if necessary, the express prohibition of marketing of the AIF and shall notify the competent authorities of the host Member State of the AIFM accordingly without undue delay.

If the changes do not affect the compliance of the AIFM's management of the AIF with this Directive, or the compliance by the AIFM with this Directive otherwise, the competent authorities of the home Member State of the AIFM shall within one month inform the competent authorities of the host Member State of the AIFM of those changes.';

(4) the following article is inserted:

'*Article 32a*

De-notification of arrangements made for the marketing of units or shares of some or all EU AIFs in the Member States other than in the home Member State of the AIFM

1. Member States shall ensure that an EU AIFM may de-notify arrangements made for marketing as regards units or shares of some or all of its AIFs in a Member State in respect of which it has made a notification in accordance with Article 32, where all the following conditions are fulfilled:

(a) except in the case of closed-ended AIFs and funds regulated by Regulation (EU) 2015/760 of the European Parliament and of the Council (*), a blanket offer is made to repurchase or redeem, free of any charges or deductions, all such AIF units or shares held by investors in that Member State, is publicly available for at least 30 working days, and is addressed, directly or through financial intermediaries, individually to all investors in that Member State whose identity is known;

(b) the intention to terminate arrangements made for marketing units or shares of some or all of its AIFs in that Member State is made public by means of a publicly available medium, including by electronic means, which is customary for marketing AIFs and suitable for a typical AIF investor;

(c) any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units or shares identified in the notification referred to in paragraph 2.

As of the date referred to in point (c) of the first subparagraph, the AIFM shall cease any new or further, direct or indirect, offering or placement of units or shares of the AIF it manages in the Member State in respect of which it has submitted a notification in accordance with paragraph 2.

2. The AIFM shall submit a notification to the competent authorities of its home Member State containing the information referred to in points (a), (b) and (c) of the first subparagraph of paragraph 1.

3. The competent authorities of the home Member State of the AIFM shall verify whether the notification submitted by the AIFM in accordance with paragraph 2 is complete. The competent authorities of the home Member State of the AIFM shall, no later than 15 working days from the receipt of a complete notification, transmit that notification to the competent authorities of the Member State identified in the notification referred to in paragraph 2, and to ESMA.

Upon transmission of the notification pursuant to the first subparagraph, the competent authorities of the home Member State of the AIFM shall promptly notify the AIFM of that transmission.

For a period of 36 months from the date referred to in point (c) of the first subparagraph of paragraph 1, the AIFM shall not engage in pre-marketing of units or shares of the EU AIFs referred to in the notification, or in respect of similar investment strategies or investment ideas, in the Member State identified in the notification referred to in paragraph 2.

4. The AIFM shall provide investors who remain invested in the EU AIF as well as the competent authorities of the home Member State of the AIFM with the information required under Articles 22 and 23.

5. The competent authorities of the home Member State of the AIFM shall transmit to the competent authorities of the Member State identified in the notification referred to in paragraph 2, information on any changes to the documentation and information referred to in points (b) to (f) of Annex IV.

6. The competent authorities of the Member State identified in the notification referred to in paragraph 2 of this Article shall have the same rights and obligations as the competent authorities of the host Member State of the AIFM as set out in in Article 45.

7. Without prejudice to other supervisory powers referred to in Article 45(3), as from the date of transmission under paragraph 5 of this Article, the competent authorities of the Member State identified in the notification referred to in paragraph 2 of this Article, shall not require the AIFM concerned to demonstrate compliance with national laws, regulations and administrative provisions governing marketing requirements as referred to in Article 5 of Regulation (EU) 2019/1156 of the European Parliament and of the Council (**).

8. Member States shall allow for the use of any electronic or other distance communication means for the purposes of paragraph 4.

(*) Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

(**) Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 (OJ L 188, 12.7.2019, p. 55).';

(5) in Article 33(6), the second and third subparagraphs are replaced by the following:

'If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Directive or the AIFM would otherwise no longer comply with this Directive, the relevant competent authorities of the home Member State of the AIFM shall inform the AIFM within 15 working days of receipt of all the information referred to in the first subparagraph that it is not to implement the change.

If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with this Directive or the AIFM otherwise would no longer comply with this Directive, the competent authorities of the home Member State of the AIFM shall take all due measures in accordance with Article 46 and shall notify accordingly the competent authorities of the host Member State of the AIFM without undue delay.';

(6) the following article is inserted:

'*Article 43a*

Facilities available to retail investors

1. Without prejudice to Article 26 of Regulation (EU) 2015/760, Member States shall ensure that an AIFM makes available, in each Member State where it intends to market units or shares of an AIF to retail investors, facilities to perform the following tasks:

(a) process investors' subscription, payment, repurchase and redemption orders relating to the units or shares of the AIF, in accordance with the conditions set out in the AIF's documents;

(b) provide investors with information on how orders referred to in point (a) can be made and how repurchase and redemption proceeds are paid;

(c) facilitate the handling of information relating to the exercise of investors' rights arising from their investment in the AIF in the Member State where the AIF is marketed;

(d) make the information and documents required pursuant to Articles 22 and 23 available to investors for the purposes of inspection and obtaining copies thereof;

(e) provide investors with information relevant to the tasks that the facilities perform in a durable medium as defined in point (m) of Article 2(1) of Directive 2009/65/EC; and

(f) act as a contact point for communicating with the competent authorities.

2. Member States shall not require an AIFM to have a physical presence in the host Member State or to appoint a third party for the purposes of paragraph 1.

