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I

(Legislative acts)

DIRECTIVES

DIRECTIVE (EU) 2016/800 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 11 May 2016****on procedural safeguards for children who are suspects or accused persons in criminal proceedings**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (b) of Article 82(2) thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) The purpose of this Directive is to establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration.
- (2) By establishing common minimum rules on the protection of procedural rights of children who are suspects or accused persons, this Directive aims to strengthen the trust of Member States in each other's criminal justice systems and thus to improve mutual recognition of decisions in criminal matters. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States.
- (3) Although the Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights, and the UN Convention on the Rights of the Child, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.
- (4) On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ⁽³⁾ ('the Roadmap'). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspected or accused persons who are vulnerable (measure E). The Roadmap emphasises

⁽¹⁾ OJ C 226, 16.7.2014, p. 63.

⁽²⁾ Position of the European Parliament of 9 March 2016 (not yet published in the Official Journal) and decision of the Council of 21 April 2016.

⁽³⁾ OJ C 295, 4.12.2009, p. 1.

that the order of the rights is indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole; only when all its components are implemented will its benefits be experienced in full.

- (5) On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — An open and secure Europe serving and protecting citizens ⁽¹⁾ (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.
- (6) Four measures on procedural rights in criminal proceedings have been adopted pursuant to the Roadmap to date, namely Directives 2010/64/EU ⁽²⁾, 2012/13/EU ⁽³⁾, 2013/48/EU ⁽⁴⁾ and Directive (EU) 2016/343 ⁽⁵⁾ of the European Parliament and the Council.
- (7) This Directive promotes the rights of the child, taking into account the Guidelines of the Council of Europe on child-friendly justice.
- (8) Where children are suspects or accused persons in criminal proceedings or are subject to European arrest warrant proceedings pursuant to Council Framework Decision 2002/584/JHA ⁽⁶⁾ (requested persons), Member States should ensure that the child's best interests are always a primary consideration, in accordance with Article 24(2) of the Charter of Fundamental Rights of the European Union (the Charter).
- (9) Children who are suspects or accused persons in criminal proceedings should be given particular attention in order to preserve their potential for development and reintegration into society.
- (10) This Directive should apply to children who are suspects or accused persons in criminal proceedings and to children who are requested persons. In respect of children who are requested persons, the relevant provisions of this Directive should apply from the time of their arrest in the executing Member State.
- (11) This Directive, or certain provisions thereof, should also apply to suspects or accused persons in criminal proceedings, and to requested persons, who were children when they became subject to the proceedings, but who have subsequently reached the age of 18, and where the application of this Directive is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned.
- (12) When, at the time a person becomes a suspect or accused person in criminal proceedings, that person has reached the age of 18, but the criminal offence was committed when the person was a child, Member States are encouraged to apply the procedural safeguards provided for by this Directive until that person reaches the age of 21, at least as regards criminal offences that are committed by the same suspect or accused person and that are jointly investigated and prosecuted as they are inextricably linked to criminal proceedings which were initiated against that person before the age of 18.
- (13) Member States should determine the age of the child on the basis of the child's own statements, checks of the child's civil status, documentary research, other evidence and, if such evidence is unavailable or inconclusive, a medical examination. A medical examination should be carried out as a last resort and in strict compliance with the child's rights, physical integrity and human dignity. Where a person's age remains in doubt, that person should, for the purposes of this Directive, be presumed to be a child.

⁽¹⁾ OJ C 115, 4.5.2010, p. 1.

⁽²⁾ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁽³⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁽⁴⁾ Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and European arrest warrant proceedings and on the right to have a third party informed upon deprivation of liberty, and to communicate with third persons and with consular authorities (OJ L 294, 6.11.2013, p. 1).

⁽⁵⁾ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

⁽⁶⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

- (14) This Directive should not apply in respect of certain minor offences. However, it should apply where a child who is a suspect or accused person is deprived of liberty.
- (15) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions other than deprivation of liberty in relation to relatively minor offences. That may be the case, for example, in relation to road traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.
- (16) In some Member States certain minor offences, in particular minor road traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.
- (17) This Directive should apply only to criminal proceedings. It should not apply to other types of proceedings, in particular proceedings which are specially designed for children and which could lead to protective, corrective or educative measures.
- (18) This Directive should be implemented taking into account the provisions of Directives 2012/13/EU and 2013/48/EU. This Directive provides for further complementary safeguards with regard to information to be provided to children and to the holder of parental responsibility in order to take into account the specific needs and vulnerabilities of children.
- (19) Children should receive information about general aspects of the conduct of the proceedings. To that end, they should, in particular, be given a brief explanation about the next procedural steps in the proceedings in so far as this is possible in the light of the interest of the criminal proceedings, and about the role of the authorities involved. The information to be given should depend on the circumstances of the case.
- (20) Children should receive information in respect of the right to a medical examination at the earliest appropriate stage in the proceedings, at the latest upon deprivation of liberty where such a measure is taken in relation to the child.
- (21) Where a child is deprived of liberty, the Letter of Rights provided to the child pursuant to Directive 2012/13/EU should include clear information on the child's rights under this Directive.
- (22) Member States should inform the holder of parental responsibility about applicable procedural rights, in writing, orally, or both. The information should be provided as soon as possible and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the child.
- (23) In certain circumstances, which can also relate to only one of the persons holding parental responsibility, the information should be provided to another appropriate adult nominated by the child and accepted as such by the competent authority. One of those circumstances is where there are objective and factual grounds indicating or giving rise to the suspicion that providing information to the holder of parental responsibility could substantially jeopardise the criminal proceedings, in particular, where evidence might be destroyed or altered, witnesses might be interfered with, or the holder of parental responsibility might have been involved in the alleged criminal activity together with the child.
- (24) Where the circumstances which led the competent authorities to provide information to an appropriate adult other than the holder of parental responsibility cease to exist, any information that the child receives in accordance with this Directive, and which remains relevant in the course of the proceedings, should be provided to the holder of parental responsibility. This requirement should not unnecessarily prolong the criminal proceedings.

- (25) Children who are suspects or accused persons have the right of access to a lawyer in accordance with Directive 2013/48/EU. Since children are vulnerable and not always able to fully understand and follow criminal proceedings, they should be assisted by a lawyer in the situations set out in this Directive. In those situations, Member States should arrange for the child to be assisted by a lawyer where the child or the holder of parental responsibility has not arranged such assistance. Member States should provide legal aid where this is necessary to ensure that the child is effectively assisted by a lawyer.
- (26) Assistance by a lawyer under this Directive presupposes that the child has the right of access to a lawyer under Directive 2013/48/EU. Therefore, where the application of a provision of Directive 2013/48/EU would make it impossible for the child to be assisted by a lawyer under this Directive, such provision should not apply to the right of children to have access to a lawyer under Directive 2013/48/EU. On the other hand, the derogations and exceptions to assistance by a lawyer laid down in this Directive should not affect the right of access to a lawyer in accordance with Directive 2013/48/EU, or the right to legal aid in accordance with the Charter and the ECHR, and with national and other Union law.
- (27) The provisions laid down in this Directive on assistance by a lawyer should apply without undue delay once children are made aware that they are suspects or accused persons. For the purposes of this Directive, assistance by a lawyer means legal support and representation by a lawyer during the criminal proceedings. Where this Directive provides for the assistance by a lawyer during questioning, a lawyer should be present. Without prejudice to a child's right of access to a lawyer pursuant to Directive 2013/48/EU, assistance by a lawyer does not require a lawyer to be present during each investigative or evidence-gathering act.
- (28) Provided that this complies with the right to a fair trial, the obligation for Member States to provide children who are suspects or accused persons with assistance by a lawyer in accordance with this Directive does not include the following: identifying the child; determining whether an investigation should be started; verifying the possession of weapons or other similar safety issues; carrying out investigative or evidence-gathering acts other than those specifically referred to in this Directive, such as body checks, physical examinations, blood, alcohol or similar tests, or the taking of photographs or fingerprints; or bringing the child to appear before a competent authority or surrendering the child to the holder of parental responsibility or to another appropriate adult, in accordance with national law.
- (29) Where a child who was not initially a suspect or accused person, such as a witness, becomes a suspect or accused person, that child should have the right not to incriminate him or herself and the right to remain silent, in accordance with Union law and the ECHR, as interpreted by the Court of Justice of the European Union (Court of Justice) and by the European Court of Human Rights. This Directive therefore makes express reference to the practical situation where such a child becomes a suspect or accused person during questioning by the police or by another law enforcement authority in the context of criminal proceedings. Where, in the course of such questioning, a child other than a suspect or accused person becomes a suspect or accused person, questioning should be suspended until the child is made aware that he or she is a suspect or accused person and is assisted by a lawyer in accordance with this Directive.
- (30) Provided that this complies with the right to a fair trial, Member States should be able to derogate from the obligation to provide assistance by a lawyer where this is not proportionate in the light of the circumstances of the case, it being understood that the child's best interests should always be a primary consideration. In any event, children should be assisted by a lawyer when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive, as well as during detention. Moreover, deprivation of liberty should not be imposed as a criminal sentence unless the child has been assisted by a lawyer in such a way as to allow the child to exercise his or her rights of the defence effectively and, in any event, during the trial hearings before a court. Member States should be able to make practical arrangements in that respect.
- (31) Member States should be able to derogate temporarily from the obligation to provide assistance by a lawyer in the pre-trial phase for compelling reasons, namely where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person, or where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence, inter alia, with a view to obtaining information concerning the alleged co-perpetrators of a serious criminal offence, or in order to avoid the loss of important evidence regarding a serious criminal offence. During a temporary derogation for one of those compelling reasons, the competent authorities should be able to question children without the lawyer being present, provided that they have been informed of their right to

remain silent and can exercise that right, and that such questioning does not prejudice the rights of the defence, including the right not to incriminate oneself. It should be possible to carry out questioning, to the extent necessary, for the sole purpose of obtaining information that is essential to avert serious adverse consequences for the life, liberty or physical integrity of a person, or to prevent substantial jeopardy to criminal proceedings. Any abuse of this temporary derogation would, in principle, irretrievably prejudice the rights of the defence.

- (32) Member States should clearly set out in their national law the grounds and criteria for such a temporary derogation, and they should make restricted use thereof. Any temporary derogation should be proportional, strictly limited in time, not based exclusively on the type or the seriousness of the alleged criminal offence, and should not prejudice the overall fairness of the proceedings. Member States should ensure that where the temporary derogation has been authorised pursuant to this Directive by a competent authority which is not a judge or a court, the decision on authorising the temporary derogation can be assessed by a court, at least during the trial stage.
- (33) Confidentiality of communication between children and their lawyer is key to ensuring the effective exercise of the rights of the defence and is an essential part of the right to a fair trial. Member States should therefore respect the confidentiality of meetings and other forms of communication between the lawyer and the child in the context of the assistance by a lawyer provided for in this Directive, without derogation. This Directive is without prejudice to procedures that address the situation where there are objective and factual circumstances giving rise to the suspicion that the lawyer is involved with the child in a criminal offence. Any criminal activity on the part of a lawyer should not be considered to be legitimate assistance to children within the framework of this Directive. The obligation to respect confidentiality not only implies that Member States refrain from interfering with, or accessing, such communication but also that, where children are deprived of liberty or otherwise find themselves in a place under the control of the State, Member States ensure that arrangements for communication uphold and protect such confidentiality. This is without prejudice to any mechanisms that are in place in detention facilities with the purpose of avoiding illicit enclosures being sent to detainees, such as screening correspondence, provided that such mechanisms do not allow the competent authorities to read the communication between children and their lawyer. This Directive is also without prejudice to procedures under national law according to which forwarding correspondence may be rejected if the sender does not agree to the correspondence first being submitted to a competent court.
- (34) This Directive is without prejudice to a breach of confidentiality that is incidental to a lawful surveillance operation by competent authorities. This Directive is also without prejudice to the work that is carried out, for example, by national intelligence services to safeguard national security in accordance with Article 4(2) of the Treaty on European Union (TEU), or that falls within the scope of Article 72 of the Treaty on the Functioning of the European Union (TFEU) pursuant to which Title V of Part III of the TFEU, on the Area of Freedom, Security and Justice, must not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
- (35) Children who are suspects or accused persons in criminal proceedings should have the right to an individual assessment to identify their specific needs in terms of protection, education, training and social integration, to determine if and to what extent they would need special measures during the criminal proceedings, the extent of their criminal responsibility and the appropriateness of a particular penalty or educative measure.
- (36) The individual assessment should, in particular, take into account the child's personality and maturity, the child's economic, social and family background, including living environment, and any specific vulnerabilities of the child, such as learning disabilities and communication difficulties.
- (37) It should be possible to adapt the extent and detail of an individual assessment according to the circumstances of the case, taking into account the seriousness of the alleged criminal offence and the measures that could be taken if the child is found guilty of such an offence. An individual assessment which has been carried out with regard to the same child in the recent past could be used if it is updated.
- (38) The competent authorities should take information deriving from an individual assessment into account when determining whether any specific measure concerning the child is to be taken, such as providing any practical assistance; when assessing the appropriateness and effectiveness of any precautionary measures in respect of the child, such as decisions on provisional detention or alternative measures; and, taking account of the individual characteristics and circumstances of the child, when taking any decision or course of action in the context of the criminal proceedings, including when sentencing. Where an individual assessment is not yet available, this should

not prevent the competent authorities from taking such measures or decisions, provided that the conditions set out in this Directive are complied with, including carrying out an individual assessment at the earliest appropriate stage of the proceedings. The appropriateness and effectiveness of the measures or decisions that are taken before an individual assessment is carried out could be re-assessed when the individual assessment becomes available.

- (39) The individual assessment should take place at the earliest appropriate stage of the proceedings and in due time so that the information deriving from it can be taken into account by the prosecutor, judge or another competent authority, before presentation of the indictment for the purposes of the trial. It should nevertheless be possible to present an indictment in the absence of an individual assessment provided that this is in the child's best interests. This could be the case, for example, where a child is in pre-trial detention and waiting for the individual assessment to become available would risk unnecessarily prolonging such detention.
- (40) Member States should be able to derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, taking into account, inter alia, the seriousness of the alleged criminal offence and the measures that could be taken if the child is found guilty of such an offence, provided that the derogation is compatible with the child's best interests. In that context, all relevant elements should be taken into consideration, including whether or not the child has, in the recent past, been the subject of an individual assessment in the context of criminal proceedings or whether the case concerned may be conducted without an indictment.
- (41) The duty of care towards children who are suspects or accused persons underpins a fair administration of justice, in particular where children are deprived of liberty and are therefore in a particularly weak position. In order to ensure the personal integrity of a child who is deprived of liberty, the child should have the right to a medical examination. Such a medical examination should be carried out by a physician or another qualified professional, either on the initiative of the competent authorities, in particular where specific health indications give reasons for such an examination, or in response to a request of the child, of the holder of parental responsibility or of the child's lawyer. Member States should lay down practical arrangements concerning medical examinations that are to be carried out in accordance with this Directive, and concerning access by children to such examinations. Such arrangements could, inter alia, address situations where two or more requests for medical examinations are made in respect of the same child in a short period of time.
- (42) Children who are suspects or accused persons in criminal proceedings are not always able to understand the content of questioning to which they are subject. In order to ensure sufficient protection of such children, questioning by police or by other law enforcement authorities should therefore be audio-visually recorded where it is proportionate to do so, taking into account, inter alia, whether or not a lawyer is present and whether or not the child is deprived of liberty, it being understood that the child's best interests should always be a primary consideration. This Directive does not require Member States to make audiovisual recordings of questioning of children by a judge or a court.
- (43) Where an audiovisual recording is to be made in accordance with this Directive but an insurmountable technical problem renders it impossible to make such a recording, the police or other law enforcement authorities should be able to question the child without it being audio-visually recorded, provided that reasonable efforts have been made to overcome the technical problem, that it is not appropriate to postpone the questioning, and that it is compatible with the child's best interests.
- (44) Whether or not the questioning of children is audio-visually recorded, questioning should in any event be carried out in a manner that takes into account the age and maturity of the children concerned.
- (45) Children are in a particularly vulnerable position when they are deprived of liberty. Special efforts should therefore be undertaken to avoid deprivation of liberty and, in particular, detention of children at any stage of the proceedings before the final determination by a court of the question whether the child concerned has committed the criminal offence, given the possible risks for their physical, mental and social development, and because deprivation of liberty could lead to difficulties as regards their reintegration into society. Member States could make practical arrangements, such as guidelines or instructions to police officers, on the application of this requirement to situations of police custody. In any case, this requirement is without prejudice to the possibility for police officers or other law enforcement authorities to apprehend a child in situations where it seems, *prima facie*, to be necessary to do so, such as *in flagrante delicto* or immediately after a criminal offence has been committed.

- (46) The competent authorities should always consider measures alternative to detention (alternative measures) and should have recourse to such measures where possible. Such alternative measures could include a prohibition for the child to be in certain places, an obligation for the child to reside in a specific place, restrictions concerning contact with specific persons, reporting obligations to the competent authorities, participation in educational programmes, or, subject to the child's consent, participation in therapeutic or addiction programmes.
- (47) Detention of children should be subject to periodic review by a court, which could also be a judge sitting alone. It should be possible to carry out such periodic review *ex officio* by the court, or at the request of the child, of the child's lawyer or of a judicial authority which is not a court, in particular a prosecutor. Member States should provide for practical arrangements in that respect, including regarding the situation where a periodic review has already been carried out *ex officio* by the court and the child or the child's lawyer requests that another review be carried out.
- (48) Where children are detained they should benefit from special protection measures. In particular, they should be held separately from adults unless it is considered to be in the child's best interests not to do so, in accordance with Article 37(c) of the UN Convention on the Rights of the Child. When a detained child reaches the age of 18, it should be possible to continue separate detention where warranted, taking into account the circumstances of the person concerned. Particular attention should be paid to the manner in which detained children are treated given their inherent vulnerability. Children should have access to educational facilities according to their needs.
- (49) Member States should ensure that children who are suspects or accused persons and kept in police custody are held separately from adults, unless it is considered to be in the child's best interests not to do so, or unless, in exceptional circumstances, it is not possible in practice to do so, provided that children are held together with adults in a manner that is compatible with the child's best interests. For example, in sparsely populated areas, it should be possible, exceptionally, for children to be held in police custody with adults, unless this is contrary to the child's best interests. In such situations, particular vigilance should be required on the part of competent authorities in order to protect the child's physical integrity and well-being.
- (50) It should be possible to detain children with young adults unless this is contrary to the child's best interests. It is for Member States to determine which persons are considered to be young adults in accordance with their national law and procedures. Member States are encouraged to determine that persons older than 24 years do not qualify as young adults.
- (51) Where children are detained, Member States should take appropriate measures as set out in this Directive. Such measures should, *inter alia*, ensure the effective and regular exercise of the right to family life. Children should have the right to maintain regular contact with their parents, family and friends through visits and correspondence, unless exceptional restrictions are required in the child's best interests or in the interests of justice.
- (52) Member States should also take appropriate measures to ensure respect for the freedom of religion or belief of the child. In that regard, Member States should, in particular, refrain from interfering with the religion or belief of the child. Member States are not, however, required to take active steps to assist children in worshipping.
- (53) Where appropriate, Member States should also take appropriate measures in other situations of deprivation of liberty. The measures taken should be proportionate and appropriate to the nature of the deprivation of liberty, such as police custody or detention, and to its duration.
- (54) Professionals in direct contact with children should take into account the particular needs of children of different age groups and should ensure that the proceedings are adapted to them. For those purposes, those professionals should be specially trained in dealing with children.
- (55) Children should be treated in a manner appropriate to their age, maturity and level of understanding, taking into account any special needs, including any communication difficulties, that they may have.

- (56) Taking into account the differences between the legal traditions and systems across the Member States, the privacy of children during criminal proceedings should be ensured in the best possible way with a view, *inter alia*, to facilitating the reintegration of children into society. Member States should provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public. This is without prejudice to judgments being pronounced publicly in accordance with Article 6 ECHR.
- (57) Children should have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved. If more than one person holds parental responsibility for the same child, the child should have the right to be accompanied by all of them, unless this is not possible in practice despite the competent authorities' reasonable efforts. Member States should lay down practical arrangements for the exercise by children of the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved and concerning the conditions under which an accompanying person may be temporarily excluded from court hearings. Such arrangements could, *inter alia*, address the situation where the holder of parental responsibility is temporarily not available to accompany the child or where the holder does not want to make use of the possibility to accompany the child, provided that the child's best interests are taken into account.
- (58) In certain circumstances, which can also relate to only one of the persons holding parental responsibility, the child should have the right to be accompanied during court hearings by an appropriate adult other than the holder of parental responsibility. One of those circumstances is where the holder of parental responsibility accompanying the child could substantially jeopardise the criminal proceedings, in particular where objective and factual circumstances indicate or give rise to the suspicion that evidence may be destroyed or altered, witnesses may be interfered with, or the holder of parental responsibility may have been involved with the child in the alleged criminal activity.
- (59) In accordance with this Directive, children should also have the right to be accompanied by the holder of parental responsibility during other stages of the proceedings at which they are present, such as during police questioning.
- (60) The right of an accused person to appear in person at the trial is based on the right to a fair trial provided for in Article 47 of the Charter and in Article 6 ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights. Member States should take appropriate measures to provide incentives for children to attend their trial, including by summoning them in person and by sending a copy of the summons to the holder of parental responsibility or, where that would be contrary to the child's best interests, to another appropriate adult. Member States should provide for practical arrangements regarding the presence of a child at the trial. Those arrangements could include provisions concerning the conditions under which a child can be temporarily excluded from the trial.
- (61) Certain rights provided for by this Directive should apply to children who are requested persons from the time when they are arrested in the executing Member State.
- (62) The European arrest warrant proceedings are crucial for cooperation between the Member States in criminal matters. Compliance with the time-limits contained in Framework Decision 2002/584/JHA is essential for such cooperation. Therefore, while children who are requested persons should be able to exercise their rights fully under this Directive in European arrest warrant proceedings, those time-limits should be complied with.
- (63) Member States should take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field or have effective access to specific training, in particular with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to children. Member States should also take appropriate measures to promote the provision of such specific training to lawyers who deal with criminal proceedings involving children.
- (64) In order to monitor and evaluate the effectiveness of this Directive, there is a need for collection of relevant data, from available data, with regard to the implementation of the rights set out in this Directive. Such data include data recorded by the judicial authorities and by law enforcement authorities and, as far as possible, administrative data compiled by healthcare and social welfare services as regards the rights set out in this Directive, in particular in relation to the number of children given access to a lawyer, the number of individual assessments carried out, the number of audiovisual recordings of questioning and the number of children deprived of liberty.

- (65) Member States should respect and guarantee the rights set out in this Directive, without any discrimination based on any ground such as race, colour, sex, sexual orientation, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability or birth.
- (66) This Directive upholds the fundamental rights and principles as recognised by the Charter and by the ECHR, including the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, the integration of persons with disabilities, the right to an effective remedy and to a fair trial, the presumption of innocence, and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.
- (67) This Directive lays down minimum rules. Member States should be able to extend the rights laid down in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection provided for by Member States should never fall below the standards provided by the Charter or the ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights.
- (68) Since the objectives of this Directive, namely setting common minimum standards on procedural safeguards for children who are suspects or accused persons in criminal proceedings, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effect, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (69) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (70) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application.
- (71) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents ⁽¹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down common minimum rules concerning certain rights of children who are:

- (a) suspects or accused persons in criminal proceedings; or
- (b) subject to European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA (requested persons).

⁽¹⁾ OJ C 369, 17.12.2011, p. 14.

*Article 2***Scope**

1. This Directive applies to children who are suspects or accused persons in criminal proceedings. It applies until the final determination of the question whether the suspect or accused person has committed a criminal offence, including, where applicable, sentencing and the resolution of any appeal.
2. This Directive applies to children who are requested persons from the time of their arrest in the executing Member State, in accordance with Article 17.
3. With the exception of Article 5, point (b) of Article 8(3), and Article 15, insofar as those provisions refer to a holder of parental responsibility, this Directive, or certain provisions thereof, applies to persons as referred to in paragraphs 1 and 2 of this Article, where such persons were children when they became subject to the proceedings but have subsequently reached the age of 18, and the application of this Directive, or certain provisions thereof, is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned. Member States may decide not to apply this Directive when the person concerned has reached the age of 21.
4. This Directive applies to children who were not initially suspects or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority.
5. This Directive does not affect national rules determining the age of criminal responsibility.
6. Without prejudice to the right to a fair trial, in respect of minor offences:
 - (a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or
 - (b) where deprivation of liberty cannot be imposed as a sanction,

this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters.

In any event, this Directive shall fully apply where the child is deprived of liberty, irrespective of the stage of the criminal proceedings.

*Article 3***Definitions**

For the purposes of this Directive the following definitions apply:

- (1) 'child' means a person below the age of 18;
- (2) 'holder of parental responsibility' means any person having parental responsibility over a child;
- (3) 'parental responsibility' means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effects, including rights of custody and rights of access.

With regard to point (1) of the first paragraph, where it is uncertain whether a person has reached the age of 18, that person shall be presumed to be a child.

*Article 4***Right to information**

1. Member States shall ensure that when children are made aware that they are suspects or accused persons in criminal proceedings, they are informed promptly about their rights in accordance with Directive 2012/13/EU and about general aspects of the conduct of the proceedings.

Member States shall also ensure that children are informed about the rights set out in this Directive. That information shall be provided as follows:

- (a) promptly when children are made aware that they are suspects or accused persons, in respect of:
 - (i) the right to have the holder of parental responsibility informed, as provided for in Article 5;
 - (ii) the right to be assisted by a lawyer, as provided for in Article 6;
 - (iii) the right to protection of privacy, as provided for in Article 14;
 - (iv) the right to be accompanied by the holder of parental responsibility during stages of the proceedings other than court hearings, as provided for in Article 15(4);
 - (v) the right to legal aid, as provided for in Article 18;
 - (b) at the earliest appropriate stage in the proceedings, in respect of:
 - (i) the right to an individual assessment, as provided for in Article 7;
 - (ii) the right to a medical examination, including the right to medical assistance, as provided for in Article 8;
 - (iii) the right to limitation of deprivation of liberty and to the use of alternative measures, including the right to periodic review of detention, as provided for in Articles 10 and 11;
 - (iv) the right to be accompanied by the holder of parental responsibility during court hearings, as provided for in Article 15(1);
 - (v) the right to appear in person at trial, as provided for in Article 16;
 - (vi) the right to effective remedies, as provided for in Article 19;
 - (c) upon deprivation of liberty in respect of the right to specific treatment during deprivation of liberty, as provided for in Article 12.
2. Member States shall ensure that the information referred to in paragraph 1 is given in writing, orally, or both, in simple and accessible language, and that the information given is noted, using the recording procedure in accordance with national law.
3. Where children are provided with a Letter of Rights pursuant to Directive 2012/13/EU, Member States shall ensure that such a Letter includes a reference to their rights under this Directive.

*Article 5***Right of the child to have the holder of parental responsibility informed**

1. Member States shall ensure that the holder of parental responsibility is provided, as soon as possible, with the information that the child has a right to receive in accordance with Article 4.

2. The information referred to in paragraph 1 shall be provided to another appropriate adult who is nominated by the child and accepted as such by the competent authority where providing that information to the holder of parental responsibility:

- (a) would be contrary to the child's best interests;
- (b) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown;
- (c) could, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings.

Where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the competent authority, the competent authority shall, taking into account the child's best interests, designate, and provide the information to, another person. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.

3. Where the circumstances which led to the application of point (a), (b) or (c) of paragraph 2 cease to exist, any information that the child receives in accordance with Article 4, and which remains relevant in the course of the proceedings, shall be provided to the holder of parental responsibility.

Article 6

Assistance by a lawyer

1. Children who are suspects or accused persons in criminal proceedings have the right of access to a lawyer in accordance with Directive 2013/48/EU. Nothing in this Directive, in particular in this Article, shall affect that right.

2. Member States shall ensure that children are assisted by a lawyer in accordance with this Article in order to allow them to exercise the rights of the defence effectively.

3. Member States shall ensure that children are assisted by a lawyer without undue delay once they are made aware that they are suspects or accused persons. In any event, children shall be assisted by a lawyer from whichever of the following points in time is the earliest:

- (a) before they are questioned by the police or by another law enforcement or judicial authority;
- (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 4;
- (c) without undue delay after deprivation of liberty;
- (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

4. Assistance by a lawyer shall include the following:

- (a) Member States shall ensure that children have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;
- (b) Member States shall ensure that children are assisted by a lawyer when they are questioned, and that the lawyer is able to participate effectively during questioning. Such participation shall be conducted in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise or essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure under national law;

(c) Member States shall ensure that children are, as a minimum, assisted by a lawyer during the following investigative or evidence-gathering acts, where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:

- (i) identity parades;
- (ii) confrontations;
- (iii) reconstructions of the scene of a crime.

5. Member States shall respect the confidentiality of communication between children and their lawyer in the exercise of the right to be assisted by a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

6. Provided that this complies with the right to a fair trial, Member States may derogate from paragraph 3 where assistance by a lawyer is not proportionate in the light of the circumstances of the case, taking into account the seriousness of the alleged criminal offence, the complexity of the case and the measures that could be taken in respect of such an offence, it being understood that the child's best interests shall always be a primary consideration.

In any event, Member States shall ensure that children are assisted by a lawyer:

- (a) when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and
- (b) during detention.

Member States shall also ensure that deprivation of liberty is not imposed as a criminal sentence, unless the child has been assisted by a lawyer in such a way as to allow the child to exercise the rights of the defence effectively and, in any event, during the trial hearings before a court.

7. Where the child is to be assisted by a lawyer in accordance with this Article but no lawyer is present, the competent authorities shall postpone the questioning of the child, or other investigative or evidence-gathering acts provided for in point (c) of paragraph 4, for a reasonable period of time in order to allow for the arrival of the lawyer or, where the child has not nominated a lawyer, to arrange a lawyer for the child.

8. In exceptional circumstances, and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence.

Member States shall ensure that the competent authorities, when applying this paragraph, shall take the child's best interests into account.

A decision to proceed to questioning in the absence of the lawyer under this paragraph may be taken only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.

Article 7

Right to an individual assessment

1. Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.

2. For that purpose children who are suspects or accused persons in criminal proceedings shall be individually assessed. The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have.
3. The extent and detail of the individual assessment may vary depending on the circumstances of the case, the measures that can be taken if the child is found guilty of the alleged criminal offence, and whether the child has, in the recent past, been the subject of an individual assessment.
4. The individual assessment shall serve to establish and to note, in accordance with the recording procedure in the Member State concerned, such information about the individual characteristics and circumstances of the child as might be of use to the competent authorities when:
 - (a) determining whether any specific measure to the benefit of the child is to be taken;
 - (b) assessing the appropriateness and effectiveness of any precautionary measures in respect of the child;
 - (c) taking any decision or course of action in the criminal proceedings, including when sentencing.
5. The individual assessment shall be carried out at the earliest appropriate stage of the proceedings and, subject to paragraph 6, before indictment.
6. In the absence of an individual assessment, an indictment may nevertheless be presented provided that this is in the child's best interests and that the individual assessment is in any event available at the beginning of the trial hearings before a court.
7. Individual assessments shall be carried out with the close involvement of the child. They shall be carried out by qualified personnel, following, as far as possible, a multidisciplinary approach and involving, where appropriate, the holder of parental responsibility, or another appropriate adult as referred to in Articles 5 and 15, and/or a specialised professional.
8. If the elements that form the basis of the individual assessment change significantly, Member States shall ensure that the individual assessment is updated throughout the criminal proceedings.
9. Member States may derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, provided that it is compatible with the child's best interests.

Article 8

Right to a medical examination

1. Member States shall ensure that children who are deprived of liberty have the right to a medical examination without undue delay with a view, in particular, to assessing their general mental and physical condition. The medical examination shall be as non-invasive as possible and shall be carried out by a physician or another qualified professional.
2. The results of the medical examination shall be taken into account when determining the capacity of the child to be subject to questioning, other investigative or evidence-gathering acts, or any measures taken or envisaged against the child.
3. The medical examination shall be carried out either on the initiative of the competent authorities, in particular where specific health indications call for such an examination, or on a request by any of the following:
 - (a) the child;
 - (b) the holder of parental responsibility, or another appropriate adult as referred to in Articles 5 and 15;
 - (c) the child's lawyer.

4. The conclusion of the medical examination shall be recorded in writing. Where required, medical assistance shall be provided.
5. Member States shall ensure that another medical examination is carried out where the circumstances so require.

Article 9

Audiovisual recording of questioning

1. Member States shall ensure that questioning of children by police or other law enforcement authorities during the criminal proceedings is audio-visually recorded where this is proportionate in the circumstances of the case, taking into account, inter alia, whether a lawyer is present or not and whether the child is deprived of liberty or not, provided that the child's best interests are always a primary consideration.
2. In the absence of audiovisual recording, questioning shall be recorded in another appropriate manner, such as by written minutes which are duly verified.
3. This Article shall be without prejudice to the possibility to ask questions for the sole purpose of the identification of the child without audiovisual recording.

Article 10

Limitation of deprivation of liberty

1. Member States shall ensure that deprivation of liberty of a child at any stage of the proceedings is limited to the shortest appropriate period of time. Due account shall be taken of the age and individual situation of the child, and of the particular circumstances of the case.
2. Member States shall ensure that deprivation of liberty, in particular detention, shall be imposed on children only as a measure of last resort. Member States shall ensure that any detention is based on a reasoned decision, subject to judicial review by a court. Such a decision shall also be subject to periodic review, at reasonable intervals of time, by a court, either *ex officio* or at the request of the child, of the child's lawyer, or of a judicial authority which is not a court. Without prejudice to judicial independence, Member States shall ensure that decisions to be taken pursuant to this paragraph are taken without undue delay.

Article 11

Alternative measures

Member States shall ensure that, where possible, the competent authorities have recourse to measures alternative to detention (alternative measures).

Article 12

Specific treatment in the case of deprivation of liberty

1. Member States shall ensure that children who are detained are held separately from adults, unless it is considered to be in the child's best interests not to do so.

2. Member States shall also ensure that children who are kept in police custody are held separately from adults, unless:

- (a) it is considered to be in the child's best interests not to do so; or
- (b) in exceptional circumstances, it is not possible in practice to do so, provided that children are held together with adults in a manner that is compatible with the child's best interests.

3. Without prejudice to paragraph 1, when a detained child reaches the age of 18, Member States shall provide for the possibility to continue to hold that person separately from other detained adults where warranted, taking into account the circumstances of the person concerned, provided that this is compatible with the best interests of children who are detained with that person.

4. Without prejudice to paragraph 1, and taking into account paragraph 3, children may be detained with young adults, unless this is contrary to the child's best interests.

5. When children are detained, Member States shall take appropriate measures to:

- (a) ensure and preserve their health and their physical and mental development;
- (b) ensure their right to education and training, including where the children have physical, sensory or learning disabilities;
- (c) ensure the effective and regular exercise of their right to family life;
- (d) ensure access to programmes that foster their development and their reintegration into society; and
- (e) ensure respect for their freedom of religion or belief.

The measures taken pursuant to this paragraph shall be proportionate and appropriate to the duration of the detention.

Points (a) and (e) of the first subparagraph shall also apply to situations of deprivation of liberty other than detention. The measures taken shall be proportionate and appropriate to such situations of deprivation of liberty.

Points (b), (c), and (d) of the first subparagraph shall apply to situations of deprivation of liberty other than detention only to the extent that is appropriate and proportionate in the light of the nature and duration of such situations.

6. Member States shall endeavour to ensure that children who are deprived of liberty can meet with the holder of parental responsibility as soon as possible, where such a meeting is compatible with investigative and operational requirements. This paragraph shall be without prejudice to the nomination or designation of another appropriate adult pursuant to Article 5 or 15.

Article 13

Timely and diligent treatment of cases

1. Member States shall take all appropriate measures to ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence.

2. Member States shall take appropriate measures to ensure that children are always treated in a manner which protects their dignity and which is appropriate to their age, maturity and level of understanding, and which takes into account any special needs, including any communication difficulties, that they may have.

