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Contents

[1] Text with EEA relevance

EN

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

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

REGULATIONS

DECISIONS

GUIDELINES

[1] Text with EEA relevance

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2014/60/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast)

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,

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

Whereas:

(1) Council Directive 93/7/EEC ([2]) has been substantially amended by Directives 96/100/EC ([3]) and 2001/38/EC ([4]) of the European Parliament and of the Council. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) The internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the Treaty on the Functioning of the European Union (TFEU). According to Article 36 TFEU, the relevant provisions on free movement of goods do not preclude prohibitions or restrictions on imports, exports or goods in transit, justified on grounds of the protection of national treasures possessing artistic, historic or archaeological value.

(3) Under the terms and within the limits of Article 36 TFEU, Member States retain the right to define their national treasures and to take the necessary measures to protect them. Nevertheless, the Union plays a valuable role in encouraging cooperation between Member States with a view to protecting cultural heritage of European significance, to which such national treasures belong.

(4) Directive 93/7/EEC introduced arrangements enabling Member States to secure the return to their territory of cultural objects which are classified as national treasures within the meaning of Article 36 TFEU, which fall within the common categories of cultural objects referred to in the Annex to that Directive, and which have been removed from their territory in breach of the national measures or of Council Regulation (EC) No 116/2009 ([5]). That Directive also covered cultural objects classified as national treasures and forming an integral part of public collections or inventories of ecclesiastical institutions which did not fall within those common categories.

([1]) Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal) and decision of the Council of 8 May 2014.

([2]) Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 74, 27.3.1993, p. 74).

([3]) Directive 96/100/EC of the European Parliament and of the Council of 17 February 1997 amending the Annex to Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 60, 1.3.1997, p. 59).

([4]) Directive 2001/38/EC of the European Parliament and of the Council of 5 June 2001 amending Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 187, 10.7.2001, p. 43).

([5]) Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (OJ L 39, 10.2.2009, p. 1).

(5) Directive 93/7/EEC established administrative cooperation between Member States as regards their national treasures, closely linked to their cooperation with Interpol and other competent bodies in the field of stolen works of art and involving, in particular, the recording of lost, stolen or illegally removed cultural objects forming part of their national treasures and their public collections.

(6) The procedure provided for in Directive 93/7/EEC was a first step in establishing cooperation between Member States in this field in the context of the internal market, with the aim of further mutual recognition of relevant national laws.

(7) Regulation (EC) No 116/2009, together with Directive 93/7/EEC, introduced a Union system for the protection of Member States' cultural objects.

(8) The objective of Directive 93/7/EEC was to ensure the physical return of the cultural objects to the Member State from whose territory those objects have been unlawfully removed, irrespective of the property rights applying to such objects. The application of that Directive, however, has shown the limitations of the arrangements for securing the return of such cultural objects. The reports on the application of that Directive have pointed out its infrequent application due in particular to the limitation of its scope, which resulted from the conditions set out in the Annex to that Directive, the short period of time allowed to initiate return proceedings and the costs associated with return proceedings.

(9) The scope of this Directive should be extended to any cultural object classified or defined by a Member State under national legislation or administrative procedures as a national treasure possessing artistic, historic or archaeological value within the meaning of Article 36 TFEU. This Directive should thus cover objects of historical, paleontological, ethnographic, numismatic interest or scientific value, whether or not they form part of public or other collections or are single items, and whether they originate from regular or clandestine excavations, provided that they are classified or defined as national treasures. Furthermore, cultural objects classified or defined as national treasures should no longer have to belong to categories or comply with thresholds related to their age and/or financial value in order to qualify for return under this Directive.

(10) The diversity of national arrangements for protecting national treasures is recognised in Article 36 TFEU. In order to foster mutual trust, a willingness to cooperate and mutual understanding between Member States, the scope of the term 'national treasure' should be determined, in the framework of Article 36 TFEU. Member States should also facilitate the return of cultural objects to the Member State from whose territory those objects have been unlawfully removed regardless of the date of accession of that Member State, and should ensure that the return of such objects does not give rise to unreasonable costs. It should be possible for Member States to return cultural objects other than those classified or defined as national treasures provided that they respect the relevant provisions of the TFEU, as well as cultural objects unlawfully removed before 1 January 1993.

(11) The administrative cooperation between Member States needs to be increased so that this Directive can be applied more effectively and uniformly. Therefore, the central authorities should be required to cooperate efficiently with each other and to exchange information relating to unlawfully removed cultural objects through the use of the Internal Market Information System ('IMI') provided for by Regulation (EU) No 1024/2012 of the European Parliament and of the Council ([1]). In order to improve the implementation of this Directive, a module of the IMI system specifically customised for cultural objects should be established. It is also desirable for other competent authorities of the Member States to use the same system, where appropriate.

(12) In order to ensure the protection of personal data, administrative cooperation and the exchange of information between the competent authorities should comply with the rules set out in Directive 95/46/EC of the European Parliament and of the Council ([2]), and, in so far as the IMI is used, in Regulation (EU) No 1024/2012. The definitions used in Directive 95/46/EC and in Regulation (EC) No 45/2001 of the European Parliament and of the Council ([3]) should also apply for the purposes of this Directive.

(13) The time-limit for checking whether the cultural object found in another Member State is a cultural object within the meaning of Directive 93/7/EEC was identified as being too short in practice. Therefore, it should be extended to six months. A longer period should allow Member States to take the necessary measures to preserve the cultural object and, where appropriate, prevent any action to evade the return procedure.

([1]) Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

([2]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 74).

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

(14) The time-limit for bringing return proceedings should also be extended to three years after the Member State from whose territory the cultural object was unlawfully removed became aware of the location of the cultural object and of the identity of its possessor or holder. The extension of this period should facilitate the return and discourage the illegal removal of national treasures. In the interest of clarity, it should be stipulated that the time-limit for bringing proceedings begins on the date on which the information came to the knowledge of the central authority of the Member State from whose territory the cultural object was unlawfully removed.

(15) Directive 93/7/EEC provided that return proceedings may not be brought more than 30 years after the object was unlawfully removed from the territory of the Member State. However, in the case of objects forming part of public collections and of objects belonging to inventories of ecclesiastical institutions in the Member States where they are subject to special protection arrangements under national law, return proceedings are subject to a longer time-limit under certain circumstances. Due to the fact that Member States may have special protection arrangements under national law with religious institutions other than ecclesiastical ones, this Directive should also extend to those other religious institutions.

(16) In its Conclusions on preventing and combating crime against cultural goods adopted on 13 and 14 December 2011, the Council recognised the need to take measures in order to make preventing and combating crime concerning cultural objects more effective. It recommended that the Commission support Member States in the effective protection of cultural objects with a view to preventing and combating trafficking and promoting complementary measures where appropriate. In addition, the Council recommended that the Member States consider the ratification of the Unesco Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property signed in Paris on 17 November 1970, and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects signed in Rome on 24 June 1995.

(17) It is desirable to ensure that all those involved in the market exercise due care and attention in transactions involving cultural objects. The consequences of acquiring a cultural object of unlawful origin will only be genuinely dissuasive if the payment of compensation is coupled with an obligation on the possessor to prove the exercise of due care and attention. Therefore, in order to achieve the Union's objectives of preventing and combating unlawful trafficking in cultural objects, this Directive should stipulate that the possessor must provide proof that he exercised due care and attention in acquiring the object, for the purpose of compensation.

(18) It would also be useful for any person, and in particular those who are involved in the market, to have easy access to public information on cultural objects classified or defined as national treasures by the Member States. Member States should try to facilitate access to this public information.

(19) In order to facilitate a uniform interpretation of the concept of due care and attention, this Directive should set out non-exhaustive criteria to be taken into account to determine whether the possessor exercised due care and attention when acquiring the cultural object.

(20) Since the objective of this Directive, namely to enable the return of cultural objects classified or defined as national treasures which have been unlawfully removed from the territory of Member States, cannot be sufficiently achieved by the Member States, but can, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(21) Since the tasks of the committee set up by Regulation (EC) No 116/2009 are rendered obsolete by the deletion of the Annex to Directive 93/7/EEC, references to that committee should be deleted accordingly. However, in order to maintain the platform for the exchange of experience and good practices on the implementation of this Directive among Member States, the Commission should set up an expert group, composed of experts from the Member States' central authorities responsible for the implementation of this Directive, which should be involved, inter alia, in the process of customising a module of the IMI system for cultural objects.

(22) Since the Annex to Regulation (EU) No 1024/2012 contains a list of provisions on administrative cooperation in Union acts which are implemented by means of the IMI, that Annex should be amended to include this Directive.

(23) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises from the earlier Directives.

(24) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law of the Directives set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

This Directive applies to the return of cultural objects classified or defined by a Member State as being among national treasures, as referred to in point (1) of Article 2, which have been unlawfully removed from the territory of that Member State.

Article 2

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

(1) 'cultural object' means an object which is classified or defined by a Member State, before or after its unlawful removal from the territory of that Member State, as being among the 'national treasures possessing artistic, historic or archaeological value' under national legislation or administrative procedures within the meaning of Article 36 TFEU;

(2) 'unlawfully removed from the territory of a Member State' means:

(a) removed from the territory of a Member State in breach of its rules on the protection of national treasures or in breach of Regulation (EC) No 116/2009; or

(b) not returned at the end of a period of lawful temporary removal or any breach of another condition governing such temporary removal;

(3) 'requesting Member State' means the Member State from whose territory the cultural object has been unlawfully removed;

(4) 'requested Member State' means the Member State in whose territory a cultural object, which was unlawfully removed from the territory of another Member State, is located;

(5) 'return' means the physical return of the cultural object to the territory of the requesting Member State;

(6) 'possessor' means the person physically holding the cultural object on his own account;

(7) 'holder' means the person physically holding the cultural object for third parties;

(8) 'public collections' means collections, defined as public in accordance with the legislation of a Member State, which are the property of that Member State, of a local or regional authority within that Member State or of an institution situated in the territory of that Member State, such institution being the property of, or significantly financed by, that Member State or local or regional authority.

Article 3

Cultural objects which have been unlawfully removed from the territory of a Member State shall be returned in accordance with the procedure and in the circumstances provided for in this Directive.

Article 4

Each Member State shall appoint one or more central authorities to carry out the tasks provided for in this Directive.

Member States shall inform the Commission of all the central authorities they appoint pursuant to this Article.

The Commission shall publish a list of those central authorities and any changes concerning them in the C series of the *Official Journal of the European Union*.

Article 5

Member States' central authorities shall cooperate and promote consultation between the Member States' competent national authorities. The latter shall in particular:

(1) upon application by the requesting Member State, seek a specified cultural object which has been unlawfully removed from its territory, identifying the possessor and/or holder. The application must include all information needed to facilitate the search, with particular reference to the actual or presumed location of the object;

(2) notify the Member States concerned, where a cultural object is found in their own territory and there are reasonable grounds for believing that it has been unlawfully removed from the territory of another Member State;

(3) enable the competent authorities of the requesting Member State to check that the object in question is a cultural object, provided that the check is made within six months of the notification provided for in point (2). If it is not made within the stipulated period, points (4) and (5) shall cease to apply;

(4) take any necessary measures, in cooperation with the Member State concerned, for the physical preservation of the cultural object;

(5) prevent, by the necessary interim measures, any action to evade the return procedure;

(6) act as intermediary between the possessor and/or holder and the requesting Member State with regard to return. To that end, the competent authorities of the requested Member State may, without prejudice to Article 6, first facilitate the implementation of an arbitration procedure, in accordance with the national legislation of the requested Member State and provided that the requesting Member State and the possessor or holder give their formal approval.

In order to cooperate and consult with each other, the central authorities of the Member States shall use a module of the Internal Market Information System ('IMI') established by Regulation (EU) No 1024/2012 specifically customised for cultural objects. They may also use the IMI to disseminate relevant case-related information concerning cultural objects which have been stolen or unlawfully removed from their territory. The Member States shall decide on the use of the IMI by other competent authorities for the purposes of this Directive.

Article 6

The requesting Member State may initiate, before the competent court in the requested Member State, proceedings against the possessor or, failing him, the holder, with the aim of securing the return of a cultural object which has been unlawfully removed from its territory.

Proceedings may be brought only where the document initiating them is accompanied by:

(a) a document describing the object covered by the request and stating that it is a cultural object;

(b) a declaration by the competent authorities of the requesting Member State that the cultural object has been unlawfully removed from its territory.

Article 7

The competent central authority of the requesting Member State shall forthwith inform the competent central authority of the requested Member State that proceedings have been initiated with the aim of securing the return of the object in question.

The competent central authority of the requested Member State shall forthwith inform the central authorities of the other Member States.

The exchange of information shall be conducted using the IMI in accordance with the applicable legal provisions on the protection of personal data and privacy, without prejudice to the possibility for the competent central authorities to use other means of communication in addition to the IMI.

Article 8

1. Member States shall provide in their legislation that return proceedings under this Directive may not be brought more than three years after the competent central authority of the requesting Member State became aware of the location of the cultural object and of the identity of its possessor or holder.

Such proceedings may, in any event, not be brought more than 30 years after the object was unlawfully removed from the territory of the requesting Member State.

However, in the case of objects forming part of public collections, defined in point (8) of Article 2, and objects belonging to inventories of ecclesiastical or other religious institutions in the Member States where they are subject to special protection arrangements under national law, return proceedings shall be subject to a time-limit of 75 years, except in Member States where proceedings are not subject to a time-limit or in the case of bilateral agreements between Member States providing for a period exceeding 75 years.

2. Return proceedings may not be brought if removal of the cultural object from the national territory of the requesting Member State is no longer unlawful at the time when they are to be initiated.

Article 9

Save as otherwise provided in Articles 8 and 14, the competent court shall order the return of the cultural object in question where it is found to be a cultural object within the meaning of point (1) of Article 2 and to have been removed unlawfully from national territory.

Article 10

Where return of the object is ordered, the competent court in the requested Member State shall award the possessor fair compensation according to the circumstances of the case, provided that the possessor demonstrates that he exercised due care and attention in acquiring the object.

In determining whether the possessor exercised due care and attention, consideration shall be given to all the circumstances of the acquisition, in particular the documentation on the object's provenance, the authorisations for removal required under the law of the requesting Member State, the character of the parties, the price paid, whether the possessor consulted any accessible register of stolen cultural objects and any relevant information which he could reasonably have obtained, or took any other step which a reasonable person would have taken in the circumstances.

In the case of a donation or succession, the possessor shall not be in a more favourable position than the person from whom he acquired the object by those means.

The requesting Member State shall pay that compensation upon return of the object.

Article 11

Expenses incurred in implementing a decision ordering the return of a cultural object shall be borne by the requesting Member State. The same applies to the costs of the measures referred to in point (4) of Article 5.

Article 12

Payment of the fair compensation and of the expenses referred to in Articles 10 and 11 respectively shall be without prejudice to the requesting Member State's right to take action with a view to recovering those amounts from the persons responsible for the unlawful removal of the cultural object from its territory.

Article 13

Ownership of the cultural object after return shall be governed by the law of the requesting Member State.

Article 14

This Directive shall apply only to cultural objects unlawfully removed from the territory of a Member State on or after 1 January 1993.

Article 15

1. Each Member State may apply the arrangements provided for in this Directive to the return of cultural objects other than those defined in point (1) of Article 2.

2. Each Member State may apply the arrangements provided for in this Directive to requests for the return of cultural objects unlawfully removed from the territory of other Member States prior to 1 January 1993.