3. The AIFM shall ensure that the facilities to perform the tasks referred to in paragraph 1, including electronically, are provided:

(a) in the official language or one of the official languages of the Member State where the AIF is marketed or in a language approved by the competent authorities of that Member State;

(b) by the AIFM itself, by a third party which is subject to regulation and supervision governing the tasks to be performed, or by both.

For the purposes of point (b), where the tasks are to be performed by a third party, the appointment of that third party shall be evidenced by a written contract, which specifies which of the tasks referred to in paragraph 1 are not to be performed by the AIFM and that the third party will receive all the relevant information and documents from the AIFM.';

(7) the following article is inserted:

'*Article 69a*

Assessment of the passport regime

Before the entry into force of the delegated acts referred to in Article 67(6) pursuant to which the rules set out in Article 35 and Articles 37 to 41 become applicable, the Commission shall submit a report to the European Parliament and to the Council, taking into account the result of an assessment of the passport regime provided in this Directive including the extension of that regime to non-EU AIFMs. That report shall be accompanied, where appropriate, by a legislative proposal.';

(8) in Annex IV, the following points are added:

'(i) the details necessary, including the address, for the invoicing or for the communication of any applicable regulatory fees or charges by the competent authorities of the host Member State;

(j) information on the facilities for performing the tasks referred to in Article 43a.';

Article 3

Transposition

1. By 2 August 2021, Member States shall adopt and publish the national laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those provisions from 2 August 2021.

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. The methods of making such reference shall be laid down by Member States.

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

Article 4

Evaluation

By 2 August 2024, the Commission shall, on the basis of a public consultation and in light of discussions with ESMA and competent authorities, conduct an evaluation of the application of this Directive. By 2 August 2025, the Commission shall present a report on the application of this Directive.

Article 5

Review

By 2 August 2023, the Commission shall present a report assessing, inter alia, the merits of harmonising the provisions applicable to UCITS management companies testing investor appetite for a particular investment idea or investment strategy, and whether any amendments to Directive 2009/65/EC are needed to that end.

Article 6

Entry into force

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

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 20 June 2019.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	G. CIAMBA

DIRECTIVE (EU) 2019/1161 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

(1) In accordance with the conclusions of the European Council of 23-24 October 2014, the Union is committed to a sustainable, competitive, secure and decarbonised energy system. The Commission's Communication of 22 January 2014 entitled 'A policy framework for climate and energy for the period from 2020 to 2030' establishes ambitious commitments for the Union to further reduce greenhouse gas emissions by at least 40 % by 2030 as compared to 1990 levels, to increase the proportion of renewable energy consumed to at least 27 %, to make energy savings of at least 27 %, and to improve the Union's energy security, competitiveness and sustainability. Since then, Directive (EU) 2018/2001 of the European Parliament and of the Council ([4]) set a share of energy from renewable sources of at least 32 % of the Union's gross final consumption of energy by 2030, and Directive (EU) 2018/2002 of the European Parliament and of the Council ([5]) set a new energy efficiency target for the Union by 2030 of at least 32,5 %.

(2) In its Communication of 20 July 2016 entitled 'A European Strategy for Low-Emission Mobility' the Commission announced that in order to meet the Union's commitments pledged at the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change held in Paris in 2015, the decarbonisation of the transport sector must be accelerated and that therefore greenhouse gas emissions and air pollutant emissions from transport will need to be firmly on the path towards zero by mid-century. Moreover, emissions of air pollutants from transport that are harmful to health and the environment need to be significantly reduced without delay. That can be achieved by an array of policy initiatives, including measures that support a shift towards public transport and the use of public procurement to promote clean vehicles.

(3) In its Communication of 31 May 2017 entitled 'Europe on the Move: an agenda for a socially fair transition towards clean, competitive and connected mobility for all' the Commission underlines that increased production and uptake of clean vehicles, alternative fuels infrastructure and new mobility services which take advantage of digitalisation and automation in the Union offer multiple benefits to Union citizens, Member States and industries. Those benefits include safer and seamless mobility solutions and the reduction of exposure to harmful pollutant emissions. Furthermore, as stated in the State of the Union address of 13 September 2017, one of the main objectives for the Union is to become a world leader in decarbonisation.

([1]) OJ C 262, 25.7.2018, p. 58.
([2]) OJ C 387, 25.10.2018, p. 70.
([3]) 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.
([4]) Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).
([5]) Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency (OJ L 328, 21.12.2018, p. 210).

(4) As was announced in the Commission's Communication 'Europe on the Move', this Directive forms part of a second package of proposals, which will contribute to the Union's drive towards low-emission mobility. That package, which was presented in the Commission's Communication of 8 November 2017 entitled 'Delivering on low-emission mobility — A European Union that protects the planet, empowers its consumers, and defends its industry and workers' includes a combination of supply- and demand-oriented measures to put the Union on a path towards low-emission mobility and at the same time strengthen the competitiveness of the Union's mobility eco-system. The promotion of clean vehicles should take place in parallel with the further development of public transport, as a way to reduce road congestion and consequently to reduce emissions and improve air quality.

(5) Innovation in new technologies helps to lower vehicle CO_2 emissions and to reduce air and noise pollution, while supporting the decarbonisation of the transport sector. An increased uptake of low- and zero-emission road vehicles will reduce CO_2 emissions and certain pollutant emissions (particulate matter, nitrogen oxides and non-methane hydrocarbons) and thus improve the air quality in cities and other polluted areas, while contributing to the competitiveness and growth of Union industry in the increasing global markets for low- and zero-emission vehicles. The Commission should pursue policy measures to foster widespread industrial uptake of and the growth of manufacturing capacity for such new technologies in all Member States in order to contribute to a level-playing field and a balanced development across Member States.

