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⁽¹⁾ Text with EEA relevance.

EN

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

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I

(Legislative acts)

REGULATIONS

**REGULATION (EU) 2018/1805 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 14 November 2018
on the mutual recognition of freezing orders and confiscation orders**

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 82(1)(a) thereof,

Having regard to the proposal from the European Commission,

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

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

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) Judicial cooperation in criminal matters in the Union is based on the principle of mutual recognition of judgments and judicial decisions, which has commonly been referred to as the cornerstone of judicial cooperation in criminal matters within the Union since the Tampere European Council of 15 and 16 October 1999.
- (3) The freezing and the confiscation of instrumentalities and proceeds of crime are among the most effective means of combatting crime. The Union is committed to ensuring more effective identification, confiscation and re-use of criminal assets in accordance with 'The Stockholm programme — An open and secure Europe serving and protecting the citizens' ⁽²⁾.
- (4) As crime is often transnational in nature, effective cross-border cooperation is essential in order to freeze and confiscate the instrumentalities and proceeds of crime.
- (5) The current Union legal framework in relation to the mutual recognition of freezing orders and confiscation orders is composed of Council Framework Decisions 2003/577/JHA ⁽³⁾ and 2006/783/JHA ⁽⁴⁾.
- (6) The Commission's implementation reports on Framework Decisions 2003/577/JHA and 2006/783/JHA show that the existing regime for the mutual recognition of freezing orders and confiscation orders is not fully effective. Those Framework Decisions have not been implemented and applied uniformly in the Member States, which has led to insufficient mutual recognition and sub-optimal cross-border cooperation.

⁽¹⁾ Position of the European Parliament of 4 October 2018 (not yet published in the Official Journal) and decision of the Council of 6 November 2018.

⁽²⁾ OJ C 115, 4.5.2010, p. 1.

⁽³⁾ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45).

⁽⁴⁾ Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59).

- (7) The Union legal framework on mutual recognition of freezing orders and confiscation orders has not kept up with recent legislative developments at Union and national levels. In particular, Directive 2014/42/EU of the European Parliament and of the Council ⁽¹⁾ establishes minimum rules on the freezing and the confiscation of property. Those minimum rules concern the confiscation of instrumentalities and proceeds of crime, including in the cases of illness or absconding of the suspect or accused person, where criminal proceedings have already been initiated regarding a criminal offence, extended confiscation and confiscation from a third party. Those minimum rules also concern the freezing of property with a view to possible subsequent confiscation. The types of freezing orders and confiscation orders covered by that Directive should also be included in the legal framework on mutual recognition.
- (8) When adopting Directive 2014/42/EU, the European Parliament and the Council stated in a declaration that an effective system of freezing and confiscation in the Union is inherently linked to the well-functioning mutual recognition of freezing orders and confiscation orders. Considering the need to put in place a comprehensive system for the freezing and confiscation of the instrumentalities and proceeds of crime in the Union, the European Parliament and the Council called on the Commission to present a legislative proposal on the mutual recognition of freezing orders and confiscation orders.
- (9) In its communication of 28 April 2015 entitled 'The European Agenda on Security', the Commission considered that judicial cooperation in criminal matters relies on effective cross-border instruments and that the mutual recognition of judgments and judicial decisions is a key element in the security framework. The Commission also recalled the need to improve the mutual recognition of freezing orders and confiscation orders.
- (10) In its communication of 2 February 2016 on an Action Plan for strengthening the fight against terrorist financing, the Commission highlighted the need to ensure that criminals who fund terrorism are deprived of their assets. The Commission stated that, in order to disrupt organised crime activities that finance terrorism, it is essential to deprive those criminals of the proceeds of crime. To that end, the Commission stated that it is necessary to ensure that all types of freezing orders and confiscation orders are enforced to the maximum extent possible throughout the Union by the application of the principle of mutual recognition.
- (11) In order to ensure the effective mutual recognition of freezing orders and confiscation orders, the rules on the recognition and execution of those orders should be established by a legally binding and directly applicable act of the Union.
- (12) It is important to facilitate the mutual recognition and execution of freezing orders and confiscation orders by establishing rules that oblige a Member State to recognise, without further formalities, the freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters and to execute those orders within its territory.
- (13) This Regulation should apply to all freezing orders and to all confiscation orders issued within the framework of proceedings in criminal matters. 'Proceedings in criminal matters' is an autonomous concept of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case law of the European Court of Human Rights. The term therefore covers all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence, not only orders covered by Directive 2014/42/EU. It also covers other types of order issued without a final conviction. While such orders might not exist in the legal system of a Member State, the Member State concerned should be able to recognise and execute such an order issued by another Member State. Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities. Freezing orders and confiscation orders that are issued within the framework of proceedings in civil or administrative matters should be excluded from the scope of this Regulation.
- (14) This Regulation should cover freezing orders and confiscation orders related to criminal offences covered by Directive 2014/42/EU, as well as freezing orders and confiscation orders related to other criminal offences. The criminal offences covered by this Regulation should therefore not be limited to particularly serious crimes that have a cross-border dimension, as Article 82 of the Treaty on the Functioning of the European Union (TFEU) does not require such a limitation for measures laying down rules and procedures for ensuring the mutual recognition of judgments in criminal matters.