Article 16

This Directive shall be without prejudice to any civil or criminal proceedings that may be brought, under the national laws of the Member States, by the requesting Member State and/or the owner of a cultural object that has been stolen.

Article 17

1. By 18 December 2015 and every five years thereafter, Member States shall submit to the Commission a report on the application of this Directive.

2. Every five years the Commission shall present a report to the European Parliament, the Council and the European Economic and Social Committee, reviewing the application and effectiveness of this Directive. The report shall be accompanied, if necessary, by appropriate proposals.

Article 18

The following point shall be added to the Annex to Regulation (EU) No 1024/2012:

'8. Directive 2014/60/EU of the European Parliament and the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (*): Articles 5 and 7.

(*) OJ L 159 28.5.2014, p. 1'.

Article 19

1. By 18 December 2015, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with point (1) of Article 2, point (3) of the first paragraph of Article 5, the second paragraph of Article 5, the third paragraph of Article 7, Article 8(1), the first and the second paragraphs of Article 10 and Article 17(1) of this Directive.

They shall forthwith communicate the text of those measures to the Commission.

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

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

Article 20

Directive 93/7/EEC, as amended by the Directives listed in Annex I, Part A, is repealed with effect from 19 December 2015, without prejudice to the obligations of Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 21

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

Points (2) to (8) of Article 2, Articles 3 and 4, points (1), (2) and (4) to (6) of the first paragraph of Article 5, Article 6, the first and second paragraphs of Article 7, Article 8(2), Article 9, the third and fourth paragraphs of Article 10, and Articles 11 to 16 shall apply from 19 December 2015.

Article 22

The Directive is addressed to the Member States.

Done at Brussels, 15 May 2014.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	D. KOURKOULAS

ANNEX I

PART A

Repealed Directive with list of its successive amendments

(referred to in Article 20)

Council Directive 93/7/EEC	(OJ L 74, 27.3.1993, p. 74).
Directive 96/100/EC of the European Parliament and of the Council	(OJ L 60, 1.3.1997, p. 59).
Directive 2001/38/EC of the European Parliament and of the Council	(OJ L 187, 10.7.2001, p. 43).

PART B

List of time-limits for transposition into national law

(referred to in Article 20)

Directive	Time-limit for transposition
93/7/EEC	15.12.1993 (15.3.1994 for Belgium, Germany and the Netherlands)
96/100/EC	1.9.1997
2001/38/EC	31.12.2001

ANNEX II

Correlation table

Directive 93/7/EEC	This Directive
—	Article 1
Article 1, point (1), first indent	Article 2, point (1)
Article 1, point (1), second indent, introductory part	—
Article 1, point (1), second indent, first sub-indent, first phrase	—
Article 1, point (1), second indent, first sub-indent, second phrase	Article 2, point (8)
Article 1, point (1), second indent, second sub-indent	—
Article 1, point (2), first indent	Article 2, point (2)(a)
Article 1, point (2), second indent	Article 2, point (2)(b)
Article 1, points (3) to (7)	Article 2, points (3) to (7)
Article 2	Article 3
Article 3	Article 4
Article 4, introductory part	Article 5, first paragraph, introductory part
Article 4, points (1) and (2)	Article 5, first paragraph, points (1) and (2)
Article 4, point (3)	Article 5, first paragraph, point (3)
Article 4, points (4) to (6)	Article 5, first paragraph, points (4) to (6)
—	Article 5, second paragraph
Article 5, first paragraph	Article 6, first paragraph
Article 5, second paragraph, first indent	Article 6, second paragraph, point (a)
Article 5, second paragraph, second indent	Article 6, second paragraph, point (b)
Article 6, first paragraph	Article 7, first paragraph
Article 6, second paragraph	Article 7, second paragraph
—	Article 7, third paragraph
Article 7(1) and (2)	Article 8(1) and (2)
Article 8	Article 9
Article 9, first paragraph	Article 10, first paragraph
Article 9, second paragraph	—
—	Article 10, second paragraph
Article 9, third and fourth paragraphs	Article 10, third and fourth paragraphs
Articles 10 to 15	Articles 11 to 16
Article 16(1) and (2)	Article 17(1) and (2)
Article 16(3)	—
Article 16(4)	—
Article 17	—
—	Article 18
Article 18	Article 19
—	Article 20
—	Article 21

Directive 93/7/EEC	This Directive
Article 19	Article 22
Annex	—
—	Annex I
—	Annex II

DIRECTIVE 2014/67/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative co-operation through the Internal Market Information System ('the IMI Regulation')

(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) and Article 62 thereof,

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

(1) The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market in the Union enshrined in the Treaty on the Functioning of the European Union (TFEU). The implementation of those principles is further developed by the Union aimed at guaranteeing a level playing field for businesses and respect for the rights of workers.

(2) The freedom to provide services includes the right of undertakings to provide services in another Member State, to which they may post their own workers temporarily in order to provide those services there. It is necessary for the purpose of the posting of workers to distinguish this freedom from the free movement of workers, which gives every citizen the right to move freely to another Member State to work and reside there for that purpose and protects them against discrimination as regards employment, remuneration and other conditions of work and employment in comparison to nationals of that Member State.

(3) With respect to workers temporarily posted to carry out work in order to provide services in another Member State than the one in which they habitually carry out their work, Directive 96/71/EC of the European Parliament and of the Council ([4]) establishes a core set of clearly defined terms and conditions of employment which are required to be complied with by the service provider in the Member State to which the posting takes place to ensure the minimum protection of the posted workers concerned.

(4) All measures introduced by this Directive should be justified and proportionate so as not to create administrative burdens or to limit the potential that undertakings, in particular small and medium-sized enterprises (SMEs), have to create new jobs, while protecting posted workers.

(5) In order to ensure compliance with Directive 96/71/EC, whilst not putting an unnecessary administrative burden on the service providers, it is essential that the factual elements referred to in the provisions on the identification of a genuine posting and preventing abuse and circumvention in this Directive are considered to be indicative and non-exhaustive. In particular, there should be no requirement that each element is to be satisfied in every posting case.

([1]) OJ C 351, 15.11.2012, p. 61.
([2]) OJ C 17, 19.1.2013, p. 67.
([3]) Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal) and decision of the Council of 13 May 2014.
([4]) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

(6) Notwithstanding the fact that the assessment of the indicative factual elements should be adapted to each specific case and take account of the specificities of the situation, situations representing the same factual elements should not lead to a different legal appreciation or assessment by competent authorities in different Member States.

(7) In order to prevent, avoid and combat abuse and circumvention of the applicable rules by undertakings taking improper or fraudulent advantage of the freedom to provide services enshrined in the TFEU and/or of the application of Directive 96/71/EC, the implementation and monitoring of the notion of posting should be improved and more uniform elements, facilitating a common interpretation, should be introduced at Union level.

(8) Therefore, the constituent factual elements characterising the temporary nature inherent to the notion of posting, and the condition that the employer is genuinely established in the Member State from which the posting takes place, need to be examined by the competent authority of the host Member State and, where necessary, in close cooperation with the Member State of establishment.

(9) When considering the size of the turnover realised by an undertaking in the Member State of establishment for the purpose of determining whether that undertaking genuinely performs substantial activities, other than purely internal management and/or administrative activities, competent authorities should take into account differences in the purchasing power of currencies.

(10) The elements set out in this Directive relating to the implementation and monitoring of posting may also assist the competent authorities in identifying workers falsely declared as self-employed. According to Directive 96/71/EC, the relevant definition of a worker is that which applies in the law of the Member State to whose territory a worker is posted. Further clarification and improved monitoring of posting by relevant competent authorities would enhance legal certainty and provide a useful tool contributing to combating bogus self-employment effectively and ensuring that posted workers are not falsely declared as self-employed, thus helping prevent, avoid and combat circumvention of the applicable rules.

(11) Where there is no genuine posting situation and a conflict of law arises, due regard should be given to the provisions of Regulation (EC) No 593/2008 of the European Parliament and of the Council [1] ('Rome I') or the Rome Convention [2] that are aimed at ensuring that employees should not be deprived of the protection afforded to them by provisions which cannot be derogated from by an agreement or which can only be derogated from to their benefit. Member States should ensure that provisions are in place to adequately protect workers who are not genuinely posted.

(12) The lack of the certificate concerning the applicable social security legislation referred to in Regulation (EC) No 883/2004 of the European Parliament and of the Council [3] may be an indication that the situation should not be characterised as one of temporarily posting to a Member State other than the one in which the worker concerned habitually works in the framework of the provision of services.

(13) As is the case with Directive 96/71/EC, this Directive should not prejudice the application of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council [4].

(14) Respect for the diversity of national industrial relations systems as well as the autonomy of social partners is explicitly recognised by the TFEU.

(15) In many Member States, the social partners play an important role in the context of the posting of workers for the provision of services since they may, in accordance with national law and/or practice, determine the different levels, alternatively or simultaneously, of the applicable minimum rates of pay. The social partners should communicate and inform about those rates.

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

[2] Rome Convention of 19 June 1980 on the law applicable to contractual obligations (80/934/EEC) (OJ L 266, 9.10.1980, p. 1).

[3] 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).

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

(16) Adequate and effective implementation and enforcement are key elements in protecting the rights of posted workers and in ensuring a level-playing field for the service providers, whereas poor enforcement undermines the effectiveness of the Union rules applicable in this area. Close cooperation between the Commission and the Member States, and where relevant, regional and local authorities, is therefore essential, without neglecting the important role of labour inspectorates and the social partners in this respect. Mutual trust, a spirit of cooperation, continuous dialogue and mutual understanding are essential in this respect.

(17) Effective monitoring procedures in Member States are essential for the enforcement of Directive 96/71/EC and of this Directive and therefore they should be established throughout the Union.

(18) Difficulties in accessing information on terms and conditions of employment are very often the reason why existing rules are not applied by service providers. Member States should therefore ensure that such information is made generally available, free of charge and that effective access to it is provided, not only to service providers from other Member States, but also to the posted workers concerned.

(19) Where terms and conditions of employment are laid down in collective agreements which have been declared to be universally applicable, Member States should ensure, while respecting the autonomy of social partners, that those collective agreements are made generally available in an accessible and transparent way.

(20) In order to improve accessibility of information, a single source of information should be established in Member States. Each Member State should provide for a single official national website, in accordance with web accessibility standards, and other suitable means of communication. The single official national website should, as a minimum, be in the form of a website portal and should serve as a gateway or main entry point and should provide in clear and precise way links to the relevant sources of the information as well as brief information on the content of the website and the links referred to. Such websites should include in particular any website put in place pursuant to Union legislation with a view to promoting entrepreneurship and/or the development of cross-border provision of services. Host Member States should provide information on the periods laid down in their national law for which the service providers have to retain documents after the period of posting.

(21) Posted workers should have the right to receive from the host Member State general information on national law and/or practice that is applicable to them.

(22) Administrative cooperation and mutual assistance between the Member States should comply with the rules on the protection of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council ([1]), and in accordance with national data protection rules implementing Union legislation. With regard to administrative cooperation through the Internal Market Information System (IMI), it should also comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council ([2]) and Regulation (EU) No 1024/2012 of the European Parliament and of the Council ([3]).

(23) In order to ensure the correct application of, and to monitor compliance with, the substantive rules on the terms and conditions of employment to be respected with regard to posted workers, Member States should apply only certain administrative requirements and control measures to undertakings that post workers in the framework of the provision of services. According to the case law of the Court of Justice of the European Union, such requirements and measures may be justified by overriding reasons of general interest, which include the effective protection of workers' rights, provided they are appropriate for securing the attainment of the objective pursued and do not go beyond what is necessary to attain it. Such requirements and measures may only be imposed provided that the competent authorities cannot carry out their supervisory task effectively without the requested information and/or less restrictive measures would not ensure that the objectives of the national control measures deemed necessary are attained.

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

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

([3]) Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

(24) A service provider should ensure that the identity of the posted workers included in the declaration made by the service provider in order to allow factual controls at the workplace is verifiable for the duration of the posting by the competent authorities.

(25) A service provider established in another Member State should inform the competent authorities in the host Member State without undue delay of any important changes to the information contained in the declaration made by the service provider in order to allow factual controls at the workplace.

(26) The obligation to communicate administrative requirements and control measures to the Commission should not constitute an *ex-ante* authorisation process.

(27) In order to ensure better and more uniform application of Directive 96/71/EC as well as its enforcement in practice and to reduce, as far as possible, differences in the level of application and enforcement across the Union, Member States should ensure that effective and adequate inspections are carried out on their territory, thus contributing, inter alia, to the fight against undeclared work in the context of posting, also taking into account other legal initiatives to address this issue better.

(28) Member States should provide, where applicable, in accordance with their national law and/or practice, the inspected undertaking with a post- inspection or control document which includes any relevant information.

(29) Member States should ensure that sufficient staff are available with the skills and qualifications needed to carry out inspections effectively and to enable requests for information as provided for in this Directive, from the host Member State or the Member State of establishment to be responded to without undue delay.

(30) Labour inspectorates, social partners and other monitoring bodies are of paramount importance in this respect and should continue to play a crucial role.

(31) In order to cope in a flexible way with the diversity of labour markets and industrial relations systems, by way of exception, the management and labour and/or other actors and/or bodies may monitor certain terms and conditions of employment of posted workers, provided they offer the persons concerned an equivalent degree of protection and exercise their monitoring in a non-discriminatory and objective manner.

(32) Member States' inspection authorities and other relevant monitoring and enforcement bodies should avail themselves of the cooperation and exchange of information provided for in the relevant law in order to verify whether the rules applicable to posted workers have been respected.

(33) Member States are particularly encouraged to introduce a more integrated approach to labour inspections. The need to develop common standards in order to establish comparable methods, practices and minimum standards at Union level should equally be examined. However, the development of common standards should not result in Member States being hampered in their efforts to combat undeclared work effectively.

(34) To facilitate the enforcement of Directive 96/71/EC and ensure its more effective application, effective complaint mechanisms should exist through which posted workers may lodge complaints or engage in proceedings either directly or, with their approval, through relevant designated third parties, such as trade unions or other associations as well as common institutions of social partners. This should be without prejudice to national rules of procedure concerning representation and defence before the courts and to the competences and other rights of trade unions and other employee representatives under national law and/or practice.

(35) For the purpose of ensuring that a posted worker receives the correct pay and provided that allowances specific to posting can be considered part of minimum rates of pay, such allowances should only be deducted from wages if national law, collective agreements and/or practice of the host Member State provide for this.

(36) Compliance with the applicable rules in the field of posting in practice and the effective protection of workers' rights in this respect is a matter of particular concern in subcontracting chains and should be ensured through appropriate measures in accordance with national law and/or practice and in compliance with Union law. Such measures may include the introduction on a voluntary basis, after consulting the relevant social partners, of a mechanism of direct subcontracting liability, in addition to or in place of the liability of the employer, in respect of any outstanding net remuneration corresponding to the minimum rates of pay and/or contributions due to common funds or institutions of social partners regulated by law or collective agreement in so far as these are covered by Article 3(1) of Directive 96/71/EC. However, Member States remain free to provide for more stringent liability rules under national law or to go further under national law on a non-discriminatory and proportionate basis.

(37) Member States that have introduced measures to ensure compliance with the applicable rules in subcontracting chains should have the possibility to provide that a (sub)contractor should not be liable in specific circumstances or that the liability may be limited in cases where due diligence obligations have been undertaken by that (sub) contractor. Those measures should be defined by national law, taking into account the specific circumstances of the Member State concerned, and they may include, inter alia, measures taken by the contractor concerning documentation of compliance with administrative requirements and control measures in order to ensure effective monitoring of compliance with the applicable rules on the posting of workers.