*Article 14***Right to protection of privacy**

1. Member States shall ensure that the privacy of children during criminal proceedings is protected.
2. To that end, Member States shall either provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public.
3. Member States shall take appropriate measures to ensure that the records referred to in Article 9 are not publicly disseminated.
4. Member States shall, while respecting freedom of expression and information, and freedom and pluralism of the media, encourage the media to take self-regulatory measures in order to achieve the objectives set out in this Article.

*Article 15***Right of the child to be accompanied by the holder of parental responsibility during the proceedings**

1. Member States shall ensure that children have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved.
2. A child shall have the right to be accompanied by another appropriate adult who is nominated by the child and accepted as such by the competent authority where the presence of the holder of parental responsibility accompanying the child during court hearings:
 - (a) would be contrary to the child's best interests;
 - (b) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown; or
 - (c) would, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings.

Where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the competent authority, the competent authority shall, taking into account the child's best interests, designate another person to accompany the child. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.

3. Where the circumstances which led to an application of point (a), (b) or (c) of paragraph 2 cease to exist, the child shall have the right to be accompanied by the holder of parental responsibility during any remaining court hearings.
4. In addition to the right provided for under paragraph 1, Member States shall ensure that children have the right to be accompanied by the holder of parental responsibility, or by another appropriate adult as referred to in paragraph 2, during stages of the proceedings other than court hearings at which the child is present where the competent authority considers that:
 - (a) it is in the child's best interests to be accompanied by that person; and
 - (b) the presence of that person will not prejudice the criminal proceedings.

*Article 16***Right of children to appear in person at, and participate in, their trial**

1. Member States shall ensure that children have the right to be present at their trial and shall take all necessary measures to enable them to participate effectively in the trial, including by giving them the opportunity to be heard and to express their views.
2. Member States shall ensure that children who were not present at their trial have the right to a new trial or to another legal remedy, in accordance with, and under the conditions set out in, Directive (EU) 2016/343.

*Article 17***European arrest warrant proceedings**

Member States shall ensure that the rights referred to in Articles 4, 5, 6 and 8, Articles 10 to 15 and Article 18 apply *mutatis mutandis*, in respect of children who are requested persons, upon their arrest pursuant to European arrest warrant proceedings in the executing Member State.

*Article 18***Right to legal aid**

Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to be assisted by a lawyer pursuant to Article 6.

*Article 19***Remedies**

Member States shall ensure that children who are suspects or accused persons in criminal proceedings and children who are requested persons have an effective remedy under national law in the event of a breach of their rights under this Directive.

*Article 20***Training**

1. Member States shall ensure that staff of law enforcement authorities and of detention facilities who handle cases involving children, receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child.
2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Member States, and with due respect for the role of those responsible for the training of judges and prosecutors, Member States shall take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field, effective access to specific training, or both.

3. With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of specific training as referred to in paragraph 2 to lawyers who deal with criminal proceedings involving children.

4. Through their public services or by funding child support organisations, Member States shall encourage initiatives enabling those providing children with support and restorative justice services to receive adequate training to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

Article 21

Data collection

Member States shall by 11 June 2021 and every three years thereafter, send to the Commission available data showing how the rights set out in this Directive have been implemented.

Article 22

Costs

Member States shall meet the costs resulting from the application of Articles 7, 8 and 9 irrespective of the outcome of the proceedings, unless, as regards the costs resulting from the application of Article 8, they are covered by medical insurance.

Article 23

Non-regression

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law, in particular the UN Convention on the Rights of the Child, or the law of any Member State which provides a higher level of protection.

Article 24

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 11 June 2019. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

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

*Article 25***Report**

The Commission shall, by 11 June 2022, submit a report to the European Parliament and to the Council assessing the extent to which the Member States have taken the necessary measures to comply with this Directive, including an evaluation of the application of Article 6, accompanied, if necessary, by legislative proposals.

*Article 26***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 27***Addressees**

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

Done at Strasbourg, 11 May 2016.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
J.A. HENNIS-PLASSCHAERT

DIRECTIVE (EU) 2016/801 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 11 May 2016****on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing
(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 points (a) and (b) of Article 79(2) thereof,

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

- (1) A number of amendments are to be made to Council Directives 2004/114/EC ⁽⁴⁾ and 2005/71/EC ⁽⁵⁾. In the interests of clarity, those Directives should be recast.
- (2) This Directive should respond to the need identified in the implementation reports on Directives 2004/114/EC and 2005/71/EC to remedy the identified weaknesses, to ensure increased transparency and legal certainty and to offer a coherent legal framework for different categories of third-country nationals coming to the Union. It should therefore simplify and streamline the existing provisions for those categories in a single instrument. Despite differences between the categories covered by this Directive, they also share a number of characteristics which makes it possible to address them through a common legal framework at Union level.
- (3) This Directive should contribute to the Stockholm Programme's aim of approximating national legislation on the conditions for entry and residence of third-country nationals. Immigration from outside the Union is one source of highly skilled people, and students and researchers are in particular increasingly sought after. They play an important role in forming the Union's key asset, human capital, and in ensuring smart, sustainable and inclusive growth, and therefore contribute to the achievement of the objectives of the Europe 2020 Strategy.
- (4) The implementation reports on Directives 2004/114/EC and 2005/71/EC pointed out certain insufficiencies, mainly in relation to admission conditions, rights, procedural safeguards, students' access to the labour market during their studies and intra-EU mobility provisions. Specific improvements were also considered necessary regarding the optional categories of third-country nationals. Subsequent wider consultations have also highlighted the need for better job-seeking possibilities for researchers and students and better protection of au pairs who are not covered by Directives 2004/114/EC and 2005/71/EC.

⁽¹⁾ OJ C 341, 21.11.2013, p. 50.

⁽²⁾ OJ C 114, 15.4. 2014, p. 42.

⁽³⁾ Position of the European Parliament of 25 February 2014 (not yet published in the Official Journal) and position of the Council at first reading of 10 March 2016 (not yet published in the Official Journal).

⁽⁴⁾ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ L 375, 23.12.2004, p. 12).

⁽⁵⁾ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289, 3.11.2005, p. 15).

- (5) For the gradual establishment of an area of freedom, security and justice, the Treaty on the Functioning of the European Union (TFEU) provides for measures to be adopted in the fields of asylum, immigration and the protection of the rights of third-country nationals.
- (6) This Directive should also aim at fostering people-to-people contacts and mobility, as important elements of the Union's external policy, notably vis-à-vis the countries of the European Neighbourhood Policy or the Union's strategic partners. It should allow for a better contribution to the Global Approach to Migration and Mobility and its Mobility Partnerships which offer a concrete framework for dialogue and cooperation between the Member States and third countries, including in facilitating and organising legal migration.
- (7) Migration for the purposes set out in this Directive should promote the generation and acquisition of knowledge and skills. It constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the Member State concerned, while strengthening cultural links and enhancing cultural diversity.
- (8) This Directive should promote the Union as an attractive location for research and innovation and advance it in the global competition for talent and, in so doing, lead to an increase in the Union's overall competitiveness and growth rates while creating jobs that make a greater contribution to GDP growth. Opening the Union up to third-country nationals who may be admitted for the purpose of research is also part of the Innovation Union flagship initiative. Creating an open labour market for Union researchers and for researchers from third countries was also affirmed as a key aim of the European Research Area, a unified area in which researchers, scientific knowledge and technology circulate freely.
- (9) It is appropriate to facilitate the admission of third-country nationals applying for the purpose of carrying out a research activity through an admission procedure which does not depend on their legal relationship with the host research organisation and by no longer requiring a work permit in addition to an authorisation. This procedure should be based on collaboration between research organisations and the immigration authorities in Member States. It should give the former a key role in the admission procedure with a view to facilitating and speeding up the entry of third-country nationals applying for the purpose of carrying out a research activity in the Union while preserving Member States' prerogatives with respect to immigration policy. Research organisations, which Member States should have the possibility to approve in advance, should be able to sign either a hosting agreement or a contract with a third-country national for the purpose of carrying out a research activity. Member States should issue an authorisation on the basis of the hosting agreement or the contract if the conditions for entry and residence are met.
- (10) As the efforts to be made to achieve the target of investing 3 % of GDP in research largely concern the private sector, this sector should be encouraged, where appropriate, to recruit more researchers in the years to come.
- (11) In order to make the Union more attractive for third-country nationals wishing to carry out a research activity in the Union, their family members, as defined in Council Directive 2003/86/EC ⁽¹⁾, should be allowed to accompany them and benefit from intra-EU mobility provisions. Those family members should have access to the labour market in the first Member State and, in the case of long-term mobility, in the second Member States, except in exceptional circumstances such as particularly high levels of unemployment where Member States should retain the possibility to apply a test demonstrating that the post cannot be filled from within the domestic labour market for a period not exceeding 12 months. With the exception of derogations provided for in this Directive, all the provisions of Directive 2003/86/EC should apply, including grounds for rejection or withdrawal or refusal of renewal. Consequently, residence permits of family members could be withdrawn or their renewal refused if the authorisation of the researcher they are accompanying comes to an end and they do not enjoy any autonomous right of residence.
- (12) Where appropriate, Member States should be encouraged to treat doctoral candidates as researchers for the purposes of this Directive.
- (13) Implementation of this Directive should not encourage a brain drain from emerging or developing countries. Measures to support researchers' reintegration into their countries of origin should be taken in partnership with the countries of origin with a view to establishing a comprehensive migration policy.

⁽¹⁾ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

- (14) In order to promote Europe as a whole as a world centre of excellence for studies and training, the conditions for entry and residence of those who wish to come to the Union for these purposes should be improved and simplified. This is in line with the objectives of the agenda for the modernisation of Europe's higher education systems, in particular within the context of the internationalisation of European higher education. The approximation of the Member States' relevant national legislation is part of this endeavour. In this context and in line with the Council conclusions on the modernisation of higher education ⁽¹⁾, the term 'higher education' encompasses all tertiary institutions which may include, inter alia, universities, universities of applied science, institutes of technology, *grandes écoles*, business schools, engineering schools, IUTs, colleges of higher education, professional schools, polytechnics and academies.
- (15) The extension and deepening of the Bologna Process launched through the Bologna Joint Declaration of the European Ministers of Education of 19 June 1999 has led to more comparable, compatible and coherent systems of higher education in participating countries but also beyond them. This is because Member States have supported the mobility of students and higher education institutions have integrated it in their curricula. This needs to be reflected through improved intra-EU mobility provisions for students. Making European higher education attractive and competitive is one of the objectives of the Bologna Declaration. The Bologna Process led to the establishment of the European Higher Education Area. Its three-cycle structure with easily readable programmes and degrees as well as the introduction of qualifications frameworks have made it more attractive for third-country nationals to study in Europe.
- (16) The duration and other conditions of preparatory courses for students covered by this Directive should be determined by Member States in accordance with their national law.
- (17) Evidence of acceptance of a third-country national by a higher education institution could include, among other possibilities, a letter or certificate confirming enrolment.
- (18) Third-country nationals who apply to be admitted as trainees should provide evidence of having obtained a higher education degree within the two years preceding the date of their application or of pursuing a course of study in a third country that leads to a higher education degree. They should also present a training agreement which contains a description of the training programme, its educational objective or learning components, its duration and the conditions under which the trainee will be supervised, proving that they will benefit from genuine training and not be used as normal workers. In addition, host entities may be required to substantiate that the traineeship does not replace a job. Where specific conditions already exist in national law, collective agreements or practices for trainees, Member States should be able to require third-country nationals who apply to be admitted as trainees to meet those specific conditions.
- (19) Trainee employees who come to work in the Union in the context of an intra-corporate transfer are not covered by this Directive, as they fall under the scope of Directive 2014/66/EU of the European Parliament and of the Council ⁽²⁾.
- (20) This Directive should support the aims of the European Voluntary Service to develop solidarity, mutual understanding and tolerance among young people and the societies they live in, while contributing to strengthening social cohesion and promoting young people's active citizenship. In order to ensure access to the European Voluntary Service in a consistent manner across the Union, Member States should apply the provisions of this Directive to third-country nationals applying for the purpose of European Voluntary Service.
- (21) Member States should have the possibility to apply the provisions of this Directive to school pupils, volunteers other than those under the European Voluntary Service and au pairs, in order to facilitate their entry and residence and ensure their rights.
- (22) If Member States decide to apply this Directive to school pupils, they are encouraged to ensure that the national admission procedure for teachers exclusively accompanying pupils within the framework of a pupil exchange scheme or an educational project is coherent with the procedure for school pupils provided for in this Directive.

⁽¹⁾ OJ C 372, 20.12.2011, p. 36.

⁽²⁾ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1).

- (23) Au pairing contributes to fostering people-to-people contacts by giving third-country nationals an opportunity to improve their linguistic skills and develop their knowledge of and cultural links with the Member States. At the same time, third-country national au pairs could be exposed to risks of abuse. In order to ensure fair treatment of au pairs and address their specific needs, it should be possible for Member States to apply the provisions of this Directive regarding the entry and residence of au pairs
- (24) If third-country nationals can prove that they are in receipt of resources throughout the period of their stay in the Member State concerned that derive from a grant, a fellowship or a scholarship, a valid work contract, a binding job offer or a financial undertaking by a pupil exchange scheme organisation, an entity hosting trainees, a voluntary service scheme organisation, a host family or an organisation mediating au pairs, Member States should take such resources into account in assessing the availability of sufficient resources. Member States should be able to lay down an indicative reference amount which they regard as constituting 'sufficient resources' that might vary for each one of the respective categories of third-country nationals.
- (25) Member States are encouraged to allow the applicant to present documents and information in an official language of the Union, other than their own official language or languages, determined by the Member State concerned.
- (26) Member States should have the possibility to provide for an approval procedure for public or private research organisations or both wishing to host third-country national researchers or for higher education institutions wishing to host third-country national students. This approval should be in accordance with the procedures set out in the national law or administrative practice of the Member State concerned. Applications to approved research organisations or higher education institutions should be facilitated and should speed up the entry of third-country nationals coming to the Union for the purpose of research or studies.
- (27) Member States should have the possibility to provide for an approval procedure for respective host entities wishing to host third-country national pupils, trainees or volunteers. Member States should have the possibility to apply this procedure to some or all of the categories of the host entities. This approval should be in accordance with the procedures set out in the national law or administrative practice of the Member State concerned. Applications to approved host entities should speed up the entry of third-country nationals coming to the Union for the purpose of training, voluntary service or pupil exchange schemes or educational projects.
- (28) If Member States establish approval procedures for host entities, they should be able to decide to either allow admission only through approved host entities or to establish an approval procedure while also allowing admission through non-approved host entities.
- (29) This Directive should be without prejudice to the right of Member States to issue authorisations for the purpose of studies, research or training other than those regulated by this Directive to third-country nationals who fall outside its scope.
- (30) Once all the general and specific conditions for admission are fulfilled, Member States should issue an authorisation, within specified time limits. If a Member State issues residence permits only on its territory and all the conditions of this Directive relating to admission are fulfilled, the Member State should grant the third-country national concerned the requisite visa and should ensure that the competent authorities effectively cooperate for that purpose. In the event that the Member State does not issue visas, it should grant the third-country national concerned an equivalent permit allowing entry.
- (31) Authorisations should mention the status of the third-country national concerned. It should be possible for Member States to indicate additional information in paper format or store it in electronic format, provided this does not amount to additional conditions.
- (32) The different periods of duration of the authorisations under this Directive should reflect the specific nature of the stay of each category of third-country nationals covered by this Directive.

- (33) Member States should have the right to determine that the total duration of residence of students does not exceed the maximum duration of studies, as provided for in national law. In this respect, the maximum duration of studies could also include, if provided for by the national law of the Member State concerned, the possible extension of studies for the purpose of repeating one or more years of studies.
- (34) It should be possible for Member States to charge applicants for handling applications for authorisations and notifications. The level of the fees should not be disproportionate or excessive in order not to constitute an obstacle to the objectives of this Directive.
- (35) The rights granted to third-country nationals falling under the scope of this Directive should not depend on the form of the authorisation each Member State issues.
- (36) It should be possible to refuse admission for the purposes of this Directive on duly justified grounds. In particular, it should be possible to refuse admission if a Member State considers, on the basis of an assessment of the facts in an individual case and taking into account the principle of proportionality, that the third-country national concerned is a potential threat to public policy, public security or public health.
- (37) The objective of this Directive is not to regulate the admission and residence of third-country nationals for the purpose of employment and it does not aim to harmonise national laws or practices with respect to workers' status. It is possible, nevertheless, that in some Member States specific categories of third-country nationals covered by this Directive are considered to be in an employment relationship on the basis of national law, collective agreements or practice. Where a Member State considers third-country national researchers, volunteers, trainees or au pairs to be in an employment relationship, that Member State should retain the right to determine volumes of admission of the category or categories concerned in accordance with Article 79(5) TFEU.
- (38) Where a third-country national researcher, volunteer, trainee or au pair applies to be admitted to enter into an employment relationship in a Member State, it should be possible for that Member State to apply a test demonstrating that the post cannot be filled from within the domestic labour market.
- (39) As regards students, volumes of admission should not apply since, even if they are allowed to work during their studies in accordance with the conditions provided for in this Directive, they seek admission to the territory of the Member States to pursue as their main activity a full-time course of study which could encompass a compulsory training.
- (40) Where, after having been admitted to the territory of the Member State concerned, a researcher, volunteer, trainee or au pair applies to renew the authorisation to enter into or continue to be in an employment relationship in the Member State concerned, with the exception of a researcher who continues the employment relationship with the same host entity, it should be possible for that Member State to apply a test demonstrating that the post cannot be filled from within the domestic labour market.
- (41) In case of doubts concerning the grounds of the application for admission, Member States should be able to carry out appropriate checks or require evidence in order to assess, on a case by case basis, the applicant's intended research, studies, training, voluntary service, pupil exchange scheme or educational project or au pairing and fight against abuse and misuse of the procedure set out in this Directive.
- (42) Where the information provided is incomplete, Member States should inform the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it. Where additional information has not been provided within that deadline, the application could be rejected.
- (43) National authorities should notify the applicant of the decision on the application. They should do so in writing as soon as possible and at the latest within the period specified in this Directive.
- (44) This Directive aims to facilitate intra-EU mobility for researchers and students, inter alia by reducing the administrative burden related to mobility in several Member States. For this purpose, this Directive sets up a specific intra-EU mobility scheme whereby a third-country national who holds an authorisation for the purpose of

research or studies issued by the first Member State is entitled to enter, stay and carry out part of the research activity or studies in one or several second Member States in accordance with the provisions governing mobility under this Directive.

- (45) In order to enable researchers to move easily from one research organisation to another for the purpose of research, their short-term mobility should cover stays in second Member States for a period of up to 180 days in any 360-day period per Member State. Long-term mobility for researchers should cover stays in one or several second Member States for a period of more than 180 days per Member State. Family members of researchers should be entitled to accompany the researcher during mobility. The procedure for their mobility should be aligned to that of the researcher they accompany.
- (46) As regards students who are covered by Union or multilateral programmes or an agreement between two or more higher education institutions, in order to ensure continuity of their studies, this Directive should provide for mobility in one or several second Member States for a period of up to 360 days per Member State.
- (47) Where a researcher or a student moves to a second Member State on the basis of a notification procedure and a document is necessary to facilitate access to services and rights, it should be possible for the second Member State to issue a document to attest that the researcher or the student is entitled to stay on the territory of that Member State. Such a document should not constitute an additional condition to benefit from the rights provided for in this Directive and should only be of a declaratory nature.
- (48) While the specific mobility scheme established by this Directive should set up autonomous rules regarding entry and stay for the purpose of research or studies in Member States other than the one that issued the initial authorisation, all the other rules governing the movement of persons across borders as laid down in the relevant provisions of the Schengen *acquis* should continue to apply.
- (49) Where the authorisation is issued by a Member State not applying the Schengen *acquis* in full and the researcher, his or her family members or the student, in the framework of intra-EU mobility, crosses an external border within the meaning of Regulation (EU) 2016/399 of the European Parliament and of the Council ⁽¹⁾, a Member State should be entitled to require evidence proving that the researcher or the student is moving to its territory for the purpose of research or studies or that the family members are moving to its territory for the purpose of accompanying the researcher in the framework of mobility. In addition, in case of crossing of an external border within the meaning of Regulation (EU) 2016/399, the Member States applying the Schengen *acquis* in full should consult the Schengen information system and should refuse entry or object to the mobility for persons for whom an alert for the purpose of refusing entry or stay, as referred to in Regulation (EC) No 1987/2006 of the European Parliament and of the Council ⁽²⁾, has been issued in that system.
- (50) This Directive should allow second Member States to request that a researcher or a student, who moves on the basis of an authorisation issued by the first Member State and does not or no longer fulfils the conditions for mobility, leaves their territory. Where the researcher or the student has a valid authorisation issued by the first Member State, the second Member State should be able to request that researcher or student to go back to the first Member State in accordance with Directive 2008/115/EC of the European Parliament and of the Council ⁽³⁾. Where the mobility is allowed by the second Member State on the basis of the authorisation issued by the first Member State and that authorisation is withdrawn or has expired during the period of mobility, it should be possible for the second Member State to either decide to return the researcher or the student to a third country, in accordance with Directive 2008/115/EC, or request without delay the first Member State to allow re-entry of the researcher or student to its territory. In this latter case, the first Member State should issue the researcher or student with a document allowing re-entry to its territory.
- (51) Union immigration policies and rules, on the one hand, and Union policies and programmes favouring mobility of researchers and students at Union level, on the other hand, should complement each other more. When determining the period of validity of the authorisation issued to researchers and students, Member States should take into account the planned mobility to other Member States, in accordance with the provisions on mobility.

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

⁽²⁾ Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).

⁽³⁾ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

Researchers and students covered by Union or multilateral programmes that comprise mobility measures or agreements between two or more higher education institutions should be entitled to receive authorisations covering at least two years, provided that they fulfil the relevant admission conditions for that period.

- (52) In order to allow students to cover part of the cost of their studies and, if possible, to gain practical experience, they should be given, during their studies, access to the labour market of the Member State where the studies are undertaken, under the conditions set out in this Directive. Students should be allowed to work a certain minimum amount of hours as specified in this Directive for that purpose. The principle of access for students to the labour market should be the general rule. However, in exceptional circumstances, Member States should be able to take into account the situation of their national labour markets.
- (53) As part of the drive to ensure a well-qualified workforce for the future, students who graduate in the Union should have the possibility to remain on the territory of the Member State concerned for the period specified in this Directive with the intention to identify work opportunities or to set up a business. Researchers should also have that possibility upon completion of their research activity as defined in the hosting agreement. In order to be issued a residence permit for that purpose, students and researchers may be asked to provide evidence in accordance with the requirements of this Directive. Once Member States issue them such a residence permit, they cease to be considered as researchers or students within the meaning of this Directive. Member States should be able to check, after a minimum time period established in this Directive, if they have a genuine chance of being employed or of launching a business. This possibility is without prejudice to other reporting obligations provided for in national law for other purposes. The authorisation issued for the purpose of identifying work opportunities or setting up a business should not grant any automatic right of access to the labour market or to set up a business. Member States should retain their right to take into consideration the situation of their labour market when the third-country national, who was issued an authorisation to remain on the territory for the purpose of job searching or to set up a business, applies for a work permit to fill a post.
- (54) The fair treatment of third-country nationals covered by this Directive should be ensured in accordance with Article 79 TFEU. Researchers should enjoy equal treatment with nationals of the Member State concerned as regards Article 12(1) and (4) of Directive 2011/98/EU of the European Parliament and of the Council ⁽¹⁾ subject to the possibility for that Member State to limit equal treatment in the specific cases provided for in this Directive. Directive 2011/98/EU should continue to apply to students, including the restrictions provided for in that Directive. Directive 2011/98/EU should apply to trainees, volunteers and au pairs when they are considered to be in an employment relationship in the Member State concerned. Trainees, volunteers and au pairs, when they are not considered to be in an employment relationship in the Member State concerned, as well as school pupils, should enjoy equal treatment with nationals of the Member State concerned as regards a minimum set of rights as provided for in this Directive. This includes access to goods and services, which does not cover study or vocational grants or loans.
- (55) Equal treatment as granted to researchers and students, as well as trainees, volunteers and au pairs when they are considered to be in an employment relationship in the Member State concerned, includes equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council ⁽²⁾. This Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the third-country nationals falling within its scope. In addition, this Directive does not grant rights in relation to situations which lie outside the scope of Union law, such as in relation to family members residing in a third country. That should not affect, however, the right of survivors who derive rights from third-country nationals falling under the scope of this Directive, where applicable, to receive survivors' pensions when residing in a third country.
- (56) In many Member States, the right to family benefits is conditional upon a certain connection with that Member State since the benefits are designed to support a positive demographic development in order to secure the future work force in that Member State. Therefore, this Directive should not affect the right of a Member State to restrict, under certain conditions, equal treatment in respect of family benefits when the researcher and the accompanying family members are staying temporarily in that Member State.

⁽¹⁾ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (OJ L 343, 23.12.2011, p. 1).

⁽²⁾ 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).

- (57) In the event of mobility between Member States, Regulation (EU) No 1231/2010 of the European Parliament and of the Council ⁽¹⁾ applies. This Directive should not confer more rights than those already provided for in existing Union law in the field of social security for third-country nationals who have cross-border interests between Member States.
- (58) This Directive should be applied without prejudice to more favourable provisions contained in Union law and applicable international instruments.
- (59) The residence permits provided for in this Directive should be issued by the competent authorities of the Member State using the uniform format as laid down in Council Regulation (EC) No 1030/2002 ⁽²⁾.
- (60) Each Member State should ensure that adequate and regularly updated information is made available to the general public, notably on the internet, concerning the host entities approved for the purposes of this Directive and the conditions and procedures for admission of third-country nationals to the territory of the Member States for the purposes of this Directive.
- (61) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in accordance with Article 6 of the Treaty on European Union (TEU).
- (62) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.
- (63) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽³⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (64) Since the objective of this Directive, namely to determine the conditions of entry and residence of third-country nationals for the purposes of research, studies, training and European Voluntary Service, as mandatory provisions, and pupil exchange, voluntary service other than the European Voluntary Service or au pairing, as optional provisions, cannot be sufficiently achieved by the Member States and can rather, by reason of its scale or effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (65) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to TEU and TFEU, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (66) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark annexed to TEU and TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (67) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to Directives 2004/114/EC and 2005/71/EC. The obligation to transpose the provisions which are unchanged arises under those Directives.

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

⁽²⁾ Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).

⁽³⁾ OJ C 369, 17.12.2011, p. 14.

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

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Directive lays down:

- (a) the conditions of entry to, and residence for a period exceeding 90 days in, the territory of the Member States, and the rights, of third-country nationals, and where applicable their family members, for the purpose of research, studies, training or voluntary service in the European Voluntary Service, and where Member States so decide, pupil exchange schemes or educational projects, voluntary service other than the European Voluntary Service or au pairing;
- (b) the conditions of entry and residence, and the rights, of researchers, and where applicable their family members, and students, referred to in point (a), in Member States other than the Member State which first grants the third-country national an authorisation on the basis of this Directive.

Article 2

Scope

1. This Directive shall apply to third-country nationals who apply to be admitted or who have been admitted to the territory of a Member State for the purpose of research, studies, training or voluntary service in the European Voluntary Service. Member States may also decide to apply the provisions of this Directive to third-country nationals who apply to be admitted for the purpose of a pupil exchange scheme or educational project, voluntary service other than the European Voluntary Service or au pairing.

2. This Directive shall not apply to third-country nationals:

- (a) who seek international protection or who are beneficiaries of international protection in accordance with the Directive 2011/95/EU of the European Parliament and of the Council ⁽¹⁾ or who are beneficiaries of temporary protection in accordance with the Council Directive 2001/55/EC ⁽²⁾ in a Member State;
- (b) whose expulsion has been suspended for reasons of fact or of law;
- (c) who are family members of Union citizens who have exercised their right to free movement within the Union;
- (d) who enjoy long-term resident status in a Member State in accordance with Council Directive 2003/109/EC ⁽³⁾;
- (e) who enjoy, together with their family members, and irrespective of their nationality, rights of free movement equivalent to those of citizens of the Union under agreements either between the Union and its Member States and third countries or between the Union and third countries;
- (f) who come to the Union as trainee employees in the context of an intra-corporate transfer under Directive 2014/66/EU;
- (g) who are admitted as highly qualified workers in accordance with Council Directive 2009/50/EC ⁽⁴⁾.

⁽¹⁾ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

⁽²⁾ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).

⁽³⁾ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

⁽⁴⁾ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJ L 155, 18.6.2009, p. 17).

*Article 3***Definitions**

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

- (1) 'third-country national' means a person who is not a citizen of the Union within the meaning of Article 20(1) TFEU;
- (2) 'researcher' means a third-country national who holds a doctoral degree or an appropriate higher education qualification which gives that third-country national access to doctoral programmes, who is selected by a research organisation and admitted to the territory of a Member State for carrying out a research activity for which such qualification is normally required;
- (3) 'student' means a third-country national who has been accepted by a higher education institution and is admitted to the territory of a Member State to pursue as a main activity a full-time course of study leading to a higher education qualification recognised by that Member State, including diplomas, certificates or doctoral degrees in a higher education institution, which may cover a preparatory course prior to such education, in accordance with national law, or compulsory training;
- (4) 'school pupil' means a third-country national who is admitted to the territory of a Member State to follow a recognised, state or regional programme of secondary education equivalent to level 2 or 3 of the International Standard Classification of Education, in the context of a pupil exchange scheme or educational project operated by an education establishment in accordance with national law or administrative practice;
- (5) 'trainee' means a third-country national who holds a degree of higher education or is pursuing a course of study in a third country that leads to a higher education degree and who is admitted to the territory of a Member State for a training programme for the purpose of gaining knowledge, practice and experience in a professional environment;
- (6) 'volunteer' means a third-country national who is admitted to the territory of a Member State to participate in a voluntary service scheme;
- (7) 'voluntary service scheme' means a programme of practical solidarity activities, based on a scheme recognised as such by the Member State concerned or the Union, pursuing objectives of general interest for a non-profit cause, in which the activities are not remunerated, except for reimbursement of expenses and/or pocket money;
- (8) 'au pair' means a third-country national who is admitted to the territory of a Member State to be temporarily received by a family in order to improve his or her linguistic skills and knowledge of the Member State concerned in exchange for light housework and taking care of children;
- (9) 'research' means creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications;
- (10) 'research organisation' means any public or private organisation which conducts research;
- (11) 'education establishment' means a public or private secondary education establishment recognised by the Member State concerned or whose courses of study are recognised in accordance with national law or administrative practice on the basis of transparent criteria and which participates in a pupil exchange scheme or educational project for the purposes set out in this Directive;
- (12) 'educational project' means a set of educational actions developed by a Member State's education establishment in cooperation with similar establishments in a third country, with the purpose of sharing cultures and knowledge;
- (13) 'higher education institution' means any type of higher education institution recognised or considered as such in accordance with national law which, in accordance with national law or practice, offers recognised higher education degrees or other recognised tertiary level qualifications, whatever such establishments may be called, or any institution which, in accordance with national law or practice, offers vocational education or training at tertiary level;
- (14) 'host entity' means a research organisation, a higher education institution, an education establishment, an organisation responsible for a voluntary service scheme or an entity hosting trainees to which the third-country national is assigned for the purposes of this Directive and which is located in the territory of the Member State concerned, irrespective of its legal form, in accordance with national law;
- (15) 'host family' means a family temporarily receiving an au pair and sharing its daily family life in the territory of a Member State on the basis of an agreement concluded between that family and the au pair;

- (16) 'employment' means the exercise of activities covering any form of labour or work regulated under national law or applicable collective agreements or in accordance with established practice for or under the direction or supervision of an employer;
- (17) 'employer' means any natural person or any legal entity, for or under the direction or supervision of whom or which the employment is undertaken;
- (18) 'first Member State' means the Member State which first issues a third-country national an authorisation on the basis of this Directive;
- (19) 'second Member State' means any Member State other than the first Member State;
- (20) 'Union or multilateral programmes that comprise mobility measures' means programmes funded by the Union or by Member States promoting mobility of third-country nationals in the Union or in the Member States participating in the respective programmes;
- (21) 'authorisation' means a residence permit or, if provided for in national law, a long-stay visa issued for the purposes of this Directive;
- (22) 'residence permit' means an authorisation issued using the format laid down in Regulation (EC) No 1030/2002 entitling its holder to stay legally on the territory of a Member State;
- (23) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Convention ⁽¹⁾ or issued in accordance with the national law of Member States not applying the Schengen *acquis* in full;
- (24) 'family members' means third-country nationals as defined in Article 4(1) of Directive 2003/86/EC.

Article 4

More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:
 - (a) bilateral or multilateral agreements concluded between the Union or the Union and its Member States and one or more third countries; or
 - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.
2. This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the third-country nationals to whom this Directive applies with respect to point (a) of Article 10(2) and Articles 18, 22, 23, 24, 25, 26, 34 and 35.

CHAPTER II

ADMISSION

Article 5

Principles

1. The admission of a third-country national under this Directive shall be subject to the verification of documentary evidence attesting that the third-country national meets:
 - (a) the general conditions laid down in Article 7; and
 - (b) the relevant specific conditions in Article 8, 11, 12, 13, 14 or 16.
2. Member States may require the applicant to provide the documentary evidence referred to in paragraph 1 in an official language of the Member State concerned or in any official language of the Union determined by that Member State.

⁽¹⁾ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).

3. Where all the general conditions and relevant specific conditions are fulfilled, the third-country national shall be entitled to an authorisation.

Where a Member State issues residence permits only on its territory and all the admission conditions laid down in this Directive are fulfilled, the Member State concerned shall issue the third-country national with the requisite visa.

Article 6

Volumes of admission

This Directive shall not affect the right of a Member State to determine, in accordance with Article 79(5) TFEU, the volumes of admission of third-country nationals referred to in Article 2(1) of this Directive, with the exception of students, if the Member State concerned considers that they are or will be in an employment relationship. On that basis, an application for authorisation may either be considered inadmissible or be rejected.

Article 7

General conditions

1. As regards the admission of a third-country national under this Directive, the applicant shall:

- (a) present a valid travel document, as determined by national law, and, if required, an application for a visa or a valid visa or, where applicable, a valid residence permit or a valid long-stay visa; Member States may require the period of validity of the travel document to cover at least the duration of the planned stay;
- (b) if the third-country national is a minor under the national law of the Member State concerned, present a parental authorisation or an equivalent document for the planned stay;
- (c) present evidence that the third-country national has or, if provided for in national law, has applied for sickness insurance for all risks normally covered for nationals of the Member State concerned; the insurance shall be valid for the duration of the planned stay;
- (d) provide evidence, if the Member State so requires, that the fee for handling the application provided for in Article 36 has been paid;
- (e) provide the evidence requested by the Member State concerned that during the planned stay the third-country national will have sufficient resources to cover subsistence costs without having recourse to the Member State's social assistance system, and return travel costs. The assessment of the sufficient resources shall be based on an individual examination of the case and shall take into account resources that derive, inter alia, from a grant, a scholarship or a fellowship, a valid work contract or a binding job offer or a financial undertaking by a pupil exchange scheme organisation, an entity hosting trainees, a voluntary service scheme organisation, a host family or an organisation mediating au pairs.

2. Member States may require the applicant to provide the address of the third-country national concerned in their territory.

Where the national law of a Member State requires an address to be provided at the time of application and the third-country national concerned does not yet know the future address, Member States shall accept a temporary address. In such a case, the third-country national shall provide his or her permanent address at the latest at the time of the issuance of an authorisation pursuant to Article 17.

3. Member States may indicate a reference amount which they regard as constituting 'sufficient resources' as referred to under point (e) of paragraph (1). The assessment of the sufficient resources shall be based on an individual examination of the case.