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

- (15) Cooperation between Member States, which is based on the principle of mutual recognition and the immediate execution of judicial decisions, presupposes confidence that the decisions to be recognised and executed will always be taken in compliance with the principles of legality, subsidiarity and proportionality. Such cooperation also presupposes that the rights of persons who are affected by a freezing order or confiscation order should be preserved. Such affected persons, who can be natural persons or legal persons, should include the person against whom a freezing order or confiscation order was issued or the person who owns the property that is covered by that order, as well as any third parties whose rights in relation to that property are directly prejudiced by that order, including bona fide third parties. Whether such third parties are directly prejudiced by a freezing order or confiscation order, should be decided in accordance with the law of the executing State.
- (16) This Regulation does not modify the obligation to respect fundamental rights and legal principles enshrined in Article 6 of the Treaty on European Union (TEU).
- (17) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (the 'Charter') and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the 'ECHR'). This includes the principle that any discrimination based on any ground such as sex, racial or ethnic origin, religion, sexual orientation, nationality, language, political opinion, or disability is to be prohibited. This Regulation should be applied in accordance with those rights and principles.
- (18) The procedural rights set out in Directives 2010/64/EU ⁽¹⁾, 2012/13/EU ⁽²⁾, 2013/48/EU ⁽³⁾, (EU) 2016/343 ⁽⁴⁾, (EU) 2016/800 ⁽⁵⁾ and (EU) 2016/1919 ⁽⁶⁾ of the European Parliament and of the Council should apply, within the scope of those Directives, to criminal proceedings covered by this Regulation as regards the Member States bound by those Directives. In any case, the safeguards under the Charter should apply to all proceedings covered by this Regulation. In particular, the essential safeguards for criminal proceedings set out in the Charter should apply to proceedings in criminal matters that are not criminal proceedings but which are covered by this Regulation.
- (19) While the rules for the transmission, recognition and execution of freezing orders and confiscation orders should ensure the efficiency of the process of recovering criminal assets, fundamental rights are to be respected.
- (20) When assessing double criminality, the competent authority of the executing State should verify whether the factual elements underlying the criminal offence in question, as reflected in the freezing certificate or confiscation certificate submitted by the competent authority of the issuing State, would also, per se, be subject to a criminal penalty in the executing State if they were present in that State at the time of the decision on the recognition of the freezing order or confiscation order.
- (21) The issuing authority should ensure that, when issuing a freezing order or confiscation order, the principles of necessity and proportionality are respected. Under this Regulation, a freezing order or confiscation order should only be issued and transmitted to an executing authority in another Member State where it could have been issued and used in a solely domestic case. The issuing authority should be responsible for assessing the necessity and proportionality of such orders in each case as the recognition and execution of freezing orders and confiscation orders should not be refused on grounds other than those provided for in this Regulation.
- (22) In some cases, a freezing order may be issued by an authority, designated by the issuing State, which is competent in criminal matters to issue or execute the freezing order in accordance with national law, and which is not a judge, court or public prosecutor. In such cases, the freezing order should be validated by a judge, court or public prosecutor, before it is transmitted to the executing authority.

⁽¹⁾ 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).