(38) It is a matter of concern that there are still many difficulties for Member States to recover cross-border administrative penalties and/or fines and therefore the mutual recognition of administrative penalties and/or fines needs to be addressed.

(39) The disparities between the systems of the Member States for enforcing imposed administrative penalties and/or fines in cross-border situations are prejudicial to the proper functioning of the internal market and risk making it very difficult, if not impossible, to ensure that posted workers enjoy an equivalent level of protection throughout the Union.

(40) Effective enforcement of the substantive rules governing the posting of workers for the provision of services should be ensured by specific action focusing on the cross-border enforcement of imposed financial administrative penalties and/or fines. Approximation of the legislation of the Member States in this field is therefore an essential prerequisite in order to ensure a higher, more equivalent and comparable level of protection necessary for the proper functioning of the internal market.

(41) The adoption of common rules which provide mutual assistance and support for enforcement measures and the associated costs, as well as the adoption of uniform requirements for the notification of decisions relating to administrative penalties and/or fines imposed for the non-respect of Directive 96/71/EC, as well as of this Directive, should resolve a number of practical cross-border enforcement problems and guarantee better communication and better enforcement of such decisions emanating from another Member State.

(42) If it emerges that the service provider is indeed not established in the Member State of establishment or that the address or the company data are false, the competent authorities should not terminate the procedure on formal grounds but should investigate the matter further in order to establish the identity of the natural or legal person responsible for the posting.

(43) The recognition of decisions imposing an administrative penalty and/or fine and requests to recover such a penalty and/or fine should be based on the principle of mutual trust. To that end, the grounds for non-recognition or a refusal to recover an administrative penalty and/or fine should be limited to the minimum necessary.

(44) Notwithstanding the establishment of more uniform rules with respect to the cross-border enforcement of administrative penalties and/or fines and the need for more common criteria to make follow-up procedures more effective in the event of the non-payment, they should not affect the Member States' competences to determine their system of penalties, sanctions and fines or the recovery measures available under their national law. Therefore, the instrument permitting enforcement or execution of such penalties and/or fines may, if appropriate, and taking into account national law and/or practice in the requested Member State, be completed, or be accompanied or replaced by a title permitting its enforcement or execution in the requested Member State.

(45) The more uniform rules should not have the effect of amending or modifying the obligation to respect fundamental rights and freedoms of defendants as well as fundamental legal principles that apply to them as enshrined in Article 6 of the Treaty on European Union (TEU), such as the right to be heard and the right to an effective remedy and to a fair trial or the principle 'ne bis in idem'.

(46) This Directive does not aim to establish harmonised rules for judicial cooperation, jurisdiction, or the recognition and enforcement of decisions in civil and commercial matters, or to deal with applicable law.

(47) Member States should take appropriate measures in the event of failure to comply with the obligations laid down in this Directive, including administrative and judicial procedures, and should provide for effective, dissuasive and proportionate penalties for any breaches of the obligations under this Directive.

(48) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably protection of personal data (Article 8), the freedom to choose an occupation and right to engage in work (Article 15), the freedom to conduct a business (Article 16), the right to collective bargaining and action (Article 28), fair and just working conditions (Article 31), the right to an effective remedy and to a fair trial (Article 47), the presumption of innocence and right of defence (Article 48) and the right not to be tried twice for the same offence (ne bis in idem) (Article 50), and has to be implemented in accordance with those rights and principles.

(49) In order to facilitate better and more uniform application of Directive 96/71/EC, it is appropriate to provide for an electronic information exchange system to facilitate administrative cooperation and competent authorities should use the IMI as much as possible. However, that should not prevent the application of existing and future bilateral agreements or arrangements concerning administrative cooperation and mutual assistance.

(50) Since the objective of this Directive, namely to establish a common framework of a set of appropriate provisions, measures and control mechanisms necessary for better and more uniform implementation, application and enforcement in practice of Directive 96/71/EC, cannot be sufficiently achieved by the Member States, and 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 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 that objective.

(51) The European Data Protection Supervisor has been consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 19 July 2012 [1],

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Directive establishes a common framework of a set of appropriate provisions, measures and control mechanisms necessary for better and more uniform implementation, application and enforcement in practice of Directive 96/71/EC, including measures to prevent and sanction any abuse and circumvention of the applicable rules and is without prejudice to the scope of Directive 96/71/EC.

[1] OJ C 27, 29.1.2013, p. 4.

This Directive aims to guarantee respect for an appropriate level of protection of the rights of posted workers for the cross-border provision of services, in particular the enforcement of the terms and conditions of employment that apply in the Member State where the service is to be provided in accordance with Article 3 of Directive 96/71/EC, while facilitating the exercise of the freedom to provide services for service providers and promoting fair competition between service providers, and thus supporting the functioning of the internal market.

2. This Directive shall not affect in any way the exercise of fundamental rights as recognised in Member States and at Union level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States, in accordance with national law and/or practice. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law and/or practice.

Article 2

Definitions

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

(a) 'competent authority' means an authority or body, which may include the liaison office(s) as referred to in Article 4 of Directive 96/71/EC, designated by a Member State to perform functions set out in Directive 96/71/EC and this Directive;

(b) 'requesting authority' means the competent authority of a Member State which makes a request for assistance, information, notification or recovery of a penalty and/or fine, as referred to in Chapter VI;

(c) 'requested authority' means the competent authority of a Member State to which a request for assistance, information, notification or recovery of a penalty and/or fine is made, as referred to in Chapter VI.

Article 3

Competent authorities and liaison offices

For the purposes of this Directive, Member States shall, in accordance with national law and/or practice, designate one or more competent authorities, which may include the liaison office(s) as referred to in Article 4 of Directive 96/71/EC. When designating their competent authorities Member States shall have due regard for the need to ensure data protection of exchanged information and the legal rights of natural and legal persons that may be affected. Member States shall remain ultimately responsible for safeguarding data protection and the legal rights of affected persons and shall put in place appropriate mechanisms in this respect.

Member States shall communicate the contact details of the competent authorities to the Commission and to the other Member States. The Commission shall publish and regularly update the list of the competent authorities and liaison offices.

Other Member States and Union institutions shall respect each Member State's choice of competent authorities.

Article 4

Identification of a genuine posting and prevention of abuse and circumvention

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC, the competent authorities shall make an overall assessment of all factual elements that are deemed to be necessary, including, in particular, those set out in paragraphs 2 and 3 of this Article. Those elements are intended to assist competent authorities when carrying out checks and controls and where they have reason to believe that a worker may not qualify as a posted worker under Directive 96/71/EC. Those elements are indicative factors in the overall assessment to be made and therefore shall not be considered in isolation.

2. In order to determine whether an undertaking genuinely performs substantial activities, other than purely internal management and/or administrative activities, the competent authorities shall make an overall assessment of all factual elements characterising those activities, taking account of a wider timeframe, carried out by an undertaking in the Member State of establishment, and where necessary, in the host Member State. Such elements may include in particular:

(a) the place where the undertaking has its registered office and administration, uses office space, pays taxes and social security contributions and, where applicable, in accordance with national law has a professional licence or is registered with the chambers of commerce or professional bodies;

(b) the place where posted workers are recruited and from which they are posted;

(c) the law applicable to the contracts concluded by the undertaking with its workers, on the one hand, and with its clients, on the other;

(d) the place where the undertaking performs its substantial business activity and where it employs administrative staff;

(e) the number of contracts performed and/or the size of the turnover realised in the Member State of establishment, taking into account the specific situation of, inter alia, newly established undertakings and SMEs.

3. In order to assess whether a posted worker temporarily carries out his or her work in a Member State other than the one in which he or she normally works, all factual elements characterising such work and the situation of the worker shall be examined. Such elements may include in particular:

(a) the work is carried out for a limited period of time in another Member State;

(b) the date on which the posting starts;

(c) the posting takes place to a Member State other than the one in or from which the posted worker habitually carries out his or her work according to Regulation (EC) No 593/2008 (Rome I) and/or the Rome Convention;

(d) the posted worker returns to or is expected to resume working in the Member State from which he or she is posted after completion of the work or the provision of services for which he or she was posted;

(e) the nature of activities;

(f) travel, board and lodging or accommodation is provided or reimbursed by the employer who posts the worker and, if so, how this is provided or the method of reimbursement;

(g) any previous periods during which the post was filled by the same or by another (posted) worker.

4. The failure to satisfy one or more of the factual elements set out in paragraphs 2 and 3 shall not automatically preclude a situation from being characterised as one of posting. The assessment of those elements shall be adapted to each specific case and take account of the specificities of the situation.

5. The elements that are referred to in this Article used by the competent authorities in the overall assessment of a situation as a genuine posting may also be considered in order to determine whether a person falls within the applicable definition of a worker in accordance with Article 2(2) of Directive 96/71/EC. Member States should be guided, inter alia, by the facts relating to the performance of work, subordination and the remuneration of the worker, notwithstanding how the relationship is characterised in any arrangement, whether contractual or not, that may have been agreed between the parties.

CHAPTER II

ACCESS TO INFORMATION

Article 5

Improved access to information

1. Member States shall take the appropriate measures to ensure that the information on the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are to be applied and complied with by service providers is made generally available free of charge in a clear, transparent, comprehensive and easily accessible way at a distance and by electronic means, in formats and in accordance with web accessibility standards that ensure access to persons with disabilities and to ensure that the liaison offices or other competent national bodies referred to in Article 4 of Directive 96/71/EC are in a position to carry out their tasks effectively.

2. In order to bring about further improvements with respect to access to information, Member States shall:

(a) indicate clearly, in a detailed and user-friendly manner and in an accessible format on a single official national website and by other suitable means, which terms and conditions of employment and/or which parts of their national and/or regional law are to be applied to workers posted to their territory;

(b) take the necessary measures to make generally available on the single official national website and by other suitable means information on which collective agreements are applicable and to whom they are applicable, and which terms and conditions of employment are to be applied by service providers from other Member States in accordance with Directive 96/71/EC, including where possible, links to existing websites and other contact points, in particular the relevant social partners;

(c) make the information available to workers and service providers free of charge in the official language(s) of the host Member State and in the most relevant languages taking into account demands in its labour market, the choice being left to the host Member State. That information shall be made available if possible in summarised leaflet form indicating the main labour conditions applicable, including the description of the procedures to lodge complaints and upon requests in formats accessible to persons with disabilities; further detailed information on the labour and social conditions applicable to posted workers, including occupational health and safety, shall be made easily available and free of charge;

(d) improve the accessibility and clarity of the relevant information, in particular that provided on a single official national website, as referred to in point (a);

(e) indicate a contact person at the liaison office in charge of dealing with requests for information;

(f) keep the information provided for in the country fiches up to date.

3. The Commission shall continue to support the Member States in the area of access to information.

4. Where, in accordance with national law, traditions and practice, including respect for the autonomy of social partners, the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC are laid down in collective agreements in accordance with Article 3(1) and (8) of that Directive, Member States shall ensure that those terms and conditions are made available in an accessible and transparent way to service providers from other Member States and to posted workers, and shall seek the involvement of the social partners in that respect. The relevant information should, in particular, cover the different minimum rates of pay and their constituent elements, the method used to calculate the remuneration due and, where relevant, the qualifying criteria for classification in the different wage categories.

5. Member States shall indicate the bodies and authorities to which workers and undertakings can turn for general information on national law and practice applicable to them concerning their rights and obligations within their territory.

CHAPTER III

ADMINISTRATIVE COOPERATION

Article 6

Mutual assistance — general principles

1. Member States shall work in close cooperation and provide each other with mutual assistance without undue delay in order to facilitate the implementation, application and enforcement in practice of this Directive and Directive 96/71/EC.

2. The cooperation of the Member States shall in particular consist in replying to reasoned requests for information from competent authorities and in carrying out checks, inspections and investigations with respect to the situations of posting referred to in Article 1(3) of Directive 96/71/EC, including the investigation of any non-compliance or abuse of applicable rules on the posting of workers. Requests for information include information with respect to a possible recovery of an administrative penalty and/or fine, or the notification of a decision imposing such a penalty and/or fine as referred to in Chapter VI.

3. The cooperation of the Member States may also include the sending and service of documents.

4. For the purpose of responding to a request for assistance from competent authorities in another Member State, Member States shall ensure that service providers established in their territory supply their competent authorities with all the information necessary for supervising their activities in compliance with their national laws. Member States shall take appropriate measures in the event of failure to provide such information.

5. In the event of difficulty in meeting a request for information or in carrying out checks, inspections or investigations, the Member State in question shall without delay inform the requesting Member State with a view to finding a solution.

In the event of any persisting problems in the exchange of information or a permanent refusal to supply information, the Commission being informed, where relevant by means of IMI, shall take the appropriate measures.

6. Member States shall supply the information requested by other Member States or the Commission by electronic means within the following time limits:

(a) in urgent cases requiring the consultation of registers, such as those on confirmation of the VAT registration, for the purpose of checking an establishment in another Member State, as soon as possible and up to a maximum of two working days from the receipt of the request.

    The reason for the urgency shall be clearly indicated in the request, including some details to substantiate that urgency.

(b) in all other requests for information, up to a maximum of 25 working days from the receipt of the request, unless a shorter time limit is mutually agreed between the Member States.

7. Member States shall ensure that registers in which service providers have been entered, and which may be consulted by the competent authorities in their territory, may also be consulted, in accordance with the same conditions, by the equivalent competent authorities of the other Member States, for the purposes of implementing this Directive and Directive 96/71/EC, in so far as these registers are listed by the Member States in the IMI.

8. Member States shall ensure that the information exchanged by bodies referred to in point (a) of Article 2 or transmitted to them shall be used only in respect of the matter(s) for which it was requested.

9. Mutual administrative cooperation and assistance shall be provided free of charge.

10. A request for information shall not preclude the competent authorities from taking measures in accordance with the relevant national and Union law to investigate and prevent alleged breaches of Directive 96/71/EC or this Directive.

Article 7

Role of the Member States in the framework of administrative cooperation

1. In accordance with the principles established in Articles 4 and 5 of Directive 96/71/EC, during the period of posting of a worker to another Member State, the inspection of terms and conditions of employment to be complied with according to Directive 96/71/EC is the responsibility of the authorities of the host Member State in cooperation, where necessary, with those of the Member State of establishment.

2. The Member State of establishment of the service provider shall continue to monitor, control and take the necessary supervisory or enforcement measures, in accordance with its national law, practice and administrative procedures, with respect to workers posted to another Member State.

3. The Member State of establishment of the service provider shall assist the Member State to which the posting takes place to ensure compliance with the conditions applicable under Directive 96/71/EC and this Directive. That responsibility shall not in any way reduce the possibilities of the Member State to which the posting takes place to monitor, control or take any necessary supervisory or enforcement measures in accordance with this Directive and Directive 96/71/EC.

4. Where there are facts that indicate possible irregularities, a Member State shall, on its own initiative, communicate to the Member State concerned any relevant information without undue delay.

5. Competent authorities of the host Member State may also ask the competent authorities of the Member State of establishment, in respect of each instance where services are provided or each service provider, to provide information as to the legality of the service provider's establishment, the service provider's good conduct, and the absence of any infringement of the applicable rules. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 6.