4. The application shall be submitted and examined either when the third-country national concerned is residing outside the territory of the Member State to which the third-country national wishes to be admitted or when the third-country national is already residing in that Member State as holder of a valid residence permit or long-stay visa.

By way of derogation, a Member State may accept, in accordance with its national law, an application submitted when the third-country national concerned is not in possession of a valid residence permit or long-stay visa but is legally present in its territory.

5. Member States shall determine whether applications are to be submitted by the third-country national, by the host entity, or by either of the two.

6. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted.

Article 8

Specific conditions for researchers

1. In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of research, the applicant shall present a hosting agreement or, if provided for in national law, a contract, in accordance with Article 10.

2. Member States may require, in accordance with national law, a written undertaking from the research organisation that, in the event that a researcher remains illegally in the territory of the Member State concerned, that research organisation is responsible for reimbursing the costs related to the stay and return incurred by public funds. The financial responsibility of the research organisation shall end at the latest six months after the termination of the hosting agreement.

Where the right of residence of the researcher is extended in accordance with Article 25, the responsibility of the research organisation referred to in the first subparagraph of this paragraph shall be limited until the starting date of the residence permit for the purpose of job-searching or entrepreneurship.

3. A Member State which has established an approval procedure for research organisations in accordance with Article 9 shall exempt applicants from presenting one or more of the documents or evidence referred to in paragraph 2 of this Article or in points (c), (d) or (e) of Article 7(1) or in Article 7(2), where the third-country nationals are to be hosted by approved research organisations.

Article 9

Approval of research organisations

1. Member States may decide to provide for an approval procedure for public and/or private research organisations wishing to host a researcher under the admission procedure laid down in this Directive.

2. The approval of the research organisations shall be in accordance with procedures set out in the national law or administrative practice of the Member State concerned. Applications for approval by research organisations shall be made in accordance with those procedures and be based on their statutory tasks or corporate purposes as appropriate and on evidence that they conduct research.

The approval granted to a research organisation shall be for a minimum period of five years. In exceptional cases, Member States may grant approval for a shorter period.

3. A Member State may, among other measures, refuse to renew or decide to withdraw the approval where:

(a) a research organisation no longer complies with paragraph 2 of this Article, Article 8(2) or Article 10(7);

(b) the approval has been fraudulently acquired; or

(c) a research organisation has signed a hosting agreement with a third-country national fraudulently or negligently.

Where an application for renewal has been refused or where the approval has been withdrawn, the organisation concerned may be banned from reapplying for approval for a period of up to five years from the date of publication of the decision on non-renewal or withdrawal.

*Article 10***Hosting agreement**

1. A research organisation wishing to host a third-country national for the purpose of research shall sign a hosting agreement with the latter. Member States may provide that contracts containing the elements referred to in paragraph 2 and, where applicable, paragraph 3 shall be considered equivalent to hosting agreements for the purposes of this Directive.
2. The hosting agreement shall contain:
 - (a) the title or purpose of the research activity or the research area;
 - (b) an undertaking by the third-country national to endeavour to complete the research activity;
 - (c) an undertaking by the research organisation to host the third-country national for the purpose of completing the research activity;
 - (d) the start and end date or the estimated duration of the research activity;
 - (e) information on the intended mobility in one or several second Member States if the mobility is known at the time of application in the first Member State.
3. Member States may also require the hosting agreement to contain:
 - (a) information on the legal relationship between the research organisation and the researcher;
 - (b) information on the working conditions of the researcher.
4. Research organisations may sign hosting agreements only if the research activity has been accepted by the relevant instances in the organisation, after examination of:
 - (a) the purpose and estimated duration of the research activity, and the availability of the necessary financial resources for it to be carried out;
 - (b) the third-country national's qualifications in the light of the research objectives, as evidenced by a certified copy of the qualifications.
5. The hosting agreement shall automatically lapse if the third-country national is not admitted or when the legal relationship between the researcher and the research organisation is terminated.
6. Research organisations shall promptly inform the competent authority of the Member State concerned of any occurrence likely to prevent implementation of the hosting agreement.
7. Member States may provide that, within two months of the date of expiry of the hosting agreement concerned, the research organisation shall provide the competent authorities designated for that purpose with confirmation that the research activity has been carried out.
8. Member States may determine in their national law the consequences of the withdrawal of the approval or the refusal to renew the approval for the existing hosting agreements, concluded in accordance with this Article, as well as the consequences for the authorisations of the researchers concerned.

*Article 11***Specific conditions for students**

1. In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of studies, the applicant shall provide evidence:
 - (a) that the third-country national has been accepted by a higher education institution to follow a course of study;
 - (b) if the Member State so requires, that the fees charged by the higher education institution have been paid;
 - (c) if the Member State so requires, of sufficient knowledge of the language of the course to be followed;
 - (d) if the Member State so requires, that the third-country national will have sufficient resources to cover the study costs.
2. Third-country nationals who automatically qualify for sickness insurance for all risks normally covered for the nationals of the Member State concerned as a result of enrolment at a higher education institution shall be presumed to meet the condition laid down in point (c) of Article 7(1).

3. A Member State which has established an approval procedure for higher education institutions in accordance with Article 15 shall exempt applicants from presenting one or more of the documents or evidence referred to in points (b), (c) or (d) of paragraph 1 of this Article or in point (d) of Article 7(1) or in Article 7(2), where the third-country nationals are to be hosted by approved higher education institutions.

Article 12

Specific conditions for school pupils

1. In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of a pupil exchange scheme or an educational project, the applicant shall provide evidence:

- (a) that the third-country national is neither below the minimum nor above the maximum age or grade set by the Member State concerned;
- (b) of acceptance by an education establishment;
- (c) of participation in a recognised, state or regional programme of education in the context of a pupil exchange scheme or educational project operated by an education establishment in accordance with national law or administrative practice;
- (d) that the education establishment, or, insofar as provided for by national law, a third party accepts responsibility for the third-country national throughout the stay in the territory of the Member State concerned, in particular as regards study costs;
- (e) that the third-country national will be accommodated throughout the stay by a family, in a special accommodation facility within the education establishment or, insofar as provided for by national law, in any other facility meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange scheme or educational project in which the third-country national is participating.

2. Member States may limit the admission of school pupils participating in a pupil exchange scheme or educational project to nationals of third countries which offer the same possibility for their own nationals.

Article 13

Specific conditions for trainees

1. In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of training, the applicant shall:

- (a) present a training agreement, which provides for a theoretical and practical training, with a host entity. Member States may require that such training agreement is approved by the competent authority and that the terms upon which the agreement has been based meet the requirements established in national law, collective agreements or practices of the Member State concerned. The training agreement shall contain:
 - (i) a description of the training programme, including the educational objective or learning components;
 - (ii) the duration of the traineeship;
 - (iii) the placement and supervision conditions of the traineeship;
 - (iv) the traineeship hours; and
 - (v) the legal relationship between the trainee and the host entity;
- (b) provide evidence of having obtained a higher education degree within the two years preceding the date of application or of pursuing a course of study that leads to a higher education degree;
- (c) provide evidence, if the Member State so requires, that during the stay the third-country national will have sufficient resources to cover the training costs;
- (d) provide evidence, if the Member State so requires, that the third-country national has received or will receive language training so as to acquire the knowledge needed for the purpose of the traineeship;
- (e) provide evidence, if the Member State so requires, that the host entity accepts responsibility for the third-country national throughout the stay in the territory of the Member State concerned, in particular as regards subsistence and accommodation costs;
- (f) provide evidence, if the Member State so requires, that, if the third-country national is accommodated throughout the stay by the host entity, the accommodation meets the conditions set by the Member State concerned.

2. Member States may require the traineeship to be in the same field and at the same qualification level as the higher education degree or the course of study referred to in point (b) of paragraph 1.
3. Member States may require the host entity to substantiate that the traineeship does not replace a job.
4. Member States may require, in accordance with national law, a written undertaking from the host entity that, in the event that a trainee remains illegally in the territory of the Member State concerned, that host entity is responsible for reimbursing the costs related to the stay and return incurred by public funds. The financial responsibility of the host entity shall end at the latest six months after the termination of the training agreement.

Article 14

Specific conditions for volunteers

1. In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of voluntary service, the applicant shall:
 - (a) provide an agreement with the host entity or, insofar as provided for by national law, another body responsible in the Member State concerned for the voluntary service scheme in which the third-country national is participating. The agreement shall contain:
 - (i) a description of the voluntary service scheme;
 - (ii) the duration of the voluntary service;
 - (iii) the placement and supervision conditions of the voluntary service;
 - (iv) the volunteering hours;
 - (v) the resources available to cover the third-country national's subsistence and accommodation costs and a minimum sum of money as pocket money throughout the stay; and
 - (vi) where applicable, the training the third-country national will receive to help perform the voluntary service;
 - (b) provide evidence, if the Member State so requires, that, if the third-country national is accommodated throughout the stay by the host entity, the accommodation meets the conditions set by the Member State concerned;
 - (c) provide evidence that the host entity or, insofar as provided for by national law, another body responsible for the voluntary service scheme has subscribed to a third-party insurance policy;
 - (d) provide evidence, if the Member State so requires, that the third-country national has received or will receive a basic introduction to the language, history, political and social structures of that Member State.
2. Member States may determine a minimum and maximum age limit for third-country nationals who apply to be admitted to a voluntary service scheme without prejudice to the rules under the European Voluntary Service.
3. Volunteers participating in the European Voluntary Service shall not be required to present evidence under point (c) and, where applicable, point (d) of paragraph 1.

Article 15

Approval of higher education institutions, education establishments, organisations responsible for a voluntary service scheme or entities hosting trainees

1. For the purposes of this Directive, Member States may decide to provide for an approval procedure for higher education institutions, education establishments, organisations responsible for a voluntary service scheme or entities hosting trainees.
2. The approval shall be in accordance with procedures set out in the national law or administrative practice of the Member State concerned.

3. Where a Member State decides to establish an approval procedure in accordance with paragraphs 1 and 2, it shall provide clear and transparent information to the host entities concerned about, inter alia, the conditions and criteria for approval, its period of validity, the consequences of non-compliance, including possible withdrawal and non-renewal, as well as any sanction applicable.

Article 16

Specific conditions for au pairs

1. In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of au pairing, the third-country national shall:

- (a) provide an agreement between the third-country national and the host family defining the third-country national's rights and obligations as an au pair, including specifications about the pocket money to be received, adequate arrangements allowing the au pair to attend courses and the maximum hours of family duties;
- (b) be between the age of 18 and 30. In exceptional cases, Member States may allow the admission of a third-country national, as an au pair, who is above the maximum age limit;
- (c) provide evidence that the host family or an organisation mediating au pairs, insofar as provided for by national law, accepts responsibility for the third-country national throughout the stay in the territory of the Member State concerned, in particular with regard to living expenses, accommodation and accident risks.

2. Member States may require the third-country national who applies to be admitted as an au pair to provide evidence:

- (a) of basic knowledge of the language of the Member State concerned; or
- (b) of having secondary education, professional qualifications or, where applicable, of fulfilling the conditions to exercise a regulated profession, as required by national law.

3. Member States may determine that the placement of au pairs shall only be carried out by an organisation mediating au pairs under the conditions defined in national law.

4. Member States may require the members of the host family to be of different nationality than the third-country national who applies to be admitted for the purpose of au pairing and not to have any family links with the third-country national concerned.

5. The maximum number of hours of au pair duties per week shall not exceed 25 hours. The au pair shall have at least one day per week free from au pair duties.

6. Member States may set a minimum sum of money as pocket money to be paid to the au pair.

CHAPTER III

AUTHORISATIONS AND DURATION OF RESIDENCE

Article 17

Authorisations

1. When the authorisation is in the form of a residence permit, Member States shall use the format laid down in Regulation (EC) No 1030/2002 and shall enter the term 'researcher', 'student', 'school pupil', 'trainee', 'volunteer' or 'au pair' on the residence permit.

2. When the authorisation is in the form of a long-stay visa, Member States shall enter a reference stating that it is issued to the 'researcher', 'student', 'school pupil', 'trainee', 'volunteer' or 'au pair' under the heading 'remarks' on the visa sticker.

3. For researchers and students coming to the Union in the framework of a specific Union or multilateral programme that comprises mobility measures, or an agreement between two or more recognised higher education institutions, the authorisation shall make a reference to that specific programme or agreement.

4. When the authorisation for long-term mobility is issued to a researcher in the form of a residence permit, Member States shall use the format laid down in Regulation (EC) No 1030/2002 and enter 'researcher-mobility' on the residence permit. When the authorisation for long-term mobility is issued to a researcher in the form of a long-stay visa, Member States shall enter 'researcher-mobility' under the heading 'remarks' on the visa sticker.

Article 18

Duration of authorisation

1. The period of validity of an authorisation for researchers shall be at least one year, or for the duration of the hosting agreement where this is shorter. The authorisation shall be renewed if Article 21 does not apply.

The duration of the authorisation for researchers who are covered by Union or multilateral programmes that comprise mobility measures shall be at least two years, or for the duration of the hosting agreement where this is shorter. If the general conditions laid down in Article 7 are not met for the two years or for the whole duration of the hosting agreement, the first subparagraph of this paragraph shall apply. Member States shall retain the right to verify that the grounds for withdrawal set out in Article 21 do not apply.

2. The period of validity of an authorisation for students shall be at least one year, or for the duration of studies where this is shorter. The authorisation shall be renewed if Article 21 does not apply.

The duration of the authorisation for students who are covered by Union or multilateral programmes that comprise mobility measures or by an agreement between two or more higher education institutions shall be at least two years, or for the duration of their studies where this is shorter. If the general conditions laid down in Article 7 are not met for the two years or for the whole duration of the studies, the first subparagraph of this paragraph shall apply. Member States shall retain the right to verify that the grounds for withdrawal set out in Article 21 do not apply.

3. Member States may determine that the total time of residence for studies shall not exceed the maximum duration of studies as defined in national law.

4. The period of validity of an authorisation for school pupils shall be for the duration of the pupil exchange scheme or the educational project where this is shorter than one year, or for a maximum of one year. Member States may decide to allow the renewal of the authorisation once for the period necessary to complete the pupil exchange scheme or the educational project if Article 21 does not apply.

5. The period of validity of an authorisation for au pairs shall be for the duration of the agreement between the au pair and the host family where this is shorter than one year, or for a maximum period of one year. Member States may decide to allow the renewal of the authorisation once for a maximum period of six months, after a justified request by the host family, if Article 21 does not apply.

6. The period of validity of an authorisation for trainees shall be for the duration of the training agreement where this is shorter than six months, or for a maximum of six months. If the duration of the agreement is longer than six months, the duration of the validity of the authorisation may correspond to the period concerned in accordance with national law.

Member States may decide to allow the renewal of the authorisation once for the period necessary to complete the traineeship if Article 21 does not apply.

7. The period of validity of an authorisation for volunteers shall be for the duration of the agreement referred to in point (a) of Article 14(1) where this is shorter than one year, or for a maximum period of one year. If the duration of the agreement is longer than one year, the duration of the validity of the authorisation may correspond to the period concerned in accordance with national law.

8. Member States may determine that, in case the validity of the travel document of the third-country national concerned is shorter than one year or shorter than two years in the cases referred to in paragraphs 1 and 2, the period of validity of the authorisation shall not exceed the period of validity of the travel document.

9. Where Member States allow entry and residence during the first year on the basis of a long-stay visa, an application for a residence permit shall be submitted before the expiry of the long-stay visa. The residence permit shall be issued if Article 21 does not apply.

Article 19

Additional information

1. Member States may indicate additional information in paper format or store such information in electronic format, as referred to in Article 4 of Regulation (EC) No 1030/2002 and point (a) 16 of the Annex thereto. This information may relate to the residence and, in cases covered by Article 24 of this Directive, the economic activities of the student and include in particular the full list of Member States that the researcher or student intends to go to in the framework of mobility or relevant information on a specific Union or multilateral programme that comprises mobility measures or an agreement between two or more higher education institutions.

2. Member States may also provide that the information referred to in paragraph 1 of this Article shall be indicated on the long-stay visa, as referred to in point 12 of the Annex to Council Regulation (EC) No 1683/95 ⁽¹⁾.

CHAPTER IV

GROUND FOR REJECTION, WITHDRAWAL OR NON-RENEWAL OF AUTHORISATIONS

Article 20

Grounds for rejection

1. Member States shall reject an application where:

- (a) the general conditions laid down in Article 7 or the relevant specific conditions laid down in Articles 8, 11, 12, 13, 14 or 16 are not met;
- (b) the documents presented have been fraudulently acquired, or falsified, or tampered with;
- (c) the Member State concerned only allows admission through an approved host entity and the host entity is not approved.

2. Member States may reject an application where:

- (a) the host entity, another body as referred to in point (a) of Article 14(1), a third party as referred to in point (d) of Article 12(1), the host family or the organisation mediating au pairs has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;
- (b) where applicable, the terms of employment as provided for in national law or collective agreements or practices in the Member State concerned are not met by the host entity or host family that will employ the third-country national;
- (c) the host entity, another body as referred to in point (a) of Article 14(1), a third party as referred to in point (d) of Article 12(1), the host family or the organisation mediating au pairs has been sanctioned in accordance with national law for undeclared work or illegal employment;
- (d) the host entity was established or operates for the main purpose of facilitating the entry of third-country nationals falling under the scope of this Directive;
- (e) where applicable, the host entity's business is being or has been wound up under national insolvency laws or no economic activity is taking place;
- (f) the Member State has evidence or serious and objective grounds to establish that the third-country national would reside for purposes other than those for which he or she applies to be admitted.

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

3. Where a third-country national applies to be admitted to enter into an employment relationship in a Member State, that Member State may verify whether the post in question could be filled by nationals of that Member State or by other Union citizens, or by third-country nationals lawfully residing in that Member State, in which case it may reject the application. This paragraph shall apply without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession.

4. Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

Article 21

Grounds for withdrawal or non-renewal of an authorisation

1. Member States shall withdraw or, where applicable, refuse to renew an authorisation where:

- (a) the third-country national no longer meets the general conditions laid down in Article 7, except for Article 7(6), or the relevant specific conditions laid down in Articles 8, 11, 12, 13, 14, 16 or the conditions laid down in Article 18;
- (b) the authorisation or the documents presented have been fraudulently acquired, or falsified, or tampered with;
- (c) the Member State concerned only allows admission through an approved host entity and the host entity is not approved;
- (d) the third-country national is residing for purposes other than those for which the third-country national was authorised to reside.

2. Member States may withdraw or refuse to renew an authorisation where:

- (a) the host entity, another body as referred to in point (a) of Article 14(1), a third party as referred to in point (d) of Article 12(1), the host family or the organisation mediating au pairs has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;
- (b) where applicable, the terms of employment as provided for in national law or collective agreements or practices in the Member State concerned are not met by the host entity or host family employing the third-country national;
- (c) the host entity, another body as referred to in point (a) of Article 14(1), a third party as referred to in point (d) of Article 12(1), the host family or the organisation mediating au pairs has been sanctioned in accordance with national law for undeclared work or illegal employment;
- (d) the host entity was established or operates for the main purpose of facilitating the entry of third-country nationals falling under the scope of this Directive;
- (e) where applicable, the host entity's business is being or has been wound up under national insolvency laws or no economic activity is taking place;
- (f) with regard to students, the time limits imposed on access to economic activities under Article 24 are not respected or a student does not make sufficient progress in the relevant studies in accordance with national law or administrative practice.

3. In the event of withdrawal, when assessing the lack of progress in the relevant studies, as referred to in point (f) of paragraph 2, a Member State may consult with the host entity.

4. Member States may withdraw or refuse to renew an authorisation for reasons of public policy, public security or public health.

5. Where a third-country national applies for renewal of the authorisation to enter into or continue to be in an employment relationship in a Member State, with the exception of a researcher who continues the employment relationship with the same host entity, that Member State may verify whether the post in question could be filled by nationals of that Member State or by other Union citizens, or by third-country nationals who are long-term residents in that Member State, in which case they may refuse to renew the authorisation. This paragraph shall apply without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession.

6. Where a Member State intends to withdraw or not renew the authorisation of a student in accordance with points (a), (c), (d) or (e) of paragraph 2, the student shall be allowed to submit an application to be hosted by a different higher education institution for an equivalent course of study in order to enable the completion of the studies. The student shall be allowed to stay on the territory of the Member State concerned until the competent authorities have taken a decision on the application.

7. Without prejudice to paragraph 1, any decision to withdraw or refuse to renew an authorisation shall take account of the specific circumstances of the case and respect the principle of proportionality.

CHAPTER V

RIGHTS

Article 22

Equal treatment

1. Researchers shall be entitled to equal treatment with nationals of the Member State concerned as provided for in Article 12(1) and (4) of Directive 2011/98/EU.

2. Member States may restrict equal treatment as regards researchers:

- (a) under point (c) of Article 12(1) of Directive 2011/98/EU, by excluding study and maintenance grants and loans or other grants and loans;
- (b) under point (e) of Article 12(1) of Directive 2011/98/EU, by not granting family benefits to researchers who have been authorised to reside in the territory of the Member State concerned for a period not exceeding six months;
- (c) under point (f) of Article 12(1) of Directive 2011/98/EU, by limiting its application to cases where the registered or usual place of residence of the family members of the researcher for whom he or she claims benefits lies in the territory of the Member State concerned;
- (d) under point (g) of Article 12(1) of Directive 2011/98/EU by restricting access to housing.

3. Trainees, volunteers and au pairs, when they are considered to be in an employment relationship in the Member State concerned, and students shall be entitled to equal treatment with nationals of the Member State concerned as provided for in Article 12(1) and (4) of Directive 2011/98/EU subject to the restrictions provided for in paragraph 2 of that Article.

4. Trainees, volunteers, and au pairs, when they are not considered to be in an employment relationship in the Member State concerned, and school pupils shall be entitled to equal treatment in relation to access to goods and services and the supply of goods and services made available to the public, as provided for by national law, as well as, where applicable, in relation to recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures.

Member States may decide not to grant them equal treatment in relation to procedures for obtaining housing and/or services provided by public employment offices in accordance with national law.

Article 23

Teaching by researchers

Researchers may, in addition to research activities, teach in accordance with national law. Member States may set a maximum number of hours or of days for the activity of teaching.

*Article 24***Economic activities by students**

1. Outside their study time and subject to the rules and conditions applicable to the relevant activity in the Member State concerned, students shall be entitled to be employed and may be entitled to exercise self-employed economic activity, subject to the limitations provided for in paragraph 3.
2. Where necessary, Member States shall grant students and/or employers prior authorisation in accordance with national law.
3. Each Member State shall determine the maximum number of hours per week or days or months per year allowed for such an activity, which shall not be less than 15 hours per week, or the equivalent in days or months per year. The situation of the labour market in the Member State concerned may be taken into account.

*Article 25***Stay for the purpose of job-searching or entrepreneurship for researchers and students**

1. After the completion of research or studies, researchers and students shall have the possibility to stay on the territory of the Member State that issued an authorisation under Article 17, on the basis of the residence permit referred to in paragraph 3 of this Article, for a period of at least nine months in order to seek employment or set up a business.
2. Member States may decide to set a minimum level of degree that students shall have obtained in order to benefit from the application of this Article. That level shall not be higher than level 7 of the European Qualifications Framework ⁽¹⁾.
3. For the purpose of stay referred to in paragraph 1, Member States shall, upon an application by the researcher or the student, issue a residence permit to that third-country national in accordance with Regulation (EC) No 1030/2002 where the conditions laid down in points (a), (c), (d) and (e) of Article 7(1), Article 7(6) and, where applicable, in Article 7(2) of this Directive are still fulfilled. Member States shall require, for researchers, a confirmation by the research organisation of the completion of the research activity or, for students, evidence of having obtained a higher education diploma, certificate or other evidence of formal qualifications. Where applicable, and if the provisions of Article 26 are still met, the residence permit provided for in that Article shall be renewed accordingly.
4. Member States may reject an application under this Article where:
 - (a) the conditions laid down in paragraph 3 and, where applicable, paragraphs 2 and 5 are not met,
 - (b) the documents presented have been fraudulently acquired, or falsified, or tampered with.
5. Member States may require that the application under this Article of the researcher or the student and, where applicable, the members of the researcher's family shall be submitted at least 30 days before the expiry of the authorisation issued under Article 17 or 26.
6. If the evidence of having obtained a higher education diploma, certificate or other evidence of formal qualifications or the confirmation by the research organisation of the completion of the research activity are not available before the expiry of the authorisation issued under Article 17, and all other conditions are fulfilled, Member States shall allow the third-country national to stay on their territory in order to submit such evidence within a reasonable time in accordance with national law.
7. After a minimum of three months from the issuance of the residence permit under this Article by the Member State concerned, the latter may require third-country nationals to prove that they have a genuine chance of being engaged or of launching a business.

Member States may require that the employment the third-country national is seeking or the business he or she is in the process of setting up corresponds to the level of research or of studies completed.

⁽¹⁾ Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning (OJ C 111, 6.5.2008, p. 1).

8. If the conditions provided for in paragraph 3 or 7 are no longer fulfilled, Member States may withdraw the residence permit of the third-country national and, where applicable, his or her family members in accordance with national law.

9. Second Member States may apply this Article to researchers and, where applicable, the members of the researcher's family or students who reside or have resided in the second Member State concerned in accordance with Article 28, 29, 30 or 31.

Article 26

Researchers' family members

1. For the purpose of allowing researchers' family members to join the researcher in the first Member State or, in the case of long-term mobility, in the second Member States, Member States shall apply the provisions of Directive 2003/86/EC with the derogations laid down in this Article.

2. By way of derogation from Article 3(1) and Article 8 of Directive 2003/86/EC, the granting of a residence permit to family members shall not be made dependent on the requirement of the researcher having reasonable prospects of obtaining the right of permanent residence and having a minimum period of residence.

3. By way of derogation from the last subparagraph of Article 4(1) and Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to therein may only be applied after the persons concerned have been granted a residence permit.

4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by a Member State, if the conditions for family reunification are fulfilled, within 90 days from the date on which the complete application was submitted. The competent authority of the Member State concerned shall process the application for the family members at the same time as the application for admission or for long-term mobility of the researcher, in case where the application for the family members is submitted at the same time. The residence permit for family members shall be granted only if the researcher is issued an authorisation under Article 17.

5. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the residence permit of family members shall end, as a general rule, on the date of expiry of the authorisation of the researcher. This shall include, where applicable, authorisations issued to the researcher for the purpose of job-searching or entrepreneurship in accordance with Article 25. Member States may require the period of validity of the travel documents of family members to cover at least the duration of the planned stay.

6. By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, the first Member State or, in the case of long-term mobility, the second Member States shall not apply any time limit in respect of access for family members to the labour market, except in exceptional circumstances such as particularly high levels of unemployment.

CHAPTER VI

MOBILITY BETWEEN MEMBER STATES

Article 27

Intra-EU mobility

1. A third-country national who holds a valid authorisation issued by the first Member State for the purpose of studies in the framework of a Union or multilateral programme that comprises mobility measures or of an agreement between two or more higher education institutions, or for the purpose of research may enter and stay in order to carry out part of the studies or research in one or several second Member States on the basis of that authorisation and a valid travel document under the conditions laid down in Articles 28, 29 and 31 and subject to Article 32.

2. During the mobility referred to in paragraph 1, researchers may, in addition to research activities, teach and students may, in addition to their studies, work, in one or several second Member States in accordance with the conditions laid down in Articles 23 and 24 respectively.

3. When a researcher moves to a second Member State in accordance with Article 28 or 29, family members holding a residence permit issued in accordance with Article 26 shall be authorised to accompany the researcher in the framework of the researcher's mobility under the conditions laid down in Article 30.

Article 28

Short-term mobility of researchers

1. Researchers who hold a valid authorisation issued by the first Member State shall be entitled to stay in order to carry out part of their research in any research organisation in one or several second Member States for a period of up to 180 days in any 360-day period per Member State, subject to the conditions laid down in this Article.

2. The second Member State may require the researcher, the research organisation in the first Member State or the research organisation in the second Member State to notify the competent authorities of the first Member State and of the second Member State of the intention of the researcher to carry out part of the research in the research organisation in the second Member State.

In such cases, the second Member State shall allow the notification to take place either:

- (a) at the time of the application in the first Member State, where the mobility to the second Member State is already envisaged at that stage; or
- (b) after the researcher was admitted to the first Member State, as soon as the intended mobility to the second Member State is known.

3. Where the notification has taken place in accordance with point (a) of paragraph 2, and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 7, the mobility of the researcher to the second Member State may take place at any moment within the period of validity of the authorisation.

4. Where the notification has taken place in accordance with point (b) of paragraph 2, the mobility may be initiated after the notification to the second Member State immediately or at any moment thereafter within the period of validity of the authorisation.

5. The notification shall include the valid travel document, as provided for in point (a) of Article 7(1), and the valid authorisation issued by the first Member State covering the period of the mobility.

6. The second Member State may require the notification to include the transmission of the following documents and information:

- (a) the hosting agreement in the first Member State as referred to in Article 10 or, if the second Member State so requires, a hosting agreement concluded with the research organisation in the second Member State;
- (b) where not specified in the hosting agreement, the planned duration and dates of the mobility;
- (c) evidence that the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned as provided for in point (c) of Article 7(1);
- (d) evidence that during the stay the researcher will have sufficient resources to cover subsistence costs without having recourse to the Member State's social assistance system, as provided for in point (e) of Article 7(1), as well as the travel costs to the first Member State in the cases referred to in point (b) of Article 32(4);

The second Member State may require the notifier to provide, before the start of mobility, the address of the researcher concerned in the territory of the second Member State.

The second Member State may require the notifier to present the documents in an official language of that Member State or in any official language of the Union determined by that Member State.

7. Based on the notification referred to in paragraph 2 the second Member State may object to the mobility of the researcher to its territory within 30 days from having received the complete notification, where:

- (a) the conditions set out in paragraph 5 or, where applicable, paragraph 6 are not complied with;
- (b) one of the grounds for rejection set out in points (b) or (c) of Article 20(1) or in paragraph 2 of that Article applies;
- (c) the maximum duration of stay as referred to in paragraph 1 has been reached.

8. Researchers who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

9. The competent authorities of the second Member State shall, without delay, inform the competent authorities of the first Member State and the notifier in writing about their objection to the mobility. Where the second Member State objects to the mobility in accordance with paragraph 7 and the mobility has not yet taken place, the researcher shall not be allowed to carry out part of the research in the research organisation in the second Member State. Where the mobility has already taken place, Article 32(4) shall apply.

10. After the period of objection has expired, the second Member State may issue a document to the researcher attesting that he or she is entitled to stay on its territory and enjoy the rights provided for in this Directive.

Article 29

Long-term mobility of researchers

1. In relation to researchers who hold a valid authorisation issued by the first Member State and who intend to stay in order to carry out part of their research in any research organisation in one or several second Member States for more than 180 days per Member State, the second Member State shall either:

- (a) apply Article 28 and allow the researcher to stay on the territory on the basis of and during the period of validity of the authorisation issued by the first Member State; or
- (b) apply the procedure provided for in paragraphs 2 to 7.

The second Member State may define a maximum period of the long-term mobility of a researcher which shall not be less than 360 days.

2. When an application for long-term mobility is submitted:

- (a) the second Member State may require the researcher, the research organisation in the first Member State or the research organisation in the second Member State to transmit the following documents:
 - (i) a valid travel document, as provided for in point (a) of Article 7(1), and a valid authorisation issued by the first Member State;
 - (ii) evidence that the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned as provided for in point (c) of Article 7(1);
 - (iii) evidence that during the stay the researcher will have sufficient resources to cover subsistence costs without having recourse to the Member State's social assistance system, as provided for in point (e) of Article 7(1), as well as the travel costs to the first Member State in the cases referred to in point (b) of Article 32(4);
 - (iv) the hosting agreement in the first Member State as referred to in Article 10 or, if the second Member State so requires, a hosting agreement concluded with the research organisation in the second Member State;
 - (v) where not specified in any of the documents presented by the applicant, the planned duration and dates of the mobility.

The second Member State may require the applicant to provide the address of the researcher concerned in its territory. Where the national law of the second Member State requires an address to be provided at the time of application and the researcher concerned does not yet know his or her future address, that Member State shall accept a temporary address. In such a case, the researcher shall provide his or her permanent address at the latest at the time of the issuance of the authorisation for long-term mobility.

The second Member State may require the applicant to present the documents in an official language of that Member State or in any official language of the Union determined by that Member State;

- (b) the second Member State shall take a decision on the application for long-term mobility and notify the decision to the applicant in writing as soon as possible, but not later than 90 days from the date on which the complete application was submitted to the competent authorities of the second Member State;
- (c) the researcher shall not be required to leave the territories of the Member States in order to submit an application and shall not be subject to a visa requirement;

- (d) the researcher shall be allowed to carry out part of the research in the research organisation in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that:
 - (i) neither the period referred to in Article 28(1) nor the period of validity of the authorisation issued by the first Member State have expired; and
 - (ii) if the second Member State so requires, the complete application has been submitted to the second Member State at least 30 days before the long-term mobility of the researcher starts;
 - (e) an application for long-term mobility may not be submitted at the same time as a notification for short-term mobility. Where the need for long-term mobility arises after the short-term mobility of the researcher has started, the second Member State may request that the application for long-term mobility be submitted at least 30 days before the short-term mobility ends.
3. The second Member State may reject an application for long-term mobility where:
- (a) the conditions set out in point (a) of paragraph 2 are not complied with;
 - (b) one of the grounds for rejection set out in Article 20, with the exception of point (a) of paragraph 1 of that Article, applies;
 - (c) the researcher's authorisation in the first Member State expires during the procedure; or
 - (d) where applicable, the maximum duration of stay referred to in the second subparagraph of paragraph 1 has been reached.
4. Researchers who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.
5. Where the second Member State takes a positive decision on the application for long-term mobility as referred to in paragraph 2 of this Article, the researcher shall be issued an authorisation in accordance with Article 17(4). The second Member State shall inform the competent authorities of the first Member State when an authorisation for long-term mobility is issued.
6. The second Member State may withdraw the authorisation for long-term mobility where:
- (a) the conditions set out in point (a) of paragraph 2 or in paragraph 4 of this Article are not or are no longer complied with; or
 - (b) one of the grounds of withdrawal of an authorisation, as set out in Article 21, with the exception of point (a) of paragraph (1), point (f) of paragraph (2) and paragraphs (3), (5) and (6) of that Article, applies.
7. When a Member State takes a decision on long-term mobility, paragraphs 2 to 5 of Article 34 apply accordingly.

Article 30

Mobility of researchers' family members

1. Family members of a researcher who hold a valid residence permit issued by the first Member State shall be entitled to enter, and stay in, one or several second Member States in order to accompany the researcher.
2. When the second Member State applies the notification procedure referred to in Article 28(2), it shall require the transmission of the following documents and information:
- (a) the documents and information required under paragraph 5 and points (b), (c) and (d) of paragraph 6 of Article 28 related to the family members accompanying the researcher;
 - (b) evidence that the family member has resided as a member of the family of the researcher in the first Member State in accordance with Article 26.

The second Member State may require the notifier to present the documents in an official language of that Member State or in any official language of the Union determined by that Member State.

The second Member State may object to the mobility of the family member to its territory where the conditions set out in the first subparagraph are not complied with. Points (b) and (c) of paragraph 7 and paragraph 9 of Article 28 shall apply to those family members accordingly.

3. When the second Member State applies the procedure referred to in point (b) of Article 29(1), an application shall be submitted by the researcher or by the family members of the researcher to the competent authorities of the second Member State. The second Member State shall require the applicant to transmit the following documents and information in relation to the family members:

- (a) the documents and information required under points (i), (ii), (iii) and (v) of point (a) of Article 29(2) related to the family members accompanying the researcher;
- (b) evidence that the family member has resided as a member of the family of the researcher in the first Member State in accordance with Article 26.

The second Member State may require the applicant to present the documents in an official language of that Member State or in any official language of the Union determined by that Member State.