⁽²⁾ 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).

⁽³⁾ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in 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 while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

⁽⁴⁾ 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).

⁽⁵⁾ 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 (OJ L 132, 21.5.2016, p. 1).

⁽⁶⁾ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).

- (23) Member States should be able to make a declaration stating that, when a freezing certificate or confiscation certificate is transmitted to them with a view to the recognition and execution of a freezing order or confiscation order, the issuing authority should transmit the original freezing order or confiscation order, or a certified copy thereof, together with the freezing certificate or confiscation certificate. Member States should inform the Commission where they make or withdraw such a declaration. The Commission should make such information available to all Member States and to the European Judicial Network (EJN) provided for by Council Decision 2008/976/JHA ⁽¹⁾. The EJN should make that information available on the website referred to in that Decision.
- (24) The issuing authority should transmit a freezing certificate or confiscation certificate, together with the freezing order or confiscation order, where applicable, either directly to the executing authority or to the central authority of the executing State, as applicable, by any means capable of producing a written record under conditions that allow the executing authority to establish authenticity of the certificate or order, such as registered mail or secured email. The issuing authority should be able to make use of any relevant channels or means of transmission, including the secure telecommunications system of the EJN, Eurojust, or other channels used by judicial authorities.
- (25) Where the issuing authority has reasonable grounds to believe that the person against whom a freezing order or confiscation order concerning an amount of money was issued has property or income in a Member State, it should transmit the freezing certificate or confiscation certificate that relates to the order to that Member State. On that basis, the certificate could, for example, be transmitted to the Member State in which the natural person against whom the order was issued is residing or, where that person has no permanent address, is habitually residing. Where the order is issued against a legal person, the certificate could be transmitted to the Member State in which the legal person is domiciled.
- (26) With a view to the administrative transmission and reception of certificates relating to freezing orders and confiscation orders, Member States should be able to designate one or more central authorities where necessary due to the structure of their internal legal systems. Such central authorities could also provide administrative support, play a coordination role and assist in the collection of statistics, thus facilitating and promoting the mutual recognition of freezing orders and confiscation orders.
- (27) Where a confiscation certificate that relates to a confiscation order concerning an amount of money is transmitted to more than one executing State, the issuing State should seek to avoid the situation whereby more property than necessary is confiscated and the total amount obtained from the execution of the order would exceed the maximum amount specified therein. To that end, the issuing authority should, inter alia, indicate in the confiscation certificate the value of assets, where known, in each executing State, so that the executing authorities can take account thereof, maintain the necessary contact and dialogue with the executing authorities on the property to be confiscated, and inform the relevant executing authority or authorities immediately if it considers that there could be a risk that confiscation in excess of the maximum amount might occur. Where appropriate, Eurojust could exercise a coordinating role within its remit in order to avoid excessive confiscation.
- (28) Member States should be encouraged to make a declaration stating that, as executing States, they would accept freezing certificates, confiscation certificates, or both, in one or more official languages of the Union other than their official languages.
- (29) The executing authority should recognise freezing orders and confiscation orders and should take the measures necessary for their execution. The decision on the recognition and execution of the freezing order or confiscation order should be taken, and the freezing or confiscation should be carried out, with the same speed and priority as for similar domestic cases. Time limits, which should be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council ⁽²⁾, should be set out in order to ensure a quick and efficient decision on the recognition of the freezing order or confiscation order and a quick and efficient execution thereof. As regards freezing orders, the executing authority should start taking the concrete measures necessary to execute such orders no later than 48 hours after the decision on the recognition and execution thereof has been taken.
- (30) In the execution of a freezing order, the issuing authority and the executing authority should take due account of the confidentiality of the investigation. In particular, the executing authority should guarantee the confidentiality of the facts and substance of the freezing order. This is without prejudice to the obligation to inform affected persons of the execution of a freezing order in accordance with this Regulation.