6. The obligations laid down in this Article shall not give rise to a duty on the part of the Member State of establishment to carry out factual checks and controls in the territory of the host Member State in which the service is provided. Such checks and controls may be carried out by the authorities of the host Member State on their own initiative or at the request of the competent authorities of the Member State of establishment, in accordance with Article 10 and in conformity with the powers of supervision provided for in the host Member State's national law, practice and administrative procedures and in compliance with Union law.

Article 8

Accompanying measures

1. Member States shall, with the assistance of the Commission, take accompanying measures to develop, facilitate and promote the exchange between officials in charge of the implementation of administrative cooperation and mutual assistance as well as monitoring the compliance with, and enforcement of, the applicable rules. Member States may also take accompanying measures to support organisations that provide information to posted workers.

2. The Commission shall assess the need for financial support in order to further improve administrative cooperation and increase mutual trust through projects, including promoting exchanges of relevant officials and training, as well as developing, facilitating and promoting best practice initiatives, including those of social partners at Union level, such as the development and updating of databases or joint websites containing general or sector-specific information concerning terms and conditions of employment to be respected and the collection and evaluation of comprehensive data specific to the posting process.

Where it concludes that such a need exists, the Commission shall, without prejudice to the prerogatives of the European Parliament and the Council in the budgetary procedure, use available financing instruments aimed at strengthening administrative cooperation.

3. While respecting the autonomy of social partners, the Commission and Member States may ensure adequate support for relevant initiatives of the social partners at the Union and national level that aim to inform undertakings and workers on the applicable terms and conditions of employment laid down in this Directive and in Directive 96/71/EC.

CHAPTER IV

MONITORING COMPLIANCE

Article 9

Administrative requirements and control measures

1. Member States may only impose administrative requirements and control measures necessary in order to ensure effective monitoring of compliance with the obligations set out in this Directive and Directive 96/71/EC, provided that these are justified and proportionate in accordance with Union law.

For these purposes Member States may in particular impose the following measures:

(a) an obligation for a service provider established in another Member State to make a simple declaration to the responsible national competent authorities at the latest at the commencement of the service provision, into (one of) the official language(s) of the host Member State, or into (an)other language(s) accepted by the host Member State, containing the relevant information necessary in order to allow factual controls at the workplace, including:

(i) the identity of the service provider;

(ii) the anticipated number of clearly identifiable posted workers;

(iii) the persons referred to under points (e) and (f);

(iv) the anticipated duration, envisaged beginning and end date of the posting;

(v) the address(es) of the workplace; and

(vi) the nature of the services justifying the posting;

(b) an obligation to keep or make available and/or retain copies, in paper or electronic form, of the employment contract or an equivalent document within the meaning of Council Directive 91/533/EEC [1], including, where appropriate or relevant, the additional information referred to in Article 4 of that Directive, payslips, time-sheets indicating the beginning, end and duration of the daily working time and proof of payment of wages or copies of equivalent documents during the period of posting in an accessible and clearly identified place in its territory, such as the workplace or the building site, or for mobile workers in the transport sector the operations base or the vehicle with which the service is provided;

(c) an obligation to deliver the documents referred to under point (b), after the period of posting, at the request of the authorities of the host Member State, within a reasonable period of time;

(d) an obligation to provide a translation of the documents referred to under point (b) into (one of) the official language(s) of the host Member State, or into (an)other language(s) accepted by the host Member State;

(e) an obligation to designate a person to liaise with the competent authorities in the host Member State in which the services are provided and to send out and receive documents and/or notices, if need be;

(f) an obligation to designate a contact person, if necessary, acting as a representative through whom the relevant social partners may seek to engage the service provider to enter into collective bargaining within the host Member State, in accordance with national law and/or practice, during the period in which the services are provided. That person may be different from the person referred to under point (e) and does not have to be present in the host Member State, but has to be available on a reasonable and justified request;

2. Member States may impose other administrative requirements and control measures, in the event that situations or new developments arise from which it appears that existing administrative requirements and control measures are not sufficient or efficient to ensure effective monitoring of compliance with the obligations set out in Directive 96/71/EC and this Directive, provided that these are justified and proportionate.

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

3. Nothing in this Article shall affect other obligations deriving from the Union legislation, including those deriving from Council Directive 89/391/EEC ([1]) and the Regulation (EC) No 883/2004, and/or those under national law regarding the protection or employment of workers provided that the latter are equally applicable to undertakings established in the Member State concerned and that they are justified and proportionate.

4. Member States shall ensure that the procedures and formalities relating to the posting of workers pursuant to this Article can be completed in a user-friendly way by undertakings, at a distance and by electronic means as far as possible.

5. Member States shall communicate to the Commission and inform service providers of any measures referred to in paragraphs 1 and 2 that they apply or that have been implemented by them. The Commission shall communicate those measures to the other Member States. The information for the service providers shall be made generally available on a single national website in the most relevant language(s), as determined by the Member State.

The Commission shall monitor the application of the measures referred to in paragraphs 1 and 2 closely, evaluate their compliance with Union law and shall, where appropriate, take the necessary measures in accordance with its competences under the TFEU.

The Commission shall report regularly to the Council on measures communicated by Member States and, where appropriate, on the state of play of its analysis and/or assessment.

Article 10

Inspections

1. Member States shall ensure that appropriate and effective checks and monitoring mechanisms provided in accordance with national law and practice are put in place and that the authorities designated under national law carry out effective and adequate inspections on their territory in order to control and monitor compliance with the provisions and rules laid down in Directive 96/71/EC, taking into account the relevant provisions of this Directive and thus guarantee their proper application and enforcement. Notwithstanding the possibility of conducting random checks, inspections shall be based primarily on a risk assessment by the competent authorities. The risk assessment may identify the sectors of activity in which the employment of workers posted for the provision of services is concentrated on their territory. When making such a risk assessment, the carrying out of large infrastructural projects, the existence of long chains of subcontractors, geographic proximity, the special problems and needs of specific sectors, the past record of infringement, as well as the vulnerability of certain groups of workers may in particular be taken into account.

2. Member States shall ensure that inspections and controls of compliance under this Article are not discriminatory and/or disproportionate, whilst taking into account the relevant provisions of this Directive.

3. If information is needed in the course of the inspections and in the light of Article 4, the host Member State and the Member State of establishment shall act in accordance with the rules on administrative cooperation. In particular, the competent authorities shall cooperate pursuant to the rules and principles laid down in Articles 6 and 7.

4. In Member States where, in accordance with national law and/or practice, the setting of the terms and conditions of employment of posted workers referred to in Article 3 of Directive 96/71/EC, and in particular the minimum rates of pay, including working time, is left to management and labour they may, at the appropriate level and subject to the conditions laid down by the Member States, also monitor the application of the relevant terms and conditions of employment of posted workers, provided that an adequate level of protection equivalent to that resulting from Directive 96/71/EC and this Directive is guaranteed.

5. Member States where labour inspectorates have no competence with respect to the control and monitoring of the working conditions and/or terms and conditions of employment of posted workers may, in accordance with national law and/or practice, establish, modify or maintain arrangements, procedures and mechanisms guaranteeing the respect of these terms and conditions of employment, provided that the arrangements offer the persons concerned an adequate degree of protection equivalent to that resulting from Directive 96/71/EC and this Directive.

([1]) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1).

CHAPTER V

ENFORCEMENT

Article 11

Defence of rights — facilitation of complaints — back-payments

1. For the enforcement of the obligations under Directive 96/71/EC, in particular Article 6 thereof, and this Directive, Member States shall ensure that there are effective mechanisms for posted workers to lodge complaints against their employers directly, as well as the right to institute judicial or administrative proceedings, also in the Member State in whose territory the workers are or were posted, where such workers consider they have sustained loss or damage as a result of a failure to apply the applicable rules, even after the relationship in which the failure is alleged to have occurred has ended.

2. Paragraph 1 shall apply without prejudice to the jurisdiction of the courts in the Member States as laid down, in particular, in the relevant instruments of Union law and/or international conventions.

3. Member States shall ensure that trade unions and other third parties, such as associations, organisations and other legal entities which have, in accordance with the criteria laid down under national law, a legitimate interest in ensuring that this Directive and Directive 96/71/EC are complied with, may engage, on behalf or in support of the posted workers or their employer, and with their approval, in any judicial or administrative proceedings with the objective of implementing this Directive and Directive 96/71/EC and/or enforcing the obligations under this Directive and Directive 96/71/EC.

4. Paragraphs 1 and 3 shall apply without prejudice to:

(a) national rules on prescription deadlines or time limits for bringing similar actions, provided that they are not regarded as capable of rendering virtually impossible or excessively difficult the exercise of those rights;

(b) other competences and collective rights of social partners, employees and employers representatives, where applicable, under national law and/or practice;

(c) national rules of procedure concerning representation and defence before the courts.

5. Posted workers bringing judicial or administrative proceedings within the meaning of paragraph 1 shall be protected against any unfavourable treatment by their employer.

6. Member States shall ensure that the employer of the posted worker is liable for any due entitlements resulting from the contractual relationship between the employer and that posted worker.

Member States shall in particular ensure that the necessary mechanisms are in place to ensure that the posted workers are able to receive:

(a) any outstanding net remuneration which, under the applicable terms and conditions of employment covered by Article 3 of Directive 96/71/EC, would have been due;

(b) any back-payments or refund of taxes or social security contributions unduly withheld from their salaries;

(c) a refund of excessive costs, in relation to net remuneration or to the quality of the accommodation, withheld or deducted from wages for accommodation provided by the employer;

(d) where relevant, employer's contributions due to common funds or institutions of social partners unduly withheld from their salaries.

This paragraph shall also apply in cases where the posted workers have returned from the Member State to which the posting took place.

Article 12

Subcontracting liability

1. In order to tackle fraud and abuse, Member States may, after consulting the relevant social partners in accordance with national law and/or practice, take additional measures on a non–discriminatory and proportionate basis in order to ensure that in subcontracting chains the contractor of which the employer (service provider) covered by Article 1(3) of Directive 96/71/EC is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker with respect to any outstanding net remuneration corresponding to the minimum rates of pay and/or contributions due to common funds or institutions of social partners in so far as covered by Article 3 of Directive 96/71/EC.

2. As regards the activities mentioned in the Annex to Directive 96/71/EC, Member States shall provide for measures ensuring that in subcontracting chains, posted workers can hold the contractor of which the employer is a direct subcontractor liable, in addition to or in place of the employer, for the respect of the posted workers' rights referred to in paragraph 1 of this Article.

3. The liability referred to in paragraphs 1 and 2 shall be limited to worker's rights acquired under the contractual relationship between the contractor and his or her subcontractor.

4. Member States may, in conformity with Union law, equally provide for more stringent liability rules under national law on a non-discriminatory and proportionate basis with regard to the scope and range of subcontracting liability. Member States may also, in conformity with Union law, provide for such liability in sectors other than those referred to in the Annex to Directive 96/71/EC.

5. Member States may in the cases referred to in paragraphs 1, 2 and 4 provide that a contractor that has undertaken due diligence obligations as defined by national law shall not be liable.

6. Instead of the liability rules referred to in paragraph 2, Member States may take other appropriate enforcement measures, in accordance with Union and national law and/or practice, which enable, in a direct subcontracting relationship, effective and proportionate sanctions against the contractor, to tackle fraud and abuse in situations when workers have difficulties in obtaining their rights.

7. Member States shall inform the Commission about measures taken under this Article and shall make the information generally available in the most relevant language(s), the choice being left to Member States.

In the case of paragraph 2, the information provided to the Commission shall include elements setting out liability in subcontracting chains.

In the case of paragraph 6, the information provided to the Commission shall include elements setting out the effectiveness of the alternative national measures with regard to the liability rules referred to in paragraph 2.

The Commission shall make this information available to the other Member States.

8. The Commission shall closely monitor the application of this Article.

CHAPTER VI

CROSS-BORDER ENFORCEMENT OF FINANCIAL ADMINISTRATIVE PENALTIES AND/OR FINES

Article 13

Scope

1. Without prejudice to the means which are or may be provided for in other Union legislation, the principles of mutual assistance and mutual recognition as well as the measures and procedures provided for in this Chapter shall apply to the cross-border enforcement of financial administrative penalties and/or fines imposed on a service provider established in a Member State, for failure to comply with the applicable rules on posting of workers in another Member State.

2. This Chapter shall apply to financial administrative penalties and/or fines, including fees and surcharges, imposed by competent authorities or confirmed by administrative or judicial bodies or, where applicable, resulting from industrial tribunals, relating to non-compliance with Directive 96/71/EC or this Directive.

This Chapter shall not apply to the enforcement of penalties which fall under the scope of application of Council Framework Decision 2005/214/JHA ([1]), Council Regulation (EC) No 44/2001 ([2]) or Council Decision 2006/325/EC ([3]).

Article 14

Designation of the competent authorities

Each Member State shall inform the Commission through IMI which authority or authorities, under its national law, are competent for the purpose of this Chapter. Member States may designate, if it is necessary as a result of the organisation of their internal systems, one or more central authorities responsible for the administrative transmission and reception of requests and to assist other relevant authorities.

Article 15

General principles — mutual assistance and recognition

1. At the request of the requesting authority, the requested authority shall, subject to Articles 16 and 17:

(a) recover an administrative penalty and/or fine that has been imposed in accordance with the laws and procedures of the requesting Member State by a competent authority or confirmed by an administrative or judicial body or, where applicable, by industrial tribunals, which is not subject to further appeal; or

(b) notify a decision imposing such a penalty and/or fine.

In addition, the requested authority shall notify any other relevant document related to the recovery of such a penalty and/or fine, including the judgment or final decision, which may be in the form of a certified copy, that constitutes the legal basis and title for the execution of the request for recovery.

([1]) Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16).

([2]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1).

([3]) Council Decision 2006/325/EC of 27 April 2006 concerning the conclusion of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 120, 5.5.2006, p. 22).

2. The requesting authority shall ensure that the request for recovery of an administrative penalty and/or fine or the notification of a decision imposing such a penalty and/or fine is made in accordance with the laws, regulations and administrative practices in force in that Member State.

Such a request shall only be made when the requesting authority is unable to recover or to notify in accordance with its laws, regulations and administrative practices.

The requesting authority shall not make a request for recovery of an administrative penalty and/or fine or notification of a decision imposing such a penalty and/or fine if and as long as the penalty and/or fine, as well as the underlying claim and/or the instrument permitting its enforcement in the requesting Member State, are contested or challenged in that Member State.

3. The competent authority requested to recover an administrative penalty and/or fine or to notify a decision imposing such a penalty and/or fine which has been transmitted in accordance with this Chapter and Article 21, shall recognise it without any further formality being required and shall forthwith take all the necessary measures for its execution, unless that requested authority decides to invoke one of the grounds for refusal provided for in Article 17.

4. For the purpose of recovery of an administrative penalty and/or fine or notification of a decision imposing such a penalty and/or fine, the requested authority shall act in accordance with the national laws, regulations and administrative practices in force in the requested Member State applying to the same or, in the absence of the same, a similar infringement or decision.

The notification of a decision imposing an administrative penalty and/or fine by the requested authority and the request for recovery shall, in accordance with the national laws, regulations and administrative practices of the requested Member State, be deemed to have the same effect as if it had been made by the requesting Member State.