The second Member State may reject the application for long-term mobility of the family member to its territory where the conditions set out in the first subparagraph are not complied with. Points (b) and (c) of paragraph 2, points (b), (c) and (d) of paragraph 3, paragraph 5, point (b) of paragraph 6 and paragraph 7 of Article 29 shall apply to those family members accordingly.

The validity of the authorisation for long-term mobility of the family members shall, as a general rule, end on the date of expiry of the researcher's authorisation issued by the second Member State.

The authorisation for long-term mobility of family members may be withdrawn or its renewal refused if the authorisation for long-term mobility of the researcher they are accompanying is withdrawn or its renewal refused and they do not enjoy any autonomous right of residence.

4. Family members who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

Article 31

Mobility of students

1. Students who hold a valid authorisation issued by the first Member State and who are covered by a Union or multilateral programme that comprises mobility measures or by an agreement between two or more higher education institutions shall be entitled to enter and stay in order to carry out part of their studies in a higher education institution in one or several second Member States for a period up to 360 days per Member State subject to the conditions laid down in paragraphs 2 to 10.

A student who is not covered by a Union or multilateral programme that comprises mobility measures or by an agreement between two or more higher education institutions shall submit an application for an authorisation to enter and stay in a second Member State in order to carry out part of the studies in a higher education institution in accordance with Articles 7 and 11.

2. The second Member State may require the higher education institution in the first Member State, the higher education institution in the second Member State or the student to notify the competent authorities of the first Member State and of the second Member State of the intention of the student to carry out part of the studies in the higher education institution in the second Member State.

In such cases, the second Member State shall allow the notification to take place either:

- (a) at the time of the application in the first Member State, where the mobility to the second Member State is already envisaged at that stage; or
- (b) after the student was admitted to the first Member State, as soon as the intended mobility to the second Member State is known.

3. Where the notification has taken place in accordance with point (a) of paragraph 2, and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 7, the mobility of the student to the second Member State may take place at any moment within the period of validity of the authorisation.

4. Where the notification has taken place in accordance with point (b) of paragraph 2 and where the second Member State has not raised any objection in writing to the mobility of the student, in accordance with paragraphs 7 and 9, the mobility is considered to be approved and may take place in the second Member State.

5. The notification shall include the valid travel document, as provided for in point (a) of Article 7(1), and the valid authorisation issued by the first Member State covering the total period of the mobility.

6. The second Member State may require the notification to include the transmission of the following documents and information:

- (a) evidence that the student carries out part of the studies in the second Member State in the framework of a Union or multilateral programme that comprises mobility measures or of an agreement between two or more higher education institutions and evidence that the student has been accepted by a higher education institution in the second Member State;
- (b) where not specified under point (a), the planned duration and dates of the mobility;
- (c) evidence that the student has sickness insurance for all the risks normally covered for nationals of the Member State concerned as provided for in point (c) of Article 7(1);
- (d) evidence that during the stay the student will have sufficient resources to cover subsistence costs without having recourse to the Member State's social assistance system as provided for in point (e) of Article 7(1), study costs, as well as the travel costs to the first Member State in the cases referred to in point (b) of Article 32(4);
- (e) evidence that the fees charged by the higher education institution have been paid, where applicable.

The second Member State may require the notifier to provide, before the start of mobility, the address of the student concerned in the territory of the second Member State.

The second Member State may require the notifier to present the documents in an official language of that Member State or in any official language of the Union determined by that Member State.

7. Based on the notification referred to in paragraph 2, the second Member State may object to the mobility of the student to its territory within 30 days from having received the complete notification where:

- (a) the conditions set out in paragraphs 5 or 6 are not complied with;
- (b) one of the grounds for rejection set out in point (b) or (c) of Article 20(1) or in paragraph 2 of that Article applies;
- (c) the maximum duration of stay referred to in paragraph 1 has been reached.

8. Students who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

9. The competent authorities of the second Member State shall, without delay, inform the competent authorities of the first Member State and the notifier in writing about their objection to the mobility. Where the second Member State objects to the mobility in accordance with paragraph 7 the student shall not be allowed to carry out part of the studies in the higher education institution in the second Member State.

10. After the period of objection has expired, the second Member State may issue a document to the student attesting that he or she is entitled to stay on its territory and enjoy the rights provided for in this Directive.

Article 32

Safeguards and sanctions in cases of mobility

1. Where the authorisation for the purpose of research or studies is issued by the competent authorities of a Member State not applying the Schengen *acquis* in full and the researcher or student crosses an external border to enter a second Member State in the framework of mobility, the competent authorities of the second Member State shall be entitled to require as evidence of the mobility the valid authorisation issued by the first Member State and:

- (a) a copy of the notification in accordance with Article 28(2) or Article 31(2), or
- (b) where the second Member State allows mobility without notification, evidence that the student carries out part of the studies in the second Member State in the framework of a Union or multilateral programme that comprises mobility measures or an agreement between two or more higher education institutions, or for researchers, either a copy of the hosting agreement specifying the details of the mobility of the researcher or, where the details of the mobility are not specified in the hosting agreement, a letter from the research organisation in the second Member State that specifies at least the duration of the intra-EU mobility and the location of the research organisation in the second Member State.

In the case of the family members of the researcher, the competent authorities of the second Member State shall be entitled to require as evidence of the mobility the valid authorisation issued by the first Member State and a copy of the notification in accordance with Article 30(2) or evidence that they are accompanying the researcher.

2. Where the competent authorities of the first Member State withdraw the authorisation, they shall inform the authorities of the second Member State immediately, where applicable.

3. The second Member State may require to be informed by the host entity of the second Member State or the researcher or the student of any modification which affects the conditions on which basis the mobility was allowed to take place.

4. Where the researcher or, where applicable, his or her family members, or the student do not or no longer fulfil the conditions for mobility:

(a) the second Member State may request that the researcher and, where applicable, his or her family members, or the student immediately ceases all activities and leaves its territory;

(b) the first Member State shall, upon request of the second Member State, allow re-entry of the researcher and, where applicable, of his or her family members or of the student without formalities and without delay. This shall also apply if the authorisation issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State.

5. Where the researcher or his or her family members or the student crosses the external border of a Member State applying the Schengen *acquis* in full, that Member State shall consult the Schengen information system. That Member State shall refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen information system.

CHAPTER VII

PROCEDURE AND TRANSPARENCY

Article 33

Sanctions against host entities

Member States may provide for sanctions against host entities or, in cases covered by Article 24, employers who have not fulfilled their obligations under this Directive. Those sanctions shall be effective, proportionate and dissuasive.

Article 34

Procedural guarantees and transparency

1. The competent authorities of the Member State concerned shall adopt a decision on the application for an authorisation or a renewal of it and notify the decision to the applicant in writing, in accordance with the notification procedures under national law, as soon as possible but not later than 90 days from the date on which the complete application was submitted.

2. By way of derogation from paragraph 1 of this Article, in the event that the admission procedure is related to an approved host entity as referred to in Articles 9 and 15, the decision on the complete application shall be taken as soon as possible but at the latest within 60 days.

3. Where the information or documentation supplied in support of the application is incomplete, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it. The period referred to in paragraphs 1 or 2 shall be suspended until the competent authorities have received the additional information required. If additional information or documents have not been provided within the deadline, the application may be rejected.

4. Reasons for a decision declaring inadmissible or rejecting an application or refusing renewal shall be given in writing to the applicant. Reasons for a decision withdrawing an authorisation shall be given in writing to the third-country national. Reasons for a decision withdrawing an authorisation may be given in writing also to the host entity.

5. Any decision declaring inadmissible or rejecting an application, refusing renewal, or withdrawing an authorisation shall be open to legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court or administrative authority with which an appeal may be lodged and the time limit for lodging the appeal.

Article 35

Transparency and access to information

Member States shall make easily accessible to applicants the information on all the documentary evidence needed for an application and information on entry and residence conditions, including the rights, obligations and procedural safeguards, of the third-country nationals falling under the scope of this Directive and, where applicable, of their family members. This shall include, where applicable, the level of the monthly sufficient resources, including the sufficient resources needed to cover the study costs or the training costs, without prejudice to an individual examination of each case, and the applicable fees.

The competent authorities in each Member State shall publish lists of the host entities approved for the purposes of this Directive. Updated versions of such lists shall be published as soon as possible following any changes to them.

Article 36

Fees

Member States may require third-country nationals including, where applicable, family members, or host entities to pay fees for the handling of notifications and applications in accordance with this Directive. The level of such fees shall not be disproportionate or excessive.

CHAPTER VIII

FINAL PROVISIONS

Article 37

Cooperation between contact points

1. Member States shall appoint contact points which shall cooperate effectively and be responsible for receiving and transmitting the information needed to implement Articles 28 to 32. Member States shall give preference to exchange of information via electronic means.

2. Each Member State shall inform the other Member States, via the national contact points referred to in paragraph 1:

- (a) about the procedures applied to mobility referred to in Articles 28 to 31;
- (b) whether that Member State only allows admission of students and researchers through approved research organisations or higher education institutions;
- (c) about multilateral programmes for students and researchers that comprise mobility measures and agreements between two or more higher education institutions.

*Article 38***Statistics**

1. Member States shall communicate to the Commission statistics on the number of authorisations issued for the purposes of this Directive and notifications received pursuant to Article 28(2) or Article 31(2) and, insofar as possible, the number of third-country nationals whose authorisations have been renewed or withdrawn. Statistics on admitted family members of researchers shall be communicated in the same manner. Those statistics shall be disaggregated by citizenship and, insofar as possible, by the period of validity of the authorisations.
2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be 2019.
3. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council ⁽¹⁾.

*Article 39***Reporting**

Periodically, and for the first time by 23 May 2023, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive in the Member States and propose amendments if appropriate.

*Article 40***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 May 2018 at the latest. They shall immediately communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives 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 41***Repeal**

Directives 2004/114/EC and 2005/71/EC are repealed for the Member States bound by this Directive with effect from 24 May 2018, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of those Directives set out in Part B of Annex I to this Directive.

For the Member States bound by this Directive, references to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation tables in Annex II.

⁽¹⁾ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).

*Article 42***Entry into force**

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

*Article 43***Addressees**

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

Done at Strasbourg, 11 May 2016.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

J.A. HENNIS-PLASSCHAERT

ANNEX I

Part A

Repealed Directives

(referred to in Article 41)

Council Directive 2004/114/EC

(OJ L 375, 23.12.2004, p. 12)

Council Directive 2005/71/EC

(OJ L 289, 3.11.2005, p. 15)

Part B

Time limits for transposition into national law and dates of application

(referred to in Article 41)

Directive	Time limit for transposition	Date of application
2004/114/EC	12.1.2007	
2005/71/EC	12.10.2007	

ANNEX II

Correlation Tables

Directive 2004/114/EC	This Directive
Article 1(a)	Article 1(a)
Article 1(b)	—
—	Article 1(b)
Article 2, introductory wording	Article 3, introductory wording
Article 2(a)	Article 3(1)
Article 2(b)	Article 3(3)
Article 2(c)	Article 3(4)
Article 2(d)	Article 3(5)
—	Article 3(6)
Article 2(e)	Article 3(11) and (13)
Article 2(f)	Article 3(7)
Article 2(g)	Article 3(22)
—	Article 3(8)
—	Article 3(12)
—	Article 3(14) to (21)
—	Article 3(23) and (24)
Article 3(1)	Article 2(1)
Article 3(2)(a) to (d)	Article 2(2)(a) to (d)
Article 3(2)(e)	—
—	Article 2(2)(e) to (g)
Article 4	Article 4
Article 5	Article 5(1)
—	Article 5(2) and (3)
—	Article 6
Article 6(1)(a) to (c) and (e)	Article 7(1)(a) to (d)
Article 6(1)(d)	Article 7(6)
Article 6(2)	—
—	Article 7(2) and (3)
Article 7(1), introductory wording	Article 11(1), introductory wording
Article 7(1)(a)	Article 11(1)(a)
Article 7(1)(b)	Articles 7(1)(e) and 11(1)(d)
Article 7(1)(c)	Article 11(1)(c)
Article 7(1)(d)	Article 11(1)(b)

Directive 2004/114/EC	This Directive
Article 7(2)	Article 11(2)
—	Article 11(3)
Article 8	Article 31
Article 9(1) and (2)	Article 12(1) and (2)
Article 10, introductory wording	Article 13(1), introductory wording
Article 10(a)	Article 13(1)(a)
—	Article 13(1)(b)
Article 10(b)	Articles 7(1)(e) and 13(1)(c)
Article 10(c)	Article 13(1)(d)
—	Article 13(1)(e) and (f)
—	Article 13(2) to (4)
Article 11, introductory wording	Article 14(1), introductory wording
Article 11(a)	Article 14(2)
Article 11(b)	Article 14(1)(a)
—	Article 14(1)(b)
Article 11(c)	Article 14(1)(c)
Article 11(d)	Article 14(1)(d)
Article 12(1)	Article 18(2)
Article 12(2)	Article 21(2)(f)
Article 13	Article 18(4)
Article 14	Article 18(6)
Article 15	Article 18(7)
—	Article 18(3), (5), (8) and (9)
—	Articles 16, 17 and 19
Article 16(1)	Article 21(1)(a) and (b)
—	Article 21(1)(c) and (d)
Article 16(2)	Article 21(4)
—	Article 21(2)(a) to (e)
—	Article 21(3)
—	Article 21(5) to (7)
—	Article 22(3) and (4)
Article 17(1), first subparagraph, first sentence	Article 24(1)
Article 17(1), first subparagraph, second sentence	Article 24(3)
Article 17(1), second subparagraph	Article 24(2)
Article 17(2)	Article 24(3)
Article 17(3) and (4)	—
—	Article 24
—	Article 27

Directive 2004/114/EC	This Directive
—	Article 30
—	Articles 32 and 33
Article 18(1)	Article 34(1)
—	Article 34(2)
Article 18(2), (3) and (4)	Article 34(3), (4) and (5)
Article 19	—
—	Article 35, first paragraph
Article 20	Article 36
—	Articles 37 and 38
Article 21	Article 39
Articles 22 to 25	—
—	Articles 40 to 42
Article 26	Article 43
—	Annexes I and II

Directive 2005/71/EC	This Directive
Article 1	Article 1(a)
Article 2, introductory wording	Article 3, introductory wording
Article 2(a)	Article 3(1)
Article 2(b)	Article 3(9)
Article 2(c)	Article 3(10)
Article 2(d)	Article 3(2)
Article 2(e)	Article 3(22)
Article 3(1)	Article 2(1)
Article 3(2)(a)	Article 2(2)(a)
Article 3(2)(b)	—
Article 3(2)(c)	Article 2(2)(b)
Article 3(2)(d)	—
Article 4	Article 4
Article 5(1)	Article 9(1)
Article 5(2)	Article 9(2)
Article 5(3)	Article 8(2)
Article 5(4)	Article 10(7)
Article 5(5)	Article 35, second paragraph
Article 5(6)	Article 9(3)
Article 5(7)	Article 10(8)

Directive 2005/71/EC	This Directive
Article 6(1)	Article 10(1)
—	Article 10(2)
Article 6(2)(a)	Article 10(4)
Article 6(2)(b)	Article 7(1)(e)
Article 6(2)(c)	Article 7(1)(c)
Article 6(2)(d)	Article 10(3)
Article 6(3)	—
Article 6(4) and (5)	Article 10(5) and (6)
Article 7(1)(a)	Article 7(1)(a)
Article 7(1)(b)	Article 8(1)
Article 7(1)(c)	Article 8(2)
Article 7(1)(d)	Article 7(6)
Article 7(1), last subparagraph	—
Article 7(2)	—
Article 7(3)	Article 5(3)
Article 8	Article 18(1)
Article 9	Article 26
Article 10(1)	Article 21(1)(a), (b) and (d)
Article 10(2)	Article 21(4)
Article 11(1) and (2)	Article 23
Article 12	Article 22(1) and (2)
Article 13	Articles 28 and 29
Article 14(1)	Article 7(5)
Article 14(2) and (3)	Article 7(4)
Article 14(4)	Article 5(3)
Article 15(1)	Article 34(1)
—	Article 34(2)
Article 15(2)	Article 34(3)
Article 15(3)	Article 34(4)
Article 15(4)	Article 34(5)
Article 16	Article 39
Article 17 to 20	—
Article 21	Article 43

DIRECTIVE (EU) 2016/802 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 May 2016
relating to a reduction in the sulphur content of certain liquid fuels
(codification)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) Council Directive 1999/32/EC ⁽³⁾ has been substantially amended several times ⁽⁴⁾. In the interests of clarity and rationality, that Directive should be codified.
- (2) The environmental policy of the Union, as set out in the action programmes on the environment, and in particular in the Sixth Environment Action Programme adopted by Decision No 1600/2002/EC of the European Parliament and of the Council ⁽⁵⁾, and in the Seventh Environment Action Programme adopted by Decision No 1386/2013/EU of the European Parliament and of the Council, ⁽⁶⁾ has as one of its objectives to achieve levels of air quality that do not give rise to significant negative impacts on, and risks to, human health and the environment.
- (3) Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) provides that Union policy on the environment is to aim at a high level of protection, taking into account the diversity of situations in the various regions of the Union.
- (4) This Directive lays down the maximum permitted sulphur content of heavy fuel oil, gas oil, marine gas oil and marine diesel oil used in the Union.
- (5) Emissions from shipping due to the combustion of marine fuels with a high sulphur content contribute to air pollution in the form of sulphur dioxide and particulate matter, which harm human health and the environment and contribute to acid deposition. Without the measures set out in this Directive, emissions from shipping would soon have been higher than emissions from all land-based sources.

⁽¹⁾ OJ C 12, 15.1.2015, p. 117.

⁽²⁾ Position of the European Parliament of 9 March 2016 (not yet published in the Official Journal) and decision of the Council of 11 April 2016.

⁽³⁾ Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC (OJ L 121, 11.5.1999, p. 13).

⁽⁴⁾ See Annex III, Part A.

⁽⁵⁾ Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme (OJ L 242, 10.9.2002, p. 1).

⁽⁶⁾ Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ L 354, 28.12.2013, p. 171).

- (6) Acidification and atmospheric sulphur dioxide damage sensitive ecosystems, reduce biodiversity and amenity value and detrimentally affect crop production and the growth of forests. Acid rain falling in cities may cause significant damage to buildings and the architectural heritage. Sulphur dioxide pollution may also have a significant effect upon human health, particularly among those sectors of the population suffering from respiratory diseases.
- (7) Acidification is a transboundary phenomenon requiring Union as well as national or local solutions.
- (8) Emissions of sulphur dioxide contribute to the formation of particulate matter in the atmosphere.
- (9) Air pollution caused by ships at berth is a major concern for many harbour cities when it comes to their efforts to meet the Union's air quality limit values.
- (10) Member States should encourage the use of shore-side electricity, as the electricity for present-day ships is usually provided by auxiliary engines.
- (11) The Union and the individual Member States are Contracting Parties to the UN-ECE Convention of 13 November 1979 on Long-Range Transboundary Air Pollution. The second UN-ECE Protocol on transboundary pollution by sulphur dioxide stipulates that the Contracting Parties should reduce sulphur dioxide emissions in line with or beyond the 30 % reduction specified in the first Protocol, and the second UN-ECE Protocol is based on the premise that critical loads and levels will continue to be exceeded in some sensitive areas. Further measures to reduce sulphur dioxide emissions will still be required. The Contracting Parties should therefore make further significant reductions in emissions of sulphur dioxide.
- (12) Sulphur, which is naturally present in small quantities in oil and coal, has for decades been recognised as the dominant source of sulphur dioxide emissions, which are one of the main causes of 'acid rain' and one of the major causes of the air pollution experienced in many urban and industrial areas.
- (13) Studies have shown that the benefits from reducing sulphur emissions by reductions in the sulphur content of fuels will often be considerably greater than the estimated costs to industry in this Directive. The technology exists and is well established for reducing the sulphur level of liquid fuels.
- (14) In accordance with Article 193 TFEU, this Directive should not prevent any Member State from maintaining or introducing more stringent protective measures in order to encourage early implementation with respect to the maximum sulphur content of marine fuels, for instance using emission abatement methods outside SO_x Emission Control Areas. Such measures are required to be compatible with the Treaties and are to be notified to the Commission.
- (15) A Member State, before introducing new, more stringent protective measures, should notify the draft measures to the Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council ⁽¹⁾.
- (16) The TFEU requires consideration to be given to the special characteristics of the outermost regions of the Union, namely the French overseas departments, the Azores, Madeira and the Canary Islands.
- (17) With regard to the limit on the sulphur content of heavy fuel oil, it is appropriate to provide for derogations in Member States and regions where the environmental conditions so allow.
- (18) With regard to the limit on the sulphur content of heavy fuel oil, it is also appropriate to provide for derogations for their use in combustion plants which comply with the emission limit values laid down in Directive 2001/80/EC of the European Parliament and of the Council ⁽²⁾, or in Annex V to Directive 2010/75/EU of the European Parliament and of the Council ⁽³⁾.

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

⁽²⁾ Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (OJ L 309, 27.11.2001, p. 1).

⁽³⁾ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

- (19) For refinery combustion plants excluded from the scope of point (d) of Article 3(2) or point (c) of Article 3(3) of this Directive the emissions of sulphur dioxide averaged over such plants should not exceed the limits set out in Directive 2001/80/EC, or Annex V to Directive 2010/75/EU, or any future revision of those Directives. In the application of this Directive, Member States should bear in mind that substitution by fuels other than those referred to in Article 2 should not produce an increase in emissions of acidifying pollutants.
- (20) In 2008, the International Maritime Organisation (IMO) adopted a resolution to amend Annex VI to the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL), containing regulations for the prevention of air pollution from ships. The revised Annex VI to MARPOL entered into force on 1 July 2010.
- (21) The revised Annex VI to MARPOL introduces, inter alia, stricter sulphur limits for marine fuel in SO_x Emission Control Areas (1,00 % as of 1 July 2010 and 0,10 % as of 1 January 2015) as well as in sea areas outside SO_x Emission Control Areas (3,50 % as of 1 January 2012 and, in principle, 0,50 % as of 1 January 2020). Most Member States are obliged, in accordance with their international commitments, to require ships to use fuel with a maximum sulphur content of 1,00 % in SO_x Emission Control Areas as of 1 July 2010. In order to ensure coherence with international law as well as to secure proper enforcement of new globally established sulphur standards in the Union, this Directive should be in line with the revised Annex VI to MARPOL. In order to ensure a minimum quality of fuel used by ships either for fuel-based or technology-based compliance, marine fuel the sulphur content of which exceeds the general standard of 3,50 % by mass should not be allowed for use in the Union, except for fuels supplied to ships using emission abatement methods operating in closed mode.
- (22) Amendments to Annex VI to MARPOL regarding SO_x Emission Control Areas are possible under IMO procedures. In the event that further changes, including exemptions, are introduced with regard to the application of limits for SO_x Emission Control Areas in Annex VI to MARPOL, the Commission should consider any such changes and, where appropriate, without delay make the necessary proposal in accordance with the TFEU to fully align this Directive with the IMO rules regarding SO_x Emission Control Areas.
- (23) The introduction of any new emission control areas should be subject to the IMO process under Annex VI to MARPOL and should be underpinned by a well-founded case based on environmental and economic grounds and supported by scientific data.
- (24) In accordance with Regulation 18 of the revised Annex VI to MARPOL, Member States should endeavour to ensure the availability of marine fuels which comply with this Directive.
- (25) In view of the global dimension of environmental politics and shipping emissions, ambitious emission standards should be set at a global level.
- (26) The Union will continue to advocate more effective protection of areas sensitive to SO_x emissions and a reduction in the normal limit value for bunker fuel oil at the IMO.
- (27) Passenger ships operate mostly in ports or close to coastal areas and their impacts on human health and the environment are significant. In order to improve air quality around ports and coasts, those ships are required to use marine fuel with a maximum sulphur content of 1,50 % until stricter sulphur standards apply to all ships in territorial seas, exclusive economic zones and pollution control zones of Member States.
- (28) In order to facilitate the transition to new engine technologies with the potential for significant further emission reductions in the maritime sector, the Commission should further explore opportunities to enable and encourage the uptake of gas-powered engines in ships.
- (29) Proper enforcement of the obligations with regard to the sulphur content of marine fuels is necessary in order to achieve the aims of this Directive. The experience from the implementation of Directive 1999/32/EC has shown that there is a need for a stronger monitoring and enforcement regime in order to ensure the proper implementation of this Directive. To that end, it is necessary that Member States ensure sufficiently frequent and accurate sampling of marine fuel placed on the market or used on board ship as well as regular verification of ships' logbooks and bunker delivery notes. It is also necessary for Member States to establish a system of effective, proportionate and dissuasive penalties for non-compliance with the provisions of this Directive. In order to ensure more transparent information, it is also appropriate to provide that the register of local suppliers of marine fuel be made publicly available.

- (30) Complying with the low sulphur limits for marine fuels, particularly in SO_x Emission Control Areas, can result in a significant increase in the price of such fuels, at least in the short term, and can have a negative effect on the competitiveness of short sea shipping in comparison with other transport modes, as well as on the competitiveness of the industries in the countries bordering SO_x Emission Control Areas. Suitable solutions are necessary in order to reduce compliance costs for the affected industries, such as allowing for alternative, more cost-effective methods of compliance than fuel-based compliance and providing support, where necessary. The Commission should, based, inter alia, on reports from Member States, closely monitor the impacts of the shipping sector's compliance with the new fuel quality standards, particularly with regard to possible modal shift from sea to land-based transport and should, if appropriate, propose proper measures to counteract such a trend.
- (31) Limiting modal shift from sea to land-based transport is important given that an increasing share of goods being transported by road would in many cases run counter to the Union's climate change objectives and increase congestion.
- (32) The costs of the new requirements to reduce sulphur dioxide emissions could result in modal shift from sea to land-based transport and could have negative effects on the competitiveness of the industries. The Commission should make full use of instruments such as Marco Polo and the trans-European transport network to provide targeted assistance so as to minimise the risk of modal shift. Member States may consider it necessary to provide support to operators affected by this Directive in accordance with the applicable State aid rules.
- (33) In accordance with existing guidelines on State aid for environmental protection, and without prejudice to future changes thereto, Member States may provide State aid in favour of operators affected by this Directive, including aid for retrofitting operations of existing vessels, if such aid measures are deemed to be compatible with the internal market in accordance with Articles 107 and 108 TFEU, in particular in light of the applicable guidelines on State aid for environmental protection. In this context, the Commission may take into account that the use of some emission abatement methods go beyond the requirements of this Directive by reducing not only the sulphur dioxide emissions but also other emissions.
- (34) Access to emission abatement methods should be facilitated. Those methods can provide emission reductions at least equivalent to, or even greater than, those achievable using low sulphur fuel, provided that they have no significant negative impacts on the environment, such as marine ecosystems, and that they are developed subject to appropriate approval and control mechanisms. The already known alternative methods, such as the use of on-board exhaust gas cleaning systems, the mixture of fuel and liquefied natural gas or the use of biofuels should be recognised in the Union. It is important to promote the testing and development of new emission abatement methods in order, among other reasons, to limit modal shift from sea to land-based transport.
- (35) Emission abatement methods hold the potential for significant emission reductions. The Commission should therefore promote the testing and development of such technologies, inter alia, by considering the establishment of a co-financed joint programme with industry, based on principles from similar programmes, such as the Clean Sky Programme.
- (36) The Commission, in cooperation with Member States and stakeholders, should further develop measures identified in the Commission's Staff Working Paper of 16 September 2011 entitled 'Pollutant emission reduction from maritime transport and the sustainable waterborne transport toolbox'.
- (37) In the case of a disruption in the supply of crude oil, petroleum products or other hydrocarbons, the Commission may authorise the application of a higher limit within a Member State's territory.
- (38) Member States should establish the appropriate mechanisms for monitoring compliance with the provisions of this Directive. Reports on the sulphur content of liquid fuels should be submitted to the Commission.
- (39) This Directive should contain detailed indications as regards the content and the format of the report to ensure harmonised reporting.

- (40) The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the amendment of the equivalent emission values for, and the criteria for the use of, emission abatement methods laid down in Annexes I and II to this Directive, in order to adapt them to scientific and technical progress in such a way as to ensure strict consistency with the relevant instruments of the IMO, and in respect of the amendment of points (a) to (e) and (p) of Article 2, point (b)(i) of Article 13(2) and Article 13(3) of this Directive in order to adapt those provisions to scientific and technical progress. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (41) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾.
- (42) It is appropriate for the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council ⁽²⁾ to assist the Commission in the approval of the emission abatement methods which are not covered by Council Directive 96/98/EC ⁽³⁾.
- (43) Effective, proportionate and dissuasive penalties are important for the implementation of this Directive. Member States should include in those penalties fines calculated in such a way as to ensure that the fines at least deprive those responsible of the economic benefits derived from their infringement and that those fines gradually increase for repeated infringements. Member States should notify the provisions on penalties to the Commission.
- (44) 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 III, Part B,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose and scope

1. The purpose of this Directive is to reduce the emissions of sulphur dioxide resulting from the combustion of certain types of liquid fuels and thereby to reduce the harmful effects of such emissions on man and the environment.
2. Reductions in emissions of sulphur dioxide resulting from the combustion of certain petroleum-derived liquid fuels shall be achieved by imposing limits on the sulphur content of such fuels as a condition for their use within Member States' territory, territorial seas and exclusive economic zones or pollution control zones.

The limitations on the sulphur content of certain petroleum-derived liquid fuels as laid down in this Directive shall not, however, apply to:

- (a) fuels intended for the purposes of research and testing;
- (b) fuels intended for processing prior to final combustion;
- (c) fuels to be processed in the refining industry;
- (d) fuels used and placed on the market in the outermost regions of the Union, provided that the relevant Member States ensure that, in those regions:
 - (i) air quality standards are respected;
 - (ii) heavy fuel oils are not used if their sulphur content exceeds 3 % by mass;

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

⁽²⁾ Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships (OJ L 324, 29.11.2002, p. 1).

⁽³⁾ Council Directive 96/98/EC of 20 December 1996 on marine equipment (OJ L 46, 17.2.1997, p. 25).

- (e) fuels used by warships and other vessels on military service. However, each Member State shall endeavour to ensure, by the adoption of appropriate measures not impairing the operations or operational capability of such ships, that the ships act in a manner consistent, so far as is reasonable and practical, with this Directive;
- (f) any use of fuels in a vessel necessary for the specific purpose of securing the safety of a ship or saving life at sea;
- (g) any use of fuels in a ship necessitated by damage sustained by it or its equipment, provided that all reasonable measures are taken after the occurrence of the damage to prevent or minimise excess emissions and that measures are taken as soon as possible to repair the damage. This shall not apply if the owner or master acted either with intent to cause damage, or recklessly;
- (h) without prejudice to Article 5, fuels used on board vessels employing emission abatement methods in accordance with Articles 8 and 10.

Article 2

Definitions

For the purpose of this Directive the following definitions shall apply:

- (a) 'heavy fuel oil' means:
 - (i) any petroleum-derived liquid fuel, excluding marine fuel, falling within CN codes 2710 19 51 to 2710 19 68, 2710 20 31, 2710 20 35 or 2710 20 39; or
 - (ii) any petroleum-derived liquid fuel, other than gas oil as defined in point (b) and other than marine fuels as defined in points (c), (d) and (e), which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 % by volume (including losses) distils at 250 °C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil;
- (b) 'gas oil' means:
 - (i) any petroleum-derived liquid fuel, excluding marine fuel, falling within CN codes 2710 19 25, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 or 2710 20 19; or
 - (ii) any petroleum-derived liquid fuel, excluding marine fuel, of which less than 65 % by volume (including losses) distils at 250 °C and of which at least 85 % by volume (including losses) distils at 350 °C by the ASTM D86 method.

Diesel fuels as defined in point 2 of Article 2 of Directive 98/70/EC of the European Parliament and of the Council ⁽¹⁾ are excluded from this definition. Fuels used in non-road mobile machinery and agricultural tractors are also excluded from this definition;

- (c) 'marine fuel' means any petroleum-derived liquid fuel intended for use or in use on board a vessel, including those fuels defined in ISO 8217. It includes any petroleum-derived liquid fuel in use on board inland waterway vessels or recreational craft, as defined respectively in Article 2 of Directive 97/68/EC of the European Parliament and of the Council ⁽²⁾ and Article 1(3) of Directive 94/25/EC of the European Parliament and of the Council ⁽³⁾, when such vessels are at sea;
- (d) 'marine diesel oil' means any marine fuel as defined for DMB grade in Table I of ISO 8217 with the exception of the reference to the sulphur content;
- (e) 'marine gas oil' means any marine fuel as defined for DMX, DMA and DMZ grades in Table I of ISO 8217 with the exception of the reference to the sulphur content;

⁽¹⁾ Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (OJ L 350, 28.12.1998, p. 58).

⁽²⁾ Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery (OJ L 59, 27.2.1998, p. 1).

⁽³⁾ Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft (OJ L 164, 30.6.1994, p. 15).

- (f) 'MARPOL' means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;
- (g) 'Annex VI to MARPOL' means the annex, entitled 'Regulations for the Prevention of Air Pollution from Ships', which the Protocol of 1997 added to MARPOL;
- (h) 'SO_x Emission Control Areas' means sea areas defined as such by the International Maritime Organisation (IMO) under Annex VI to MARPOL;
- (i) 'passenger ships' means ships that carry more than 12 passengers, where a passenger is every person other than:
 - (i) the master and the members of the crew or other person employed or engaged in any capacity on board a ship on the business of that ship; and
 - (ii) a child under 1 year of age;
- (j) 'regular services' means a series of passenger ship crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:
 - (i) according to a published timetable; or
 - (ii) with crossings so regular or frequent that they constitute a recognisable schedule;
- (k) 'warship' means a ship belonging to the armed forces of a State, bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline;
- (l) 'ships at berth' means ships which are securely moored or anchored in a Union port while they are loading, unloading or hotelling, including the time spent when not engaged in cargo operations;
- (m) 'placing on the market' means supplying or making available to third persons, against payment or free of charge, anywhere within Member States' jurisdictions, marine fuels for on-board combustion. It excludes supplying or making available marine fuels for export in ships' cargo tanks;
- (n) 'outermost regions' means the French overseas departments, the Azores, Madeira and the Canary Islands, as set out in Article 349 TFEU;
- (o) 'emission abatement method' means any fitting, material, appliance or apparatus to be fitted in a ship or other procedure, alternative fuel, or compliance method, used as an alternative to low sulphur marine fuel meeting the requirements set out in this Directive, that is verifiable, quantifiable and enforceable;
- (p) 'ASTM method' means the methods laid down by the American Society for Testing and Materials in the 1976 edition of standard definitions and specifications for petroleum and lubricating products;
- (q) 'combustion plant' means any technical apparatus in which fuels are oxidised in order to use the heat generated.

Article 3

Maximum sulphur content of heavy fuel oil

1. Member States shall ensure that heavy fuel oils are not used within their territory if their sulphur content exceeds 1,00 % by mass.
2. Until 31 December 2015, subject to appropriate monitoring of emissions by competent authorities, paragraph 1 shall not apply to heavy fuel oils used:
 - (a) in combustion plants which fall within the scope of Directive 2001/80/EC, which are subject to Article 4(1) or (2) or point (a) of Article 4(3) of that Directive and which comply with the emission limits for sulphur dioxide for such plants as set out in that Directive;
 - (b) in combustion plants which fall within the scope of Directive 2001/80/EC, which are subject to point (b) of Article 4(3) and Article 4(6) of that Directive and the monthly average sulphur dioxide emissions of which do not exceed 1 700 mg/Nm³ at an oxygen content in the flue gas of 3 % by volume on a dry basis;

- (c) in combustion plants which do not fall under points (a) or (b), and the monthly average sulphur dioxide emissions of which do not exceed 1 700 mg/Nm³ at an oxygen content in the flue gas of 3 % by volume on a dry basis;
- (d) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, but excluding plants which fall under points (a) and (b), gas turbines and gas engines, does not exceed 1 700 mg/Nm³ at an oxygen content in the flue gas of 3 % by volume on a dry basis.