⁽¹⁾ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

⁽²⁾ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 on determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

- (31) The recognition and execution of a freezing order or confiscation order should not be refused on grounds other than those provided for in this Regulation. This Regulation should permit the executing authorities not to recognise or execute confiscation orders on the basis of the principle of *ne bis in idem*, on the basis of the rights of affected persons or on the basis of the right to be present at the trial.
- (32) This Regulation should permit executing authorities not to recognise or execute confiscation orders where the person against whom the confiscation order was issued did not appear in person at the trial that resulted in the confiscation order linked to a final conviction. This should only be a ground for non-recognition or non-execution where trials result in confiscation orders linked to a final conviction and not where proceedings result in non-conviction-based confiscation orders. However, in order for such a ground to be available, one or more hearings should be held. The ground should not be available if the relevant national procedural rules do not provide for a hearing. Such national procedural rules should comply with the Charter and with the ECHR, in particular with regard to the right to a fair trial. This is the case, for example, where the proceedings are conducted in a simplified manner following, solely or partially, a written procedure or a procedure in which no hearing is provided for.
- (33) It should be possible, in exceptional circumstances, not to recognise or execute a freezing order or confiscation order where such recognition or execution would prevent the executing State from applying its constitutional rules relating to freedom of the press or freedom of expression in other media.
- (34) The creation of an area of freedom, security and justice within the Union is based on mutual trust and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights. However, in exceptional situations, where there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of a freezing order or confiscation order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, the executing authority should be able to decide not to recognise and execute the order concerned. The fundamental rights that should be relevant in this respect are, in particular, the right to an effective remedy, the right to a fair trial and the right of defence. The right to property should, in principle, not be relevant because freezing and confiscation of assets necessarily imply an interference with a person's right to property and because the necessary safeguards in that respect are already provided for in Union law, including in this Regulation.
- (35) Before deciding not to recognise or execute a freezing order or confiscation order on the basis of any ground for non-recognition or non-execution, the executing authority should consult the issuing authority in order to obtain any necessary additional information.
- (36) When examining a request from the executing authority to limit the period during which the property should be frozen, the issuing authority should take into account all of the circumstances of the case, in particular whether the continuation of the freezing order could cause unjustified damage in the executing State. The executing authority is encouraged to consult with the issuing authority on this issue before making a formal request.
- (37) The issuing authority should inform the executing authority when an authority of the issuing State receives any sum of money which has been paid in respect of the confiscation order, it being understood that the executing State should only be informed if the amount paid in respect of the order impacts on the outstanding amount that is to be confiscated pursuant to the order.
- (38) It should be possible for the executing authority to postpone the execution of a freezing order or confiscation order, in particular where its execution might damage an ongoing criminal investigation. As soon as the grounds for postponement have ceased to exist, the executing authority should take the measures necessary for the execution of the order.
- (39) After the execution of a freezing order, and following the decision to recognise and execute a confiscation order, the executing authority should, in so far as possible, inform affected persons known to it of such execution or such decision. To that end, the executing authority should make every reasonable effort to identify the affected persons, verify how they can be reached and inform them of the execution of the freezing order or of the decision to recognise and execute the confiscation order. In carrying out that obligation, the executing authority could ask the issuing authority for assistance, for example where the affected persons appear to reside in the issuing State. The obligation under this Regulation for the executing authority to provide information to affected

persons is without prejudice to any obligation of the issuing authority to provide information to persons under the law of the issuing State, for example regarding the issue of a freezing order or regarding existing legal remedies under the law of the issuing State.