Article 16

Request for recovery or notification

1. The request of the requesting authority for recovery of an administrative penalty and/or fine as well as the notification of a decision concerning such a penalty and/or fine shall be carried out without undue delay by means of a uniform instrument and shall at least indicate:

(a) the name and known address of the addressee, and any other relevant data or information for the identification of the addressee;

(b) a summary of the facts and circumstances of the infringement, the nature of the offence and the relevant applicable rules;

(c) the instrument permitting enforcement in the requesting Member State and all other relevant information or documents, including those of a judicial nature, concerning the underlying claim, administrative penalty and/or fine; and

(d) the name, address and other contact details regarding the competent authority responsible for the assessment of the administrative penalty and/or fine, and, if different, the competent body where further information can be obtained concerning the penalty and/or fine or the possibilities for contesting the payment obligation or decision imposing it.

2. In addition to that which has been provided for in paragraph 1, the request shall indicate:

(a) in the case of notification of a decision, the purpose of the notification and the period within which it shall be effected;

(b) in the case of a request for recovery, the date when the judgment or decision has become enforceable or final, a description of the nature and amount of the administrative penalty and/or fine, any dates relevant to the enforcement process, including whether, and if so how, the judgment or decision has been served on defendant(s) and/or given in default of appearance, a confirmation from the requesting authority that the penalty and/or fine is not subject to any further appeal, and the underlying claim in respect of which the request is made and its different components.

3. The requested authority shall take all the necessary steps to notify the service provider of the request for recovery or of the decision imposing an administrative penalty and/or fine and of the relevant documents, where necessary, in accordance with its national law and/or practice as soon as possible, and no later than one month of receipt of the request.

The requested authority shall as soon as possible inform the requesting authority of:

(a) the action taken on its request for recovery and notification and, more specifically, of the date on which the addressee was notified;

(b) the grounds for refusal, in the event that it refuses to execute a request for recovery of an administrative penalty and/or fine or to notify a decision imposing an administrative penalty and/or fine in accordance with Article 17.

Article 17

Grounds for refusal

The requested authorities shall not be obliged to execute a request for recovery or notification if the request does not contain the information referred to in Article 16(1) and (2), is incomplete or manifestly does not correspond to the underlying decision.

In addition, the requested authorities may refuse to execute a request for recovery in the following circumstances:

(a) following inquiries by the requested authority it is obvious that the envisaged costs or resources required to recover the administrative penalty and/or fine are disproportionate in relation to the amount to be recovered or would give rise to significant difficulties;

(b) the overall financial penalty and/or fine is below EUR 350 or the equivalent to that amount;

(c) fundamental rights and freedoms of defendants and legal principles that apply to them as laid down in the Constitution of the requested Member State are not respected.

Article 18

Suspension of the procedure

1. If, in the course of the recovery or notification procedure, the administrative penalty and/or fine and/or underlying claim is challenged or appealed by the service provider concerned or by an interested party, the cross-border enforcement procedure of the penalty and/or fine imposed shall be suspended pending the decision of the appropriate competent body or authority in the requesting Member State in the matter.

Any challenge or appeal shall be made to the appropriate competent body or authority in the requesting Member State.

The requesting authority shall without delay notify the requested authority of the contestation.

2. Disputes concerning the enforcement measures taken in the requested Member State or concerning the validity of a notification made by a requested authority shall be brought before the competent body or judicial authority of that Member State in accordance with its laws and regulations.

Article 19

Costs

1. Amounts recovered with respect to the penalties and/or fines referred to in this Chapter shall accrue to the requested authority.

The requested authority shall recover the amounts due in the currency of its Member State, in accordance with the laws, regulations and administrative procedures or practices which apply to similar claims in that Member State.

The requested authority shall, if necessary, in accordance with its national law and practice convert the penalty and/or fine into the currency of the requested State at the rate of exchange applying on the date when the penalty and/or fine was imposed.

2. Member States shall not claim from each other the reimbursement of costs arising from any mutual assistance they grant each other pursuant to this Directive or resulting from its application.

CHAPTER VII

FINAL PROVISIONS

Article 20

Penalties

Member States shall lay down rules on penalties applicable in the event of infringements of national provisions adopted pursuant to this Directive and shall take all the necessary measures to ensure that they are implemented and complied with. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 18 June 2016. They shall notify without delay any subsequent amendments to them.

Article 21

Internal Market Information System

1. The administrative cooperation and mutual assistance between the competent authorities of the Member States provided for in Articles 6 and 7, Article 10(3), and Articles 14 to 18 shall be implemented through the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012.

2. Member States may apply bilateral agreements or arrangements concerning administrative cooperation and mutual assistance between their competent authorities as regards the application and monitoring of the terms and conditions of employment applicable to posted workers referred to in Article 3 of Directive 96/71/EC, in so far as these agreements or arrangements do not adversely affect the rights and obligations of the workers and undertakings concerned.

Member States shall inform the Commission of the bilateral agreements and/or arrangements they apply and shall make the text of those bilateral agreements generally available.

3. In the context of bilateral agreements or arrangements referred to in paragraph 2, competent authorities of the Member States shall use IMI as much as possible. In any event, where a competent authority in one of the Member States concerned has used IMI, it shall where possible be used for any follow-up required.

Article 22

Amendment to Regulation (EU) No 1024/2012

In the Annex to Regulation (EU) No 1024/2012 the following points are added:

‘6. Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (*): Article 4.

7. Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (“the IMI Regulation”) (**): Articles 6 and 7, Article 10(3), and Articles 14 to 18.

(*) OJ L 18, 21.1.1997, p. 1.
(**) OJ L 159, 28.5.2014, p. 11’.

Article 23

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 18 June 2016. 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 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 24

Review

1. The Commission shall review the application and implementation of this Directive.

No later than 18 June 2019, the Commission shall present a report on its application and implementation to the European Parliament, the Council and the European Economic and Social Committee and propose, where appropriate, necessary amendments and modifications.

2. In its review the Commission shall, after consultation of Member States and, where relevant, social partners at Union level, in particular assess:

(a) the necessity and appropriateness of the factual elements for identification of a genuine posting, including the possibilities to amend existing and defining possible new elements to be taken into account in order to determine whether the undertaking is genuine and a posted worker temporarily carries out his or her work, as referred to in Article 4;

(b) the adequacy of data available relating to the posting process;

(c) the appropriateness and adequacy of the application of national control measures in light of the experience with and effectiveness of the system for administrative cooperation and exchange of information, the development of more uniform, standardised documents, the establishment of common principles or standards for inspections in the field of the posting of workers and technological developments, as referred to in Article 9;

(d) liability and/or enforcement measures introduced to ensure compliance with the applicable rules and effective protection of workers' rights in subcontracting chains, as referred to Article 12;

(e) the application of the provisions on cross-border enforcement of financial administrative penalties and fines in particular in light of experience with and effectiveness of the system, as laid down in Chapter VI;

(f) the use of bilateral agreements or arrangements in relation to IMI, taking into account, where appropriate, the report referred to in Article 25(1) of Regulation (EU) No 1024/2012;

(g) the possibility to adjust the deadlines established in Article 6(6) for supplying the information requested by Member States or the Commission with a view to reducing those deadlines, taking into account the progress achieved in the functioning and use of IMI.

Article 25

Entry into force

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

Article 26

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 15 May 2014.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	D. KOURKOULAS

Joint statement by the European Parliament, the Council and the Commission on Article 4(3)(g)

The fact whether or not the post to which the posted worker is temporarily assigned to carry out his/her work in the framework of the provision of services was filled by the same or another (posted) worker during any previous periods constitutes only one of the possible elements to be taken into account while making an overall assessment of the factual situation in case of doubt.

The mere fact that it can be one of the elements should in no way be interpreted as imposing a ban on the possible replacement of a posted worker by another posted worker or hampering the possibility of such a replacement, which may be inherent in particular to services which are provided on a seasonal, cyclical or repetitive basis.

DECISIONS

DECISION No 573/2014/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

on enhanced cooperation between Public Employment Services (PES)

(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 149 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,

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

Whereas:

(1) In its conclusions of 17 June 2010, the European Council adopted the Europe 2020 Strategy for jobs and smart, sustainable and inclusive growth ('Europe 2020'). The European Council called for the mobilisation of all Union instruments and policies to support the achievement of the common objectives and invited the Member States to take enhanced coordinated action. Public Employment Services (PES) play a central role in contributing to the achievement of the Europe 2020 employment rate headline target of 75 % for women and men aged between 20 and 64 by 2020, in particular by decreasing youth unemployment.

(2) Article 45 of the Treaty on the Functioning of the European Union ('Treaty') lays down the freedom of movement for workers within the Union, while Article 46 thereof sets out the measures to bring about this freedom, in particular by ensuring close cooperation between the public employment services. A network of PES established under this Decision ('the Network') should, in addition to the general aspects of geographical mobility, cover a wide range of objectives and initiatives by way of incentive measures designed to improve cooperation between Member States in the field of employment.

(3) This Decision should aim to encourage cooperation between Member States within the areas of PES responsibility. It formalises and strengthens the informal cooperation between the PES via the current European Network of Heads of PES, in which all Member States have agreed to participate. The full potential value of the Network resides in the continued participation of all Member States. That participation should be notified to the Secretariat of the Network.

(4) In accordance with Article 148(4) of the Treaty, by Decision 2010/707/EU ([3]) the Council adopted guidelines for the employment policies of the Member States, which have been maintained for the years 2011-13. Those integrated guidelines provide guidance to the Member States on defining their national reform programmes and on

([1]) OJ C 67, 6.3.2014, p. 116.
([2]) Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal) and decision of the Council of 8 May 2014.
([3]) Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States (OJ L 308, 24.11.2010, p. 46).

implementing reforms. The integrated guidelines form the basis for country-specific recommendations that the Council addresses to the Member States under that Article. In recent years, those recommendations have included specific recommendations on the functioning and capacity of PES and on the effectiveness of active labour market policies in Member States.

(5) The country-specific recommendations would benefit from being further supported by an enhanced evidence-based feedback on the success of policy implementation and cooperation between the PES of Member States. To this end, the Network should carry out concrete initiatives such as common evidence-based benchmarking systems, corresponding mutual learning activities, mutual assistance between the Network members and the implementation of strategic actions for the modernisation of PES. The specific knowledge of the Network and its individual members should also be used to provide, at the request of the European Parliament, the Council, the Commission or the Employment Committee (EMCO), evidence for the development of employment policies.

(6) Greater and more focused cooperation between the PES should lead to an improved sharing of best practices. The Network should link findings based on benchmarking and mutual learning activities in a way that allows the development of a systematic, dynamic and integrated benchlearning process.

(7) The Network should work in close cooperation with EMCO, pursuant to Article 150 of the Treaty, and should contribute to EMCO's work by providing factual evidence and reports on policies implemented by the PES. Contributions from the Network to the European Parliament should be channelled through the Secretariat, and those to the Council should be channelled through EMCO, without any modification and, where appropriate, together with comments. In particular, the combined knowledge of the Network on the delivery aspects of employment policies and the comparative analyses of PES could assist policy decision-makers, at both Union and national level, in assessing and designing employment policies.

(8) The Network, within the areas of PES responsibility, should contribute to the implementation of policy initiatives in the field of employment such as the Council Recommendation of 22 April 2013 on establishing a Youth Guarantee [1]. The Network should also support initiatives aimed at better skills matching, decent and sustainable work, enhanced voluntary labour mobility and facilitating the transition from education and training to work, including through support for the provision of guidance and the enhanced transparency of skills and qualifications. The activities of the Network should address the evaluation and assessment of active labour market policies, including those targeting vulnerable social groups and social exclusion.

(9) The Network should reinforce cooperation between its members, develop joint initiatives aimed at exchanges of information and best practices in all areas covered by PES, comparative analyses and advice, as well as the promotion of innovative approaches to the delivery of employment services. By establishing the Network, an inclusive, evidence-based and performance-oriented comparison of all PES will be possible, leading to the identification of best practices in the areas of PES services. Those results should contribute to a better design and delivery of employment services within their specific responsibilities. The initiatives of the Network should improve the effectiveness of PES and allow for more efficient public spending. The Network should also cooperate with other providers of employment services.

(10) In its annual work programme, the Network should define the technical details of the PES benchmarking and the related mutual learning exercise, in particular the benchlearning methodology, on the basis of the benchmarking indicators as set out in the Annex to this Decision to assess the performance of PES, the context variables, the data delivery requirements, and the learning instruments of the integrated mutual learning programme. The benchmarking areas should be defined in this Decision. Member States remain competent to decide whether to engage on a voluntary basis in additional benchlearning exercises in other areas.

(11) The power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of amending the Annex on benchmarking indicators. It is of particular importance that the Commission

[1] OJ C 120, 26.4.2013, p. 1.

carry out appropriate consultations during its preparatory work, including at expert level, in particular with PES experts. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(12) Due to the variety of PES models, tasks and forms of service delivery, it is up to Member States to nominate, from the senior management of the PES, one member and one alternate member for the Board of the Network ('the Board'). Where applicable, the member or the alternate member should represent, on the Board, other PES from his or her Member State. Where it is not possible, for constitutional reasons, for a Member State to nominate only one PES, the relevant PES should be identified, keeping their number to a minimum and without changing the rule that one Member State equals one vote on the Board. The members of the Board should make every effort to ensure that the opinions and experiences of local and regional authorities are incorporated into the Network's activities, and that such authorities are kept informed of those activities. The members of the Board should have the authority to take decisions on behalf of their PES. In order to ensure the involvement of all PES in the Network, activities should be open to the participation of PES from all levels.

(13) In order to ensure that the common tasks of PES are closely matched to the actual situation on the labour market, the Network should have the most up-to-date unemployment figures at NUTS 3 level.

(14) The Network should build on the experience of and replace the existing informal advisory group of the European Network of Heads of PES that the Commission has supported since 1997, the views of which have been taken into account in this Decision. The key areas for action identified by that advisory group in its paper entitled 'PES Strategy 2020' should contribute to the modernisation and the strengthening of PES.

(15) The Network should provide mutual assistance to the benefit of its members and should help its members to support each other in the modernisation of organisational structures and service delivery by enhancing co-operation, in particular the transfer of knowledge, study visits and staff exchanges.

(16) The Network and its initiatives should be funded through the PROGRESS/employment section of the European Union Programme for Employment and Social Innovation' ('EaSI') established by Regulation (EU) No 1296/2013 of the European Parliament and of the Council [1], within the appropriations set by the European Parliament and the Council.

(17) For projects developed by the Network or identified in the mutual learning activities and then implemented in the individual PES, Member States should have access to funding from the European Social Fund (ESF), the Regional Development Fund (ERDF) and 'Horizon 2020', the Union's Framework Programme for Research and Innovation (2014-20) established by Regulation (EU) No 1291/2013 of the European Parliament and of the Council [2].

(18) The Network should ensure that it complements and does not replace nor duplicate actions undertaken as part of the European Employment Strategy within the meaning of Title IX of the Treaty, in particular those of EMCO and its tools such as the Joint Assessment Framework (JAF), as well as the Mutual Learning Programme. Furthermore, in order for synergies to be made, the Commission should ensure that the Secretariat of the Network cooperates closely with that of EMCO.

(19) This Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union ('the Charter'). In particular, this Decision seeks to ensure full respect for the right of access to free placement services and to promote the application of Article 29 of the Charter,

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[1] Regulation (EU) No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation ('EaSI') and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion (OJ L 347, 20.12.2013, p. 238).

[2] 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 (2014-20) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

HAVE ADOPTED THIS DECISION:

Article 1

Establishment of the Network

A Union-wide network of Public Employment Services (PES) is hereby established for the period from 17 June 2014 to 31 December 2020 ('the Network'). The Network shall carry out the initiatives laid down in Article 4.