(6) Market forecasts estimate that the purchase prices of clean vehicles will continue to fall. Lower operational and maintenance costs already contribute towards competitive total cost of ownership. The expected reduction of purchase prices will further reduce barriers to market availability and uptake of clean vehicles in the next decade.

(7) While the Union is one of the leading regions for research and high value eco-innovation, the Asia-Pacific region hosts the largest producers of battery electric buses and batteries. Similarly, global market developments in battery electric vehicles are driven by markets in China and the United States. An ambitious Union policy on the procurement of clean vehicles will help to stimulate innovation and further promote competitiveness and growth of the Union industry in the increasingly global markets for clean vehicles and associated technology infrastructure. As noted in its Communication of 3 October 2017 entitled 'Making public procurement work in and for Europe', the Commission will continue to lead efforts to ensure a level playing field and promote better access to third countries' public procurement markets, including for the purchase, leasing, rental or hire-purchase of road transport vehicles.

(8) Taking into account that public expenditure on goods, works and services represented approximately 16 % of GDP in 2018, public authorities, through their public procurement policy, can foster and support markets for innovative goods and services. In order to achieve that goal, Directive 2009/33/EC of the European Parliament and of the Council ([6]) should set out clear and transparent requirements, including clear, long-term procurement targets and a simple method for their calculation. Directives 2014/24/EU ([7]) and 2014/25/EU ([8]) of the European Parliament and of the Council set out minimum public procurement rules which coordinate the way contracting authorities and contracting entities procure works, supplies and services. In particular, those Directives set out overall monetary thresholds for determining which public contracts are to be subject to Union public procurement legislation. Those thresholds are also applicable to Directive 2009/33/EC.

(9) The availability of sufficient recharging and refuelling infrastructure is necessary for the deployment of alternative fuel vehicles. On 8 November 2017, the Commission adopted an action plan to support the accelerated roll-out of alternative fuels infrastructure in the Union, including strengthened support to the roll-out of publicly available infrastructure by means of Union funds, helping to create more favourable conditions for the transition towards clean vehicles, including in public transport. The Commission will review the implementation of Directive 2014/94/EU of the European Parliament and of the Council ([9]) by 31 December 2020, and will submit a legislative proposal to amend that Directive, if it considers it necessary on the basis of that review.

([6]) Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (OJ L 120, 15.5.2009, p. 5).

([7]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

([8]) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

([9]) Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1).

(10) Directive 2009/33/EC complements the horizontal public procurement legislation of the Union and adds sustainability criteria, thereby aiming to stimulate the market for clean and energy-efficient road transport vehicles. The Commission carried out an ex-post evaluation of Directive 2009/33/EC in 2015 and concluded that that Directive did not trigger a market uptake of clean vehicles across the Union, in particular due to shortcomings as regards its scope and the provisions on vehicle purchase. That evaluation concluded that the impact of that Directive has been very limited in reducing greenhouse gas and air pollutant emissions and in promoting industry competitiveness.

(11) The impact assessment carried out by the Commission on the revision of Directive 2009/33/EC underlines the benefits of changing the overall governance approach to clean vehicle procurement at Union level. Setting minimum procurement targets can effectively help to reach the objective of promoting and stimulating the market uptake of clean vehicles in comparison to relying on the internalisation of external cost into overall procurement decisions, while noting the relevance of considering environmental aspects in all procurement decisions. The medium and long-term benefits for Union citizens and enterprises fully justify that approach insofar as it leaves sufficient flexibility to contracting authorities and contracting entities in the choice of the technologies to be used.

(12) Extending the scope of Directive 2009/33/EC by including practices such as lease, rental and hire-purchase of vehicles, as well as contracts for certain services, ensures that all relevant procurement practices are covered. The services covered by the scope of this Directive, such as public road transport services, special purpose road transport passenger services, non-scheduled passenger transport, as well as specific mail and parcel services and refuse collection services, should be those where the vehicles that are used for the provision of these services fall within the vehicle categories covered by this Directive, and where they represent a major element in the contract. Those services should be identified using their respective Common Procurement Vocabulary codes listed in the Annex. Existing contracts should not be retrospectively affected by this Directive.

(13) There is widespread support from key stakeholders for a definition of clean vehicles which takes into account the requirements for the reduction of greenhouse gases and air pollutant emissions from light-duty vehicles. To ensure that there are adequate incentives to promote market uptake of low- and zero-emission vehicles in the Union, provisions for their public procurement under this Directive should be aligned with the definition of zero- and low-emission vehicles provided for in Regulation (EU) 2019/631 of the European Parliament and of the Council ([10]). Action carried out under this Directive will contribute to compliance with the requirements of the standards laid down in Regulation (EU) 2019/631. In order to improve air quality, clean vehicles should perform better compared to the minimum requirements for nitrogen oxides (NOx) and for ultrafine particles — Particle Number (PN) set by the real-driving emission (RDE) limit values in force. In addition to zero-emission vehicles, today there are few light-duty vehicles with air pollutant emissions of 80 % or less of the current emission limits. The number of such vehicles, however, is expected to increase in the coming years, especially plug-in hybrids. A more ambitious approach for public procurement can provide a significant additional market stimulus.

(14) Clean heavy-duty vehicles should be defined through the use of alternative fuels in line with Directive 2014/94/EU. Where liquid biofuels, synthetic or paraffinic fuels are to be used by procured vehicles, contracting authorities and contracting entities have to ensure, through mandatory contract clauses or through similarly effective means within the public procurement procedure, that only such fuels are to be used in those vehicles. While it is possible for those fuels to contain fuel additives, as is the case for example with ethanol-based fuel for adapted diesel engines (ED95), they should not be blended with fossil fuels.