- (40) The issuing authority should be notified without delay if it is impossible to execute a freezing order or confiscation order. Such impossibility might arise because the property has already been confiscated, has disappeared, has been destroyed or cannot be found at the location indicated by the issuing authority, or because the location of the property has not been indicated in a sufficiently precise manner despite consultations between the executing authority and the issuing authority. In such circumstances, the executing authority should no longer be obliged to execute the order. However, if the executing authority subsequently obtains information that allows it to locate the property, it should be able to execute the order without a new certificate having to be transmitted in accordance with this Regulation.
- (41) Where the law of the executing State renders the execution of a freezing order or confiscation order legally impossible, the executing authority should contact the issuing authority in order to discuss the situation and to find a solution. Such a solution could consist in the issuing authority withdrawing the order concerned.
- (42) As soon as the execution of a confiscation order has been completed, the executing authority should inform the issuing authority of the results of the execution. Where practically possible, the executing authority should, at that time, also inform the issuing authority of the property or the amount of money that has been confiscated, and of other details that it considers relevant.
- (43) The execution of a freezing order or confiscation order should be governed by the law of the executing State and only the authorities of that State should be competent to decide on the procedures for execution. Where appropriate, the issuing and executing authority should be able to invite Eurojust or the EJN to provide assistance, within their remit, concerning issues relating to the execution of freezing orders and confiscation orders.
- (44) The proper operation of this Regulation presupposes close communication between the competent national authorities involved, in particular in cases of the simultaneous execution of a confiscation order in more than one Member State. The competent national authorities should therefore consult each other whenever necessary, directly or, where appropriate, via Eurojust or the EJN.
- (45) The victims' rights to compensation and restitution should not be prejudiced in cross-border cases. Rules for the disposal of frozen or confiscated property should give priority to the compensation of, and restitution of property to, victims. The notion of 'victim' is to be interpreted in accordance with the law of the issuing State, which should also be able to provide that a legal person could be a victim for the purpose of this Regulation. This Regulation should be without prejudice to rules on compensation and restitution of property to victims in national proceedings.
- (46) Where the executing authority is informed of a decision issued by the issuing authority or by another competent authority in the issuing State to reconstitute frozen property to the victim, the executing authority should take the necessary measures to ensure that the property concerned is frozen and restituted to the victim as soon as possible. The executing authority should be able to transfer the property to the issuing State, so that the latter would be able to reconstitute the property to the victim, or directly to the victim subject to the consent of the issuing State. The obligation to reconstitute frozen property to the victim should be subject to the following conditions: the victim's title to the property should not be contested, meaning that it is accepted that the victim is the rightful owner of the property and there are no serious claims putting that into question; the property should not be required as evidence in criminal proceedings in the executing State; and the rights of affected persons, in particular the rights of bona fide third parties, should not be prejudiced. The executing authority should reconstitute frozen property to the victim only where those conditions have been met. Where the executing authority considers that those conditions have not been met, it should consult with the issuing authority, for example to request any additional information or to discuss the situation, in order to find a solution. If no solution can be found, the executing authority should be able to decide not to reconstitute the frozen property to the victim.
- (47) Each Member State should consider establishing a national centralised office responsible for the management of frozen property, with a view to possible later confiscation, as well as for the management of confiscated property. Frozen property and confiscated property could be earmarked, as a matter of priority, for law enforcement and organised crime prevention projects and for other projects of public interest and social utility.

- (48) Each Member State should consider establishing a national fund to guarantee appropriate compensation for victims of crime, such as families of police officers and public servants killed or permanently disabled in the line of duty. Member States could earmark a portion of confiscated assets for that purpose.
- (49) Member States should not be able to claim from each other compensation for costs resulting from the application of this Regulation. However, where the executing State has incurred large or exceptional costs, for example because the property has been frozen for a considerable period of time, any proposal by the executing authority to share the costs should be considered by the issuing authority.
- (50) In order to be able to address identified problems in the future regarding the content of the certificates set out in the Annexes to this Regulation as quickly as possible, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amendments to those certificates. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽¹⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (51) Since the objective of this Regulation, namely the mutual recognition and execution of freezing orders and confiscation orders, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and its effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (52) Provisions of Framework Decision 2003/577/JHA have already been replaced by Directive 2014/41/EU of the European Parliament and of the Council ⁽²⁾ as regards the freezing of evidence for Member States bound by that Directive. Provisions of Framework Decision 2003/577/JHA as regards freezing of property should be replaced by this Regulation between Member States bound by it. Framework Decision 2006/783/JHA should also be replaced by this Regulation between Member States bound by it. The provisions of Framework Decision 2003/577/JHA as regards freezing of property, as well as the provisions of Framework Decision 2006/783/JHA, should therefore continue to apply not only between the Member States that are not bound by this Regulation but also between any Member State that is not bound by this Regulation and any Member State that is bound by this Regulation.
- (53) The legal form of this act should not constitute a precedent for future legal acts of the Union in the field of mutual recognition of judgments and judicial decisions in criminal matters. The choice of the legal form for future legal acts of the Union should be carefully assessed on a case-by-case basis taking into account, among other factors, the effectiveness of the legal act and the principles of proportionality and subsidiarity.
- (54) Member States should ensure that, in accordance with Council Decision 2007/845/JHA ⁽³⁾, their Asset Recovery Offices cooperate with each other to facilitate the tracing and identification of proceeds of crime and other crime-related property which may become the object of a freezing order or confiscation order.
- (55) In accordance with Article 3 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 the TEU and to the TFEU, the United Kingdom has notified its wish to take part in the adoption and application of this Regulation.
- (56) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (57) 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 Regulation and is not bound by it or subject to its application,

⁽¹⁾ OJ L 123, 12.5.2016, p. 1.