The Network shall be composed of:

(a) the PES as nominated by the Member States;

(b) the Commission.

EMCO shall have an observer status.

Member States with subnational autonomous PES shall ensure their adequate representation in the specific initiatives of the Network.

Article 2

Definition of benchlearning

For the purposes of this Decision and the activities of the Network, 'benchlearning' means the process of creating a systematic and integrated link between benchmarking and mutual learning activities, that consists of identifying good performances through indicator-based benchmarking systems, including data collection, data validation, data consolidation and assessments, with appropriate methodology, and of using findings for tangible and evidence-informed mutual learning activities, including good or best practice models.

Article 3

Objectives

The aim of this Decision is to encourage cooperation between Member States through the Network in the field of employment, within the areas of PES responsibility, in order to contribute to 'Europe 2020' and to the implementation of relevant Union policies, thereby supporting:

(a) the most vulnerable social groups with high unemployment rates, especially older workers and young persons not in employment, education or training ('NEETs');

(b) decent and sustainable work;

(c) the better functioning of the labour markets in the EU;

(d) the identification of skills shortages and the provision of information on their extent and location, as well as the better matching of the skills of job-seekers with the needs of employers;

(e) the better integration of labour markets;

(f) increased voluntary geographical and occupational mobility on a fair basis to meet specific labour market needs;

(g) the integration of persons excluded from the labour market as part of the combat against social exclusion;

(h) the evaluation and assessment of active labour market initiatives and their effective and efficient implementation.

Article 4

Initiatives of the Network

1. Within the areas of PES responsibility, the Network shall, in particular, carry out the following initiatives:

(a) the development and implementation of Union-wide, evidence-based benchlearning among PES to compare, with appropriate methodology, the performance of their activities in the following areas:

   (i) contribution to reducing unemployment for all age groups and for vulnerable groups;

   (ii) contribution to reducing the duration of unemployment and reducing inactivity, so as to address long-term and structural unemployment, as well as social exclusion;

(iii) filling of vacancies (including through voluntary labour mobility);

(iv) customer satisfaction with PES services;

(b) the provision of mutual assistance, either in the form of peer-to-peer or group activities, through cooperation, exchanges of information, experiences and staff between the members of the Network, including support for the implementation of PES-related country-specific recommendations issued by the Council upon request by the Member State or the PES concerned;

(c) contribute to modernising and strengthening PES in key areas, in line with the employment and social objectives of Europe 2020;

(d) prepare reports at the request of the European Parliament, the Council or the Commission, or on its own initiative;

(e) contribute to the implementation of relevant policy initiatives;

(f) adopt and implement its annual work programme setting out its working methods, deliverables and the details related to the implementation of benchlearning;

(g) promote and share best practices on the identification of NEETs and on the development of initiatives to ensure those young people gain the skills necessary to enter and remain in the labour market.

As regards the initiative laid down in point (a) of the first subparagraph, the benchmarking shall use the indicators set out in the Annex. The Network shall also participate actively in the implementation of these activities by sharing data, knowledge and practices. Member States shall remain competent to decide whether to engage on a voluntary basis in additional benchlearning exercises in areas other than those listed in points (i) to (iv) of point (a).

2. The Network shall establish a reporting mechanism in relation to the initiatives listed in paragraph 1. In application of that mechanism, the members of the Network shall report annually to the Board.

Article 5

Cooperation

The Network shall initiate cooperation with relevant labour market stakeholders including other providers of employment services, and, where appropriate, social partners, organisations representing unemployed persons or vulnerable groups, NGOs working in the field of employment, regional and local authorities, the European Lifelong Guidance Policy Network and private employment services, by involving them in relevant activities and meetings of the Network and by exchanging information and data with them.

Article 6

Functioning of the Network

1. The Network shall be governed by a Board. Member States shall nominate onto the Board one member and one alternate member, from the senior management of their respective PES. The Commission shall also appoint one member and one alternate member of the Board. Alternate members of the Board shall replace their members whenever necessary.

EMCO shall nominate, from its members and in accordance with its Rules of Procedure, one representative who will have observer status on the Board, with the exception of the restricted sessions of the Board. The Board shall be able to meet in restricted sessions, with the participation of one member per Member State and one member from the Commission, except for agenda points concerning the annual work programme. The Rules of Procedure of the Board shall provide further detailed rules on the holding of restricted sessions.

2. The Board shall appoint a Chair and two Vice-Chairs from among its members nominated by a Member State. The Chair shall represent the Network. A Vice-Chair shall replace the Chair whenever necessary.

3. The Board shall adopt its Rules of Procedure by unanimous decision. Those Rules of Procedure shall contain, inter alia, the decision-making arrangements of the Board, and the provisions on the appointment and terms of office of the Chair and Vice-Chairs of the Board.

4. The Board shall adopt by majority decision:

(a) the annual work programme of the Network, including the setting up of working groups and the language arrangements of the meetings of the Network;

(b) the technical framework for the delivery of the benchmarking and mutual learning activities, as part of the annual work programme of the Network, including the benchlearning methodology on the basis of the benchmarking indicators as set out in the Annex to this Decision to compare PES performance, the context variables, the data delivery requirements, and the learning instruments of the integrated mutual learning programme;

(c) the annual report of the Network. That report shall be sent to the European Parliament and to the Council, and shall be published.

5. The Board shall be assisted by a Secretariat provided by and based within the Commission. The Secretariat, in cooperation with the Chair and Vice-Chairs, shall prepare the Board meetings, the annual work programme and the annual report of the Network. The Secretariat shall closely cooperate with the EMCO Secretariat.

Article 7

Financial support for this incentive measure

The global resources for the implementation of this Decision shall be established within the PROGRESS/employment section of EaSI, the annual appropriations of which shall be authorised by the European Parliament and by the Council within the limits of the financial framework.

Article 8

Amendment of the Annex on benchmarking indicators

The Commission shall be empowered to adopt delegated acts in accordance with Article 9 to amend the Annex laying down the benchmarking indicators.

Article 9

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 delegation of power referred to in Article 8 shall be conferred on the Commission from 17 June 2014 until 31 December 2020.

3. The delegation of power referred to in Article 8 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to Article 8 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 10

Review

By 18 June 2017, the Commission shall submit a report on the application of this Decision to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The report shall, in particular, assess to what extent the Network has contributed to the achievement of the objectives set out in Article 3 and whether it has fulfilled its tasks. It shall also assess how benchmarking in the areas referred to in points (a)(i) to (iv) of Article 4(1) has been developed and implemented by the Network.

Article 11

Entry into force

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

Article 12

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 15 May 2014.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	D. KOURKOULAS

ANNEX

BENCHMARKING INDICATORS

A. The quantitative indicators for the areas listed in points (a)(i) to (iv) of Article 4(1):

1. Contribution to reducing unemployment for all age groups and for vulnerable groups:
   (a) Transition from unemployment into employment per age group, gender and qualification level, as a share of the stock of registered unemployed persons;
   (b) Number of people leaving the PES unemployment records, as a share of registered unemployed persons.
2. Contribution to reducing the duration of unemployment and reducing inactivity, so as to address long-term and structural unemployment, as well as social exclusion:
   (a) Transition into employment within, for example, 6 and 12 months of unemployment per age group, gender and qualification level, as a share of all PES register transitions into employment;
   (b) Entries into a PES register of previously inactive persons, as a share of all entries into that PES register per age group and gender.
3. Filling of vacancies (including through voluntary labour mobility):
   (a) Job vacancies filled;
   (b) Answers to Eurostat's Labour Force Survey on the contribution of PES to the finding of the respondent's current job.
4. Customer satisfaction with PES services:
   (a) Overall satisfaction of jobseekers;
   (b) Overall satisfaction of employers.

B. Areas of benchmarking through qualitative internal and external assessment of performance enablers for the areas listed in points (a)(i) to (iv) of Article 4(1):

1. Strategic performance management;
2. Design of operational processes such as effective channelling and profiling of jobseekers and tailored use of active labour market instruments;
3. Sustainable activation and management of transitions;
4. Relations to employers;
5. Evidence-based design and implementation of PES services;
6. Effective management of partnerships with stakeholders;
7. Allocation of PES resources.

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Information relating to the entry into force of the Agreement between the European Community and the Republic of Turkey on the participation of the Republic of Turkey in the work of the European Monitoring Centre for Drugs and Drug Addiction

The Agreement between the European Union and the Republic of Turkey on the participation of the Republic of Turkey in the work of the European Monitoring Centre for Drugs and Drug Addiction [1] will enter into force on 1 June 2014, the procedure provided for in Article 10 of the Agreement having been completed on 2 May 2014.

[1] OJ L 323, 8.12.2007, p. 24.

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 574/2014

of 21 February 2014

amending Annex III to Regulation (EU) No 305/2011 of the European Parliament and of the Council on the model to be used for drawing up a declaration of performance on construction products

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC [1], and in particular Article 60(e) thereof,

Whereas:

(1) Article 4(1) of Regulation (EU) No 305/2011 obliges manufacturers of construction products to draw up a declaration of performance when a construction product that is covered by a harmonised standard or conforms to a European Technical Assessment issued for that product is placed on the market. According to Article 6(4) of Regulation (EU) No 305/2011, that declaration should be drawn up using the model set out in Annex III to that Regulation.

(2) In accordance with Article 60(e) of Regulation (EU) No 305/2011, the Commission is delegated the task of adapting Annex III to Regulation (EU) No 305/2011 in response to technical progress.

(3) The model set out in Annex III to Regulation (EU) No 305/2011 should be adapted, in order to respond to technological progress, to allow the flexibility required by different kinds of construction products and manufacturers as well as to simplify the declaration of performance.

(4) Furthermore, practical experience with the implementation of Annex III shows that manufacturers would need further instructions for drawing up declarations of performance on construction products in line with applicable legislation. Providing such instructions would also ensure a harmonised and correct application of Annex III.

(5) The manufacturers should be allowed some flexibility for drawing up declarations of performance as long as they provide, in a clear and coherent manner, the essential information required by Article 6 of Regulation (EU) No 305/2011.

(6) In order to unequivocally identify the product covered by a declaration of performance in relation with its performance levels or classes, manufacturers should link every single product to the respective product-type and to a given set of performance levels or classes by the unique identification code referred to in Article 6(2)(a) of Regulation (EU) No 305/2011.

(7) The purpose of Article 11(4) of Regulation (EU) No 305/2011 is to enable the identification and the traceability of any single construction product by the indication, by the manufacturers, of a type, batch or serial number. This purpose is not served by a declaration of performance, which should be subsequently used for all products corresponding to the product-type defined in it. Therefore, the information required by Article 11(4) should not be required to be contained in the declaration of performance.

[1] OJ L 88, 4.4.2011, p. 5.

(8) When the notified bodies are properly identified, the listing of all certificates, test, calculation or assessment reports issued might become extensive and burdensome but does not bring about added value for the users of the products covered by a declaration of performance. The manufacturers should thus not be obliged to include these listings in their declarations of performance.

(9) In order to enhance the efficiency and competitiveness of the European construction sector as a whole, manufacturers providing declarations of performance wishing to benefit from the simplification and instructions for the purposes of facilitating the provision of such declarations should be able to do so as soon as possible,

HAS ADOPTED THIS REGULATION:

Article 1

Annex III to Regulation (EU) No 305/2011 shall be replaced by the Annex to this Regulation.

Article 2

Declarations of performance issued before the entry into force of this Regulation, which comply with Article 6 of Regulation (EU) No 305/2011 and the initial Annex III thereto, shall be deemed to comply with this Regulation.

Article 3

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, 21 February 2014.

For the Commission
The President
José Manuel BARROSO

ANNEX

'ANNEX III

DECLARATION OF PERFORMANCE

No .....

1. Unique identification code of the product-type: .....

2. Intended use/es: .....

.....

3. Manufacturer: .....

.....

4. Authorised representative: .....

.....

5. System/s of AVCP: .....

6a. Harmonised standard: .....

.....

Notified body/ies: .....

.....

6b. European Assessment Document: .....

.....

European Technical Assessment: .....

.....

Technical Assessment Body: .....

Notified body/ies: .....

7. Declared performance/s: .....

.....

8. Appropriate Technical Documentation and/or Specific Technical Documentation: .....

.....

The performance of the product identified above is in conformity with the set of declared performance/s. This declaration of performance is issued, in accordance with Regulation (EU) No 305/2011, under the sole responsibility of the manufacturer identified above.

Signed for and on behalf of the manufacturer by:

[*name*] .....

At [*place*] ..... on [*date of issue*] .....

[*signature*] .....

Instructions for drawing up the declaration of performance

1. GENERAL

These instructions aim at guiding the manufacturers when drawing up a declaration of performance compliant with Regulation (EU) No 305/2011, following the model of this Annex (hereinafter referred to as "the model").

These instructions are not part of the declarations of performance to be issued by manufacturers and should not be enclosed to these declarations of performance.

When drawing up a declaration of performance, the manufacturer shall:

(1) reproduce the texts and the headlines of the model which are not indicated between square brackets;

(2) replace the blank spaces and square brackets by inserting the necessary information.

Manufacturers may also include in the declaration of performance the reference to the website where the copy of the declaration of performance is made available in accordance with Article 7(3) of Regulation (EU) No 305/2011. This may be included after point 8 or in another place where it does not affect the readability and clarity of the mandatory information.

2. FLEXIBILITY

Providing that the mandatory information required by Article 6 of Regulation (EU) No 305/2011 is provided in a clear, complete and coherent manner, when drawing up a declaration of performance, it is possible to:

(1) use a different layout as in the model;

(2) combine the points of the model by presenting some of them together;

(3) present the points of the model in a different order or using one or more tables;

(4) omit some points of the model which are not relevant for the product for which a declaration of performance is drawn up. For example, this is the case since the declaration of performance may be based either on a harmonised standard or on a European Technical Assessment issued for the product, rendering the other alternative not applicable. These omissions could also concern the points on the authorised representative or on the use of Appropriate Technical Documentation and the Specific Technical Documentation;

(5) present the points without numbering them.

If a manufacturer wishes to issue a single declaration of performance covering different variations of a product-type, at least the following elements need to be listed separately and clearly for every product variation: the number of the declaration of performance, the identification code under point 1 and the declared performances/s under point 7.

3. INSTRUCTION FOR THE COMPLETION OF THE FORM

Point of the model	Instruction
Number of the declaration of performance	This is the reference number of the declaration of performance foreseen in Article 9(2) of Regulation (EU) No 305/2011. The choice of the number is left to the manufacturer. This number may be the same as the unique identification code of the product-type indicated under point 1 of the model.