(15) In order to improve air quality in municipalities, it is crucial to renew the transport fleet with clean vehicles. Furthermore, the principles of the circular economy require the extension of product life. Therefore, vehicles that meet the clean vehicles or zero-emission vehicles requirements as a result of retrofitting should also be counted towards the achievement of the respective minimum procurement targets.

([10]) Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO_2 emission performance standards for new passenger cars and for new light commercial vehicles and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011 (OJ L 111, 25.4.2019, p. 13)

(16) Light-duty and heavy-duty vehicles are used for different purposes and have different levels of market maturity, and it would be beneficial that public procurement provisions acknowledge those differences. The impact assessment recognised that markets for low- and zero-emission urban buses are characterised by increased market maturity, whereas markets for low- and zero-emission trucks are at an earlier stage of market development. Due to the limited level of market maturity of low- and zero-emission coaches, the relatively limited role of public procurement in this market segment and their specific operational requirements, coaches should not be included in the scope of this Directive. In line with the approach followed in Regulation (EC) No 661/2009 of the European Parliament and of the Council ([11]) and United Nations Economic Commission for Europe (UNECE) Regulation 107, vehicles of category M_3 with areas for standing passengers to allow for frequent passenger movement are considered to be buses, while vehicles of category M_3 with very limited or no area for standing passengers are considered to be coaches. Given the very limited market for double-decker buses and their specific design limitations, it is appropriate to apply, during the first reference period covered by this Directive, lower minimum procurement targets for zero-emission vehicles belonging to that category of heavy-duty vehicles in Member States where double-decker buses represent a significant share of public procurement.

(17) In order to avoid imposing disproportionate burdens on public authorities and operators, Member States should be able to exempt from the requirements of this Directive the public procurement of certain vehicles with specific characteristics linked to their operational requirements. Those vehicles include armoured vehicles, ambulances, hearses, wheelchair accessible vehicles of category M_1, mobile cranes, vehicles designed and constructed for use principally on construction sites or in quarries, port or airport facilities, as well as vehicles specifically designed and constructed or adapted for use by the armed forces, civil protection, fire services and forces responsible for maintaining public order. Such adaptations may relate to the installation of specialised communications equipment or emergency lights. The requirements provided for in this Directive should not apply to vehicles that are designed and constructed specifically to perform works and which are not suitable for carrying passengers or for transporting goods. Those vehicles include vehicles for road maintenance such as snow ploughs.

(18) Setting minimum targets for the procurement of clean vehicles to be met in two reference periods ending in 2025 and in 2030 at Member State level should contribute to policy certainty for markets where investment in low- and zero-emission mobility is needed. The minimum targets support market creation for clean vehicles throughout the Union. They provide time for the adjustment of public procurement processes and give a clear market signal. Moreover, requiring half of the minimum target for the buses procured in those reference periods to be fulfilled through the procurement of zero-emission buses strengthens the commitment to decarbonisation of the transport sector. It should be noted that trolley buses are considered to be zero-emission buses, provided that they run only on electricity or that they use only a zero-emission powertrain when they are not connected to the grid, otherwise they still count as clean vehicles. The impact assessment notes that Member States increasingly set targets depending on their economic capacity and on the seriousness of the problem. Different targets should be set for different Member States in accordance with their economic capacity (Gross Domestic Product per capita) and exposure to pollution (urban population density). The territorial impact assessment conducted for this Directive illustrated that the impact will be evenly distributed among regions in the Union.

(19) Member States should have the flexibility to distribute efforts to meet the minimum targets within their territory, in accordance with their constitutional framework and in line with their transport policy objectives. In the allocation of efforts within a Member State, different factors could be taken into account, such as differences in economic capacity, air quality, population density, characteristics of the transport systems, policies to decarbonise transport and reduce air pollution, or any other relevant criteria.

(20) Vehicles with zero emissions at the tail-pipe also leave an environmental footprint due to the emissions deriving from the fuel supply chain, from the extraction phase to the tank, as well as due to the process of manufacture of the components and their level of recyclability. In order to be consistent with the objectives of sustainability, batteries should be produced with the minimum environmental impact inside and outside the Union, in particular regarding the process of extraction of the raw materials to be used in the production of the batteries. The promotion of technologies that address that challenge, such as sustainable and recyclable batteries,

([11]) Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor (OJ L 200, 31.7.2009, p. 1).

can contribute to the overall sustainability of electric vehicles through initiatives such as the EU Battery Alliance and the EU Battery Action Plan and in the context of the review of Directive 2006/66/EC of the European Parliament and of the Council ([12]). The possible reflection of life cycle CO_2 emissions and of well-to-wheel CO_2 emissions of vehicles should be considered for the period after 2030, taking into account relevant provisions of Union law on their calculation at that point in time.

(21) In its recommendation of 4 April 2017 to the Council and the Commission following the inquiry into emission measurements in the automotive sector ([13]), the European Parliament called on Member States to foster green public procurement policies through the purchasing of zero-emission vehicles and ultra-low emission vehicles by public authorities for their own fleets or for public or semi-public car-sharing programmes, and for the phasing out of new CO_2-emitting cars by 2035.