⁽²⁾ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

⁽³⁾ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (OJ L 332, 18.12.2007, p. 103).

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT-MATTER, DEFINITIONS AND SCOPE

Article 1

Subject matter

1. This Regulation lays down the rules under which a Member State recognises and executes in its territory freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters.
2. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles enshrined in Article 6 TEU.
3. When issuing freezing orders or confiscation orders, issuing authorities shall ensure that the principles of necessity and proportionality are respected.
4. This Regulation does not apply to freezing orders and confiscation orders issued within the framework of proceedings in civil or administrative matters.

Article 2

Definitions

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

- (1) 'freezing order' means a decision issued or validated by an issuing authority in order to prevent the destruction, transformation, removal, transfer or disposal of property with a view to the confiscation thereof;
- (2) 'confiscation order' means a final penalty or measure, imposed by a court following proceedings in relation to a criminal offence, resulting in the final deprivation of property of a natural or legal person;
- (3) 'property' means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property, which the issuing authority considers to be:
 - (a) the proceeds of a criminal offence, or its equivalent, whether the full amount of the value or only part of the value of such proceeds;
 - (b) the instrumentalities of a criminal offence, or the value of such instrumentalities;
 - (c) subject to confiscation through the application in the issuing State of any of the powers of confiscation provided for in Directive 2014/42/EU; or
 - (d) subject to confiscation under any other provisions relating to powers of confiscation, including confiscation without a final conviction, under the law of the issuing State, following proceedings in relation to a criminal offence;
- (4) 'proceeds' means any economic advantage derived directly or indirectly from a criminal offence, consisting of any form of property and including any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;
- (5) 'instrumentalities' means any property used or intended to be used, in any manner, wholly or partially, to commit a criminal offence;
- (6) 'issuing State' means the Member State in which a freezing order or confiscation order is issued;
- (7) 'executing State' means the Member State to which a freezing order or confiscation order is transmitted for the purpose of recognition and execution;
- (8) 'issuing authority' means:
 - (a) in respect of a freezing order:
 - (i) a judge, court, or public prosecutor competent in the case concerned; or

- (ii) another competent authority which is designated as such by the issuing State and which is competent in criminal matters to order the freezing of property or to execute a freezing order in accordance with national law. In addition, before it is transmitted to the executing authority, the freezing order shall be validated by a judge, court or public prosecutor in the issuing State after examining its conformity with the conditions for issuing such an order under this Regulation. Where the order has been validated by a judge, court or public prosecutor, that other competent authority may also be regarded as an issuing authority for the purposes of transmitting the order;
- (b) in respect of a confiscation order, an authority which is designated as such by the issuing State and which is competent in criminal matters to execute a confiscation order issued by a court in accordance with national law;
- (9) 'executing authority' means an authority that is competent to recognise a freezing order or confiscation order and to ensure its execution in accordance with this Regulation and the procedures applicable under national law for the freezing and confiscation of property; where such procedures require that a court register the order and authorise its execution, the executing authority includes the authority that is competent to request such registration and authorisation;
- (10) 'affected person' means the natural or legal person against whom a freezing order or confiscation order is issued, or the natural or legal person that owns the property that is covered by that order, as well as any third parties whose rights in relation to that property are directly prejudiced by that order under the law of the executing State.