Point of the model	Instruction
Point 1	Indicate the unique identification code of the product-type referred to in Article 6(2)(a) of Regulation (EU) No 305/2011. In Article 9(2) of Regulation (EU) No 305/2011, the unique identification code determined by the manufacturer to follow the CE marking is linked to the product-type and thus to the set of performance levels or classes of a construction product, as brought forward in the declaration of performance drawn up for it. Moreover, for the recipients of construction products, in particular for their final end users, it is necessary to be able to unequivocally identify this set of performance levels or classes for any given product. Therefore, every construction product, for which a declaration of performance has been drawn up, should be linked by its manufacturer to the respective product-type and a given set of performance levels or classes by the unique identification code, which acts also as the reference mentioned in Article 6(2)(a) of Regulation (EU) No 305/2011.
Point 2	Indicate the intended use, or list the intended uses, as appropriate, of the construction product as foreseen by the manufacturer, in accordance with the applicable harmonised technical specification.
Point 3	Indicate the name, the registered trade name or registered trade mark and the contact address of the manufacturer, as required pursuant to Article 11(5) of Regulation (EU) No 305/2011.
Point 4	This point shall be included and filled in only in case an authorised representative has been designated. In such case, indicate the name and the contact address of the authorised representative whose mandate covers the tasks specified in Article 12(2) of Regulation (EU) No 305/2011.
Point 5	Indicate the number of the applicable system or systems of assessment and verification of constancy of performance (AVCP) of the construction product as set out in Annex V to Regulation (EU) No 305/2011. If there are multiple systems, each of them shall be declared.
Points 6a and 6b	Since a manufacturer can draw up a declaration of performance based on either a harmonised standard or a European Technical Assessment issued for the product, these two different situations presented under points 6a and 6b should be treated as alternative, with only one of them to be applied and filled in in a declaration of performance. In case of point 6a, i.e. when a declaration of performance is based on a harmonised standard, indicate all the following: (a) the reference number of the harmonised standard and its date of issue (dated reference); and (b) the identification number of the notified body/ies. When providing the name of the notified body/ies, it is essential that the name is provided in its original language, without translation to other languages. In case of point 6b, i.e. when a declaration of performance is based on a European Technical Assessment issued for the product, indicate all the following: (a) the number of the European Assessment Document and its date of issue; (b) the number of the European Technical Assessment and its date of issue; (c) the name of the Technical Assessment Body; and (d) the identification number of the notified body/ies.

Point of the model	Instruction
Point 7	Under this point, the declaration of performance shall indicate: (a) the list of essential characteristics, as determined in the harmonised technical specifications for the intended use or uses indicated under point 2; and (b) for each essential characteristic, the declared performance, by level or class, or in a description, in relation to this characteristic or, for characteristics for which no performance is declared, the letters "NPD" (No Performance Determined).This point may be filled up with the use of a table which brings forward the links between the harmonised technical specifications and the systems of assessment and verification of constancy of performance applied respectively to each essential characteristic of the product, as well as the performance in relation to each essential characteristic. The performance shall be declared in a clear and explicit manner. Therefore, the performance cannot be described in the declaration of performance solely by inserting a calculation formula to be applied by the recipients. Furthermore, the levels or classes of performance presented in reference documents shall be reproduced in the declaration of performance itself and thus cannot be expressed solely by inserting references to these documents into the declaration of performance. However, the performance notably of structural behaviour of a construction product may be expressed by referring to the respective production documentation or structural design calculations. In this case, the relevant documents shall be attached to the declaration of performance.
Point 8	This point shall only be included and filled in in a declaration of performance if Appropriate Technical Documentation and/or Specific Technical Documentation has been used, in accordance with Articles 36 to 38 of Regulation (EU) No 305/2011, in order to indicate the requirements with which the product complies. In such a case, under this point the declaration of performance shall indicate: (a) the reference number of the Specific and/or Appropriate Technical Documentation used, and (b) the requirements with which the product complies.
Signature	Replace the spaces indicated between square brackets by the information indicated and the signature.'

COMMISSION REGULATION (EU) No 575/2014

of 27 May 2014

amending Regulation (EU) No 383/2012 laying down technical requirements with regard to driving licences which include a storage medium (microchip)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences ([1]), and in particular Article 1(2) thereof,

Whereas:

(1) Commission Regulation (EU) No 383/2012 ([2]) applies to driving licences which include a microchip and lays down a series of technical requirements.

(2) In particular, Section III.4.2 of Annex III to Regulation (EU) No 383/2012 lays down an EU type-approval numbering system based on the assignment of a distinguishing number for the Member State which has granted the EU type-approval.

(3) Following the accession of Croatia to the Union, it is necessary to provide for a distinguishing number for this country which is in compliance with the UN/ECE numerical order for type-approval.

(4) Regulation (EU) No 383/2012 should therefore be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Committee on driving licences,

HAS ADOPTED THIS REGULATION:

Article 1

Section III.4.2 of Annex III to Regulation (EU) No 383/2012 is replaced by the text in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 27 May 2014.

For the Commission

The President

José Manuel BARROSO

([1]) OJ L 403, 30.12.2006, p. 18.

([2]) Commission Regulation (EU) No 383/2012 of 4 May 2012 laying down technical requirements with regard to driving licences which include a storage medium (microchip) (OJ L 120, 5.5.2012, p. 1).

ANNEX

Section III.4.2 of Annex III to Regulation (EU) No 383/2012 is replaced by the following:

'III.4.2 **Numbering system**

The EU type-approval numbering system shall consist of:

(a) The letter "e" followed by a distinguishing number for the Member State which has granted the EU type-approval

1 for Germany

2 for France

3 for Italy

4 for the Netherlands

5 for Sweden

6 for Belgium

7 for Hungary

8 for the Czech Republic

9 for Spain

11 for the United Kingdom

12 for Austria

13 for Luxembourg

17 for Finland

18 for Denmark

19 for Romania

20 for Poland

21 for Portugal

23 for Greece

24 for Ireland

25 for Croatia

26 for Slovenia

27 for Slovakia

29 for Estonia

32 for Latvia

34 for Bulgaria

36 for Lithuania

49 for Cyprus

50 for Malta.

(b) The letters DL preceded by a hyphen and followed by the two figures indicating the sequence number assigned to this Regulation or latest major technical amendment to this Regulation. The sequence number for this Regulation is 00.

(c) A unique identification number of the EU type-approval attributed by the issuing Member State.

Example of the EU type-approval numbering system: e50-DL00 12345

The approval number shall be stored on the microchip in DG 1 for each driving licence carrying such microchip.'

COMMISSION IMPLEMENTING REGULATION (EU) No 576/2014

of 27 May 2014

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

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ([2]), and in particular Article 136(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 27 May 2014.

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

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

ANNEX

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

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	AL	45,8
	MA	33,4
	MK	75,5
	TR	68,5
	ZZ	55,8
0707 00 05	AL	36,9
	MK	39,9
	TR	119,9
	ZZ	65,6
0709 93 10	MA	29,9
	TR	111,2
	ZZ	70,6
0805 10 20	EG	41,2
	MA	41,0
	TR	49,7
	ZZ	44,0
0805 50 10	TR	121,8
	ZA	139,4
	ZZ	130,6
0808 10 80	AR	104,4
	BR	97,8
	CL	95,3
	CN	98,7
	MK	26,7
	NZ	138,9
	US	185,4
	ZA	105,3
	ZZ	106,6

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

DECISIONS

COMMISSION IMPLEMENTING DECISION

of 27 May 2014

amending Decision 2011/166/EU setting up the SHARE-ERIC

(2014/302/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) ([1]), in particular Article 11(1) thereof,

Whereas:

(1) The Survey of Health, Ageing and Retirement in Europe as a European Research Infrastructure Consortium (SHARE-ERIC) was set up by Commission Decision 2011/166/EU ([2]).

(2) The Statutes of the SHARE-ERIC annexed to Decision 2011/166/EU provide for the transfer of the statutory seat from the Netherlands to Germany as soon as the necessary declaration according to point (d) of Article 5(1) of Regulation (EC) No 723/2009 is provided by the German authorities.

(3) As a result of the declaration provided by Germany, SHARE-ERIC submitted on 21 September 2013 a proposal to the Commission to amend its Statutes in accordance with Article 11(1) of Regulation (EC) No 723/2009.

(4) Several amendments, including the amendment taking into account the transfer of the statutory seat to Germany, entered into force in accordance with Article 11(4) of Regulation (EC) No 723/2009.

(5) Other amendments specifying ownership and dissemination of SHARE-ERIC data and modifying tax exemptions as a result of the transfer of the seat to Germany require the Commission's approval.

(6) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 20 of Regulation (EC) No 723/2009,

HAS ADOPTED THIS DECISION:

Article 1

The Statutes of the SHARE-ERIC annexed to Decision 2011/166/EU are amended in accordance with the Annex to this Decision.

Article 2

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

Done at Brussels, 27 May 2014.

For the Commission

The President

José Manuel BARROSO

([1]) OJ L 206, 8.8.2009, p. 1.

([2]) Commission Decision 2011/166/EU of 17 March 2011 setting up the SHARE-ERIC (OJ L 71, 18.3.2011, p. 20).

ANNEX

The Statutes of the SHARE-ERIC are amended as follows:

(1) Article 11(2) is replaced by the following:

'(2) The SHARE-ERIC is the owner of the Survey and all of its data, including add-ons certified by SHARE, meta and para data and all address and link files, and of all intellectual property rights emanating from setting up and conducting the Survey.';

(2) Article 12(1) is replaced by the following:

'(1) The SHARE-ERIC shall disseminate the collected data after data cleaning, imputation, and documentation and after taking account of international and national privacy laws, without delay to the scientific community.';

(3) Article 13 is amended as follows:

(a) paragraph 4 is replaced by the following:

'(4) Tax exemptions based on point (g) of Article 143(1) and point (b) of Article 151(1) of Directive 2006/112/EC and in accordance with Articles 50 and 51 of Council Implementing Regulation (EU) No 282/2011 (*) shall apply to purchases of goods and services which are for the official use by the SHARE-ERIC, are procured and paid for by it and for which the amount of VAT to be reimbursed exceeds a total of EUR 25 per invoice. Procurement by individual members shall not benefit from these exemptions.

The first subparagraph shall not apply, however, so as to have the effect of distorting competition.

(*) OJ L 77, 23.3.2011, p. 1.';

(b) the following paragraphs 5 and 6 are added:

'(5) Excise goods as defined in points (b) and (c) of Article 1(1) of Council Directive 2008/118/EC (*) may be granted an exemption from payment of excise duty in accordance with point (b) of Article 12(1) of that Directive provided that those excise goods are intended exclusively for official use by the SHARE-ERIC and are procured and paid for by it.

No exemption from payment of excise duties shall be granted for excise goods intended for the personal use of the SHARE-ERIC employees or of third parties.

(6) Duties paid on energy products and electricity as defined in point (a) of Article 1(1) of Directive 2008/118/EC may be refunded in accordance with point (b) of Article 12(1) and Article 12(2) of that Directive provided that those energy products and electricity are intended exclusively for official use by the SHARE-ERIC and are procured and paid for by it, and that the amount of the duty exceeds a total of EUR 25 per invoice.

No duty exemption shall be granted on energy products or electricity intended for the personal use of the SHARE-ERIC employees or of third parties.

(*) OJ L 9, 14.1.2009, p. 12.'

DECISION OF THE EUROPEAN CENTRAL BANK

of 20 February 2014

on the prohibition of monetary financing and the remuneration of government deposits by national central banks

(ECB/2014/8)

(2014/303/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular of the second indent of Article 132(1) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the second indent of Article 34.1 thereof,

Whereas:

(1) Pursuant to Article 271(d) of the Treaty on the Functioning of the European Union, and Article 35.6 of the Statute of the European System of Central Banks and the European Central Bank, in conjunction with the ninth recital of Council Regulation (EC) No 3603/93 [1], the Governing Council is mandated to assess compliance by national central banks (NCBs) with their obligations under the Treaties. To that effect the Governing Council monitors compliance of NCBs with the prohibition on monetary financing as laid down in Article 123 of the Treaty on the Functioning of the European Union. This Decision aims to clarify the criteria that the European Central Bank (ECB) will apply regarding the remuneration of deposits held by governments and public authorities with their central bank in relation to the Treaty prohibition of monetary financing, for the purposes of the above-mentioned Governing Council's monitoring role.

(2) To monitor compliance with the monetary financing prohibition laid down in Article 123 of the Treaty on the Functioning of the European Union, the ECB will take into account the remuneration of government deposits, which should not be higher than a remuneration based on the relevant money market rates. This Decision specifies the market rates that will operate as ceilings for the remuneration of government deposits and that will be taken into account in monitoring compliance with the Treaty from 1 December 2014,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

For the purposes of this Decision:

(a) 'government' means all public entities mentioned in Article 123 of the Treaty, as interpreted in the light of Regulation (EC) No 3603/93, except for publicly-owned credit institutions which, in the context of the supply of reserves by NCBs, are given the same treatment by NCBs and the ECB as private credit institutions;

(b) 'government deposits' means overnight and fixed-term deposits accepted by NCBs from any government;

[1] Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

(c) 'unsecured overnight market rate' means: (i) with regard to overnight deposits in euro, the euro overnight index average rate (EONIA); and (ii) with regard to overnight deposits in a different currency, a comparable rate;

(d) 'secured market rate' means: (i) with regard to fixed term deposits in euro, the euro repo market offered rate (EUREPO) with comparable maturity if available; and (ii) with regard to fixed term deposits in a different currency, a comparable rate.

Article 2

Remuneration of government deposits and compliance with the prohibition on monetary financing

1. For the purposes of monitoring compliance with the prohibition on monetary financing, the following ceilings on the remuneration of government deposits with NCBs shall apply:

(a) for overnight deposits, the unsecured overnight market rate;

(b) for fixed-term deposits, the secured market rate or, if unavailable, the unsecured overnight market rate.

2. Compliance with the ceilings referred to in paragraph 1 shall be assessed in the light of all relevant facts specific to each individual case.

Article 3

Entry into force

1. The provisions of this Decision shall be applied by the ECB from 1 December 2014.

2. This Decision shall enter into force on 22 February 2014.

Done at Frankfurt am Main, 20 February 2014.

The President of the ECB
Mario DRAGHI

GUIDELINES

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 20 February 2014

on domestic asset and liability management operations by the national central banks

(ECB/2014/9)

(2014/304/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 12.1 and 14.3 thereof,

Whereas:

(1) The achievement of the single monetary policy requires that the European Central Bank (ECB) specifies the general principles to be followed by the national central banks of Member States whose currency is the euro (hereinafter the 'NCBs') when carrying out domestic operations in assets and liabilities on their own initiative; such operations should not interfere with the single monetary policy.

(2) Repurchase agreements entered into by NCBs with non-Eurosystem national central banks may have an impact on euro liquidity and hence on the single monetary policy once they are activated. Therefore, to better safeguard the integrity of the single monetary policy, the Governing Council decided on 22 October 2009 that its prior approval should be required for certain liquidity arrangements entered into by NCBs with non-Eurosystem national central banks.

(3) Limitations on the remuneration of government deposits held with NCBs as fiscal agents pursuant to Article 21.2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') must be specified to preserve the integrity of the single monetary policy, and in order to provide incentives for government deposits to be placed in the market, so as to facilitate the Eurosystem's liquidity management and monetary policy implementation. In addition, the introduction of a ceiling on the remuneration of government deposits based on money market rates facilitates the monitoring of the NCBs' compliance with the prohibition on monetary financing carried out by the ECB in accordance with Article 271(d) of the Treaty.

(4) In view of the exceptional and temporary nature of the government deposits related to European Union/International Monetary Fund and other comparable financial support programmes, the applicable procedures should not restrict the ability of a national government to maintain deposits with its NCB, not least because the holding of such deposits may be part of the conditions of the relevant programme. The exclusion of such deposits from the threshold amount does not interfere with the single monetary policy to the same extent as the holding of government deposits in other Member States whose currency is the euro,

HAS ADOPTED THIS GUIDELINE:

Article 1

Scope of application

1. This Guideline shall apply to all NCB operations involving euro amounts, including operations conducted by NCBs either as principal on their own behalf or as agent on behalf of third parties or as both principal and agent at the same time. The following operations are not subject to this Guideline:

(a) standing facilities and operations executed by NCBs on the ECB's initiative, in particular, operations carried out in accordance with Guideline ECB/2011/14 ([1]);

(b) transactions in precious metals and foreign exchange operations against the euro, which are covered by Guideline ECB/2003/12 ([2]);

(c) operations of NCBs related to emergency liquidity assistance.