(22) The maximum impact can be achieved if public procurement of clean vehicles is targeted in areas that have a relatively high degree of air and noise pollution. Public authorities in Member States are encouraged to focus particularly on those areas when implementing domestic minimum procurement targets. Public authorities are also encouraged to take measures, such as making available sufficient financial resources to contracting authorities and contracting entities, to avoid that the costs of compliance with the minimum procurement targets established in this Directive lead to higher ticket prices for consumers or to a reduction in public transport services, or discourage the development of non-road clean transport such as trams and metro trains. Public authorities should reflect related action in their reporting under this Directive. In order to avoid a disproportionate burden and optimise the potential results of this Directive, appropriate technical assistance should be provided to public authorities.

(23) Public transport only contributes to a small share of the emissions originating from the transport sector. In order to further promote transport decarbonisation, improve air quality and maintain a level playing field between different operators, Member States can, in compliance with Union law, decide to impose similar requirements also on private operators and services outside the scope of this Directive, such as taxi, car rental and ride-pooling companies.

(24) Life-cycle costing is an important tool for contracting authorities and contracting entities to cover energy and environmental costs during the life-cycle of a vehicle, including the cost of greenhouse gas emissions and other pollutant emissions on the basis of a relevant methodology to determine their monetary value. Given the scarce use of the methodology for the calculation of operational lifetime costs under Directive 2009/33/EC and the information provided by contracting authorities and contracting entities on the use of own methodologies tailored to their specific circumstances and needs, no mandatory methodology should be required to be used, but contracting authorities and contracting entities should be able to choose any life-cycle costing methodology in order to support their procurement processes on the basis of the most economically advantageous tender ('MEAT') criteria as described in Article 67 of Directive 2014/24/EU and Article 82 of Directive 2014/25/EU, taking into account cost-effectiveness over the lifetime of the vehicle, as well as environmental and social aspects.

(25) Reporting on public procurement under this Directive should provide a clear market overview to enable effective monitoring of its implementation. Such reporting should start with a preliminary submission of information by Member States to the Commission by 2 August 2022, and continue with a first comprehensive report on the implementation of the minimum procurement targets in 2026 and every three years thereafter. The timeframe should be aligned with existing reporting obligations under Directives 2014/24/EU and 2014/25/EU. To minimise the administrative burden on public bodies and establish an effective market overview, simplified reporting should be facilitated. The Commission will provide solutions for the registration and monitoring under the Tenders Electronic Daily database (TED), and will ensure comprehensive reporting on low- and zero-emission vehicles and other alternative fuels vehicles within the context of the Common Procurement Vocabulary of the Union. Specific codes in the Common Procurement Vocabulary will help the registration and monitoring under TED.

([12]) Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1).

([13]) OJ C 298, 23.8.2018, p. 140.

(26) Further support for market uptake of clean vehicles and their infrastructure can be achieved by providing targeted public support measures at national and Union level. Such measures include the increased use of Union funds to support the renewal of public transport fleets and better exchange of knowledge and alignment of procurement to enable actions at a scale great enough for cost reductions and market impact. The possibility of public support in favour of promoting the development of infrastructure necessary for the distribution of alternative fuels is recognised in the Guidelines on State aid for environmental protection and energy 2014-2020 ([14]). However, the Treaty on the Functioning of the European Union, and in particular Articles 107 and 108 thereof, will continue to apply to such public support.

(27) Targeted support measures for the procurement of clean vehicles can help contracting authorities and contracting entities. Under the current Multiannual Financial Framework (MFF) for 2014-2020, the Union already possesses an array of different funds to support Member States, local authorities and the operators concerned in their transition to sustainable mobility. In particular, the European Structural and Investment Funds are a key source of financing for urban mobility projects. Horizon 2020, the Union's research programme, established by Regulation (EU) No 1291/2013 of the European Parliament and of the Council ([15]), funds research and innovation projects on urban mobility and smart cities and communities, while the Connecting Europe Facility, established by Regulation (EU) No 1316/2013 of the European Parliament and of the Council ([16]), devotes support to deployment of relevant infrastructure in urban nodes. The introduction of a clean vehicle definition and the setting of minimum targets for their procurement in this Directive can help ensure even better targeted use of Union financial instruments including in the next MFF for 2021-2027. Those support measures will help to reduce the initial high investment in infrastructural changes and will support the decarbonisation of transport.

(28) In order to help ensure that the potential benefits are fully exploited, the Commission should provide guidance to Member States with regard to the different Union funds that might be used, and should facilitate and structure the exchange of knowledge and best practices between Member States in order to promote the purchase, lease, rent or hire-purchase of clean and energy-efficient road transport vehicles by contracting authorities and contracting entities. The Commission should also continue to provide technical and financial advisory services to local authorities and operators through instruments such as the European Investment Advisory Hub, JASPERS and JESSICA. Such assistance should include encouraging contracting authorities and contracting entities to pool their resources in the joint procurement of low emission and energy-efficient road transport vehicles, in order to achieve economies of scale and facilitate the achievement of the objectives of this Directive.

(29) In order to maximise the impact of investments, mobility and urban planning need to be better coordinated, such as through the use of sustainable urban mobility plans (SUMPs). SUMPs are plans that are developed across individual policy areas and in cooperation with different levels of governance combining different transport modes, road safety, freight delivery, mobility management and intelligent transport systems. SUMPs can play an important role in achieving the Union's targets regarding reductions of CO_2 emissions, noise and air pollution.

(30) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission in relation to setting out the common format for the reports from Member States and their transmission arrangements. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([17]).