Article 3

Criminal offences

1. Freezing orders or confiscation orders shall be executed without verification of the double criminality of the acts giving rise to such orders, where those acts are punishable in the issuing State by a custodial sentence of a maximum of at least three years and constitute one or more of the following criminal offences under the law of the issuing State:

- (1) participation in a criminal organisation;
- (2) terrorism;
- (3) trafficking in human beings;
- (4) sexual exploitation of children and child pornography;
- (5) illicit trafficking in narcotic drugs and psychotropic substances;
- (6) illicit trafficking in weapons, munitions and explosives;
- (7) corruption;
- (8) fraud, including fraud and other criminal offences affecting the Union's financial interests as defined in Directive (EU) 2017/1371 of the European Parliament and of the Council ⁽¹⁾;
- (9) laundering of the proceeds of crime;
- (10) counterfeiting currency, including the euro;
- (11) computer-related crime;
- (12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- (13) facilitation of unauthorised entry and residence;
- (14) murder or grievous bodily injury;
- (15) illicit trade in human organs and tissue;
- (16) kidnapping, illegal restraint or hostage-taking;
- (17) racism and xenophobia;
- (18) organised or armed robbery;
- (19) illicit trafficking in cultural goods, including antiques and works of art;

⁽¹⁾ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

- (20) swindling;
- (21) racketeering and extortion;
- (22) counterfeiting and piracy of products;
- (23) forgery of administrative documents and trafficking therein;
- (24) forgery of means of payment;
- (25) illicit trafficking in hormonal substances and other growth promoters;
- (26) illicit trafficking in nuclear or radioactive materials;
- (27) trafficking in stolen vehicles;
- (28) rape;
- (29) arson;
- (30) crimes within the jurisdiction of the International Criminal Court;
- (31) unlawful seizure of aircraft or ships;
- (32) sabotage.

2. For criminal offences other than those referred to in paragraph 1, the executing State may make the recognition and execution of a freezing order or confiscation order subject to the condition that the acts giving rise to the freezing order or confiscation order constitute a criminal offence under the law of the executing State, whatever its constituent elements or however it is described under the law of the issuing State.

CHAPTER II

TRANSMISSION, RECOGNITION AND EXECUTION OF FREEZING ORDERS

Article 4

Transmission of freezing orders

1. A freezing order shall be transmitted by means of a freezing certificate. The issuing authority shall transmit the freezing certificate provided for in Article 6 directly to the executing authority or, where applicable, to the central authority referred to in Article 24(2), by any means capable of producing a written record under conditions that allow the executing authority to establish the authenticity of the freezing certificate.
2. Member States may make a declaration stating that, when a freezing certificate is transmitted to them with a view to the recognition and execution of a freezing order, the issuing authority is to transmit the original freezing order or a certified copy thereof together with the freezing certificate. However, only the freezing certificate has to be translated, in accordance with Article 6(2).
3. Member States may make the declaration referred to in paragraph 2 prior to the date of application of this Regulation or at a later date. Member States may withdraw such a declaration at any time. Member States shall inform the Commission when they make or withdraw such a declaration. The Commission shall make such information available to all Member States and to the EJN.
4. As regards a freezing order concerning an amount of money, where the issuing authority has reasonable grounds to believe that the person against whom the freezing order was issued has property or income in a Member State, it shall transmit the freezing certificate to that Member State.
5. As regards a freezing order concerning specific items of property, where the issuing authority has reasonable grounds to believe that such items are located in a Member State, it shall transmit the freezing certificate to that Member State.
6. The freezing certificate shall:
 - (a) be accompanied by a confiscation certificate transmitted in accordance with Article 14; or
 - (b) contain an instruction that the property is to remain frozen in the executing State pending the transmission and execution of the confiscation order in accordance with Article 14, in which case the issuing authority shall indicate the estimated date of this transmission in the freezing certificate.

7. The issuing authority shall inform the executing authority if it is aware of any affected persons. The issuing authority shall also provide, upon request, the executing authority with any information relevant to any claim that such affected persons may have in relation to the property, including any information identifying those persons.

8. Where, despite the information having been made available in accordance with Article 24(3), the competent executing authority is unknown to the issuing authority, the issuing authority shall make all necessary inquiries, including through the contact points of the EJN, in order to determine which authority is competent for the recognition and execution of the freezing order.

9. Where the authority in the executing State which receives a freezing certificate is not competent to recognise the freezing order or take the measures necessary for its execution, that authority shall immediately transmit the freezing certificate to the competent executing authority in its Member State and shall inform the issuing authority accordingly.