2. Articles 7 and 8 shall not apply to operations that NCBs carry out:

(a) while acting as fiscal agents pursuant to Article 21.2 of the Statute of the ESCB;

(b) for their administrative purposes or for their staff pursuant to Article 24 of the Statute of the ESCB;

(c) while managing a pension fund for their staff;

(d) while operating a deposit scheme for their staff or other customers;

(e) while transferring their profit to the government.

Operations conducted by an NCB's staff pension fund that is managed by an autonomous institution shall be exempt from Articles 6 and 9. In addition, the *ex-post* reporting requirements of Articles 6 and 9 shall not apply to operations carried out by NCBs for their administrative purposes or deposit transactions related to current accounts that staff and other customers hold at NCBs.

3. Except for the *ex-post* reporting requirements in Article 6(1), this Guideline shall not apply to operations within the framework of Eurosystem reserve management services.

4. Without prejudice to paragraph 1 above, Articles 5 and 11 shall apply to government deposits denominated in euro or in a foreign currency.

Article 2

Definitions

For the purposes of this Guideline:

(a) 'repurchase agreement' means an agreement by which an NCB and a non-euro area national central bank agree to enter into one or more specific repurchase transactions. In a repurchase transaction, one party agrees to purchase from (or sell to) the other party securities denominated in euro against payment of an agreed price in euro on the trade date, with a simultaneous agreement to sell to (or purchase from) the other party equivalent securities against payment of another agreed price in euro at the maturity date;

(b) 'government' means all public entities of a Member State or any public entities of the Union mentioned in Article 123 of the Treaty, as interpreted in the light of Council Regulation (EC) No 3603/93 ([3]), except for publicly owned credit institutions which, in the context of the supply of reserves by NCBs, are given the same treatment by NCBs and the ECB as private credit institutions;

([1]) Guideline ECB/2011/14 of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem (OJ L 331, 14.12.2011, p. 1).

([2]) Guideline ECB/2003/12 of 23 October 2003 for participating Member States' transactions with their foreign exchange working balances pursuant to Article 31.3 of the Statute of the European System of Central Banks and of the European Central Bank (OJ L 283, 31.10.2003, p. 81).

([3]) Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Article 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

(c) 'government deposits' means overnight and fixed term deposits accepted by NCBs from any government, including deposits held in foreign currencies;

(d) 'unsecured overnight market rate' means: (a) with regard to overnight deposits in domestic currency, the euro overnight index average rate (EONIA); (b) with regard to overnight deposits in a foreign currency, a comparable rate;

(e) 'secured market rate' means: (a) with regard to fixed term deposits in domestic currency, the euro repo market offered rate (EUREPO) with comparable maturity if available; and (b) with regard to fixed term deposits in foreign currency, a comparable rate;

(f) 'gross domestic product' means the value of an economy's total output of goods and services, less intermediate consumption, plus net taxes on products and imports, in a specified period;

(g) 'deposit facility rate' means the pre-specified interest rate that is applied to counterparties who use the Eurosystem deposit facility to make overnight deposits with an NCB.

Article 3

Organisational issues

1. NCBs shall make, and the Executive Board shall monitor, the appropriate arrangements to enable counterparties to distinguish between operations carried out by NCBs under this Guideline and European System of Central Bank operations carried out by NCBs in accordance with the instruments and procedures specified in Guideline ECB/2011/14.

2. NCBs shall make the appropriate arrangements to ensure that confidential monetary policy information is not used by NCBs in carrying out operations covered by this Guideline.

3. NCBs shall inform the ECB of the arrangements established in accordance with paragraphs 1 and 2.

Article 4

Prior approval of repurchase agreements with non-Eurosystem national central banks

1. Before NCBs enter into repurchase agreements with non-Eurosystem national central banks, they shall submit these agreements to the ECB for the Governing Council's prior approval.

2. NCBs shall submit their requests for prior approval to the ECB as far in advance as possible before the envisaged date for entering into the repurchase agreements. Each request shall contain as a minimum the following information:

(a) identity of the counterparty to the repurchase agreement;

(b) purpose of the repurchase agreement;

(c) to the extent already available, amount and dates of the specific repurchase transactions; the envisaged aggregated amount of such transactions;

(d) maturity of the repurchase agreement and, to the extent already available, maturity of the specific repurchase transactions to be entered into;

(e) any other information considered relevant by the NCB submitting the request.

3. The Governing Council shall respond to each request as soon as possible and in any case no later than 40 business days following receipt of the request.

4. When receiving a request for prior approval, the Governing Council shall have regard to:

(a) the primary objective of ensuring the integrity of monetary policy;

(b) the preservation of the effectiveness of euro liquidity management by the Eurosystem;

(c) a coordinated Eurosystem approach with respect to the conduct of repurchase transactions with non-Eurosystem national central banks;

(d) a level-playing field for all credit institutions located in a Member State whose currency is the euro.

5. If the Governing Council considers that a repurchase agreement would not be in line with the objectives specified in paragraph 4, it may either require that the repurchase agreement submitted for its approval is:

(a) entered into at a later date than that originally planned; or

(b) subject to specific amendments and resubmitted for approval before it can be entered into by the relevant NCB.

6. The Governing Council shall endeavour to accommodate the NCBs' requests for prior approval taking into account the principles of proportionality and non-discrimination.

Article 5

Limitations on remuneration of government deposits

1. Remuneration of government deposits shall be subject to the following ceilings:

(a) for overnight deposits, the unsecured overnight market rate;

(b) for fixed term deposits, the secured market rate or, if not available, the unsecured overnight market rate.

2. On any calendar day, the total amount of overnight and fixed term deposits of all governments with an NCB exceeding the higher of either: (a) EUR 200 million; or (b) 0,04 % of the gross domestic product of the Member State in which the NCB is domiciled, shall be remunerated with an interest rate of zero per cent.

3. The government deposits related to European Union/International Monetary Fund and other comparable financial support programmes that are held in accounts with NCBs shall be subject to paragraph 1, but they shall not count towards the threshold amount mentioned in paragraph 2.

Article 6

Reporting

1. NCBs shall report *ex ante* to the ECB the total net liquidity effect of their domestic asset and liability management operations within the context of the Eurosystem's general liquidity management framework. An NCB shall include the transfer of its profit to the government in its forecast of autonomous liquidity factors at least one week in advance of the transfer taking place. Furthermore, an NCB shall ensure through appropriate measures that investment operations and deposit schemes do not result in liquidity effects that cannot be accurately forecast.

2. Once a month, NCBs shall report *ex post* to the ECB, using the *ex post* reporting format in Annex II to this Guideline, the details of the operations they carried out during the previous month. With respect to the monthly *ex post* report, a general threshold of EUR 500 million shall apply to the monthly turnover in each individual category listed in Annex II, with transactions counting towards the threshold as follows:

(a) the gross sum of purchases, sales and redemptions for each of the following categories:

  (i) investment operations;

  (ii) pension fund management;

  (iii) agent activities;

(b) the gross sum of securities lending and borrowing for the following categories:

  (i) securities loans; and

  (ii) repurchase transactions.

(c) the gross sum of credit granting and deposit taking for the category credit and deposit schemes;

(d) the amount for each of the following categories:

(i) obligations towards third parties; and

(ii) transfer and subsidies.

If the gross sum of the transactions in a category is below the respective threshold, NCBs shall fill in a zero in the reporting format as for cases where no transactions have taken place. NCBs may choose to continue to report all their transactions to the ECB even if the threshold for one or more categories is not reached (full reporting).

For transactions in euro carried out within the Eurosystem reserve management services framework, NCBs shall, in addition, comply with any other applicable reporting requirements.

3. In the event that reporting requirements reveal that the asset or liability management operations of a particular NCB contradict single monetary policy requirements, the ECB may give specific instructions with regard to the asset and liability management behaviour of the NCB in question.

Article 7

Thresholds

1. Operations may not be conducted above the threshold in Annex I to this Guideline without the ECB's prior approval. Such threshold also applies to repurchase transactions, without prejudice to the prior approval procedure for repurchase agreements in Article 4.

2. In addition to the threshold for daily aggregate operations in Annex I to this Guideline, the ECB may specify and apply additional thresholds for NCBs' cumulative purchases or sales of assets and liabilities during any particular period of time.

3. The Governing Council may change the threshold in Annex I to this Guideline at any time.

Article 8

Procedure for requesting and granting prior approval

1. NCBs shall forward their requests for prior approval as far in advance as possible. Where the operation has to be settled on the same day or the next working day, the ECB shall receive such requests at the latest by 9 a.m. ([1]) on the envisaged trade date. For other operations, the ECB shall receive the corresponding request at the latest by 11 a.m. on the envisaged trade date.

2. The NCB's request shall be made in accordance with Annex III to this Guideline. Where a transaction, for which prior approval has been sought and granted, does not take place in accordance with the prior approval, NCBs shall notify the ECB immediately.

3. Under exceptional circumstances, NCBs carrying out security lending operations against collateral may, where the market participants are not able to provide specific securities, also forward their requests for late same-day prior approval in the late afternoon.

4. The ECB shall respond to an NCB's request for prior approval as soon as possible, and to a request for late same-day prior approval immediately. For operations to be settled on the trade date or on the next working day, the ECB shall respond by 10.15 a.m. on the envisaged trade date. For other operations, the ECB shall respond by 1 p.m. on the envisaged trade date. If an NCB does not receive a reply by this deadline, after verifying that the ECB received its request and that no reply has been sent, assume from 1.15 p.m. that approval has been granted.

([1]) All references are to Central European Time, which takes account of the change to Central European Summer Time.

5. The ECB shall consider all requests with a view to ensuring consistency with the single monetary policy of the Eurosystem, having regard to both the effect of individual NCBs' operations and the aggregate effect of such operations in the Member States whose currency is the euro. Without prejudice to this, the ECB shall try to accommodate the NCBs' requests.

Article 9

Monitoring

1. Once a year the Executive Board shall submit a report to the Governing Council on the implementation and application of this Guideline. This report shall provide information on:

(a) the application of the prior approval procedure;

(b) NCBs' domestic asset and liability management practices;

(c) compliance with this Guideline.

2. In case of doubt regarding compliance with Article 5(1) to (3), the ECB may request information from NCBs.

Article 10

Confidentiality

All the information and data exchanged in the context of the above procedures, including the monitoring report mentioned in Article 9, shall be treated confidentially.

Article 11

Transitional provision

Fixed-term government deposits held with the NCBs shall be subject to Article 5(1), but they shall only count towards the threshold amount mentioned in Article 5(2) from 1 December 2015.

Article 12

Taking effect and implementation

1. This Guideline shall take effect two days following its adoption.

2. The NCBs shall take the necessary measures to comply with this Guideline by 1 December 2014. They shall notify the ECB of the texts and means relating to those measures by 31 October 2014 at the latest.

Article 13

Addressees

This Guideline is addressed to the NCBs.

Done at Frankfurt am Main on 20 February 2014.

For the Governing Council of the ECB
The President of the ECB
Mario DRAGHI

ANNEX I

THRESHOLDS FOR NCBS' DOMESTIC OPERATIONS IN ASSETS AND LIABILITIES CONDUCTED ON A SINGLE DATE

Threshold applicable
Settlement date effect (net aggregate operations) [1]
EUR 200 million

[1] Net liquidity impact of the planned operations for the day, to be settled on a single date coinciding with or following the trade date.

ANNEX II

MONTHLY *EX POST* REPORT OF DOMESTIC ASSET AND LIABILITY MANAGEMENT OPERATIONS

	Category of operation										
	Investment operations	Pension fund management	Agent activities		Securities loans	Repurchase transactions		Credit and deposit schemes		Obligations towards 3rd parties	Transfer and subsidies
Way of conducting the operation	1. On-balance sheet 2. Off-balance sheet	1. On-balance sheet 2. Off-balance sheet	1. On-balance sheet 2. Off-balance sheet	Number of transactions	nnnnnn	nnnnnn	Number of transactions	nnnnnn	Type of operation	xxxxx	xxxxx
Number of transactions	nnnnnn	nnnnnn	nnnnnn	Securities lending	EUR (XX) mn	EUR (XX) mn	Granting	EUR (XX) mn	Way of conducting the operation	1. On-balance sheet 2. Off-balance sheet	1. On-balance sheet 2. Off-balance sheet
Purchase	EUR (XX) mn	EUR (XX) mn	EUR (XX) mn	Securities borrowing	EUR (XX) mn	EUR (XX) mn	Deposit-taking	EUR (XX) mn	Number of transactions	nnnnnn	nnnnnn
Sale	EUR (XX) mn	EUR (XX) mn	EUR (XX) mn						Amount	EUR (XX) mn	EUR (XX) mn
Redemption	EUR (XX) mn	EUR (XX) mn	EUR (XX) mn								

ANNEX III

MESSAGE FORMAT FOR REQUESTS FOR PRIOR APPROVAL OF LARGE TRANSACTIONS

Variable name	Description of variable	Codification	Mandatory field
ID-code	Unique identifier for a group of operations (either securities transactions or other transactions) which have the same trade and settlement date, consisting of a sequential numbering preceded by the two-digit ISO country code.	ISnn	Automatically generated by the application.
Trade date	Trade date of the planned group of operations.	yyyy/mm/dd	Yes
Settlement date	Settlement date (or start date in the case of forward transactions) of the planned group of operations.	yyyy/mm/dd	Yes
Purchase and lending	If securities/other instruments have been purchased or credit or securities loans have been granted, the cumulative amount has to be quoted.	EUR [YY] million	No (To be left blank if only sale transactions are planned.)
Sale and deposit-taking	If securities/other instruments have been sold or deposits have been taken, the cumulative amount has to be quoted.	EUR [XX] million	No (To be left blank if only purchase transactions are planned.)
Impact on liquidity projections	Indication of the impact on liquidity projections for the settlement date in the case of an acceptance of the request, relative to the last daily liquidity forecast submitted to the ECB at 8 a.m. In the event of a refusal, this field helps the ECB to identify the reverse impact on liquidity projections.	EUR [ZZ] million	Yes (If the total impact on liquidity projections has already been reported to the ECB, a zero must be entered in this box.)
Type of transaction	Indication of the type of transaction: 1. Securities transaction 2. Other transaction	The type of transaction is selected from the list box that is provided by the system.	Yes (The user must indicate the type of transaction.)
Intended way of conducting the operation	Description of the intended way of conducting the operations, by reference to one of the following items: 1. On-balance-sheet operation 2. Off-balance-sheet operation	The intended way of conducting the operation is selected from the list box that is provided by the system.	No (The user is free to indicate the intended way of conducting the operation.)

Variable name	Description of variable	Codification	Mandatory field
Free text	Any information which would help the ECB's liquidity management function to assess the net liquidity impact in the context of the relevant period of liquidity analysis and the most recent liquidity forecast. For example, if the impact on liquidity projections is not permanent, but will be reversed in the foreseeable future, the user shall comment in the free text field on the liquidity impact beyond the settlement date. The user could also give further details on each single operation, such as the type, the size or its purpose.	Any combination of numbers and letters within the predefined H1&H2 character set [1].	No

[1] The symbols allowed in the free text format are specified in Section 1.1.4.7 of Annex 4 to the H1&H2 System Design document of 22 August 1997.

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