3. As from 1 January 2016, subject to appropriate monitoring of emissions by competent authorities, paragraph 1 shall not apply to heavy fuel oils used:

- (a) in combustion plants which fall within the scope of Chapter III of Directive 2010/75/EU, and which comply with the emission limits for sulphur dioxide for such plants as set out in Annex V to that Directive or, where those emission limit values are not applicable in accordance with that Directive, for which the monthly average sulphur dioxide emissions does not exceed 1 700 mg/Nm³ at an oxygen content in the flue gas of 3 % by volume on a dry basis;
- (b) in combustion plants which do not fall under point (a), and the monthly average sulphur dioxide emissions of which does not exceed 1 700 mg/Nm³ at an oxygen content in the flue gas of 3 % by volume on a dry basis;
- (c) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, but excluding plants falling under point (a), gas turbines and gas engines, does not exceed 1 700 mg/Nm³ at an oxygen content in the flue gas of 3 % by volume on a dry basis.

Member States shall take the necessary measures to ensure that no combustion plant using heavy fuel oil with a sulphur concentration greater than that referred to in paragraph 1 is operated without a permit issued by a competent authority, which specifies the emission limits.

Article 4

Maximum sulphur content in gas oil

Member States shall ensure that gas oils are not used within their territory if their sulphur content exceeds 0,10 % by mass.

Article 5

Maximum sulphur content in marine fuel

Member States shall ensure that marine fuels are not used within their territory if their sulphur content exceeds 3,50 % by mass, except for fuels supplied to ships using emission abatement methods subject to Article 8 operating in closed mode.

Article 6

Maximum sulphur content of marine fuels used in territorial seas, exclusive economic zones and pollution control zones of Member States, including SO_x Emission Control Areas, and by passenger ships operating on regular services to or from Union ports

1. Member States shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones if the sulphur content of those fuels by mass exceeds:

- (a) 3,50 % as from 18 June 2014;
- (b) 0,50 % as from 1 January 2020.

This paragraph shall apply to all vessels of all flags, including vessels whose journey began outside of the Union, without prejudice to paragraphs 2 and 5 of this Article and Article 7.

2. Member States shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones falling within SO_x Emission Control Areas if the sulphur content of those fuels by mass exceeds:

- (a) 1,00 % until 31 December 2014;
- (b) 0,10 % as from 1 January 2015.

This paragraph shall apply to all vessels of all flags, including vessels whose journey began outside the Union.

The Commission shall have due regard to any future changes to the requirements pursuant to Annex VI to MARPOL applicable within SO_x Emission Control Areas, and, where appropriate, without undue delay make any relevant proposals with a view to amending this Directive accordingly.

3. The application date for paragraph 2 for any new sea areas, including ports, designated by the IMO as SO_x Emission Control Areas in accordance with Regulation 14(3)(b) of Annex VI to MARPOL shall be 12 months after the date of entry into force of the designation.

4. Member States shall be responsible for the enforcement of paragraph 2 at least in respect of:

- vessels flying their flag, and
- in the case of Member States bordering SO_x Emission Control Areas, vessels of all flags while in their ports.

Member States may also take additional enforcement action in respect of other vessels in accordance with international maritime law.

5. Member States shall take all necessary measures to ensure that marine fuels are not used in their territorial seas, exclusive economic zones and pollution control zones falling outside SO_x Emission Control Areas by passenger ships operating on regular services to or from any Union port if the sulphur content of those fuels exceeds 1,50 % by mass until 1 January 2020.

Member States shall be responsible for the enforcement of this requirement at least in respect of vessels flying their flag and vessels of all flags while in their ports.

6. Member States shall require the correct completion of ships' logbooks, including fuel-changeover operations.

7. Member States shall endeavour to ensure the availability of marine fuels which comply with this Directive and inform the Commission of the availability of such marine fuels in its ports and terminals.

8. If a ship is found by a Member State not to be in compliance with the standards for marine fuels which comply with this Directive, the competent authority of the Member State is entitled to require the ship to:

- (a) present a record of the actions taken to attempt to achieve compliance; and
- (b) provide evidence that it attempted to purchase marine fuel which complies with this Directive in accordance with its voyage plan and, if it was not made available where planned, that attempts were made to locate alternative sources for such marine fuel and that, despite best efforts to obtain marine fuel which complies with this Directive, no such marine fuel was made available for purchase.

The ship shall not be required to deviate from its intended voyage or to delay unduly the voyage in order to achieve compliance.

If a ship provides the information referred to in the first subparagraph, the Member State concerned shall take into account all relevant circumstances and the evidence presented to determine the appropriate action to take, including not taking control measures.

A ship shall notify its flag State and the competent authority of the relevant port of destination when it cannot purchase marine fuel which complies with this Directive.

A port State shall notify the Commission when a ship has presented evidence of the non-availability of marine fuels which comply with this Directive.

9. Member States shall, in accordance with Regulation 18 of Annex VI to MARPOL:

- (a) maintain a publicly available register of local suppliers of marine fuel;
- (b) ensure that the sulphur content of all marine fuels sold in their territory is documented by the supplier on a bunker delivery note, accompanied by a sealed sample signed by the representative of the receiving ship;
- (c) take action against marine fuel suppliers that have been found to deliver fuel that does not comply with the specification stated on the bunker delivery note;
- (d) ensure that remedial action is taken to bring any non-compliant marine fuel discovered into compliance.

10. Member States shall ensure that marine diesel oils are not placed on the market in their territory if the sulphur content of those marine diesel oils exceeds 1,50 % by mass.

Article 7

Maximum sulphur content of marine fuels used by ships at berth in Union ports

1. Member States shall take all necessary measures to ensure that ships at berth in Union ports do not use marine fuels with a sulphur content exceeding 0,10 % by mass, allowing sufficient time for the crew to complete any necessary fuel-changeover operation as soon as possible after arrival at berth and as late as possible before departure.

Member States shall require the time of any fuel-changeover operation to be recorded in ships' logbooks.

2. Paragraph 1 shall not apply:

- (a) whenever, according to published timetables, ships are due to be at berth for less than two hours;
- (b) to ships which switch off all engines and use shore-side electricity while at berth in ports.

3. Member States shall ensure that marine gas oils are not placed on the market in their territory if the sulphur content of those marine gas oils exceeds 0,10 % by mass.

Article 8

Emission abatement methods

1. Member States shall allow the use of emission abatement methods by ships of all flags in their ports, territorial seas, exclusive economic zones and pollution control zones, as an alternative to using marine fuels that meet the requirements of Articles 6 and 7, subject to paragraphs 2 and 4 of this Article.

2. Ships using the emission abatement methods referred to in paragraph 1 shall continuously achieve reductions of sulphur dioxide emissions that are at least equivalent to the reductions that would be achieved by using marine fuels that meet the requirements of Articles 6 and 7. Equivalent emission values shall be determined in accordance with Annex I.

3. Member States shall, as an alternative solution for reducing emissions, encourage the use of onshore power supply systems by docked vessels.

4. The emission abatement methods referred to in paragraph 1 shall comply with the criteria specified in the instruments referred to in Annex II.

5. Where justified in the light of scientific and technical progress regarding alternative emission abatement methods and in such a way as to ensure strict consistency with the relevant instruments and standards adopted by the IMO, the Commission shall:

- (a) be empowered to adopt delegated acts, in accordance with Article 16, amending Annexes I and II;
- (b) adopt implementing acts laying down the detailed requirements for monitoring of emissions, where appropriate. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Article 9

Approval of emission abatement methods for use on board ships flying the flag of a Member State

1. Emission abatement methods falling within the scope of Directive 96/98/EC shall be approved in accordance with that Directive.

2. Emission abatement methods not covered by paragraph 1 of this Article shall be approved in accordance with the procedure referred to in Article 3(2) of Regulation (EC) No 2099/2002, taking into account:

- (a) guidelines developed by the IMO;
- (b) the results of any trials conducted under Article 10;
- (c) effects on the environment, including achievable emission reductions, and impacts on ecosystems in enclosed ports, harbours and estuaries; and
- (d) the feasibility of monitoring and verification.

Article 10

Trials of new emission abatement methods

Member States may, in cooperation with other Member States, as appropriate, approve trials of ship emission abatement methods on vessels flying their flag, or in sea areas within their jurisdiction. During those trials, the use of marine fuels meeting the requirements of Articles 6 and 7 shall not be mandatory, provided that all of the following conditions are fulfilled:

- (a) the Commission and any port State concerned are notified in writing at least 6 months before trials begin;
- (b) permits for trials do not exceed 18 months in duration;
- (c) all ships involved install tamper-proof equipment for the continuous monitoring of funnel gas emissions and use it throughout the trial period;
- (d) all ships involved achieve emission reductions which are at least equivalent to those which would be achieved through the sulphur limits for fuels specified in this Directive;
- (e) there are proper waste management systems in place for any waste generated by the emission abatement methods throughout the trial period;
- (f) there is an assessment of impacts on the marine environment, particularly ecosystems in enclosed ports, harbours and estuaries throughout the trial period; and
- (g) full results are provided to the Commission and are made publicly available within 6 months of the end of the trials.

*Article 11***Financial measures**

Member States may adopt financial measures in favour of operators affected by this Directive where such financial measures are in accordance with State aid rules applicable and to be adopted in this area.

*Article 12***Change in the supply of fuels**

If, as a result of a sudden change in the supply of crude oil, petroleum products or other hydrocarbons, it becomes difficult for a Member State to apply the limits on the maximum sulphur content referred to in Articles 3 and 4, that Member State shall inform the Commission thereof. The Commission may authorise a higher limit to be applicable within the territory of that Member State for a period not exceeding 6 months. It shall notify the Council and the Member States of its decision. Any Member State may refer that decision to the Council within 1 month. The Council, acting by a qualified majority, may adopt a different decision within 2 months.

*Article 13***Sampling and analysis**

1. Member States shall take all necessary measures to check by sampling that the sulphur content of fuels used complies with Articles 3 to 7. The sampling shall commence on the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out periodically with sufficient frequency and quantities such that the samples are representative of the fuel examined, and in the case of marine fuel, of the fuel being used by vessels while in relevant sea areas and ports. The samples shall be analysed without undue delay.

2. The following means of sampling, analysis and inspection of marine fuel shall be used:

(a) inspection of ships' logbooks and bunker delivery notes; and

(b) as appropriate, the following means of sampling and analysis:

(i) sampling of the marine fuel for on-board combustion while being delivered to ships, in accordance with the Guidelines for the sampling of fuel oil for determination of compliance with the revised Annex VI to MARPOL, adopted on 17 July 2009 by Resolution 182(59) of the Marine Environment Protection Committee (MEPC) of the IMO, and analysis of its sulphur content; or

(ii) sampling and analysis of the sulphur content of marine fuel for on-board combustion contained in tanks, where technically and economically feasible, and in sealed bunker samples on board ships.

3. The reference method adopted for determining the sulphur content shall be ISO method 8754 (2003) or EN ISO 14596:2007.

In order to determine whether marine fuel delivered to, and used on board, ships is compliant with the sulphur limits required by Articles 4 to 7, the fuel verification procedure set out in Appendix VI to Annex VI to MARPOL shall be used.

4. The Commission shall be empowered to adopt implementing acts concerning:

(a) the frequency of sampling;

(b) the sampling methods;

(c) the definition of a sample representative of the fuel examined.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

*Article 14***Reporting and review**

1. Each year by 30 June, Member States shall, on the basis of the results of the sampling, analysis and inspections carried out in accordance with Article 13, submit a report to the Commission on the compliance with the sulphur standards set out in this Directive for the preceding year.

On the basis of the reports received in accordance with the first subparagraph of this paragraph and the notifications regarding the non-availability of marine fuel which complies with this Directive submitted by Member States in accordance with the fifth subparagraph of Article 6(8), the Commission shall, within 12 months of the date referred to in the first subparagraph of this paragraph, draw up and publish a report on the implementation of this Directive. The Commission shall evaluate the need for further strengthening of the relevant provisions of this Directive and make any appropriate legislative proposals to that effect.

2. By 31 December 2013, the Commission shall submit a report to the European Parliament and to the Council which shall be accompanied, if appropriate, by legislative proposals. The Commission shall consider in its report the potential for reducing air pollution taking into account, inter alia: annual reports submitted in accordance with paragraphs 1 and 3; observed air quality and acidification; fuel costs; potential economic impact and observed modal shift; and progress in reducing emissions from ships.

3. The Commission may adopt implementing acts concerning the information to be included in the report and the format of the report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

*Article 15***Adaptation to scientific and technical progress**

The Commission shall be empowered to adopt delegated acts in accordance with Article 16 concerning the adaptations of points (a) to (e) and (p) of Article 2, point (b)(i) of Article 13(2) and Article 13(3) to scientific and technical progress. Such adaptations shall not result in any direct changes to the scope of this Directive or to sulphur limits for fuels specified in this Directive.

*Article 16***Exercise of the delegation**

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

2. The power to adopt delegated acts referred to in Article 8(5) and Article 15 shall be conferred on the Commission for a period of 5 years from 17 December 2012. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.

3. The delegation of power referred to in Article 8(5) and Article 15 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the powers 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(5) and Article 15 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 3 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 3 months at the initiative of the European Parliament or of the Council.

Article 17

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

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

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

Article 18

Penalties

Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive.

The penalties determined shall be effective, proportionate and dissuasive and may include fines calculated in such a way as to ensure that the fines at least deprive those responsible of the economic benefits derived from the infringement of the national provisions as referred to in the first paragraph and that those fines gradually increase for repeated infringements.

Article 19

Repeal

Directive 1999/32/EC, as amended by the acts listed in Annex III, Part A, is repealed, 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 III, 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 IV.

Article 20

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 21***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 11 May 2016.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
J.A. HENNIS-PLASSCHAERT

ANNEX I

EQUIVALENT EMISSION VALUES FOR EMISSION ABATEMENT METHODS AS REFERRED TO IN ARTICLE 8(2)

Marine fuel sulphur limits referred to in Articles 6 and 7 of this Directive and Regulations 14.1 and 14.4 of Annex VI to MARPOL and corresponding emission values referred to in Article 8(2):

Marine fuel Sulphur Content (% m/m)	Ratio Emission SO ₂ (ppm)/CO ₂ (% v/v)
3,50	151,7
1,50	65,0
1,00	43,3
0,50	21,7
0,10	4,3

Note:

- the use of the Ratio Emissions limits is only applicable when using petroleum-based distillate or residual fuel oils,
- in justified cases where the CO₂ concentration is reduced by the exhaust gas cleaning (EGC) unit, the CO₂ concentration may be measured at the EGC unit inlet, provided that the correctness of such a methodology can be clearly demonstrated.

ANNEX II

CRITERIA FOR THE USE OF EMISSION ABATEMENT METHODS AS REFERRED TO IN ARTICLE 8(4)

The emission abatement methods referred to in Article 8 shall comply at least with the criteria specified in the following instruments, as applicable:

Emission abatement method	Criteria for use
Mixture of marine fuel and boil-off gas	Commission Decision 2010/769/EU ⁽¹⁾ .
Exhaust gas cleaning systems	Resolution MEPC.184(59) adopted on 17 July 2009 'Washwater resulting from exhaust gas cleaning systems which make use of chemicals, additives, preparations and relevant chemicals created <i>in situ</i> ', referred to in point 10.1.6.1 of Resolution MEPC.184(59), shall not be discharged into the sea, including enclosed ports, harbours and estuaries, unless it is demonstrated by the ship operator that such washwater discharge has no significant negative impacts on and does not pose risks to human health and the environment. If the chemical used is caustic soda it is sufficient that the washwater meets the criteria set out in Resolution MEPC.184(59) and its pH does not exceed 8,0.
Biofuels	Use of biofuels as defined in Directive 2009/28/EC of the European Parliament and of the Council ⁽²⁾ that comply with the relevant CEN and ISO standards. The mixtures of biofuels and marine fuels shall comply with the sulphur standards set out in Article 5, Article 6(1), (2) and (5) and Article 7 of this Directive.

⁽¹⁾ Commission Decision 2010/769/EU of 13 December 2010 on the establishment of criteria for the use by liquefied natural gas carriers of technological methods as an alternative to using low sulphur marine fuels meeting the requirements of Article 4b of Council Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels as amended by Directive 2005/33/EC of the European Parliament and of the Council on the sulphur content of marine fuels (OJ L 328, 14.12.2010, p. 15).

⁽²⁾ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16).

ANNEX III

PART A

Repealed Directive with list of the successive amendments thereto
(referred to in Article 19)

Council Directive 1999/32/EC

(OJ L 121, 11.5.1999, p. 13)

Regulation (EC) No 1882/2003 of the European Parliament and of the Council

Point 19 of Annex I only

(OJ L 284, 31.10.2003, p. 1)

Directive 2005/33/EC of the European Parliament and of the Council

(OJ L 191, 22.7.2005, p. 59)

Regulation (EC) No 219/2009 of the European Parliament and of the Council

Point 3.4 of the Annex only

(OJ L 87, 31.3.2009, p. 109)

Directive 2009/30/EC of the European Parliament and of the Council

Article 2 only

(OJ L 140, 5.6.2009, p. 88)

Directive 2012/33/EU of the European Parliament and of the Council

(OJ L 327, 27.11.2012, p. 1)

PART B

Time limits for transposition into national law
(referred to in Article 19)

Directive	Time limit for transposition
1999/32/EC	1 July 2000
2005/33/EC	11 August 2006
2009/30/EC	31 December 2010
2012/33/EU	18 June 2014

ANNEX IV

CORRELATION TABLE

Directive 1999/32/EC	This Directive
Article 1(1)	Article 1(1)
Article 1(2), subparagraph 2, introductory wording	Article 1(2), subparagraph 2, introductory wording
Article 1(2), subparagraph 2, (a), (b) and (c)	Article 1(2), subparagraph 2, (a), (b) and (c)
Article 1(2), subparagraph 2, (d), introductory wording	Article 1(2), subparagraph 2, (d), introductory wording
Article 1(2), subparagraph 2, (d), first indent	Article 1(2), subparagraph 2, (d)(i)
Article 1(2), subparagraph 2, (d), second indent	Article 1(2), subparagraph 2, (d)(ii)
Article 1(2), subparagraph 2, (e) to (h)	Article 1(2), subparagraph 2, (e) to (h)
Article 2, introductory wording	Article 2, introductory wording
Article 2, point 1	Article 2(a)
Article 2, point 1, first indent	Article 2(a)(i)
Article 2, point 1, second indent	Article 2(a)(ii)
Article 2, point 2	Article 2(b)
Article 2, point 2, first indent	Article 2(b)(i)
Article 2, point 2, second indent	Article 2(b)(ii)
Article 2, point 2, final wording	Article 2(b), final wording
Article 2, point 3	Article 2(c)
Article 2, point 3a	Article 2(d)
Article 2, point 3b	Article 2(e)
Article 2, point 3c	Article 2(f)
Article 2, point 3d	Article 2(g)
Article 2, point 3e	Article 2(h)
Article 2, point 3f	Article 2(i)
Article 2, point 3g	Article 2(j)
Article 2, point 3h	Article 2(k)
Article 2, point 3i	Article 2(l)
Article 2, point 3k	Article 2(m)
Article 2, point 3l	Article 2(n)
Article 2, point 3m	Article 2(o)
Article 2, point 4	Article 2(p)
Article 2, point 5	Article 2(q)
Article 3	Article 3
Article 3a	Article 5

Directive 1999/32/EC	This Directive
Article 4	Article 4
Article 4a(1)	Article 6(2)
Article 4a(1a)	Article 6(1)
Article 4a(2)	Article 6(3)
Article 4a(3)	Article 6(4)
Article 4a(4)	Article 6(5)
Article 4a(5)	Article 6(6)
Article 4a(5a)	Article 6(7)
Article 4a(5b)	Article 6(8)
Article 4a(6)	Article 6(9)
Article 4a(7)	Article 6(10)
Article 4b	Article 7
Article 4c(1) and (2)	Article 8(1) and (2)
Article 4c(2a)	Article 8(3)
Article 4c(3)	Article 8(4)
Article 4c(4)	Article 8(5)
Article 4d	Article 9
Article 4e	Article 10
Article 4f	Article 11
Article 5	Article 12
Article 6(1)	Article 13(1)
Article 6(1a)	Article 13(2)
Article 6(2)	Article 13(3)
Article 6(1b)	Article 13(4)
Article 7(1) and (2)	Article 14(1) and (2)
Article 7(1a)	Article 14(3)
Article 7(3)	—
Article 7(4)	Article 15
Article 9	Article 17
Article 9a	Article 16
Article 10	—
Article 11(1)	Article 18, first paragraph
Article 11(2)	Article 18, second paragraph
—	Article 19
Article 12	Article 20

Directive 1999/32/EC	This Directive
Article 13	Article 21
Annexes I and II	Annexes I and II
—	Annex III
—	Annex IV

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2016/803

of 7 May 2015

on the signing, on behalf of the Union and its Member States, and provisional application of a Protocol amending the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, to take account of the accession to the European Union of the Republic of Croatia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with Article 218(5) thereof,

Having regard to the Act of Accession of Croatia, and in particular the second subparagraph of Article 6(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 14 September 2012, the Council authorised the Commission to open negotiations, on behalf of the Union and its Member States and the Republic of Croatia, to conclude a Protocol amending the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part ⁽¹⁾, to take account of the accession to the European Union of the Republic of Croatia ('the Protocol').
- (2) Those negotiations were successfully completed on 24 April 2014.
- (3) The Protocol should be signed on behalf of the Union and its Member States, subject to its conclusion at a later date.
- (4) The Protocol should be applied provisionally,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Protocol amending the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, to take account of the accession to the European Union of the Republic of Croatia is hereby authorised on behalf of the Union and its Member States, subject to the conclusion of the said Protocol.

The text of the Protocol is attached to this Decision.

⁽¹⁾ The text of the Agreement is published in OJ L 334, 6.12.2012, p. 3.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Protocol on behalf of the Union and its Member States.

Article 3

The Protocol shall be applied on a provisional basis, in accordance with Article 3(2) thereof, as from the signing thereof by the parties ⁽¹⁾, pending its entry into force.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 7 May 2015.

For the Council
The President
E. RINKĒVIČS

⁽¹⁾ The date from which the Protocol will be provisionally applied will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

PROTOCOL

amending the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, to take account of the accession to the European Union of the Republic of Croatia

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE REPUBLIC OF CROATIA,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

being parties to the Treaty on European Union and the Treaty on the Functioning of the European Union and being Member States of the European Union (hereinafter 'the Member States'), and

THE EUROPEAN UNION,

of the one part, and

THE HASHEMITE KINGDOM OF JORDAN,

of the other part,

HAVING REGARD to the accession of the Republic of Croatia to the European Union on 1 July 2013,

HAVE AGREED AS FOLLOWS:

Article 1

The Republic of Croatia is a Party to the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part ⁽¹⁾, signed on 15 December 2010 (hereinafter 'the Agreement').

Article 2

The text of the Agreement in the Croatian language ⁽²⁾ shall be authentic under the same conditions as the other language versions.

Article 3

1. This Protocol shall be approved by the Parties in accordance with their own procedures. It shall enter into force on the date of entry into force of the Agreement. However, should this Protocol be approved by the Parties after the date of entry into force of the Agreement, it would then enter into force, in accordance with Article 29(1) of the Agreement, one month after the date of the last note in an exchange of diplomatic notes between the Parties confirming that all necessary procedures for the entry into force of this Protocol have been completed.

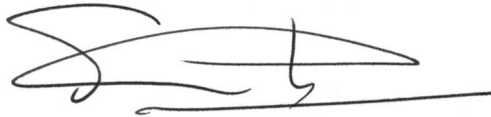
2. This Protocol shall be an integral part of the Agreement and shall be applied on a provisional basis as from the signing thereof by the Parties.

Done at Brussels on 3 May 2016, in duplicate, in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish and Arabic languages, each text being equally authentic.

⁽¹⁾ The text of the Agreement is published in OJ L 334, 6.12.2012, p. 3.

⁽²⁾ Special edition in Croatian, Chapter 7 Volume 24, p. 280.

За държавите-членки
Por los Estados miembros
Za členské státy
For medlemsstaterne
Für die Mitgliedstaaten
Liikmesriikide nimel
Για τα κράτη μέλη
For the Member States
Pour les États membres
Za države članice
Per gli Stati membri
Dalībvalstu vārdā –
Valstybių narių vardu
A tagállamok részéről
Ghall-Istati Membri
Voor de lidstaten
W imieniu Państw Członkowskich
Pelos Estados-Membros
Pentru statele membre
Za členské štáty
Za države članice
Jäsenvaltioiden puolesta
För medlemsstaterna
عن الدول الأعضاء



За Европейския съюз
Por la Unión Europea
Za Evropskou unii
For Den Europæiske Union
Für die Europäische Union
Euroopa Liidu nimel
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Za Europejską uniję
Per l'Unione europea
Eiropas Savienības vārdā –
Europos Sąjungos vardu
Az Európai Unió részéről
Ghall-Unjoni Ewropea
Voor de Europese Unie
W imieniu Unii Europejskiej
Pela União Europeia
Pentru Uniunea Europeană
Za Európsku úniu
Za Evropsko unijo
Euroopan unionin puolesta
För Europeiska unionen
عن الاتحاد الأوروبي



За Хашемитското кралство Йордания
Por el Reino Hachemí de Jordania
Za Jordánské hášimovské království
For Det Hashemitiske Kongerige Jordan
Für das Haschemitische Königreich Jordanien
Jordaania Hašimiidi Kuningriigi nimel
Για το Χασεμιτικό Βασίλειο της Ιορδανίας
For the Hashemite Kingdom of Jordan
Pour le Royaume hachémite de Jordanie
Za Hašemitsku Kraljevinu Jordan
Per il Regno hascemita di Giordania
Jordānijas Hāšimītu Karalistes vārdā –
Jordānijos Hašimitų Karalystės vardu
A Jordán Hásimita Királyság részéről
Ghar-Renju Haxemita tal-Ġordan
Voor het Hasjemitisch Koninkrijk Jordanië
W imieniu Jordańskiego Królestwa Haszymidzkiego
Pelo Reino Hachemita da Jordânia
Pentru Regatul Haşemit al Iordaniei
Za Jordánske hášimovské kráľovstvo
Za Hašemitsko kraljevino Jordanijo
Jordanian hašemiittisen kuningaskunnan puolesta
För Hashemitiska konungariket Jordanien

عن المملكة الأردنية الهاشمية



REGULATIONS

COUNCIL REGULATION (EU, Euratom) 2016/804

of 17 May 2016

amending Regulation (EU, Euratom) No 609/2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 322(2) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Court of Auditors ⁽²⁾,

Whereas:

- (1) Council Regulation (EC, Euratom) No 1150/2000 ⁽³⁾ was recast by Council Regulation (EU, Euratom) No 609/2014 ⁽⁴⁾. Regulation (EU, Euratom) No 609/2014 is to enter into force on the day of entry into force of Council Decision 2014/335/EU, Euratom ⁽⁵⁾. That Decision has not yet entered into force.
- (2) In order to give the Commission (Eurostat) sufficient time to assess relevant gross national income (GNI) data and to give the GNI Committee sufficient time to establish an opinion on the GNI data, any changes to the GNI of a given financial year should be possible until 30 November of the fourth year after that financial year. The period for keeping supporting documents related to the value added tax (VAT) and GNI own resources should, consequently, also be extended from 30 September to 30 November of the fourth year following the financial year to which they refer.
- (3) This Regulation should reflect the existing practice whereby the Commission accounts for own resources purposes referred to in Article 9 of Regulation (EU, Euratom) No 609/2014 ('Commission own resources accounts') are kept with Member States' treasuries or with their national central banks. The notion of treasury should cover also other public entities exercising similar functions.

⁽¹⁾ Opinion of the European Parliament of 15 December 2015.

⁽²⁾ OJ C 5, 8.1.2016, p. 1.

⁽³⁾ Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/EC, Euratom on the system of the European Communities' own resources (OJ L 130, 31.5.2000, p. 1).

⁽⁴⁾ Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements (OJ L 168, 7.6.2014, p. 39).

⁽⁵⁾ Council Decision 2014/335/EU, Euratom of 26 May 2014 on the system of own resources of the European Union (OJ L 168, 7.6.2014, p. 105).

- (4) The Commission own resources accounts should be kept free of any charge and interest. The application of charges or negative interest would reduce the Union's budget and lead to unequal treatment of Member States. Therefore, where negative interest is applicable to Commission own resources accounts, the Member States concerned should credit an amount equal to the amount of negative interest. Since some Member States do not have the possibility of avoiding the financial impact of the obligation to credit such amounts of negative interest to the Commission own resources accounts, it is appropriate that the Commission, when covering its cash resource requirements, aim to reduce that impact by drawing with priority on the sums credited to the accounts concerned.
- (5) The Commission own resources accounts should only be debited upon the Commission's instruction. This should be without prejudice to the application of negative interest.
- (6) In the interest of clarity and readability, Article 10 of Regulation (EU, Euratom) No 609/2014 should be divided into several Articles.
- (7) The Commission should, at any time, have sufficient cash resources available to comply with payment requirements arising from the implementation of the budget, which are particularly concentrated in the first months of the year. The Commission already has the possibility of inviting Member States to bring forward up to two additional twelfths for the specific needs of paying expenditure of the European Agricultural Guarantee Fund (EAGF) pursuant to Regulation (EU) No 1307/2013 of the European Parliament and of the Council ⁽¹⁾. In order to further reduce the risk of payment delays due to temporary shortages of cash resources, it should be possible for the Commission to invite Member States to bring forward up to an additional half of one twelfth for the specific needs of paying expenditure of the European Structural and Investment Funds pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council ⁽²⁾, in so far as it is justified by cash requirements. However, to avoid excessive pressure on national treasuries, the total amount that can be brought forward to the same month should not exceed two additional twelfths. Moreover, due to the specific payment requirements applicable to the EAGF, this is not to be applied to the detriment of the EAGF.
- (8) Pursuant to Regulation (EU, Euratom) No 1150/2000, the Commission is to calculate adjustments to the VAT and GNI-based own resources, and inform Member States thereof, in time for them to enter these adjustments in the Commission own resources account on the first working day of December. The amounts of the adjustments to be made available on the first working day of December 2014 were of an unprecedented size. In order to prevent unreasonably heavy budgetary constraints on Member States just before the year-end, Council Regulation (EU, Euratom) No 1377/2014 ⁽³⁾ amended Regulation (EC, Euratom) No 1150/2000 to allow Member States to defer, in certain exceptional circumstances, the entry of these adjustments in the Commission own resources account.
- (9) Regulation (EC, Euratom) No 1150/2000, as thus amended, will cease to apply once Regulation (EU, Euratom) No 609/2014 enters into force. However, this should not prejudice the validity of those deferments to the entry of adjustments already formally requested under Regulation (EU, Euratom) No 1377/2014 while this latter Regulation was still in force.
- (10) In the interest of simplification, and in order to limit the fiscal strain on Member States and the Commission in particular towards the end of the year, the procedure for adjusting the VAT and GNI own resources should be streamlined. There should be more time between the formal notification to Member States of the required adjustments and their entry in the Commission own resources account. Such notification and entry should occur in the same year, that year being also relevant for recording the impact on the government accounts and for the purposes of the Stability and Growth Pact. There should be an immediate redistribution of the overall amount of adjustments among Member States according to their respective shares in the GNI-based own resource. This would eliminate the need for the derogation introduced by Regulation (EU, Euratom) No 1377/2014.

⁽¹⁾ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

⁽²⁾ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

⁽³⁾ Council Regulation (EU, Euratom) No 1377/2014 of 18 December 2014 amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 2007/436/EC, Euratom on the system of the European Communities' own resources (OJ L 367, 23.12.2014, p. 14).

- (11) In order to achieve the Union's objectives, the procedure for calculating interest should ensure in particular that own resources are made available in a timely manner and in full.
- (12) In order to improve legal certainty and clarity, cases where interest for late payment is due should be defined for the VAT and GNI-based own resources. In view of the specificities of those own resources, which have a verification cycle allowing for corrections and adjustments respectively within a period of four years, any changes to VAT and GNI-based own resources following from such corrections or adjustments should not give rise to the retroactive calculation of interest. Interest in respect of those resources should therefore be payable only for delays in entering amounts of monthly twelfths and amounts resulting from the annual calculation of adjustments for previous financial years. Moreover, to maintain a proper incentive for taking corrective action, interest should also be payable in case of delays in entering amounts resulting from particular corrections to VAT statements on the date specified pursuant to measures taken by the Commission under the second subparagraph of Article 9(1) of Council Regulation (EEC, Euratom) No 1553/89 ⁽¹⁾. Furthermore, when a Member State fails to provide, within the explicit time limit set by the Commission, corrections to GNI data necessary for addressing points notified by the Commission or by a Member State, interest should also be applied to any increase of own resources resulting from an adjustment carried out as a consequence of addressing the notified point. This interest should be applied as from the moment where the amount of the adjustment should have been entered, that is, the first working day of June of the year following that in which the explicit time limit expired, until the moment where that adjusted amount is entered in the account. In line with existing rules and practice, any delay in making an entry in respect of traditional own resources should give rise to the calculation of interest.
- (13) The interest rate system set out in Article 12 of Regulation (EU, Euratom) No 609/2014 contains a fixed increase of 2 percentage points to the basic rate and a progressive increase of 0,25 of a percentage point for each month of delay, the increased rate being applicable to the entire period of delay. That interest rate system has been instrumental in ensuring that own resources are made available in a timely manner and in full, and its main elements should therefore be maintained.
- (14) Nevertheless, the existing rules providing for an ever increasing rate have led to the payment of very high interest rates in exceptional cases involving delays of many years. In order to ensure the proportionality of the system while maintaining the deterrent effect, the accumulated increase to that basic rate should be limited to an annual maximum of 16 percentage points.
- (15) On the other hand, the existing fixed increase of 2 percentage points to the basic rate for short periods of delay in particular may lead to a disincentive to make own resources available in a timely manner in circumstances where refinancing costs on the money market are higher than the interest payable. In order to further reinforce the smooth functioning of the system, the fixed increase to the basic rate should therefore be raised to 2,5 percentage points and the resulting interest rate applied should not be lower than that percentage, even where the applicable basic rate is negative. This should, in particular, prevent delays in making available the monthly twelfths of the own resources based on VAT and on GNI, which currently constitute more than 80 % of the Union's budget revenue.
- (16) In order to promote effective protection of the financial interests of the Union and to take into account the newly introduced provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽²⁾, it should be possible for Member States to be released from the obligation to make available to the Union's budget those amounts of traditional own resources that prove irrecoverable due to deferred entry in the accounts or deferred notification of customs debts in order not to prejudice criminal investigations affecting the financial interests of the Union. The Commission should communicate with the least possible delay to Member States, and update, where necessary, the criteria that will guide the assessment of cases involving this possibility.
- (17) The reporting threshold for cases of traditional own resources declared or deemed irrecoverable should be raised in order to reduce the administrative burden for the Member States and for the Commission.
- (18) It should be clarified that the possibility for the Commission pursuant to Article 14(3) of Regulation (EU, Euratom) No 609/2014 to draw in excess of its assets to ensure compliance with the Union's obligations in

⁽¹⁾ Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9).

⁽²⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

the sole case of default under a loan contracted or guaranteed pursuant to Council regulations and decisions also covers regulations and decisions which, following the Treaty of Lisbon, are to be adopted not just by the Council, but by the European Parliament and the Council pursuant to the Treaty on the Functioning of the European Union.