(31) By 31 December 2027, the Commission should review the implementation of Directive 2009/33/EC. That review should be accompanied, where appropriate, by a legislative proposal to amend that Directive for the period after 2030, including for the setting of new ambitious targets and the extension of the scope to other categories of vehicles, such as L-category vehicles and construction site machinery. In its review, the Commission should

([14]) OJ C 200, 28.6.2014, p. 1.
([15]) Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).
([16]) Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).
([17]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

also assess, inter alia, the possibility of aligning this Directive to any methodology for counting life-cycle CO_2 emissions and well-to-wheel CO_2 emissions developed in the context of EU vehicle CO_2 emission performance standards, as well as the possibility of promoting sustainable and recyclable batteries, and the use of best-graded and retreated tyres.

(32) Although minimum procurement targets set out in this Directive do not apply to the Union institutions, it is desirable for the Union institutions to lead by example.

(33) Since the objectives of this Directive, namely to provide a demand-side stimulus for clean vehicles in support of a low-emission mobility transition, cannot be sufficiently achieved by the Member States alone, but can rather, by reason of a common and long-term policy framework and for reasons of scale 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 the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(34) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ([18]), 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.

(35) Directive 2009/33/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/33/EC

Directive 2009/33/EC is amended as follows:

(1) the title is replaced by the following:

'Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean road transport vehicles in support of low-emission mobility';

(2) Article 1 is replaced by the following:

'*Article 1*

Subject matter and objectives

This Directive requires Member States to ensure that contracting authorities and contracting entities take into account lifetime energy and environmental impacts, including energy consumption and emissions of CO_2 and of certain pollutants, when procuring certain road transport vehicles with the objectives of promoting and stimulating the market for clean and energy-efficient vehicles and of improving the contribution of the transport sector to the environment, climate and energy policies of the Union.';

(3) Article 2 is replaced by the following:

'*Article 2*

Exemptions

Member States may exempt from the requirements laid down in this Directive vehicles referred to in point (d) of Article 2(2) and in points (a) and (b) of Article 2(3) of Regulation (EU) 2018/858 of the European Parliament and of the Council (*) and in points 5.2. to 5.5. and point 5.7. of Part A of Annex I to that Regulation.

(*) Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (OJ L 151, 14.6.2018, p. 1).';

([18]) OJ C 369, 17.12.2011, p. 14.

(4) Article 3 is replaced by the following:

'*Article 3*

Scope

1. This Directive shall apply to procurement through:

(a) contracts for the purchase, lease, rent or hire-purchase of road transport vehicles awarded by contracting authorities or contracting entities in so far as they are under an obligation to apply the procurement procedures set out in Directives 2014/24/EU (*) and 2014/25/EU (**) of the European Parliament and of the Council;

(b) public service contracts within the meaning of Regulation (EC) No 1370/2007 of the European Parliament and of the Council (***) having as their subject matter the provision of passenger road transport services in excess of a threshold which shall be defined by Member States not exceeding the applicable threshold value set in Article 5(4) of that Regulation;

(c) service contracts set out in Table 1 of the Annex to this Directive in so far as the contracting authorities or contracting entities are under an obligation to apply the procurement procedures set out in Directives 2014/24/EU and 2014/25/EU.

This Directive shall only apply to such contracts for which the call for competition has been sent after 2 August 2021 or, in cases where a call for competition is not foreseen, where the contracting authority or contracting entity has commenced the procurement procedure after that date.

2. This Directive shall not apply to:

(a) vehicles referred to in points (a), (b) and (c) of Article 2(2) and in point (c) of Article 2(3) of Regulation (EU) 2018/858;

(b) vehicles of category M_3 other than Class I and Class A vehicles as defined in points (2) and (3) of Article 3 of Regulation (EC) No 661/2009 of the European Parliament and of the Council (****).

(*) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

(**) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

(***) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

(****) Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor (OJ L 200, 31.7.2009, p. 1).';

(5) Article 4 is replaced by the following:

'*Article 4*

Definitions

For the purpose of this Directive:

(1) "contracting authorities" means contracting authorities as defined in point 1 of Article 2(1) of Directive 2014/24/EU and in Article 3 of Directive 2014/25/EU;

(2) "contracting entities" means contracting entities as defined in Article 4 of Directive 2014/25/EU;

(3) "road transport vehicle" means a vehicle of category M or N, as defined in points (a) and (b) of Article 4(1) of Regulation (EU) 2018/858;

(4) "clean vehicle" means:

(a) a vehicle of category M_1, M_2 or N_1 with a maximum tail-pipe emission expressed in CO_2 g/km and real driving pollutant emissions below a percentage of the applicable emission limits as laid down in Table 2 of the Annex; or

(b) a vehicle of category M_3, N_2 or N_3 using alternative fuels as defined in points (1) and (2) of Article 2 of Directive 2014/94/EU of the European Parliament and of the Council (*), excluding fuels produced from high indirect land-use change-risk feed stock for which a significant expansion of the production area into land with high-carbon stock is observed in accordance with Article 26 of Directive (EU) 2018/2001 of the European Parliament and of the Council (**). In the case of vehicles using liquid biofuels, synthetic and paraffinic fuels, those fuels shall not be blended with conventional fossil fuels;

(5) "zero-emission heavy duty vehicle" means a clean vehicle as defined in point 4(b) of this Article without an internal combustion engine, or with an internal combustion engine that emits less than 1 g CO_2/kWh as measured in accordance with Regulation (EC) No 595/2009 of the European Parliament and of the Council (***) and its implementing measures, or that emits less than 1 g CO_2/km as measured in accordance with Regulation (EC) No 715/2007 of the European Parliament and of the Council (****) and its implementing measures.

(*) Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1).