- (19) Save in exceptional cases, the Commission should notify to Member States, or to their national central banks, its orders of cash movement transactions affecting the accounts opened for own resources purposes at least one day before those orders are to be executed.
- (20) Regulation (EU, Euratom) No 609/2014 should therefore be amended accordingly.
- (21) For reasons of consistency, this Regulation should enter into force on the same day as Regulation (EU, Euratom) No 609/2014. The amendment set out in this Regulation to Article 18 of Regulation (EU, Euratom) No 609/2014 should apply from 1 January 2014 so as to safeguard the continued application of the derogation introduced by Regulation (EU, Euratom) No 1377/2014 until the date of entry into force of this Regulation. The amendment set out in this Regulation to Article 12 of Regulation (EU, Euratom) No 609/2014 should apply where the due date of the own resource occurs after the entry into force of this Regulation. However, for reasons of proportionality, Member States should also benefit from the limitation on the total increase of the interest rate, as well as from the limitation on the payment of interest for the VAT-based own resources only in relation to delays specified in Article 12 of Regulation (EU, Euratom) No 609/2014, as amended by this Regulation, for own resources that were due prior to the date of entry into force of this Regulation, where those own resources became known after that date,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU, Euratom) No 609/2014 is amended as follows:

- (1) In Article 3, the second paragraph is replaced by the following:

‘The supporting documents relating to the statistical procedures and bases referred to in Article 3 of Regulation (EC, Euratom) No 1287/2003 shall be kept by the Member States until 30 November of the fourth year following the financial year in question. The supporting documents relating to the VAT-based own resource base shall be kept for the same period.’.

- (2) Article 6 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. Accounts for own resources shall be kept by the treasury of each Member State or a public entity exercising similar functions (‘treasury’), or by the national central bank of each Member State. Those accounts shall be broken down by type of resources.’;

- (b) in paragraph 3, the third subparagraph is amended as follows:

- (i) in the first indent the reference to ‘Article 10(3)’ is replaced by a reference to ‘Article 10a(1)’;

- (ii) the second indent is replaced by the following:

‘— the result of the calculation referred to in the first subparagraph of Article 10b(5) shall be recorded annually, except for the particular adjustments referred to in Article 10b(2)(b), which shall be recorded in the accounts on the first working day of the month following agreement between the Member State concerned and the Commission.’.

- (3) Article 9 is amended as follows:

- (a) paragraph 1 is amended as follows:

- (i) the first and the second subparagraphs are replaced by the following:

‘1. In accordance with the procedure laid down in Articles 10, 10a and 10b, each Member State shall credit own resources to the account opened in the name of the Commission with its treasury or national central bank. Subject to the application of negative interest as referred to in the third subparagraph, that account may only be debited upon instruction by the Commission.

That account shall be kept in national currency and free of any charge and interest.’;

(ii) the following subparagraph is added:

‘Where negative interest is applied to that account, the Member State concerned shall credit the account with an amount corresponding to the amount of such negative interest applied, at the latest on the first working day of the second month following the application of such negative interest.’;

(b) paragraph 2 is replaced by the following:

‘2. Member States or their national central banks shall transmit the following to the Commission by electronic means:

(a) on the working day on which the own resources are credited to the account of the Commission, a statement of account or a credit advice showing the entry of the own resources;

(b) without prejudice to point (a), at the latest on the second working day following the crediting of the account, a statement of account showing the entry of the own resources.’.

(4) Article 10 is replaced by the following:

‘Article 10

Making available the traditional own resources

1. After deduction of collection costs in accordance with Articles 2(3) and 10(3) of Decision 2014/335/EU, Euratom, entry of the traditional own resources referred to in Article 2(1)(a) of that Decision shall be made at the latest on the first working day following the 19th day of the second month following the month during which the entitlement was established in accordance with Article 2 of this Regulation.

However, for entitlements shown in separate accounts under the second subparagraph of Article 6(3), the entry must be made at the latest on the first working day following the 19th day of the second month following the month in which the entitlements were recovered.

2. If necessary, Member States may be invited by the Commission to bring forward by one month the entry of resources, other than the VAT-based own resource and the GNI-based own resource, on the basis of the information available to them on the 15th of the same month.

Each entry brought forward shall be adjusted the following month when the entry mentioned in paragraph 1 is made. This adjustment shall entail the negative entry of an amount equal to that given in the entry brought forward.

Article 10a

Making available the VAT and GNI-based own resources

1. The VAT-based own resource and the GNI-based own resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to Denmark, the Netherlands, Austria and Sweden, shall be credited on the first working day of each month, the amounts being one-twelfth of the relevant totals in the budget, converted into national currencies at the rates of exchange of the last day of quotation of the calendar year preceding the budget year, as published in the *Official Journal of the European Union*, C series.

2. For the specific needs of paying expenditure of the EAGF pursuant to Regulation (EU) No 1307/2013 of the European Parliament and of the Council (*), and depending on the Union’s cash position, Member States may be invited by the Commission to bring forward, by up to two months in the first quarter of the financial year, the entry of one-twelfth, or a fraction thereof, of the amounts in the budget for the VAT-based own resource and the GNI-based own resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to Denmark, the Netherlands, Austria and Sweden.

Subject to the third subparagraph, for the specific needs of paying expenditure of the European Structural and Investment Funds pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council (**), and depending on the Union’s cash position, Member States may be invited by the Commission to bring forward,

in the first six months of the financial year, the entry of up to an additional half of one-twelfth of the amounts in the budget for the VAT-based own resource and the GNI-based own resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to Denmark, the Netherlands, Austria and Sweden.

The total amount that Member States may be invited by the Commission to bring forward in the same month under the first and second subparagraphs shall, in any event, not exceed an amount corresponding to two additional twelfths.

After the first six months, the monthly entry requested may not exceed one-twelfth of the VAT and GNI-based own resources, while remaining within the limit of the amounts entered in the budget for that purpose.

The Commission shall notify the Member States thereof in advance, no later than two weeks before an entry requested pursuant to the first and second subparagraphs.

The Commission shall inform the Member States well in advance, and no later than six weeks before an entry requested pursuant to the second subparagraph, of its intention to request such an entry.

Paragraph 4, concerning the amount to be entered in January each year, and paragraph 5, applicable if the budget has not been finally adopted before the beginning of the financial year, shall apply to these advance entries.

3. Any change in the uniform rate of the VAT-based own resource, in the rate of the GNI-based own resource, in the correction granted to the United Kingdom for budgetary imbalances and in its financing referred to in Articles 4 and 5 of Decision 2014/335/EU, Euratom, and in the financing of the gross reduction granted to Denmark, the Netherlands, Austria and Sweden shall require the final adoption of an amending budget and shall give rise to readjustments of the twelfths that have been entered since the beginning of the financial year.

These readjustments shall be carried out when the first entry is made following the final adoption of the amending budget if it is adopted before the 16th of the month. Otherwise they shall be carried out when the second entry following final adoption is made. By way of derogation from Article 11 of the Financial Regulation, these readjustments shall be entered in the accounts in respect of the financial year of the amending budget in question.

4. Calculation of the twelfths for January of each financial year shall be based on the amounts provided for in the draft budget, referred to in Article 314(2) of the Treaty on the Functioning of European Union (TFEU) and converted into national currencies at the rates of exchange of the first day of quotation following 15 December of the calendar year preceding the budget year; the adjustment shall be made with the entry for the following month.

5. If the budget has not been finally adopted at the latest two weeks before the entry for January of the following financial year, the Member States shall enter on the first working day of each month, including January, one-twelfth of the amount of the VAT-based own resource, and the GNI-based own resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to Denmark, the Netherlands, Austria and Sweden, entered in the last budget finally adopted; the adjustment shall be made on the first due date following final adoption of the budget if it is adopted before the 16th of the month. Otherwise, the adjustment shall be made on the second due date following final adoption of the budget.

6. There shall be no subsequent revision of the financing of the gross reduction granted to Denmark, the Netherlands, Austria and Sweden in the event of modifications of the GNI data pursuant to Article 2(2) of Regulation (EC, Euratom) No 1287/2003.

Article 10b

Adjustments to the VAT and GNI-based own resources of previous financial years

1. On the basis of the annual statement on the VAT-based own resource base provided for in Article 7(1) of Regulation (EEC, Euratom) No 1553/89, each Member State shall, in the year following that in which that statement was transmitted, be debited with an amount calculated from the information contained in that statement by applying the uniform rate adopted for the financial year to which the statement relates and be credited with the 12 payments made for that financial year. However, each Member State's VAT-based own resource base to which

that rate is applied may not exceed the percentage determined by Article 2(1)(b) of Decision 2014/335/EU, Euratom of its GNI, as referred to in the first subparagraph of Article 2(7) of that Decision.

2. Any corrections to the VAT-based own resource base under Article 9(1) of Regulation (EEC, Euratom) No 1553/89 shall give rise, for each Member State concerned whose base, allowing for those corrections, does not exceed the percentages determined by Articles 2(1)(b) and 10(2) of Decision 2014/335/EU, Euratom, to the following adjustments to the balance established pursuant to paragraph 1 of this Article:

- (a) the corrections under the first subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 made by 31 July shall give rise to a general adjustment in the following year;
- (b) a particular adjustment may be entered at any time if the Member State concerned and the Commission are in agreement in accordance with the first subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89;
- (c) where the measures that the Commission takes under the second subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 to correct the base lead to a particular adjustment of the entries in the account referred to in Article 9(1) of this Regulation, that adjustment shall be made on the date specified by the Commission pursuant to those measures.

The changes to GNI referred to in paragraph 4 of this Article shall also give rise to an adjustment of the balance of any Member State whose VAT-based own resource base, allowing for the corrections referred to in the first subparagraph of this paragraph, is capped at the percentages determined by Article 2(1)(b) and Article 10(2) of Decision 2014/335/EU, Euratom.

3. On the basis of figures for aggregate GNI at market prices and its components from the preceding year supplied by the Member States in accordance with Article 2(2) of Regulation (EC, Euratom) No 1287/2003, each Member State shall, in the year following that in which the figures were supplied, be debited with an amount calculated by applying to its GNI the rate adopted for the year preceding the year of supply of the figures, and be credited with the payments made during that year.

4. Any changes to the GNI of previous financial years pursuant to Article 2(2) of Regulation (EC, Euratom) No 1287/2003 shall, subject to Article 5 thereof, give rise for each Member State concerned to an adjustment to the balance established pursuant to paragraph 3 of this Article. After 30 November of the fourth year following a given financial year, any changes to GNI shall no longer be taken into account, except on points notified within this time limit either by the Commission or by the Member State.

5. For each Member State, the Commission shall calculate the difference between the amounts resulting from the adjustments referred to in paragraphs 1 to 4, with the exception of particular adjustments pursuant to paragraphs 2(b) and (c), and the product of multiplying the total amounts of adjustments by the percentage that the GNI of that Member State represents of the GNI of all Member States, as applicable on 15 January to the budget in force for the year following that in which the data for the adjustments was supplied (the 'net amount').

For the purposes of this calculation, amounts shall be converted between the national currency and the euro at the rates of exchange of the last day of quotation of the calendar year preceding the year of entry in the accounts, as published in the *Official Journal of the European Union*, C series.

The Commission shall inform the Member States of the amounts resulting from this calculation before 1 February of the year following that in which the data for the adjustments was supplied. Each Member State shall enter the net amount in the account referred to in Article 9(1) on the first working day of June of that same year.

6. The operations referred to in paragraphs 1 to 5 of this Article constitute revenue operations in respect of the financial year in which they are to be entered in the account referred to in Article 9(1).

(*) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

(**) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

(5) In Article 11, paragraph 2 is replaced by the following:

‘2. The Commission shall calculate the adjustment during the year following the financial year concerned.

The calculation shall be made on the basis of the following figures relating to the relevant financial year:

- (a) aggregate GNI at market prices and its components, supplied by the Member States in accordance with Article 2(2) of Regulation (EC, Euratom) No 1287/2003;
- (b) the budgetary outturn of operational expenditure corresponding to the measure or policy in question.

The adjustment shall be equal to the product of multiplying the total amount of the expenditure in question, with the exception of expenditure financed by participating third countries, by the percentage that the GNI of the Member State entitled to the adjustment represents of the GNI of all Member States. The adjustment shall be financed by the participating Member States according to a scale determined by dividing their respective GNI by the GNI of all the participating Member States. For the purposes of calculating the adjustment, amounts shall be converted between the national currency and the euro at the exchange rate on the last day of quotation of the calendar year preceding the budget year concerned, as published in the *Official Journal of the European Union*, C series.

The adjustment for each relevant year shall be made only once and it shall be final in the event of subsequent modification of the GNI figure.’

(6) Article 12 is replaced by the following:

‘Article 12

Interest on amounts made available belatedly

1. Any delay in making the entry in the account referred to in Article 9(1) shall give rise to the payment of interest by the Member State concerned.
2. For the VAT and GNI-based own resources, interest shall be payable only in relation to delays in entering amounts:
 - (a) referred to in Article 10a;
 - (b) resulting from the calculation referred to in the first subparagraph of Article 10b(5), at the moment specified in the third subparagraph thereof;
 - (c) resulting from particular adjustments to the VAT-based own resource under Article 10b(2)(c) of this Regulation, on the date specified by the Commission pursuant to measures taken by it under the second subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89;
 - (d) resulting from failure of a Member State to provide corrections to GNI data necessary for addressing points notified by the Commission or by the Member State as referred to in Article 10b(4), within the explicit time limit set by the Commission. The interest on the adjustments resulting from such corrections shall be calculated as from the first working day of June of the year following that, in which the explicit time limit set by the Commission expired.
3. The recovery of amounts of interest below EUR 500 shall be waived.
4. In the case of Member States belonging to the Economic and Monetary Union, the interest rate shall be equal to the rate as published in the *Official Journal of the European Union*, C series, which the European Central Bank applied to its main refinancing operations on the first day of the month in which the due date fell, or 0 per cent, whichever is higher, increased by 2,5 percentage points.

This rate shall be increased by 0,25 of a percentage point for each month of delay.

The total increase pursuant to the first and the second subparagraphs shall not exceed 16 percentage points. The increased rate shall be applied to the entire period of delay.

5. In the case of Member States not belonging to the Economic and Monetary Union, the interest rate shall be equal to the rate applied on the first day of the month in question by the central banks for their main refinancing operations, or 0 per cent, whichever is higher, increased by 2,5 percentage points. For the Member States for which the central bank rate is not available, the interest rate shall be equal to the most equivalent rate applied on the first day of the month in question on the Member State's money market, or 0 per cent, whichever is higher, increased by 2,5 percentage points.

This rate shall be increased by 0,25 of a percentage point for each month of delay.

The total increase pursuant to the first and the second subparagraphs shall not exceed 16 percentage points. The increased rate shall be applied to the entire period of delay.

6. For the payment of interest referred to in paragraphs 1 and 2 of this Article, Article 9(2) and (3) shall apply *mutatis mutandis*.

(7) Article 13 is amended as follows:

(a) in paragraph 2, the following second subparagraph is inserted:

'Member States may be released from the obligation to place at the disposal of the Commission the amounts corresponding to entitlements established under Article 2 where those entitlements prove irrecoverable due to the deferral of the entry in the accounts or the notification of the customs debt in order not to prejudice a criminal investigation affecting the financial interests of the Union.';

(b) in paragraph 3, the first subparagraph is replaced by the following:

'3. Within three months of the administrative decision mentioned in paragraph 2 or in accordance with the time limits referred to in that paragraph, Member States shall provide a report to the Commission with information on those cases where paragraph 2 has been applied, provided that the established entitlements involved exceed EUR 100 000.';

(8) in Article 14, paragraphs 3 and 4 are replaced by the following:

'3. In the sole case of default under a loan contracted or guaranteed pursuant to regulations and decisions adopted by the Council, or by the European Parliament and the Council, in circumstances in which the Commission cannot activate other measures provided for by the financial arrangements applying to these loans in time to ensure compliance with the Union's legal obligations to the lenders, paragraphs 2 and 4 may provisionally be applied, irrespective of the conditions in paragraph 2, in order to service the Union's debts.

4. Subject to the second subparagraph, the difference between the overall assets and the cash resource requirements shall be divided among the Member States, as far as possible, in proportion to the estimated budget revenue from each of them.

The Commission, when covering its cash resource requirements, shall aim to reduce the impact of the obligation on Member States to credit amounts of negative interest pursuant to the third subparagraph of Article 9(1) by drawing with priority on the sums credited to the accounts concerned.'

(9) Article 15 is replaced by the following:

'Article 15

Execution of payment orders

1. The Member States or their national central bank shall execute the Commission's payment orders following the Commission's instructions and within not more than three working days of receipt. In the case of cash movement transactions, the Member States or their national central bank shall execute the orders within the period requested by the Commission which, save in exceptional cases, shall notify them at least one day before the order is to be executed.

2. The Member States or their national central bank shall send to the Commission, by electronic means and at the latest on the second working day following the completion of each transaction, a statement of account showing the related movements.’.

(10) Article 18 is replaced by the following:

‘Article 18

Repeal

1. Subject to paragraph 2, Regulation (EC, Euratom) No 1150/2000 is repealed with effect from 1 January 2014.

2. Article 10(7a) of Regulation (EC, Euratom) No 1150/2000 is repealed with effect from the date of entry into force of this Regulation.

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

Article 2

This Regulation shall enter into force on the date of entry into force of Regulation (EU, Euratom) No 609/2014.

Subject to the third and fourth subparagraphs, it shall apply from the same date.

Point (6) of Article 1 shall apply to the calculation of interest for late payment of own resources that are due after the date of entry into force of this Regulation. However, the limitation on the total increase of the interest rate to 16 percentage points, as well as the limitation on the payment of interest for the VAT-based own resources only in relation to delays in entering amounts resulting from particular adjustments thereto on the date specified pursuant to measures taken by the Commission, shall also apply to the calculation of interest for late payment of own resources that were due prior to the date of entry into force of this Regulation, where those own resources only became known to the Commission or to the Member State concerned after the date of entry into force of this Regulation.

Point (10) of Article 1 shall apply from 1 January 2014.

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

Done at Brussels, 17 May 2016.

For the Council

The President

M.H.P. VAN DAM

COMMISSION REGULATION (EU) 2016/805

of 20 May 2016

amending Annex IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards *Streptomyces* K61 (formerly *S. griseoviridis*), *Candida oleophila* strain O, FEN 560 (also called fenugreek or fenugreek seed powder), methyl decanoate (CAS 110-42-9), methyl octanoate (CAS 111-11-5) and terpenoid blend QRD 460

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC ⁽¹⁾, and in particular Article 5(1) thereof,

Whereas:

- (1) For *Streptomyces* K61 (formerly *S. griseoviridis*), *Candida oleophila* strain O, FEN 560 (also called fenugreek or fenugreek seed powder) and terpenoid blend QRD 460 no specific MRLs were set. As those substances were not included in Annex IV to Regulation (EC) No 396/2005, the default value of 0,01 mg/kg laid down in Article 18(1)(b) of that Regulation applies. Methyl decanoate (CAS 110-42-9) and methyl octanoate (CAS 111-11-5) belong to the group of fatty acids C7-C20 which is included in Annex IV to Regulation (EC) No 396/2005.
- (2) As regards FEN 560 (also called fenugreek or fenugreek seed powder), the European Food Safety Authority ('the Authority') concluded ⁽²⁾ that the inclusion of that substance in Annex IV to Regulation (EC) No 396/2005 is appropriate.
- (3) As regards terpenoid blend QRD 460, the Authority concluded ⁽³⁾ that the inclusion of that substance in Annex IV to Regulation (EC) No 396/2005 is appropriate.
- (4) As regards *Streptomyces* K61 (formerly *S. griseoviridis*) ⁽⁴⁾ the Authority could not conclude on the dietary risk assessment for consumers as some information was not available and further consideration by risk managers was necessary. Such further consideration was reflected in the review report ⁽⁵⁾ which concluded that the risk to humans through metabolites from this substance is negligible. It is therefore appropriate to include that substance in Annex IV to Regulation (EC) No 396/2005.
- (5) As regards *Candida oleophila* strain O ⁽⁶⁾ the Authority could not conclude on the dietary risk assessment for consumers as some information was not available and further consideration by risk managers was necessary. Such further consideration was reflected in the review report ⁽⁷⁾ which concluded that the risk to humans through metabolites from this substance is negligible. It is therefore appropriate to include that substance in Annex IV to Regulation (EC) No 396/2005.

⁽¹⁾ OJ L 70, 16.3.2005, p. 1.

⁽²⁾ European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance fenugreek seed powder (FEN 560). *EFSA Journal* 2010; 8(3):1448, 50 pp.

⁽³⁾ EFSA (European Food Safety Authority), 2014. Conclusion on the peer review of the pesticide risk assessment of the active substance terpenoid blend QRD-460. *EFSA Journal* 2014;12(10):3816, 41 pp.

⁽⁴⁾ European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance *Streptomyces* K61 (formerly *Streptomyces griseoviridis*). *EFSA Journal* 2013;11(1):3061, 40 pp.

⁽⁵⁾ Review report for the active substance *Streptomyces* K61 (formerly *Streptomyces griseoviridis*) finalised in the Standing Committee on the Food Chain and Animal Health at its meeting on 11 July 2008 in view of the inclusion of *Streptomyces* K61 (formerly *Streptomyces griseoviridis*) in Annex I of Directive 91/414/EEC. SANCO/1865/08 — rev. 5, 11 July 2014.

⁽⁶⁾ European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance *Candida oleophila* strain O. *EFSA Journal* 2012;10(11):2944, 27 pp.

⁽⁷⁾ Review report for the active substance *Candida oleophila* strain O finalised in the Standing Committee on the Food Chain and Animal Health at its meeting on 15 March 2013 in view of the approval of *Candida oleophila* strain O as active substance in accordance with Regulation (EC) No 1107/2009. SANCO/10395/2013 rev 1, 15 March 2014.

- (6) Methyl decanoate (CAS 110-42-9) was included in Annex I to Council Directive 91/414/EEC ⁽¹⁾ by Commission Directive 2008/127/EC ⁽²⁾ and is deemed to have been approved under Regulation (EC) No 1107/2009 of the European Parliament and of the Council ⁽³⁾. No relevant impurities were identified for that substance. In addition, natural exposure to methyl decanoate is far higher than the one linked to the use of that substance as a plant protection product. It is therefore appropriate to maintain that substance in Annex IV to Regulation (EC) No 396/2005 but separately from the group fatty acids C7-C20 to ensure transparency.
- (7) Methyl octanoate (CAS 111-11-5) was included in Annex I to Directive 91/414/EEC by Directive 2008/127/EC and is deemed to have been approved under Regulation (EC) No 1107/2009. No relevant impurities were identified for that substance. In addition, natural exposure to methyl octanoate is far higher than the one linked to the use of that substance as a plant protection product. It is therefore appropriate to maintain that substance in Annex IV to Regulation (EC) No 396/2005, but separately from the group fatty acids C7-C20 to ensure transparency.
- (8) Regulation (EC) No 396/2005 should therefore be amended accordingly.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

In Annex IV to Regulation (EC) No 396/2005, the following entries are inserted in alphabetical order: 'Streptomyces K61 (formerly *S. griseoviridis*)', 'Candida oleophila strain O', 'FEN 560 (also called fenugreek or fenugreek seed powder)', 'Methyl decanoate (CAS 110-42-9)', 'Methyl octanoate (CAS 111-11-5)' and 'Terpenoid blend QRD 460'.

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, 20 May 2016.

For the Commission

The President

Jean-Claude JUNCKER

⁽¹⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

⁽²⁾ Commission Directive 2008/127/EC of 18 December 2008 amending Council Directive 91/414/EEC to include several active substances (OJ L 344, 20.12.2008, p. 89).

⁽³⁾ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1).

COMMISSION IMPLEMENTING REGULATION (EU) 2016/806**of 20 May 2016****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 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽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, 20 May 2016.

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

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽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	MA	104,4
	TR	63,7
	ZZ	84,1
0707 00 05	TR	105,8
	ZZ	105,8
0709 93 10	TR	138,4
	ZZ	138,4
0805 10 20	EG	47,0
	IL	62,4
	MA	54,9
	TR	41,8
	ZA	75,5
	ZZ	56,3
	AR	166,2
0805 50 10	TR	143,1
	ZA	190,7
	ZZ	166,7
	AR	111,7
0808 10 80	BR	101,6
	CL	124,4
	CN	107,2
	NZ	157,8
	US	198,5
	ZA	103,2
	ZZ	129,2

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COUNCIL DECISION (EU) 2016/807

of 15 March 2016

on the position to be adopted on behalf of the European Union at the International Maritime Organization (IMO) during the 40th session of the Facilitation Committee, the 69th session of the Marine Environment Protection Committee and the 96th session of the Maritime Safety Committee, on the adoption of amendments to the Facilitation Convention, MARPOL Annex IV, SOLAS Regulations II-2/13 and II-2/18, the Fire Safety Systems Code and the 2011 Enhanced Survey Programme Code

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Action by the Union in the sector of maritime transport should aim at improving maritime safety, protecting the marine environment and facilitating international maritime traffic.
- (2) The Facilitation Committee of the IMO (FAL), meeting at its 39th session, approved amendments to the Convention on Facilitation of International Maritime Traffic, 1965 (the 'FAL Convention'). Those amendments are expected to be adopted during the 40th session of the FAL to be held in April 2016.
- (3) The Marine Environment Protection Committee (MEPC) of the IMO, meeting at its 68th session (MEPC 68), agreed that sufficient notification pursuant to Regulation 13 of Annex IV to the International Convention for the Prevention of Pollution from Ships ('MARPOL Annex IV') had been received for part of the Baltic Sea to be designated as a Special Area. Consequently, effective dates for the taking effect of that designation provided for in Regulation 11.3 of MARPOL Annex IV could be established for that Special Area. The MEPC 68 concluded that amendments to Regulations 1 and 11 of MARPOL Annex IV would be needed for the designation of that part of the Special Area to take effect, and that amendments to MARPOL Annex IV to that effect should be proposed. Those amendments are expected to be adopted during the 69th session of the MEPC to be held in April 2016.
- (4) The Maritime Safety Committee (MSC) of the IMO, meeting at its 95th session, approved amendments to Regulations II-2/13 and II-2/18 of the International Convention for the Safety of Life at Sea (SOLAS), the International Code for Fire Safety Systems ('FSS Code') and the 2011 Enhanced Survey Programme Code (the '2011 ESP Code'). Those amendments are expected to be adopted during the 96th session of the MSC to be held in May 2016.
- (5) The general review of the FAL Convention modernises its provisions, taking into account developments in the field of the transmission of information and data by electronic means and the single window concept. It introduces, in particular, measures of relevance to the Union concerning the insertion of visa numbers in the passenger lists but not in crew lists and the right of authorities to make the use of electronic submissions of forms mandatory. Articles 5 and 7 of Directive 2010/65/EU of the European Parliament and of the Council ⁽¹⁾ provide that reporting formalities for ships arriving in and departing from ports situated in Member States are to be accepted only in electronic format via a single window as of 1 June 2015 and that Member States are to accept FAL forms on paper for the fulfilment of reporting formalities until that date. Directive 2010/65/EU also provides that information required in accordance with a legal act of the Union is to be provided in electronic

⁽¹⁾ Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC (OJ L 283, 29.10.2010, p. 1).

format as of 1 June 2015. The requirement to include a visa number where applicable in the crew and passenger lists results from point 3.1.2 of Annex VI to Regulation (EC) No 562/2006 of the European Parliament and of the Council ⁽¹⁾.

- (6) Article VIII of the FAL Convention requires the Contracting Parties to the FAL Convention that find it impracticable to comply with any standard of the FAL Convention, or that deem it necessary for special reasons to adopt different documentary requirements or procedures, to notify those differences to the Secretary-General. Some requirements set out in Directive 2010/65/EU and Regulation (EC) No 562/2006 impose stricter obligations than the relevant rules provided for in the FAL Convention and therefore represent a difference within the meaning of Article VIII of that Convention which needs to be notified.
- (7) The amendments to MARPOL Annex IV are intended to provide the legal framework to implement the agreement by MEPC 68 that sufficient notifications had been received on the availability of port reception facilities to allow the Baltic Sea Special Area provisions to take effect and that, consequently, effective dates could be established for the designation of part of the Baltic Sea as a Special Area, in conformity with those notifications. Article 4 of Directive 2000/59/EC of the European Parliament and of the Council ⁽²⁾ provides for the availability of port reception facilities, which is also covered by Regulation 12bis of IMO Resolution MEPC.200(62), for the purpose of reducing discharges of ship-generated waste and cargo residues into the sea, especially illegal discharges, from ships using ports in the Union.
- (8) The amendments to SOLAS Regulation II-2/13 will introduce requirements for evaluation of escape routes by an evacuation analysis early in the design process, which are to apply to new ro-ro passenger ships and other passenger ships carrying more than 36 passengers. Directive 2009/45/EC of the European Parliament and of the Council ⁽³⁾ applies to passenger ships and high-speed passenger craft which are engaged on domestic voyages. Article 6(2)(a)(i) of that Directive provides that new passenger ships of Class A are to comply entirely with the requirements of the 1974 SOLAS Convention, as amended. Furthermore, Directive 2009/45/EC provides for detailed rules on escape routes on ro-ro passenger ships for Class B, C and D ships, as laid down in Annex I, Chapter II, Part B, paragraph 6-1.
- (9) The amendments to SOLAS Regulation II-2/18 concerning helicopter landing areas on new ro-ro passenger ships will make the provisions of IMO Circular MSC.1/Circ.1431 of 31 May 2012 on Guidelines for the approval of helicopter facility foam fire-fighting appliances mandatory. Regulation 18, Part B, Chapter II-2 of Annex I to Directive 2009/45/EC provides that ships equipped with helidecks are to comply with the requirements of the SOLAS Regulation as per revision of 1 January 2003 which are now expected to be amended.
- (10) The revised Chapter 8 of the FSS Code will provide that special attention is to be paid to the specification of water quality provided by the system manufacturer to prevent internal corrosion and internal clogging of sprinklers. Article 6(2)(a)(i) of Directive 2009/45/EC provides that new passenger ships of Class A are to comply entirely with the requirements of the 1974 SOLAS Convention, as amended, which incorporates the FSS Code made mandatory under SOLAS by IMO Resolution MSC.99(73). Furthermore, Directive 2009/45/EC provides for detailed rules on Fire Extinction for Class B, C and D ships, as laid down in Annex I, Chapter II-2, Part A, paragraphs 4.5 and 4.8.
- (11) The new Chapter 17 of the FSS Code will further detail the specifications for foam firefighting appliances for the protection of helicopter facilities as required by Chapter II-2 of SOLAS. Article 6(2)(a)(i) of Directive 2009/45/EC provides that new passenger ships of Class A is to comply entirely with the requirements of the 1974 SOLAS Convention, as amended, which incorporates the FSS Code made mandatory under SOLAS by IMO Resolution MSC.99(73). Furthermore, Directive 2009/45/EC provides for detailed rules on the special requirements for helicopter facilities for Class B, C and D ships, as laid down in Annex I, Chapter II, Part B, paragraph 18.
- (12) To the extent that the amendments to SOLAS Regulation II-2/13, SOLAS Regulation II-2/18, the revised Chapter 8 of the FSS Code and the new Chapter 17 of the FSS Code may affect the provisions of Directive 2009/45/EC regarding passenger ships and high-speed passenger craft which are engaged on domestic voyages, those amendments fall under the exclusive competence of the Union.

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

⁽²⁾ Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332 28.12.2000, p. 81).

⁽³⁾ Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (OJ L 163, 25.6.2009, p. 1).

- (13) The amendments to the 2011 ESP Code are intended to harmonise the use of terms related to recognised organisations. Articles 5 and 6 of Regulation (EU) No 530/2012 of the European Parliament and of the Council ⁽¹⁾ make mandatory the application of the IMO's Condition Assessment Scheme (CAS) to single-hull oil tankers above 15 years of age. The Enhanced Programme of Inspections during surveys of Bulk Carriers and Oil tankers or Enhanced Survey Programme (ESP) specifies how to undertake this intensified assessment. As CAS uses ESP as the tool to achieve its aim, any changes to the ESP inspections will automatically be applicable through Regulation (EU) No 530/2012.
- (14) The Union is neither a member of the IMO nor a contracting party to the relevant conventions and codes. It is therefore necessary for the Council to authorise the Member States to express the position of the Union and express their consent to be bound by those amendments, to the extent that they fall under the exclusive competence of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the Union at the 40th session of the IMO Facilitation Committee shall be to agree to the adoption of the amendments to the Facilitation Convention as laid down in IMO document FAL 40/3.

Article 2

The position to be adopted on behalf of the Union at the 69th session of the IMO Marine Environment Protection Committee shall be to agree to the adoption of the amendments to Regulations 1 and 11 of MARPOL Annex IV, as laid down in the Annex to IMO Document MEPC 69/3/3.

Article 3

The position to be adopted on behalf of the Union at the 96th session of the IMO Maritime Safety Committee shall be to agree to the adoption of the following amendments to:

- SOLAS Regulation II-2/13 as laid down in Annex 14 to IMO document MSC 95/22/add.2,
- SOLAS Regulation II-2/18 as laid down in Annex 2 to IMO document SSE 2/20,
- Chapter 8 of the FSS Code as laid down in point 1 of Annex 18 to IMO document 95/22/add.2,
- Chapter 17 of the FSS Code as laid down in point 2 of Annex 18 to IMO document 95/22/add.2,
- The 2011 ESP Code as laid down in Annex 15 to IMO document 95/22/add.2.

Article 4

1. The position to be adopted on behalf of the Union as set out in Articles 1, 2 and 3 shall be expressed by the Member States, which are members of the IMO, acting jointly in the interest of the Union.
2. Minor changes to the positions referred to in Articles 1, 2 and 3 may be agreed upon without further decision of the Council.

⁽¹⁾ Regulation (EU) No 530/2012 of the European Parliament and of the Council of 13 June 2012 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers (OJ L 172, 30.6.2012, p. 3).

Article 5

Member States are hereby authorised to give their consent to be bound, in the interest of the Union, by the amendments referred to in Articles 1, 2 and 3, to the extent that they fall under the exclusive competence of the Union.

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 15 March 2016.

For the Council
The President
A.G. KOENDERS

POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2016/808**of 18 May 2016****on the appointment of the EU Operation Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) (ATALANTA/2/2016)**

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 38 thereof,

Having regard to Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast ⁽¹⁾, and in particular Article 6 thereof,

Whereas:

- (1) Pursuant to Article 6(1) of Joint Action 2008/851/CFSP, the Council authorised the Political and Security Committee (PSC) to take decisions on the appointment of the EU Operation Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast ('EU Operation Commander').
- (2) On 3 July 2014, the PSC adopted Decision 2014/433/CFSP ⁽²⁾ appointing Major General Martin SMITH as EU Operation Commander.
- (3) The United Kingdom has proposed that Brigadier General Robert A. MAGOWAN succeed Major General Martin SMITH as EU Operation Commander.
- (4) The EU Military Committee supports that proposal.
- (5) In accordance with Article 5 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications,

HAS ADOPTED THIS DECISION:

Article 1

Brigadier General Robert A. MAGOWAN is hereby appointed EU Operation Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) as from 3 June 2016.

Article 2

Decision 2014/433/CFSP is repealed.

⁽¹⁾ OJ L 301, 12.11.2008, p. 33.

⁽²⁾ Political and Security Committee Decision ATALANTA/3/2014 of 3 July 2014 on the appointment of the EU Operation Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) (2014/433/CFSP) (OJ L 198, 5.7.2014, p. 5).

Article 3

This Decision shall enter into force on the date of its adoption.

It shall apply from 3 June 2016.

Done at Brussels, 18 May 2016.