(**) Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

(***) Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (OJ L 188, 18.7.2009, p. 1).

(****) Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 171, 29.6.2007, p. 1).';

(6) Article 5 is replaced by the following:

'*Article 5*

Minimum procurement targets

1. Member States shall ensure that the procurement of vehicles and services referred to in Article 3 complies with the minimum procurement targets for clean light-duty vehicles set out in Table 3 of the Annex and for clean heavy-duty vehicles set out in Table 4 of the Annex. Those targets are expressed as minimum percentages of clean vehicles in the total number of road transport vehicles covered by the aggregate of all contracts referred to in Article 3, awarded between 2 August 2021 and 31 December 2025, for the first reference period, and between 1 January 2026 and 31 December 2030, for the second reference period.

2. For the purpose of calculating the minimum procurement targets, the date of the public procurement to be taken into account is the date of completion of the public procurement procedure, by way of awarding of the contract.

3. Vehicles that meet the definition of clean vehicle under point 4 of Article 4 or of zero-emission heavy-duty vehicle under point 5 of Article 4 as a result of retrofitting may be counted as clean vehicles or zero-emission heavy-duty vehicles, respectively, for the purpose of compliance with the minimum procurement targets.

4. In the case of contracts referred to in point (a) of Article 3(1), the number of road transport vehicles purchased, leased, rented or hire-purchased under each contract shall be taken into account for the purpose of assessing compliance with the minimum procurement targets.

5. In the case of contracts referred to in points (b) and (c) of Article 3(1), the number of road transport vehicles to be used for the provision of the services covered by each contract shall be taken into account for the purpose of assessing compliance with the minimum procurement targets.

6. Where new targets for the period after 1 January 2030 are not adopted, the targets set for the second reference period shall continue to apply, and shall be calculated in accordance with paragraphs 1 to 5, over subsequent five-year periods.

7. Member States may apply or authorise their contracting authorities or contracting entities to apply higher national targets or more stringent requirements than those referred to in the Annex.';

(7) Articles 6 and 7 are deleted;

(8) Article 8 is replaced by the following:

'*Article 8*

Exchange of knowledge and best practices

The Commission shall facilitate and structure the exchange of knowledge and best practices between Member States on practices for promoting procurement of clean and energy-efficient road transport vehicles by contracting authorities and contracting entities.';

(9) Article 9 is replaced by the following:

'*Article 9*

Committee procedure

1. The Commission shall be assisted by the committee established by Article 9 of Directive 2014/94/EU.

That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (*).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

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

(10) Article 10 is replaced by the following:

'*Article 10*

Reporting and review

1. By 2 August 2022 Member States shall inform the Commission of the measures taken to implement this Directive and of the Member States' intentions regarding future implementation activities, including the timing and possible effort-sharing between different levels of governance, as well as on any other information which the Member State considers relevant.

2. By 18 April 2026, and every three years thereafter, Member States shall submit to the Commission a report on the implementation of this Directive. Those reports shall accompany the reports provided for in the second subparagraph of Article 83(3) of Directive 2014/24/EU and the second subparagraph of Article 99(3) of Directive 2014/25/EU, and they shall contain information on the measures taken to implement this Directive, on future implementation activities, as well as any other information which the Member State considers relevant. Those reports shall also include the number and the categories of vehicles covered by the contracts referred to in Article 3(1) of this Directive, based on the data provided by the Commission in accordance with paragraph 3 of this Article. The information shall be presented on the basis of the categories set out in Regulation (EC) No 2195/2002 of the European Parliament and of the Council (*).

3. In order to assist the Member States in their reporting obligations, the Commission shall collate and publish the number and the categories of vehicles covered by the contracts referred to in points (a) and (c) of Article 3(1) of this Directive by extracting the relevant data from contract award notices published on the Tenders Electronic Daily (TED) database in accordance with Directives 2014/24/EU and 2014/25/EU.

4. By 18 April 2027, and every three years thereafter, the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Directive, specifying the measures taken by Member States in this regard, following the reports referred to in paragraph 2.

5. By 31 December 2027, the Commission shall review the implementation of this Directive and, where appropriate, submit a legislative proposal for its amendment for the period after 2030, including for the setting of new targets and for the inclusion of other categories of vehicles, such as two- and three-wheeled vehicles.

6. The Commission shall adopt implementing acts in accordance with Article 9(2) setting out the format of the reports referred to in paragraph 2 of this Article and their transmission arrangements.

(*) Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L 340, 16.12.2002, p. 1).';

(11) the Annex is replaced by the text in the Annex to this Directive.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 August 2021. They shall immediately inform the Commission thereof.

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

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

Article 3

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 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 20 June 2019.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	G. CIAMBA

ANNEX

'*ANNEX*

INFORMATION FOR THE IMPLEMENTATION OF MINIMUM PROCUREMENT TARGETS FOR CLEAN ROAD TRANSPORT VEHICLES IN SUPPORT OF LOW-EMISSION MOBILITY IN MEMBER STATES

Table 1: Common Procurement Vocabulary (CPV) codes for services referred to in point (c) of Article 3(1)

CPV Code	Description
60112000-6	Public road transport services
60130000-8	Special-purpose road passenger-transport services
60140000-1	Non-scheduled passenger transport
90511000-2	Refuse collection services
60160000-7	Mail transport by road
60161000-4	Parcel transport services
64121100-1	Mail delivery services
64121200-2	Parcel delivery services

Table 2: Emission thresholds for clean light-duty vehicles

Vehicle categories	Until 31 December 2025		From 1 January 2026	
	CO_2 g/km	RDE air pollutant emissions [1] as a percentage of emission limits [2]	CO_2 g/km	RDE air pollutant emissions [1] as a percentage of emission limits [2]
M_1	50	80 %	0	n.a.
M_2	50	80 %	0	n.a.
N_1	50	80 %	0	n.a.