For the Political and Security Committee

The Chairperson

W. STEVENS

COMMISSION DECISION (EU) 2016/809**of 20 May 2016****on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in certain acts of the Union in the field of police cooperation adopted before the entry into force of the Treaty of Lisbon and which are not part of the Schengen *acquis***

THE EUROPEAN COMMISSION,

Having regard to Protocol No 36 on transitional provisions, and in particular Article 10(5) thereof, in conjunction with Article 4 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice and Article 331(1) of the Treaty on the Functioning of the European Union,

Whereas:

- (1) Article 10(4) of Protocol No 36 allowed the United Kingdom, at the latest six months before the expiry of the five-year transitional period referred to in Article 10(3) of Protocol No 36, to notify the Council that it does not accept, with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which had been adopted before the entry into force of the Treaty of Lisbon, the powers of the Commission and of the Court of Justice as referred to in Article 10(1) of Protocol No 36.
- (2) By letter to the President of the Council of 24 July 2013, the United Kingdom made use of that possibility by notifying that it did not accept the said powers of the Commission and of the Court of Justice, with the consequence that the relevant acts in the field of police cooperation and judicial cooperation in criminal matters ceased to apply to the United Kingdom on 1 December 2014.
- (3) Article 10(5) of Protocol No 36 allows the United Kingdom to notify the Council of its wish to participate in acts which have ceased to apply to it.
- (4) Commission Decision 2014/858/EU ⁽¹⁾ confirmed the participation of the United Kingdom in a number of acts.
- (5) Council Decision 2014/836/EU ⁽²⁾ confirmed that Council Decision 2008/615/JHA ⁽³⁾, Council Decision 2008/616/JHA ⁽⁴⁾ and Council Framework Decision 2009/905/JHA ⁽⁵⁾ (‘the Prüm Decisions’) ceased to apply to the United Kingdom as from 1 December 2014 and prevented the United Kingdom from accessing the Eurodac database for law enforcement purposes until such time as it participates in the Prüm Decisions. Decision 2014/836/EU also called for the United Kingdom to undertake a full business and implementation case in order to assess the merits and practical benefits of participating in the Prüm Decisions. The United Kingdom has conducted the business and implementation case and its parliament has voted in favour of participating in the Prüm Decisions.
- (6) Council Decision 2014/857/EU ⁽⁶⁾ confirmed the notification of the United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen *acquis* which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters.

⁽¹⁾ Commission Decision 2014/858/EU of 1 December 2014 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon and which are not part of the Schengen *acquis* (OJ L 345, 1.12.2014, p. 6).

⁽²⁾ Council Decision 2014/836/EU of 27 November 2014 determining certain consequential and transitional arrangements concerning the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon (OJ L 343, 28.11.2014, p. 11).

⁽³⁾ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

⁽⁴⁾ Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 12).

⁽⁵⁾ Council Framework Decision 2009/905/JHA of 30 November 2009 on Accreditation of forensic service providers carrying out laboratory activities (OJ L 322, 9.12.2009, p. 14).

⁽⁶⁾ Council Decision 2014/857/EU of 1 December 2014 concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen *acquis* which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Decisions 2000/365/EC and 2004/926/EC (OJ L 345, 1.12.2014, p. 1).

- (7) By letter to the President of the Council of 22 January 2016, the United Kingdom made further use of Article 10(5) of Protocol No 36 to notify of its wish to participate in Decision 2008/615/JHA, Decision 2008/616/JHA and Framework Decision 2009/905/JHA.
- (8) For acts which are not part of the Schengen *acquis*, Article 10(5) of Protocol No 36 refers to Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice. Article 4 of Protocol No 21 refers to the procedure provided for in Article 331(1) TFEU. That latter provision provides for the Commission to confirm the participation of the Member State wishing to participate and to note where necessary that the conditions of participation have been fulfilled.
- (9) According to the fourth sentence of Article 10(5) of Protocol No 36 the Union institutions and the United Kingdom shall seek to re-establish the widest possible measure of participation of the United Kingdom in the *acquis* of the Union in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while respecting their coherence.
- (10) The conditions of the fourth sentence of Article 10(5) of Protocol No 36 are fulfilled for the acts for which the United Kingdom has notified its wish to participate in them.
- (11) The participation of the United Kingdom in the acts listed in recital 7 should therefore be confirmed,

HAS ADOPTED THIS DECISION:

Article 1

The participation of the United Kingdom in the following Council Decisions is confirmed:

Decision 2008/615/JHA,

Decision 2008/616/JHA,

Framework Decision 2009/905/JHA.

Article 2

This Decision shall be published in the *Official Journal of the European Union*.

It shall enter into force on 21 May 2016.

Done at Brussels, 20 May 2016.

For the Commission
The President
Jean-Claude JUNCKER

DECISION (EU) 2016/810 OF THE EUROPEAN CENTRAL BANK
of 28 April 2016
on a second series of targeted longer-term refinancing operations (ECB/2016/10)

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 the first indent of Article 3.1, Article 12.1, the second indent of Article 18.1 and the second indent of Article 34.1 thereof,

Whereas:

- (1) Decision ECB/2014/34 ⁽¹⁾ provides for a series of targeted longer-term refinancing operations (TLTROs) to be conducted over a period of two years from 2014 to 2016.
- (2) On 10 March 2016, in pursuing its price stability mandate, the Governing Council decided to launch a new series of four targeted longer-term refinancing operations (TLTROs-II), with the aim of further easing private sector credit conditions and stimulating credit creation. The TLTROs-II are intended to strengthen the transmission of monetary policy by further incentivising bank lending to the non-financial private sector, i.e. households and non-financial corporations, in Member States whose currency is the euro. This measure is not intended to support bank lending to households for the purposes of house purchases. Eligible lending to the non-financial private sector in the context of this measure therefore excludes loans to households for the purposes of house purchases. In conjunction with other non-standard measures in place, TLTROs-II aim to contribute to a return of inflation rates to levels below, but close to, 2 % over the medium term.
- (3) As with the first series of TLTROs, in order to facilitate the participation of institutions that, for organisational reasons, borrow from the Eurosystem by means of a group structure, participation in TLTROs-II will be possible on a group basis where there is an institutional basis for group treatment. Group participation will be conducted through one specific group member and where prescribed conditions have been fulfilled. Moreover, in order to address the issues related to intra-group liquidity distribution, in the case of groups that are established on the basis of close links between members, all group members will have to formally confirm in writing their participation in the group. A TLTRO group that was recognised for the purposes of TLTROs pursuant to Decision ECB/2014/34 may participate in TLTROs-II as a TLTRO-II group subject to certain procedures concerning notification and recognition.
- (4) The overall amount that may be borrowed under all TLTROs-II will be determined on the basis of a participant's total amount of eligible loans to the non-financial private sector outstanding as at 31 January 2016, less any amount previously borrowed by the TLTRO-II participant under the first two TLTROs conducted in September and December 2014 pursuant to Decision ECB/2014/34 and still outstanding on the settlement date of a TLTRO-II.
- (5) The interest rate applicable to each TLTRO-II will be determined based on the lending history of the participant in the period 1 February 2016 to 31 January 2018 in accordance with the principles set out in this Decision.
- (6) Starting 24 months after the settlement of each TLTRO-II, participants will have the option to repay amounts allotted in accordance with prescribed procedures on a quarterly basis.
- (7) Institutions that wish to participate in TLTROs-II will be subject to certain reporting requirements. The reported data will be used: (a) in determining the borrowing allowance; (b) in calculating the applicable benchmark; (c) to assess participants' performance against their benchmarks; and (d) for other analytical purposes as required for

⁽¹⁾ Decision ECB/2014/34 of 29 July 2014 on measures relating to targeted longer-term refinancing operations (OJ L 258, 29.8.2014, p. 11).

performing Eurosystem tasks. It is further envisaged that the national central banks of Member States whose currency is the euro (hereinafter 'NCBs') in receipt of reported data may exchange such data within the Eurosystem to the extent and to the level necessary for the proper implementation of the TLTRO-II framework, as well as an analysis of its effectiveness and for other Eurosystem analytical purposes. Reported data may be shared within the Eurosystem for the purpose of validating the data provided.

- (8) In order to allow credit institutions sufficient time to make operational preparations for the first TLTRO-II, this Decision should enter into force without undue delay,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

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

- (1) 'benchmark net lending' means the amount of eligible net lending that a participant needs to exceed in the period 1 February 2016 to 31 January 2018 in order to qualify for an interest rate on the participant's TLTRO-II borrowing that is lower than the initial rate applied and which is calculated in accordance with the principles and the detailed provisions set out in Article 4 and Annex I, respectively;
- (2) 'benchmark outstanding amount' means the sum of a participant's eligible loans outstanding as at 31 January 2016 and the participant's benchmark net lending which is calculated in accordance with the principles and the detailed provisions set out in Article 4 and Annex I, respectively;
- (3) 'bid limit' means the maximum amount that may be borrowed by a participant in any TLTRO-II calculated in accordance with the principles and the detailed provisions set out in Article 4 and Annex I, respectively;
- (4) 'borrowing allowance' means the overall amount that may be borrowed by a participant in all TLTROs-II and calculated in accordance with the principles and the detailed provisions set out in Article 4 and Annex I, respectively;
- (5) 'credit institution' means a credit institution as defined in point (14) of Article 2 of Guideline (EU) 2015/510 of the European Central Bank (ECB/2014/60) ⁽¹⁾;
- (6) 'eligible loans' means loans to non-financial corporations and households (including non-profit institutions serving households) resident, as defined in point (4) of Article 1 of Council Regulation (EC) No 2533/98 ⁽²⁾, in Member States whose currency is the euro, except loans to households for house purchases, as further detailed in Annex II;
- (7) 'eligible net lending' means gross lending in the form of eligible loans net of repayments of outstanding amounts of eligible loans during a specific period, as further detailed in Annex II;
- (8) 'first reference period' means the period 1 February 2015 to 31 January 2016;
- (9) 'monetary financial institution' (MFI) means a monetary financial institution as defined in point (a) of Article 1 of Regulation (EU) No 1071/2013 of the European Central Bank (ECB/2013/33) ⁽³⁾;
- (10) 'MFI code' means a unique identification code for an MFI in the list of MFIs maintained and published by the European Central Bank (ECB) for statistical purposes in accordance with Article 4 of Regulation (EU) No 1071/2013 (ECB/2013/33);

⁽¹⁾ Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3).

⁽²⁾ Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

⁽³⁾ Regulation (EU) No 1071/2013 of the European Central Bank of 24 September 2013 concerning the balance sheet of the monetary financial institutions sector (ECB/2013/33) (OJ L 297, 7.11.2013, p. 1).

- (11) 'outstanding amounts of eligible loans' means outstanding eligible loans on the balance sheet, excluding eligible loans securitised or otherwise transferred without derecognition from the balance sheet, as further detailed in Annex II;
- (12) 'participant' means a counterparty eligible for Eurosystem monetary policy open market operations in accordance with Guideline (EU) 2015/510 (ECB/2014/60), which submits bids in TLTRO-II tender procedures either on an individual basis or on a group basis as lead institution, and which is subject to all rights and obligations associated with its participation in the TLTRO-II tender procedures;
- (13) 'relevant NCB' means, with reference to a particular participant, the NCB of the Member State in which the participant is established;
- (14) 'second reference period' means the period 1 February 2016 to 31 January 2018.

Article 2

The second series of targeted longer-term refinancing operations

1. The Eurosystem shall conduct four TLTROs-II in accordance with the indicative calendar for TLTROs-II published on the ECB's website.
2. Each TLTRO-II shall mature four years after the respective settlement date, on a day that coincides with the settlement date of a Eurosystem main refinancing operation, in accordance with the indicative calendar for TLTROs-II published on the ECB's website.
3. TLTROs-II shall be:
 - (a) liquidity-providing reverse transactions;
 - (b) executed in a decentralised manner by the NCBs;
 - (c) executed through standard tenders; and
 - (d) executed in the form of fixed rate tender procedures.
4. The standard conditions under which the NCBs are prepared to conduct credit operations shall apply in respect of TLTROs-II, unless otherwise specified in this Decision. These conditions shall include the procedures for conducting open market operations, the criteria for determining the eligibility of counterparties and collateral for the purposes of Eurosystem credit operations and the sanctions applicable in the event of non-compliance with counterparty obligations. Each of these conditions is laid down in the general and temporary legal frameworks applicable to refinancing operations and as implemented in NCBs' contractual and/or regulatory national frameworks.
5. In the event of a conflict between this Decision and Guideline (EU) 2015/510 (ECB/2014/60) or any other ECB legal act laying down the legal framework applicable to longer-term refinancing operations and/or any national measures implementing it at national level, this Decision shall prevail.

Article 3

Participation

1. Institutions may participate in TLTROs-II on an individual basis if they are eligible counterparties for Eurosystem monetary policy open market operations.
2. Institutions may participate in TLTROs-II on a group basis by forming a TLTRO-II group. Participation on a group basis is relevant for the purposes of calculating the applicable borrowing allowance and the benchmarks as laid down in Article 4 and the associated reporting obligations as laid down in Article 7. Participation on a group basis shall be subject to the following restrictions:
 - (a) an institution shall not be a member of more than one TLTRO-II group;

- (b) an institution participating in TLTROs-II on a group basis may not participate on an individual basis;
- (c) the institution appointed as lead institution shall be the only member of the TLTRO-II group that may participate in TLTRO-II tender procedures; and
- (d) the composition and the lead institution of a TLTRO-II group shall remain unchanged for all TLTROs-II, subject to paragraphs 6 and 7 of this Article.

3. In order to participate in TLTROs-II through a TLTRO-II group, the following conditions shall be fulfilled.

- (a) With effect from the last day of the month preceding the application referred to in point (d) of this paragraph, each member of a given group shall:
 - (i) have a close link to another member of the group within the meaning of 'close link' as defined in Article 138 of Guideline (EU) 2015/510 (ECB/2014/60) and references therein to 'counterparty', 'guarantor', 'issuer' or 'debtor' shall be understood as referring to a group member; or
 - (ii) hold required reserves with the Eurosystem in accordance with Regulation (EC) No 1745/2003 of the European Central Bank (ECB/2003/9) ⁽¹⁾ indirectly through another member of the group or be used by another member of the group in order to indirectly hold required reserves with the Eurosystem.
- (b) The group shall appoint one member as the lead institution for the group. The lead institution shall be an eligible counterparty for Eurosystem monetary policy open market operations.
- (c) Each member of the TLTRO-II group shall be a credit institution established in a Member State whose currency is the euro, and shall fulfil the criteria laid down in points (a), (b) and (c) of Article 55 of Guideline (EU) 2015/510 (ECB/2014/60).
- (d) Subject to point (e), the lead institution shall apply for group participation to its NCB in accordance with the indicative calendar for TLTROs-II published on the ECB's website. The application shall include:
 - (i) the name of the lead institution;
 - (ii) a list of the MFI codes and names of all the institutions to be included in the TLTRO-II group;
 - (iii) an explanation of the basis for a group application, including a list of the close links and/or indirect reserve holding relationships between the members of the group, identifying each member by its MFI code;
 - (iv) in the case of group members which meet the conditions stipulated in point (ii) of point (a): written confirmation from the lead institution certifying that each member of its TLTRO-II group has formally decided to be a member of the TLTRO-II group in question and agrees not to participate in TLTROs-II as an individual counterparty or as a member of any other TLTRO-II group, together with appropriate evidence that the written confirmation from the lead institution was executed by duly authorised signatories. A lead institution may make the necessary confirmation in respect of its TLTRO-II group members where there are agreements in place, such as those for the indirect holding of minimum reserves pursuant to Article 10(2) of Regulation (EC) No 1745/2003 (ECB/2003/9), which expressly state that the relevant group members participate in Eurosystem open market operations exclusively through the lead institution. The relevant NCB, in cooperation with the NCBs of the relevant group members, may check the validity of the written confirmation concerned; and
 - (v) in the case of a group member to which point (i) of point (a) applies: (1) written confirmation from the relevant group member of its formal decision to be a member of the TLTRO-II group in question and not to participate in TLTROs-II as an individual counterparty or as a member of any other TLTRO-II group; and (2) appropriate evidence, confirmed by the NCB of the relevant group member, that this formal decision was taken at the highest decision-making level of the member's corporate structure, such as the Board of Directors or equivalent in accordance with any applicable law.

⁽¹⁾ Regulation (EC) No 1745/2003 of the European Central Bank of 12 September 2003 on the application of minimum reserves (ECB/2003/9) (OJ L 250, 2.10.2003, p. 10).

- (e) A TLTRO group recognised for the purposes of TLTROs pursuant to Decision ECB/2014/34 may participate in TLTROs-II as a TLTRO-II group provided that its lead institution submits a written notification to that effect to the relevant NCB in accordance with the indicative calendar for TLTROs-II published on the ECB's website. The notification shall include:
 - (i) a list of members of the TLTRO group who have formally decided to be members of the TLTRO-II group in question and not to participate in TLTRO-II as individual counterparties or as members of any other TLTRO-II group. In the case of group members which meet the conditions stipulated in point (ii) of point (a), the lead institution may provide the necessary notification where there are agreements in place, as referred to in point (iv) of point (d), which expressly state that the relevant group members participate in Eurosystem open market operations exclusively through the lead institution. The relevant NCB, in cooperation with the NCBs of the relevant group members, may check the validity of that list; and
 - (ii) appropriate evidence, as may be requested by the lead institution's NCB, that it was executed by duly authorised signatories.
- (f) The lead institution shall obtain confirmation from its NCB that the TLTRO-II group has been recognised. Prior to issuing its confirmation, the relevant NCB may request any additional information relevant for its assessment of the potential TLTRO-II group from the lead institution. In its assessment of a group application, the relevant NCB shall also take into account any assessments by the NCBs of group members that may be necessary, such as the verification of documentation provided in accordance with points (d) or (e) as applicable.

For the purposes of this Decision, credit institutions subject to consolidated supervision, including branches of the same credit institution, shall also be regarded as suitable applicants for TLTRO-II group recognition, and shall be required to meet the conditions laid down in this Article *mutatis mutandis*. This facilitates the formation of TLTRO-II groups among such institutions, where they are part of the same legal entity. For the purpose of confirming the formation, or a change in the composition, of a TLTRO-II group of this nature, paragraph 3(d)(iv) and paragraph 6(b)(ii)(4) shall apply respectively.

4. If one or more of the institutions included in the application for TLTRO-II group recognition do not fulfil the conditions of paragraph 3, the relevant NCB may partially reject the application of the proposed group. In such a case, the institutions submitting the application may decide to act as a TLTRO-II group with the composition limited to those group members that fulfil the necessary conditions or to withdraw the application for TLTRO-II group recognition.

5. In exceptional cases, where there are objective reasons, the Governing Council may decide to deviate from the conditions set out in paragraphs 2 and 3.

6. Without prejudice to paragraph 5, the composition of a group recognised in accordance with paragraph 3 may change in the following circumstances:

- (a) A member shall be excluded from the TLTRO-II group if it no longer meets the requirements of point (a) or (c) of paragraph 3. The relevant group member's NCB shall inform the lead institution of the group member's failure to meet those requirements.

In such cases, the lead institution concerned shall notify the relevant NCB of the change in status of its group member.

- (b) If, in relation to the TLTRO-II group, additional close links or indirect holdings of required reserves with the Eurosystem are established after the last day of the month preceding the application referred to in point (d) of paragraph 3, the TLTRO-II group composition may change to reflect the addition of a new member provided that:

- (i) the lead institution applies to its NCB for recognition of the change in the TLTRO-II group's composition;

- (ii) the application referred to in point (i) includes:

- (1) the name of the lead institution;

- (2) the list of MFI codes and names of all the institutions that are intended to be included in the new composition of the TLTRO-II group;

- (3) an explanation of the basis for the application, including details of the changes to the close links and/or indirect reserve holding relationships between the members of the group, identifying each member by its MFI code;
 - (4) in the case of group members to which point (ii) of paragraph 3(a) applies: written confirmation from the lead institution certifying that each member of its TLTRO-II group has formally decided to be a member of the TLTRO-II group in question and not to participate in TLTROs-II as an individual counterparty or as a member of any other TLTRO-II group. A lead institution may make the necessary certification in respect of its TLTRO-II group members where there are agreements in place, such as those for the indirect holding of minimum reserves pursuant to Article 10(2) of Regulation (EC) No 1745/2003 (ECB/2003/9), which expressly state that the relevant group members participate in Eurosystem open market operations exclusively through the lead institution. The relevant NCB, in cooperation with the NCBs of the relevant group members, may check the validity of that written confirmation; and
 - (5) in the case of group members to which point (i) of paragraph 3(a) applies, written confirmation from each additional member of its formal decision to be a member of the TLTRO-II group in question and not to participate in TLTROs-II as an individual counterparty or as a member of any other TLTRO-II group, and written confirmation from each member of the TLTRO-II group, included in both the old and the new composition, of its formal decision to agree to the new composition of the TLTRO-II group, together with appropriate evidence, confirmed by the NCB of the relevant group member, as detailed in point (v) of paragraph 3(d); and
- (iii) the lead institution has obtained confirmation from its NCB that the changed TLTRO-II group has been recognised. Prior to issuing its confirmation, the relevant NCB may request any additional information relevant for its assessment of the new TLTRO-II group composition from the lead institution. In its assessment of a group application, the relevant NCB must also take into account any necessary assessment of the NCBs of group members, such as the verification of documentation provided in accordance with point (ii).
- (c) If, in relation to the TLTRO-II group, a merger, acquisition or division involving the TLTRO-II group members takes place after the last day of the month preceding the application referred to in point (d) of paragraph 3 and that operation does not result in any change in the set of eligible loans, the TLTRO-II group composition may change to reflect the merger, acquisition or division, as applicable, provided that the conditions listed in point (b) are met.
7. Where changes in the composition of a TLTRO-II group have been accepted by the Governing Council in accordance with paragraph 5, or changes in the composition of TLTRO-II groups have taken place in accordance with paragraph 6, unless otherwise decided by the Governing Council, the following shall apply:
- (a) in respect of the changes to which paragraph 5 or paragraph 6(b) applies, the lead institution may participate in a TLTRO-II on the basis of the new composition of its TLTRO-II group for the first time six weeks after that lead institution submits the successful application for recognition of the new group composition to its NCB; and
 - (b) an institution that is no longer a member of a TLTRO-II group shall not participate in any further TLTRO-II either individually or as member of another TLTRO-II group, unless it submits a new application to participate in accordance with paragraphs 1, 3 or 6.
8. If a lead institution loses its eligibility as a counterparty for Eurosystem monetary policy open market operations, its TLTRO-II group shall no longer be recognised and such lead institution shall be obliged to repay all amounts borrowed under TLTROs-II.

Article 4

Borrowing allowance, bid limit and benchmarks

1. The borrowing allowance applicable to an individual participant shall be calculated on the basis of the loan data in respect of the outstanding amounts of eligible loans of the individual participant. The borrowing allowance applicable to a participant which is the lead institution of a TLTRO-II group shall be calculated on the basis of the aggregated loan data in respect of outstanding amounts of eligible loans of all members of the TLTRO-II group.

2. Each participant's borrowing allowance shall equal 30 % of its total amount of eligible loans outstanding as at 31 January 2016 less any amount previously borrowed by that TLTRO-II participant under the first two TLTROs conducted in September and December 2014 pursuant to Decision ECB/2014/34 and still outstanding on the settlement date of a TLTRO-II having regard to any legally binding notification for early repayment submitted by the participant in accordance with Article 6 of Decision ECB/2014/34 or any legally binding notification for mandatory early repayment provided by the relevant NCB in accordance with Article 7 of Decision ECB/2014/34. The relevant technical calculations are outlined in Annex I.

3. If a member of a TLTRO group recognised for the purposes of TLTROs pursuant to Decision ECB/2014/34 is not willing to be a member of the respective TLTRO-II group, for the purposes of calculating the TLTRO-II borrowing allowance for that credit institution as an individual participant, that institution shall be deemed to have borrowed under TLTROs conducted in September and December 2014 an amount equal to the amount borrowed by the lead institution of the TLTRO group in these two operations and still outstanding on the settlement date of a TLTRO-II multiplied by the share of eligible loans of the member to those of the TLTRO group as at 30 April 2014. This latter amount will be subtracted from the amount that the respective TLTRO-II group is deemed to have borrowed under TLTROs conducted in September and December 2014 for the purpose of calculating the TLTRO-II borrowing allowance of the lead institution.

4. Each participant's bid limit shall equal its borrowing allowance less the amounts borrowed under previous TLTROs-II. This amount shall be considered to represent a maximum bid limit for each participant and the rules applicable to bids exceeding the maximum bid limit, as laid down in Article 36 of Guideline (EU) 2015/510 (ECB/2014/60), shall apply. The relevant technical calculations are outlined in Annex I.

5. A participant's benchmark net lending shall be determined on the basis of eligible net lending in the first reference period, as follows:

- (a) for participants who report positive or zero eligible net lending in the first reference period, the benchmark net lending shall be zero;
- (b) for participants who report negative eligible net lending in the first reference period, the benchmark net lending shall be equal to the eligible net lending for the first reference period.

The relevant technical calculations are outlined in Annex I. The benchmark net lending for participants that have been granted banking licences after 31 January 2015 shall be zero unless the Governing Council, in circumstances where it is objectively justified, decides otherwise.

6. A participant's benchmark outstanding amount shall be determined as the sum of the eligible loans outstanding as at 31 January 2016 and the benchmark net lending. The relevant technical calculations are outlined in Annex I.

Article 5

Interest

1. Subject to paragraph 2, the interest rate applicable to the amount borrowed under each TLTRO-II shall be the rate on the main refinancing operation prevailing at the time of the tender allotment in respect of the relevant TLTRO-II.

2. The interest rate applicable to the amounts borrowed by participants whose eligible net lending in the second reference period exceeds their benchmark net lending shall also be linked to the interest rate on the deposit facility prevailing at the time of the allotment of each TLTRO-II in accordance with the detailed provisions and calculations set out in Annex I. The interest rate shall be communicated to participants before the first early repayment date in June 2018 according to the indicative calendar for TLTROs-II published on the ECB's website.

3. Interest shall be settled in arrears on the maturity of each TLTRO-II, or on early repayment as provided for in Article 6, as applicable.

4. If, due to the exercise of remedies available to an NCB in accordance with its contractual or regulatory arrangements, a participant is required to repay the TLTRO-II outstanding amounts before the applicable interest rate is communicated to that participant, the interest rate applicable to the amounts borrowed by that participant under each TLTRO-II shall be the rate on the main refinancing operation prevailing at the time of the tender allotment in respect of the relevant TLTRO-II.

Article 6

Early repayment

1. Starting 24 months after the settlement of each TLTRO-II, participants shall, on a quarterly basis, have the option of terminating or reducing the amount of the TLTRO-II concerned before maturity.
2. Early repayment dates shall coincide with the settlement date of a Eurosystem main refinancing operation, as specified by the Eurosystem.
3. In order to benefit from the early repayment procedure, a participant shall notify the relevant NCB that it intends to repay under the early repayment procedure on the early repayment date, at least one week in advance of that early repayment date.
4. The notification referred to in paragraph 3 shall become binding on the participant concerned one week before the early repayment date to which it refers. Failure by the participant to settle, in full or in part, the amount due under the early repayment procedure by the repayment date may result in the imposition of a financial penalty. The applicable financial penalty shall be calculated in accordance with Annex VII to Guideline (EU) 2015/510 (ECB/2014/60) and shall correspond to the financial penalty applied for failures to comply with the obligations to adequately collateralise and settle the amount the counterparty has been allotted as regards reverse transactions for monetary policy purposes. The imposition of a financial penalty shall be without prejudice to the NCB's right to exercise the remedies provided for on the occurrence of an event of default set out in Article 166 of Guideline (EU) 2015/510 (ECB/2014/60).

Article 7

Reporting requirements

1. Each participant in TLTROs-II shall submit to the relevant NCB the data identified in the reporting template set out in Annex II as follows:
 - (a) data relating to the first reference period for the purposes of establishing the participant's borrowing allowance, bid limits and benchmarks (hereinafter referred to as the 'first report'); and
 - (b) data relating to the second reference period for the purposes of determining the applicable interest rates (hereinafter referred to as the 'second report').
2. The data shall be provided in accordance with:
 - (a) the indicative calendar for TLTRO's-II published on the ECB's website;
 - (b) the guidelines set out in Annex II; and
 - (c) the minimum standards for accuracy and compliance with concepts specified in Annex IV to Regulation (EU) No 1071/2013 (ECB/2013/33).
3. Terms used in the report submitted by participants shall be interpreted in accordance with the definitions of those terms in Regulation (EU) No 1071/2013 (ECB/2013/33).
4. Lead institutions of TLTRO-II groups shall submit reports reflecting aggregated data in respect of all members of the TLTRO-II group. In addition, the lead institution's NCB, or the NCB of a member of a TLTRO-II group may, in coordination with the lead institution's NCB, require the lead institution to submit disaggregated data for each individual group member.

5. Each participant shall ensure that the quality of the data submitted pursuant to paragraphs 1 and 2 is evaluated by an external auditor in accordance with the following rules:

- (a) the auditor may evaluate the data in the first report as part of the audit of the participant's annual financial statements and the results of the auditor's evaluation shall be submitted by the deadline specified in the indicative calendar for TLTROs-II published on the ECB's website;
- (b) the results of the auditor's evaluation in respect of the second report shall be submitted together with that second report unless, in exceptional circumstances, a different deadline is approved by the relevant NCB; in this case, the interest rate applicable to the amounts borrowed by the participant who requested the extension shall be communicated only after the results of the auditor's evaluation are submitted; if, following the relevant NCB's approval, the participant decides to terminate or reduce the amount of its TLTROs-II before it submits the results of the auditor's evaluation, the interest rate applicable to the amounts to be repaid by that participant shall be the rate on the main refinancing operation prevailing at the time of the tender allotment in respect of the relevant TLTRO-II;
- (c) the auditor's evaluations shall focus on the requirements set out in paragraphs 2 and 3. In particular, the auditor shall:
 - (i) evaluate the accuracy of the data provided by verifying that the set of the participant's eligible loans including, in the case of a lead institution the eligible loans of its TLTRO-II group members, satisfies the eligibility criteria;
 - (ii) check that the data reported complies with the guidelines detailed in Annex II and with the concepts introduced by Regulation (EU) No 1071/2013 (ECB/2013/33);
 - (iii) check that the data reported are consistent with data compiled pursuant to Regulation (EU) No 1071/2013 (ECB/2013/33); and
 - (iv) check whether controls and procedures are in place to validate the integrity, accuracy and consistency of the data.

In the case of participation on a group basis, the results of the auditor's evaluations shall be shared with the NCBs of the other TLTRO-II group members. At the request of the participant's NCB, detailed results of the evaluations conducted pursuant to this paragraph shall be provided to that NCB and, in the case of group participation, subsequently shared with the NCBs of the group members.

The Eurosystem may provide further guidance on the manner in which the auditor's evaluation is to be conducted in which case the participants shall ensure that such guidance is applied by the auditors in their evaluation.

6. Following a change in the TLTRO-II group composition or a corporate reorganisation, such as a merger, acquisition or division, that affects the set of the participant's eligible loans, a revised first report shall be submitted in accordance with the instructions received from the participant's NCB. The relevant NCB shall assess the impact of the revision and undertake appropriate action. Such action may include a requirement to repay amounts borrowed which, taking into account the change to the TLTRO-II group composition or the corporate reorganisation, exceed the relevant borrowing allowance. The participant concerned (which may include a newly established entity following the corporate reorganisation) shall provide any additional information requested by the relevant NCB to assist in the assessment of the impact of the revision.

7. The data provided by the participants pursuant to this Article may be used by the Eurosystem for the implementation of the TLTRO-II framework, as well as for the analysis of the framework's effectiveness and other Eurosystem analytical purposes.

Article 8

Non-compliance with reporting requirements

1. Where a participant fails to submit a report or comply with audit requirements, or where errors are identified in the data reported, the following shall apply:

- (a) If a participant fails to submit the first report by the relevant deadline, its borrowing allowance shall be set at zero.

- (b) If a participant fails to submit the second report by the relevant deadline or to comply with the obligations set out in Article 7(5) or (6), the interest rate on the main refinancing operation prevailing at the time of the tender allotment in respect of the relevant TLTRO-II shall be applicable to the amounts borrowed by that participant under TLTROs-II.
- (c) If a participant, either in connection with the audit referred to in Article 7(5) or otherwise, identifies errors in the data submitted in the reports, including inaccuracies or incompleteness, it shall notify the relevant NCB thereof within the shortest time frame possible. Where the relevant NCB has been notified of such errors, or where such errors otherwise come to its attention: (i) the participant shall provide any additional information requested by the relevant NCB to assist in the assessment of the impact of the error concerned; and (ii) the relevant NCB may take appropriate action, which may include an adjustment to the interest rate applied to the participant's borrowings under TLTROs-II and a requirement to repay the amounts borrowed which, due to the error, exceed the participant's borrowing allowance.
2. Paragraph 1 shall be without prejudice to any sanction that may be imposed pursuant to Decision ECB/2010/10 of the European Central Bank ⁽¹⁾ in respect of the reporting obligations laid down in Regulation (EU) No 1071/2013 (ECB/2013/33).

Article 9

Entry into force

This Decision shall enter into force on 3 May 2016.

Done at Frankfurt am Main, 28 April 2016.

The President of the ECB
Mario DRAGHI

⁽¹⁾ Decision ECB/2010/10 of the European Central Bank of 19 August 2010 on non-compliance with statistical reporting requirements, (OJ L 226, 28.8.2010, p. 48).

ANNEX I

CONDUCT OF THE SECOND SERIES OF TARGETED LONGER-TERM REFINANCING OPERATIONS

1. Calculation of borrowing allowance and bid limit

Participants in one of the second series of targeted longer-term refinancing operations (TLTRO-II), acting either individually or as the lead institution of a TLTRO-II group, are subject to a borrowing allowance. The borrowing allowance calculated will be rounded up to the next multiple of EUR 10 000.

The borrowing allowance applicable to an individual participant in the TLTROs-II is calculated on the basis of the amount of eligible loans outstanding as at 31 January 2016. The borrowing allowance applicable to the lead institution of a TLTRO-II group is calculated on the basis of the amount of eligible loans outstanding as at 31 January 2016 in relation to all members of that TLTRO-II group.

The borrowing allowance equals 30 % of the outstanding amount of eligible loans relating to the participant ⁽¹⁾ as at 31 January 2016 minus the amounts borrowed by the participant in the targeted longer-term refinancing operations (TLTROs) conducted in September and December 2014 pursuant to Decision ECB/2014/34 and still outstanding at the settlement date of a TLTRO-II, i.e.:

$$BA_k = 0,3 \times OL_{Jan2016} - OB_k \text{ for } k = 1, \dots, 4$$

Here BA_k is the borrowing allowance in TLTRO-II k (with $k = 1, \dots, 4$), $OL_{Jan2016}$ is the amount of eligible loans held by the participant which are outstanding as at 31 January 2016 and OB_k is the amount borrowed by the participant in TLTRO1 and TLTRO2 of the first TLTRO series and still outstanding on the settlement date of a TLTRO-II k .

The bid limit applicable to each participant in each TLTRO-II is the borrowing allowance minus the participant's borrowing in the previous TLTROs-II.

Let $C_k \geq 0$ be the borrowing of a participant in TLTRO-II k . The bid limit BL_k for this participant in operation k is:

$$BL_1 = BA_1 \text{ and}$$

$$BL_k = BA_k - \sum_{j=1}^{k-1} C_j, \text{ for } k = 2, 3, 4.$$

2. Calculation of benchmarks

Let NL_m be the eligible net lending of a participant in calendar month m , calculated as the participant's gross flow of new eligible loans in that month less repayments of eligible loans, as defined in Annex II.

Denote by NLB the benchmark net lending for this participant. This is defined as follows:

$$NLB = \min(NL_{Feb2015} + NL_{March2015} + \dots + NL_{Jan2016}, 0)$$

This implies that if the participant has positive or zero eligible net lending in the first reference period, then $NLB = 0$. If, however, the participant has negative eligible net lending in the first reference period, then $NLB = NL_{Feb2015} + NL_{March2015} + \dots + NL_{Jan2016}$.

Denote by OAB a participant's benchmark outstanding amount. This is defined as follows:

$$OAB = \max(OL_{Jan2016} + NLB, 0)$$

⁽¹⁾ References to a 'participant' should be understood as applying to individual participants or TLTRO-II groups.

3. Calculation of interest rate

Let $NS_{Jan2018}$ denote the amount obtained by summing the eligible net lending over the period 1 February 2016 to 31 January 2018 and the amount of eligible loans outstanding as at 31 January 2016; this is calculated as $NS_{Jan2018} = OL_{Jan2016} + NL_{Feb2016} + NL_{March2016} + \dots + NL_{Jan2018}$

Denote now EX by the percentage deviation of $NS_{Jan2018}$ from the benchmark outstanding amount, that is,

$$EX = \frac{(NS_{Jan2018} - OAB)}{OAB} \times 100$$

Where OAB is equal to zero, EX is deemed to equal 2,5.

Let r_k be an interest rate to be applied for TLTRO-II k . Let MRO_k and DF_k be the main refinancing operation (MRO) rate and the deposit facility rate, expressed as annual percentage rates, prevailing at the time of allotment of TLTRO-II k , respectively. The interest rate is determined as follows:

- (a) If a participant does not exceed its benchmark outstanding amount of eligible loans as at 31 January 2018, the interest rate to be applied to all amounts borrowed by the participant under TLTROs-II equals the MRO rate applicable at the time of the allotment of each TLTRO-II, that is:

$$\text{if } EX \leq 0, \text{ then } r_k = MRO_k.$$

- (b) If a participant exceeds its benchmark outstanding amount of eligible loans by at least 2,5 % as at 31 January 2018, the interest rate to be applied to all amounts borrowed by the participant under TLTROs-II equals the deposit facility rate applicable at the time of the allotment of each TLTRO-II, that is,

$$\text{if } EX \geq 2,5, \text{ then } r_k = DF_k.$$

- (c) If a participant exceeds its benchmark outstanding amount of eligible loans but by less than by 2,5 % as at 31 January 2018, the interest rate to be applied to all amounts borrowed by the participant under TLTROs-II is graduated linearly depending on the percentage by which the participant exceeds its benchmark outstanding amounts of eligible loans, that is,

$$\text{if } 0 < EX < 2,5, \text{ then } r_k = MRO_k - \frac{(MRO_k - DF_k) \times EX}{2,5}.$$

The interest rate will be expressed as an annual percentage rate, rounded down to the next fourth decimal position.

ANNEX II

**THE SECOND SERIES OF TARGETED LONGER-TERM REFINANCING OPERATIONS — GUIDELINES FOR
COMPILING DATA REQUIRED BY THE REPORTING TEMPLATE****1. Introduction ⁽¹⁾**

These guidelines provide instructions for compiling the data reports that participants in the TLTROs-II must submit in accordance with Article 7. The reporting requirements are presented in the reporting template at the end of this Annex. These guidelines also specify the reporting requirements of lead institutions of TLTRO-II groups participating in the operations.

Section 2 and 3 provide general information relating to the compilation and transmission of the data and section 4 explains the indicators to be reported.

2. General information

The measures to be used in the calculation of the borrowing allowance relate to monetary financial institution (MFI) loans to euro area non-financial corporations and MFI loans to euro area households ⁽²⁾, excluding loans for house purchases, in all currencies. In accordance with Article 7, data reports must be submitted for the two reference periods defined in Article 1. In particular, information on outstanding amounts of eligible loans at the end of the month preceding the start of the period and at the end of the period, as well as eligible net lending during the period (calculated as gross lending net of loan repayments) must be reported separately for non-financial corporations and for households. Outstanding amounts of eligible loans are adjusted to account for loans which are securitised or otherwise transferred and not derecognised. Detailed information is also required on the relevant sub-components of these items, as well as on effects that result in changes to outstanding amounts of eligible loans but that are not related to eligible net lending (hereinafter 'adjustments to the outstanding amounts'), also covering loan sales and purchases and other loan transfers.

As regards the use of the collected information, data on outstanding amounts of eligible loans as at 31 January 2016 will be used to determine the borrowing allowance. In addition, data on eligible net lending during the first reference period will be used for the calculation of the benchmark net lending and the benchmark outstanding amount. Meanwhile data on eligible net lending during the second reference period will be used to assess the lending developments and, consequently, the interest rates applicable. All other indicators included in the template are necessary to verify the internal consistency of the information and its consistency with the statistical data collected within the Eurosystem, as well as for in-depth monitoring of the impact of the TLTRO-II programme.

The general framework underlying the completion of the data reports is provided by the reporting requirements of euro area MFIs in the context of MFI balance sheet items (BSI) statistics, as specified in Regulation (EU) No 1071/2013 (ECB/2013/33). In particular, as regards loans, Article 8(2) of Regulation (EU) No 1071/2013 (ECB/2013/33) requires that they 'shall be reported at their principal amount outstanding at the end of the month. Write-offs and write-downs as determined by the relevant accounting practices shall be excluded from this amount. [...] loans shall not be netted against any other assets or liabilities'. However, in contrast to the rules laid down in Article 8(2), which also imply that loans are to be reported gross of provisions, Article 8(4) states that 'NCBs may allow the reporting of provisioned loans net of provisions and the reporting of purchased loans at the price agreed at the time of their acquisition [i.e. their transaction value], provided that such reporting practices are applied by all resident reporting agents'. The implications that this deviation from the general BSI guidance has for the compilation of the data reports are reviewed in more detail below.

Regulation (EU) No 1071/2013 (ECB/2013/33) should also be used as the reference document as regards the definitions to be applied in the compilation of the data reports. See, in particular, Article 1 for general definitions, and Parts 2 and 3 of Annex II for a definition of the categories of instruments to be covered under 'loans' and of the sectors of participants respectively. Importantly, in the BSI framework accrued interest receivable on loans is, as a rule, subject to on-balance-sheet recording as it accrues (i.e. on an accrual basis rather than when it is actually received), but should be excluded from the data on outstanding amounts of loans. However, capitalised interest should be recorded as part of the outstanding amounts.

⁽¹⁾ The conceptual framework underlying the reporting requirements remains unchanged in comparison to that specified in Decision ECB/2014/34.

⁽²⁾ For the purposes of the data reports, 'households' includes non-profit institutions serving households.

While much of the data to be reported are already compiled by MFIs in accordance with the requirements of Regulation (EU) No 1071/2013 (ECB/2013/33), some additional information must be compiled by participants bidding in TLTRO-II. The methodological framework for BSI statistics, as laid down in the Manual on MFI balance sheet statistics ⁽¹⁾, provides all the background information required in order to compile these additional data; further details are provided in point 4 regarding the definitions of the individual indicators.

3. General reporting instructions

(a) Structure of the reporting template

The template includes an indication of the period to which the data refer and groups the indicators into two blocks: MFI loans to euro area non-financial corporations and MFI loans to euro area households, excluding loans for house purchases. The data in all cells highlighted in yellow are calculated from the data entered in the other cells, based on the formulas provided. The template also incorporates a validation rule that verifies the consistency between outstanding amounts and transactions.

(b) Definition of the 'reporting period'

The reporting period denotes the date range to which the data refer. There are two reporting periods in the TLTRO-II, i.e. the 'first reference period', 1 February 2015 to 31 January 2016, and the 'second reference period', 1 February 2016 to 31 January 2018. Indicators relating to outstanding amounts must be reported as at the end of the month preceding the start of the reporting period and at the end of the reporting period; therefore, for the first reference period outstanding amounts must be reported as at 31 January 2015 and 31 January 2016, and for the second reference period outstanding amounts must be reported as at 31 January 2016 and 31 January 2018. In turn, data on transactions and adjustments must cover all relevant effects that take place during the reporting period.

(c) Reporting in respect of TLTRO-II groups

In respect of group participation in the TLTROs-II, data should be reported, as a rule, on an aggregated basis. However, national central banks of Member States whose currency is the euro (NCBs) have the option of collecting the information on an individual institution basis, if deemed appropriate.

(d) Transmission of the data reports

The completed data reports should be transmitted to the relevant NCB as specified in Article 7 and in accordance with the indicative calendar for TLTROs-II published on the ECB's website, which also stipulates the reference periods to be covered in each transmission and which data vintages should be used for the compilation of the data.

(e) Unit of the data

Data must be reported in terms of thousands of euro.

4. Definitions

This section provides definitions of the items to be reported; the numbering used in the reporting template is indicated in brackets.

(a) Outstanding amounts of eligible loans (1 and 4)

The data in these cells are calculated on the basis of the figures reported in respect of the subsequent items, namely 'Outstanding amounts on the balance sheet' (1.1 and 4.1), minus 'Outstanding amounts of loans that are securitised or otherwise transferred but not derecognised from the balance sheet' (1.2 and 4.2), plus 'Outstanding provisions against eligible loans' (1.3 and 4.3). The latter sub-term is relevant only in cases where, contrary to the general BSI practice, loans are reported net of provisions.

⁽¹⁾ See the 'Manual on MFI balance sheet statistics', ECB, April 2012, available on the ECB's website at www.ecb.europa.eu. In particular, Section 2.1.4, p. 76, deals with the statistical reporting of loans.

(i) Outstanding amounts on the balance sheet (1.1 and 4.1)

This item comprises outstanding amounts of loans granted to euro area non-financial corporations and households, excluding loans for house purchase. Accrued interest, as opposed to capitalised interest, is excluded from the indicators.

These cells on the template are directly linked to the requirements of Part 2 of Annex I to Regulation (EU) No 1071/2013 (ECB/2013/33) (Block 2 of Table 1 on monthly stocks).

For a more detailed definition of the items to be included in the data reports, see Part 2 of Annex II to Regulation (EU) No 1071/2013 (ECB/2013/33) and Section 2.1.4 of the Manual on MFI balance sheet statistics.

(ii) Outstanding amounts of loans that are securitised or otherwise transferred but not derecognised from the balance sheet (1.2 and 4.2)

This item comprises the outstanding amounts of loans that are securitised or otherwise transferred but which have not been derecognised from the balance sheet. All securitisation activities must be reported, regardless of where the financial vehicle corporations involved are resident. Loans provided as collateral to the Eurosystem for monetary policy credit operations in the form of credit claims, which result in a transfer without derecognition from the balance sheet are excluded from this item.

Part 5 of Annex I to Regulation (EU) No 1071/2013 (ECB/2013/33) (Block 5.1 of Table 5a on monthly data) covers the required information on securitised loans to non-financial corporations and households that have not been derecognised, but does not require the latter to be broken down by purpose. In addition, outstanding amounts of loans which have been otherwise transferred (i.e. not through a securitisation) but are not derecognised, are not covered by Regulation (EU) No 1071/2013 (ECB/2013/33). For the purposes of compiling the data reports, separate data extractions from the MFIs' internal databases are thus required.

For additional details of the items to be included in the data reports, see Part 5 of Annex I to Regulation (EU) No 1071/2013 (ECB/2013/33) and Section 2.3 of the Manual on MFI balance sheet statistics.

(iii) Outstanding provisions against eligible loans (1.3 and 4.3)

These data are relevant only for those institutions that, contrary to the general BSI practice, report loans net of provisions. In the case of institutions bidding as a TLTRO-II group, this requirement only applies to those institutions in the group that record loans net of provisions.

This item includes individual and collective allowances for impairment and loan losses (before write-offs and write-downs take place). The data must refer to outstanding eligible loans on the balance sheet, i.e. excluding loans that are securitised or otherwise transferred which have not been derecognised from the balance sheet.

As stated in the third subparagraph of point 2, in BSI statistics loans should be reported, as a rule, at the principal outstanding amount, with the corresponding provisions being allocated to 'Capital and reserves'. In such cases, no separate information on provisions should be reported. At the same time, in cases where loans are reported net of provisions, this additional information must be reported in order to gather fully comparable data across MFIs.

Where it is the practice to report outstanding amounts of loans net of provisions, NCBs have the option of making the reporting of this information non-mandatory. However, in such cases the calculations under the TLTRO-II framework will be based on amounts of outstanding loans on the balance sheet net of provisions ⁽¹⁾.

For additional details, see the reference to provisions in the definition of 'Capital and reserves' provided in Part 2 of Annex II to Regulation (EU) No 1071/2013 (ECB/2013/33).

⁽¹⁾ This exception also has implications for the reporting of data on write-offs and write-downs, as clarified below.

(b) Eligible net lending (2)

These cells of the reporting template record the net lending (transactions) granted during the reporting period. The data are calculated on the basis of the figures reported for the sub-items, namely 'Gross lending' (2.1) minus 'Repayments' (2.2).

Loans which are renegotiated during the reporting period should be reported both as 'Repayments' and as 'Gross lending' at the time when the renegotiation takes place. Adjustment data must include effects relating to loan renegotiation.

Reversed transactions during the period (i.e. loans granted and repaid during the period) should in principle be reported both as 'Gross lending' and as 'Repayments'. However, it is also permissible for bidding MFI to exclude these operations when compiling the data reports, to the extent that this would alleviate their reporting burden. In this case, they should inform the relevant NCB and the data on adjustments to the outstanding amounts must also exclude effects relating to these reversed operations. This exception does not apply to loans granted during the period which are securitised or otherwise transferred.

Credit card debt, revolving loans and overdrafts should also be considered. For these instruments, changes in balances owing to amounts used or withdrawn during the reporting periods should be used as proxies for net lending. Positive amounts should be reported as 'Gross lending' (2.1), whereas negative amounts should be reported (with the positive sign) as 'Repayments' (2.2).

(i) Gross lending (2.1)

This item comprises the flow of gross new loans in the reporting period, excluding any loan acquisitions. Credit granted that relates to credit card debt, revolving loans and overdrafts should also be reported, as explained above.

Amounts added during the period to customer balances due, for instance, to interest capitalisation (as opposed to interest accruals) and fees, should also be included.

(ii) Repayments (2.2)

This item comprises the flow of repayments of principal during the reporting period, excluding those relating to securitised or otherwise transferred loans which are not derecognised from the balance sheet. Repayments relating to credit card debt, revolving loans and overdrafts should also be reported, as explained above.

Interest payments relating to accrued interest not yet capitalised, loan disposals and other adjustments to the outstanding amounts (including write-offs and write-downs) should not be reported.

(c) Adjustments to the outstanding amounts

These cells of the reporting template are for reporting changes in outstanding amounts (reductions (–) and increases (+)) occurring during the reporting period which are not related to net lending. Such changes arise from operations such as loan securitisations and other loan transfers during the reporting period, and from other adjustments related to revaluations owing to changes in exchange rates, loan write-offs and write-downs and reclassifications. The data in these cells are automatically calculated on the basis of the figures reported under the sub-items, namely 'Loan sales and purchases and other loan transfers during the reporting period' (3.1) plus 'Other adjustments' (3.2).

(i) Loan sales and purchases and other loan transfers during the reporting period (3.1)

— Net flows of securitised loans with an impact on loan stocks (3.1 A)

This item comprises the net amount of loans that are securitised during the reporting period with an impact on reported loan stocks, calculated as acquisitions minus disposals ⁽¹⁾. All securitisation activities must be reported, regardless of where the financial vehicle corporations involved are resident. Loan transfers should be recorded at the nominal amount net of write-offs and write-downs at the time of the sale. These write-offs and write-downs should be reported, where identifiable, under item 3.2B in the template (see below). In the case of MFIs that report loans net of provisions, the transfers should be recorded at the balance sheet value (i.e. the nominal amount net of outstanding provisions) ⁽²⁾.

The requirements of Part 5 of Annex I to Regulation (EU) No 1071/2013 (ECB/2013/33) (Blocks 1.1 of Table 5a on monthly data and Table 5b on quarterly data) cover these elements.

For a more detailed definition of the items to be reported, see Part 5 of Annex I to Regulation (EU) No 1071/2013 (ECB/2013/33) and Section 2.3 of the Manual on MFI balance sheet statistics.

— Net flows of loans that are otherwise transferred with an impact on loan stocks (3.1B)

This item comprises the net amount of loans disposed of or acquired during the period with an impact on reported loan stocks in operations not related to securitisation activities, and is calculated as acquisitions minus disposals. The transfers should be recorded at the nominal amount net of write-offs and write-downs at the time of the sale. These write-offs and write-downs should be reported, where identifiable, under item 3.2B. In the case of MFIs that report loans net of provisions, the transfers should be recorded at the balance sheet value (i.e. the nominal amount net of outstanding provisions).

The requirements of Part 5 of Annex I to Regulation (EU) No 1071/2013 (ECB/2013/33) partly cover these elements. Blocks 1.2 of Table 5a on monthly data and Table 5b on quarterly data cover data on net flows of loans that are otherwise transferred with an impact on loan stocks, but exclude:

- (1) loans disposed of to, or acquired from, another domestic MFI, including intra-group transfers owing to corporate business restructuring (e.g. the transfer of a pool of loans by a domestic MFI subsidiary to the parent MFI);
- (2) loan transfers in the context of intra-group reorganisations owing to mergers, acquisitions and divisions.

For the purposes of compiling the data reports, all of these effects must be reported. For additional details on the items to be reported, see Part 5 of Annex I to Regulation (EU) No 1071/2013 (ECB/2013/33) and Section 2.3 of the Manual on MFI balance sheet statistics. With regard to 'Changes in the structure of the MFI sector', Section 1.6.3.4 of the Manual on MFI balance sheet statistics (and the related Section 5.2 of Annex 1.1) provides a detailed description of intra-group transfers, distinguishing between cases where transfers take place between separate institutional units (e.g. before one or more of the units cease to exist in a merger or acquisition) and those that take place at the moment when some units cease to exist, in which case a statistical reclassification should be carried out. For the purposes of compiling the data reports, in both cases the implications are the same and the data should be reported under item 3.1C (and not under item 3.2C).

— Net flows of loans that are securitised or otherwise transferred without any impact on loan stocks (3.1C)

This item comprises the net amount of loans that are securitised or otherwise transferred during the reporting period without any impact on the reported loan stocks, and is calculated as acquisitions minus disposals. The transfers should be recorded at the nominal amount net of write-offs and write-downs at

⁽¹⁾ This sign convention (which is the opposite of the requirements of Regulation (EU) No 1071/2013 (ECB/2013/33)) is consistent with the general requirement regarding adjustment data, as specified above — i.e. effects leading to increases or decreases in outstanding amounts are to be reported, respectively, with a positive or negative symbol.

⁽²⁾ Regulation (EU) No 1071/2013 (ECB/2013/33) allows MFIs to report purchased loans at their transaction value as long as this is a national practice applied by all MFIs resident in the country. In such cases, revaluation components that may arise must be reported under item 3.2B.

the time of the sale. These write-offs and write-downs should be reported, where identifiable, under item 3.2B. In the case of MFIs that report loans net of provisions, the transfers should be recorded at the balance sheet value (i.e. the nominal amount net of outstanding provisions). Net flows relating to the provision of loans as collateral to the Eurosystem for monetary policy credit operations in the form of credit claims which result in a transfer without derecognition from the balance sheet are excluded from this item.

The requirements of Part 5 of Annex I to Regulation (EU) No 1071/2013 (ECB/2013/33) partly cover these elements. Blocks 2.1 of Table 5a on monthly data and Table 5b on quarterly data cover data on net flows of loans that are securitised or otherwise transferred without any impact on loan stocks, but loans to households for house purchase are not separately identified and should thus be extracted from the MFIs' internal databases separately. In addition, as specified above, the requirements exclude:

- (1) loans disposed of to, or acquired from, another domestic MFI, including intra-group transfers owing to corporate business restructuring (e.g. when a domestic MFI subsidiary transfers a pool of loans to the parent MFI);
- (2) loan transfers in the context of intra-group reorganisations owing to mergers, acquisitions and divisions.

For the purposes of compiling the data reports, all of these effects must be reported.

For additional details on the items to be included, see Part 5 of Annex I to Regulation (EU) No 1071/2013 (ECB/2013/33) and Section 2.3 of the Manual on MFI balance sheet statistics.

(ii) Other adjustments (3.2)

Data on other adjustments must be reported for outstanding eligible loans on the balance sheet, excluding securitised or otherwise transferred loans which are not derecognised.

— Revaluations owing to changes in exchange rates (3.2 A)

Movements in exchange rates against the euro give rise to changes in the value of loans denominated in foreign currencies when they are expressed in euro. Data on these effects should be reported with a negative (positive) sign when in net terms they give rise to a reduction (increase) in outstanding amounts, and are necessary to allow a full reconciliation between net lending and changes in outstanding amounts.

These adjustments are not covered under the requirements laid down by Regulation (EU) No 1071/2013 (ECB/2013/33). For the purposes of the data reports, if the data (or even an approximation) are not readily available to MFIs, they can be calculated in accordance with the guidance provided in Section 4.2.2 of the Manual on MFI balance sheet statistics. The suggested estimation procedure limits the scope of the calculations to major currencies and is based on the following steps:

- (1) the outstanding amounts of eligible loans at the end of the month preceding the start of the period and at the end of the period (items 1 and 4) are broken down by currency of denomination, focusing on the pools of loans denominated in GBP, USD, CHF and JPY. If these data are not readily available, data on total outstanding amounts on the balance sheet, including securitised or otherwise transferred loans which are not derecognised — items 1.1 and 4.1 — may be used;
- (2) each pool of loans is treated as follows. The relevant equation numbers in the Manual on MFI balance sheet statistics are provided in brackets:
 - outstanding amounts at the end of the month preceding the start of the reporting period and at the end of the period are converted into the original currency of denomination, using the corresponding nominal exchange rates ⁽¹⁾ (equations [4.2.2] and [4.2.3]),

⁽¹⁾ ECB reference exchange rates should be used. See the press release of 8 July 1998 on the setting-up of common market standards which is available on the ECB's website www.ecb.europa.eu.

- the change in outstanding amounts during the reference period denominated in foreign currency is computed and converted back into euro using the average value of the daily exchange rates during the reporting period (equation [4.2.4]),
- the difference between the change in outstanding amounts converted into euro, as calculated in the previous step, and the change in outstanding amounts in euro is computed (equation [4.2.5], with the opposite sign);

(3) the final exchange rate adjustment is estimated as the sum of the adjustments for each currency.

For additional information, see Sections 1.6.3.5 and 4.2.2 of the Manual on MFI balance sheet statistics.

— Write-offs/write-downs (3.2B)

In accordance with point (g) of Article 1 of Regulation (EU) No 1071/2013 (ECB/2013/33), “write-down” means the direct reduction of the carrying amount of a loan on the statistical balance sheet owing to its impairment.’ Similarly, in accordance with point (h) Article 1 of the same Regulation “write-off” means a write-down of the full carrying amount of a loan leading to its removal from the balance sheet.’ The effects of write-downs and write-offs should be reported with a negative or positive sign when in net terms they result in a reduction or increase, as applicable, in outstanding amounts. These data are necessary to allow a full reconciliation between net lending and changes in outstanding amounts.

As regards write-offs and write-downs relating to outstanding loans on the balance sheet, data compiled to comply with the minimum requirements of Part 4 of Annex I to Regulation (EU) No 1071/2013 (ECB/2013/33) Table 1A on monthly revaluation adjustments) can be used. However, disentangling the impact of loan write-offs and write-downs on securitised or otherwise transferred loans which are not derecognised requires a separate data extraction from the MFIs’ internal databases.

Data on outstanding amounts of eligible loans (items 1 and 4) are in principle corrected for the outstanding amounts of provisions in cases where loans are recorded net of provisions on the statistical balance sheet.

- In cases where participants report items 1.3 and 4.3, data on loan write-offs and write-downs should incorporate the cancellation of past provisions on loans that have become (partly or fully) unrecoverable and, in addition, should also include any losses in excess of the provisions, if applicable. Similarly, when a provisioned loan is securitised or otherwise transferred, a write-off or write-down needs to be recorded that is equal to the outstanding provisions, with the opposite sign, in order to match the change in the value on the balance sheet, corrected for the amounts of provisions and the value of the net flow. Provisions may change over time as a result of new allowances for impairment and loan losses (net of possible reversals, including those that take place when a loan is repaid by the borrower). Such changes should not be recorded in the data reports as part of write-offs/write-downs (as the data reports reconstruct values gross of provisions) ⁽¹⁾.

Disentangling the impact of loan write-offs and write-downs on securitised or otherwise transferred loans which are not derecognised may be omitted if separate data on provisions cannot be extracted from the MFIs’ internal databases.

- Where it is the practice that outstanding amounts of loans are reported net of provisions, but the relevant items (1.3 and 4.3) relating to provisions are not reported (see point 4(a)), write-offs/write-downs must include new allowances for impairment and loan losses on the loan portfolio (net of possible reversals, including those that take place when a loan is repaid by the borrower) ⁽²⁾.

⁽¹⁾ This requirement differs from the reporting requirements under Regulation (EU) No 1071/2013 (ECB/2013/33).

⁽²⁾ This requirement is the same as the information to be reported under Regulation (EU) No 1071/2013 (ECB/2013/33) by MFIs recording loans net of provisions.

It is not necessary to disentangle the impact of write-offs and write-downs on securitised or otherwise transferred loans which are not derecognised if separate data on provisions cannot be extracted from the MFIs' internal databases.

In principle, these items also cover revaluations arising when loans are securitised or otherwise transferred and the transaction value differs from the nominal amount outstanding when the transfer takes place. These revaluations must be reported, where identifiable, and should be calculated as the difference between the transaction value and the nominal amount outstanding at the time of the sale.

For additional information, see Part 4 of Annex I to Regulation (EU) No 1071/2013 (ECB/2013/33) and Section 1.6.3.3 of the Manual on MFI balance sheet statistics.

— Reclassifications (3.2C)

Reclassifications record all other effects that are not related to net lending, as defined in point 4(b), but result in changes in the outstanding amounts of loans on the balance sheet, excluding securitised or otherwise transferred loans which are not derecognised.

These effects are not covered under the requirements laid down by Regulation (EU) No 1071/2013 (ECB/2013/33) and their impact is normally estimated on an aggregated basis when compiling macro-economic statistics. However, they are important at the level of individual institutions (or TLTRO-II groups) in order to reconcile net lending and changes in outstanding amounts.

The following effects must be reported, in respect of the outstanding amounts of loans on the balance sheet, excluding securitised or otherwise transferred loans which are not derecognised and the usual convention of recording effects leading to reductions (increases) in outstanding amounts with a negative (positive) sign applies.

- (1) Changes in the sector classification or area of residence of borrowers that result in changes in the reported outstanding positions which are not due to net lending and thus need to be recorded.
- (2) Changes in the classification of instruments. These may also affect the indicators if the outstanding amounts of loans increase or decrease owing, for instance, to the reclassification of a debt security as a loan or a loan as a debt security.
- (3) Adjustments that result from the correction of reporting errors, in accordance with instructions received from the relevant NCB pursuant to point (c) of Article 8(1).

In accordance with Article 7(6), corporate reorganisations and changes in the composition of TLTRO-II groups normally result in the need to resubmit the first data report to reflect the new corporate structure and TLTRO-II group composition. Hence, no reclassifications are used in respect of those events.

For additional information, see Section 1.6.3.4 of the Manual on MFI balance sheet statistics. However, the conceptual differences highlighted above should be taken into account for the purposes of deriving reclassification data at the level of individual institutions.

TLTRO-II reporting

Reporting period:

Loans to non-financial corporations and households, excluding loans to households for house purchase (EUR thousands)

	Loans to non-financial corporations	Loans to households (including non-profit institutions serving households), excluding loans for house purchase	item	formula	validation
Main aggregates					
1 Outstanding amounts of eligible loans at the end of the month preceding the start of the reporting period	0	0	1	$1 = 1.1 - 1.2 (+ 1.3)$	
2 Eligible net lending in the reporting period	0	0	2	$2 = 2.1 - 2.2$	
3 Adjustments to the outstanding amounts: reductions (–) and increases (+).....	0	0	3	$3 = 3.1 + 3.2$	
4 Outstanding amounts of eligible loans at the end of the reporting period	0	0	4	$4 = 4.1 - 4.2 (+ 4.3)$	$4 = 1 + 2 + 3$
Underlying items					
Outstanding amounts of eligible loans at the end of the month preceding the start of the reporting period					
1.1 Outstanding amounts on the balance sheet			1.1		
1.2 Outstanding amounts of loans securitised or otherwise transferred but not derecognised from the balance sheet.....			1.2		
1.3 Outstanding provisions against eligible loans (*)			1.3		
Eligible net lending in the reporting period					
2.1 Gross lending			2.1		
2.2 Repayments.....			2.2		
Adjustments to the outstanding amounts: reductions (–) and increases (+)					
3.1 Loan sales and purchases and other loan transfers during the reporting period	0	0	3.1	$3.1 = 3.1A + 3.1B + 3.1C$	
3.1A Net flows of loans that are securitised with an impact on loan stocks.....			3.1A		
3.1B Net flows of loans that are otherwise transferred with an impact on loan stocks.....			3.1B		
3.1C Net flows of loans that are securitised or otherwise transferred without any impact on loan stocks.....			3.1C		
3.2 Other adjustments	0	0	3.2	$3.2 = 3.2A + 3.2B + 3.2C$	
3.2A Revaluations owing to changes in exchange rates.....			3.2A		
3.2B Write-offs/write-downs			3.2B		
3.2C Reclassifications			3.2C		

Outstanding amounts of eligible loans at the end of the reporting period

4.1	Outstanding amounts on the balance sheet			4.1
4.2	Outstanding amounts of loans securitised or otherwise transferred but not derecognised from the balance sheet.....			4.2
4.3	Outstanding provisions against eligible loans (*)			4.3

(*) Only applicable in those cases where loans are reported net of provisions; see the reporting instructions for more details.

DECISION (EU) 2016/811 OF THE EUROPEAN CENTRAL BANK**of 28 April 2016****amending Decision ECB/2014/34 on measures relating to targeted longer-term refinancing operations (ECB/2016/11)**

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 the first indent of Article 3.1, Article 12.1, the second indent of Article 18.1 and the second indent of Article 34.1 thereof,

Having regard to Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) ⁽¹⁾,

Whereas:

- (1) Pursuant to Article 1(4) of Guideline (EU) 2015/510 (ECB/2014/60), the Governing Council may, at any time, change the tools, instruments, requirements, criteria and procedures for the implementation of Eurosystem monetary policy operations.
- (2) On 29 July 2014, in pursuing its price stability mandate and in the context of measures aimed at enhancing the functioning of the monetary policy transmission mechanism by supporting lending to the real economy, the Governing Council adopted Decision ECB/2014/34 ⁽²⁾. This Decision provided for a series of targeted longer-term refinancing operations (TLTROs) to be conducted over a period of two years.
- (3) On 10 March 2016, in order to reinforce the ECB's accommodative monetary policy stance and to strengthen the transmission of monetary policy by further incentivising bank lending to the real economy, the Governing Council decided to conduct a new series of four targeted longer-term refinancing operations (TLTROs-II). The terms for these TLTROs-II are to be set out in a separate decision. In order to allow institutions to repay the amounts borrowed under TLTROs and borrow under the TLTROs-II, the Governing Council decided to introduce in June 2016 an additional voluntary repayment possibility for all outstanding TLTROs.
- (4) The Governing Council also decided that no further reporting obligations would apply to participants that submitted the data required for calculating mandatory early repayment in September 2016.
- (5) In order to allow credit institutions sufficient time to make operational preparations for the first TLTRO-II, this Decision should enter into force without undue delay.
- (6) Therefore, Decision ECB/2014/34 should be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1***Amendments**

Decision ECB/2014/34 is amended as follows:

- (1) Article 6 is replaced by the following:

*'Article 6***Early repayment**

1. Without prejudice to paragraph 2, starting 24 months after each TLTRO, participants shall have, on a semi-annual basis, the option of terminating or reducing the amount of TLTROs before maturity. Early repayment dates shall coincide with the settlement day of a Eurosystem main refinancing operation, as specified by the Eurosystem.

⁽¹⁾ OJ L 91, 2.4.2015, p. 3.

⁽²⁾ Decision ECB/2014/34 of 29 July 2014 on measures relating to targeted longer-term refinancing operations (OJ L 258, 29.8.2014, p. 11).

2. Participants shall also have the option of terminating or reducing the amount of TLTROs before maturity on a date that coincides with the settlement day of the first TLTRO conducted pursuant to Decision (EU) 2016/810 of the European Central Bank (ECB/2016/10) (*). In order to benefit from the early repayment procedure on this first early repayment date, a participant shall notify the relevant NCB that it intends to repay under the early repayment procedure on the early repayment date, at least three weeks in advance of that early repayment date. Such a notification shall become binding on the participant three weeks before the early repayment date to which it refers. For the avoidance of doubt, the additional borrowing allowance available for the TLTRO to be conducted in June 2016 and to be calculated in accordance with Article 4(3) shall be determined based on the amounts borrowed during the TLTROs conducted from March 2015, without deducting any amount repaid on the first early repayment date.

3. In respect of all other repayment dates, in order to benefit from the early repayment procedure, a participant shall notify the relevant NCB that it intends to repay under the early repayment procedure on the early repayment date, at least two weeks in advance of that early repayment date. Such a notification shall become binding on the participant two weeks before the early repayment date to which it refers.

4. If the participant fails to settle by the repayment date, in full or in part, the amount due under the early repayment procedure, a financial penalty may be imposed. The applicable financial penalty shall be calculated in accordance with Annex VII to Guideline (EU) 2015/510 of the European Central Bank (ECB/2014/60) (**) and shall correspond to the financial penalty applied for failures to comply with the obligations to adequately collateralise and settle the amount the counterparty has been allotted as regards reverse transactions for monetary policy purposes. The imposition of a financial penalty shall be without prejudice to the NCB's right to exercise the remedies provided for on the occurrence of an event of default as set out in Article 166 of Guideline (EU) 2015/510 (ECB/2014/60).

(*) Decision (EU) 2016/810 of the European Central Bank of 28 April 2016 on a second series of targeted longer-term refinancing operations (ECB/2016/10) (OJ L 132, 21.5.2016, p. 107).

(**) Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3).;

(2) in Article 7, paragraphs 1 and 2 are replaced by the following:

‘1. Participants in the TLTROs whose cumulative eligible net lending in the period from 1 May 2014 to 30 April 2016 is below their applicable benchmark as at 30 April 2016 shall be required to repay their initial and additional TLTRO borrowings in full on 28 September 2016, unless an alternative date is otherwise specified by the Eurosystem. Annex I outlines the technical calculations.

2. If a participant's total borrowings in respect of its additional allowance in the TLTROs conducted from March 2015 to June 2016 exceed the additional allowance calculated as of the allotment reference month of April 2016, then the amount of this excess additional borrowing shall be payable on 28 September 2016, unless an alternative date is otherwise specified by the Eurosystem. Annex I outlines the technical calculations.’;

(3) In Article 7, paragraph 5 is replaced by the following:

‘5. If the participant fails to settle by the repayment date, in full or in part, the amount due under the mandatory early repayment procedure, a financial penalty may be imposed. The applicable financial penalty shall be calculated in accordance with Annex VII to Guideline (EU) 2015/510 (ECB/2014/60) and shall correspond to the financial penalty applied for failures to comply with the obligations to adequately collateralise and settle the amount the counterparty has been allotted as regards reverse transactions for monetary policy purposes. The imposition of a financial penalty shall be without prejudice to the NCB's right to exercise the remedies provided for on the occurrence of an event of default as set out in Article 166 of Guideline (EU) 2015/510 (ECB/2014/60).’;

(4) in Article 8, paragraph 4 is replaced by the following:

‘4. If an institution participates in a TLTRO and as long as it has credit outstanding under a TLTRO, it shall be required to submit completed data reporting templates quarterly in accordance with paragraph 1 until all data required to determine the mandatory repayment obligation pursuant to Article 7 has been submitted.’;

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

‘8. Unless it has repaid all amounts outstanding under its TLTROs in accordance with Article 6(2), each participant in TLTROs shall be required to have an annual examination of accuracy in respect of data reported in accordance with paragraph 1. This exercise, which could take place in the context of an annual audit, may be carried out by an external auditor. Instead of using an external auditor, participants may make plans for equivalent arrangements, as approved by the Eurosystem. The participant’s NCB shall be informed of the result of this examination. In the case of a TLTRO group participation, the results shall be shared with the NCBs of the TLTRO group members. At the request of the participant’s NCB, detailed results of the examinations carried out under this paragraph shall be provided to that NCB and, in the case of group participation, subsequently be shared with the NCBs of the TLTRO group members.’

Article 2

Entry into force

This Decision shall enter into force on 3 May 2016.

Done at Frankfurt am Main, 28 April 2016.

The President of the ECB

Mario DRAGHI