[1] Declared maximum real-driving emission (RDE) values of particles number (PN) in #/km and nitrogen oxides (NOx) in mg/km as reported in point 48.2 of the certificate of conformity, as described in Annex IX to Directive 2007/46/EC of the European Parliament and of the Council (*) for both complete and urban RDE trips.

[2] The applicable emission limits laid down in Annex I to Regulation (EC) No 715/2007, or its successors.

(*) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).

Table 3: Minimum procurement targets for the share of clean light-duty vehicles in accordance with Table 2 in the total number of light-duty vehicles covered by contracts referred to in Article 3 at Member State level

Member State	From 2 August 2021 to 31 December 2025	From 1 January 2026 to 31 December 2030
Luxembourg	38,5 %	38,5 %
Sweden	38,5 %	38,5 %
Denmark	37,4 %	37,4 %
Finland	38,5 %	38,5 %
Germany	38,5 %	38,5 %
France	37,4 %	37,4 %
United Kingdom	38,5 %	38,5 %
Netherlands	38,5 %	38,5 %
Austria	38,5 %	38,5 %
Belgium	38,5 %	38,5 %
Italy	38,5 %	38,5 %
Ireland	38,5 %	38,5 %
Spain	36,3 %	36,3 %
Cyprus	31,9 %	31,9 %
Malta	38,5 %	38,5 %
Portugal	29,7 %	29,7 %
Greece	25,3 %	25,3 %
Slovenia	22 %	22 %
Czechia	29,7 %	29,7 %
Estonia	23,1 %	23,1 %
Slovakia	22 %	22 %
Lithuania	20,9 %	20,9 %
Poland	22 %	22 %
Croatia	18,7 %	18,7 %
Hungary	23,1 %	23,1 %
Latvia	22 %	22 %
Romania	18,7 %	18,7 %
Bulgaria	17,6 %	17,6 %

Table 4: Minimum procurement targets for the share of clean heavy-duty vehicles in the total number of heavy-duty vehicles covered by contracts referred to in Article 3 at Member State level (*)

Member State	Trucks (vehicle category N_2 and N_3)		Buses (vehicle category M_3) (*)	
	From 2 August 2021 to 31 December 2025	From 1 January 2026 to 31 December 2030	From 2 August 2021 to 31 December 2025	From 1 January 2026 to 31 December 2030
Luxembourg	10 %	15 %	45 %	65 %
Sweden	10 %	15 %	45 %	65 %
Denmark	10 %	15 %	45 %	65 %
Finland	9 %	15 %	41 %	59 %
Germany	10 %	15 %	45 %	65 %
France	10 %	15 %	43 %	61 %
United Kingdom	10 %	15 %	45 %	65 %
Netherlands	10 %	15 %	45 %	65 %
Austria	10 %	15 %	45 %	65 %
Belgium	10 %	15 %	45 %	65 %
Italy	10 %	15 %	45 %	65 %
Ireland	10 %	15 %	45 %	65 %
Spain	10 %	14 %	45 %	65 %
Cyprus	10 %	13 %	45 %	65 %
Malta	10 %	15 %	45 %	65 %
Portugal	8 %	12 %	35 %	51 %
Greece	8 %	10 %	33 %	47 %
Slovenia	7 %	9 %	28 %	40 %
Czechia	9 %	11 %	41 %	60 %
Estonia	7 %	9 %	31 %	43 %
Slovakia	8 %	9 %	34 %	48 %
Lithuania	8 %	9 %	42 %	60 %
Poland	7 %	9 %	32 %	46 %
Croatia	6 %	7 %	27 %	38 %
Hungary	8 %	9 %	37 %	53 %
Latvia	8 %	9 %	35 %	50 %

Member State	Trucks (vehicle category N_2 and N_3)		Buses (vehicle category M_3) (*)	
	From 2 August 2021 to 31 December 2025	From 1 January 2026 to 31 December 2030	From 2 August 2021 to 31 December 2025	From 1 January 2026 to 31 December 2030
Romania	6 %	7 %	24 %	33 %
Bulgaria	7 %	8 %	34 %	48 %

(*) Half of the minimum target for the share of clean buses has to be fulfilled by procuring zero-emission buses as defined in point 5 of Article 4. This requirement is lowered to one quarter of the minimum target for the first reference period if more than 80 % of the buses covered by the aggregate of all contracts referred to in Article 3, awarded during that period in a Member State, are double-decker buses.'.

II

(Non-legislative acts)

INTERINSTITUTIONAL AGREEMENTS

Joint statement of the European Parliament, the Council and the Commission

The European Parliament, the Council and the Commission note that the process for selecting the location of the seat of the European Labour Authority (ELA) was not concluded at the time of the adoption of its founding Regulation ([1]).

Recalling the commitment to sincere and transparent cooperation and recalling the Treaties, the three Institutions acknowledge the value of exchange of information from the initial stages of the process for the selection of the seat of the ELA.

Such early exchange of information would make it easier for the three Institutions to exercise their rights according to the Treaties through the related procedures.

The European Parliament and the Council take note of the Commission's intention to take any appropriate steps in order for the founding Regulation to provide for a provision on the location of the seat of the ELA, and to ensure that the ELA operates autonomously in line with that Regulation.

([1]) OJ L 186, 11.7.2019, p. 21.

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