Article 5

Transmission of a freezing order to one or more executing States

1. A freezing certificate shall only be transmitted pursuant to Article 4 to one executing State at any one time, unless paragraph 2 or 3 of this Article applies.

2. Where a freezing order concerns specific items of property, the freezing certificate may be transmitted to more than one executing State at the same time where:

- (a) the issuing authority has reasonable grounds to believe that different items of property covered by the freezing order are located in different executing States; or
- (b) the freezing of a specific item of property covered by the freezing order would require action in more than one executing State.

3. Where a freezing order concerns an amount of money, the freezing certificate may be transmitted to more than one executing State at the same time where the issuing authority considers that there is a specific need to do so, in particular where the estimated value of the property which may be frozen in the issuing State and in any one executing State is not likely to be sufficient for the freezing of the full amount covered by the freezing order.

Article 6

Standard freezing certificate

1. In order to transmit a freezing order, the issuing authority shall complete the freezing certificate set out in Annex I, shall sign it and shall certify its content as being accurate and correct.

2. The issuing authority shall provide the executing authority with a translation of the freezing certificate in an official language of the executing State or in any other language that the executing State will accept in accordance with paragraph 3.

3. Any Member State may, at any time, state in a declaration submitted to the Commission that it will accept translations of freezing certificates in one or more official languages of the Union other than the official language or languages of that Member State. The Commission shall make the declarations available to all Member States and to the EJN.

Article 7

Recognition and execution of freezing orders

1. The executing authority shall recognise a freezing order transmitted in accordance with Article 4 and shall take the measures necessary for its execution in the same way as for a domestic freezing order issued by an authority of the executing State, unless the executing authority invokes one of the grounds for non-recognition and non-execution provided for in Article 8 or one of the grounds for postponement provided for in Article 10.

2. The executing authority shall report to the issuing authority on the execution of the freezing order, including a description of the property frozen and, where available, providing an estimate of its value. Such reporting shall be carried out using any means capable of producing a written record, without undue delay once the executing authority has been informed that the freezing order has been executed.

*Article 8***Grounds for non-recognition and non-execution of freezing orders**

1. The executing authority may decide not to recognise or execute a freezing order only where:
 - (a) executing the freezing order would be contrary to the principle of *ne bis in idem*;
 - (b) there is a privilege or immunity under the law of the executing State that would prevent the freezing of the property concerned or there are rules on the determination or limitation of criminal liability that relate to the freedom of the press or the freedom of expression in other media that prevent the execution of the freezing order;
 - (c) the freezing certificate is incomplete or manifestly incorrect and has not been completed following the consultation referred to in paragraph 2;
 - (d) the freezing order relates to a criminal offence committed, wholly or partially, outside the territory of the issuing State and, wholly or partially, in the territory of the executing State and the conduct in connection with which the freezing order was issued does not constitute a criminal offence under the law of the executing State;
 - (e) in a case falling under Article 3(2), the conduct in connection with which the freezing order was issued does not constitute a criminal offence under the law of the executing State; however, in cases that involve taxes or duties or customs and exchange regulations, the recognition or execution of the freezing order shall not be refused on the grounds that the law of the executing State does not impose the same kind of taxes or duties or does not provide for the same type of rules as regards taxes and duties or the same type of customs and exchange regulations as the law of the issuing State;
 - (f) in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the freezing order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, in particular the right to an effective remedy, the right to a fair trial or the right of defence.
2. In any of the cases referred to in paragraph 1, before deciding not to recognise or execute the freezing order, whether wholly or partially, the executing authority shall consult the issuing authority by any appropriate means and where appropriate, shall request the issuing authority to supply any necessary information without delay.
3. Any decision not to recognise or execute the freezing order shall be taken without delay and notified immediately to the issuing authority by any means capable of producing a written record.
4. Where the executing authority has recognised a freezing order, but it becomes aware, during the execution thereof, that one of the grounds for non-recognition or non-execution applies, it shall immediately contact the issuing authority by any appropriate means in order to discuss the appropriate measures to take. On that basis, the issuing authority may decide to withdraw the freezing order. If, following such discussions, no solution has been reached, the executing authority may decide to stop the execution of the freezing order.

*Article 9***Time limits for recognition and execution of freezing orders**

1. The executing authority shall take the decision on the recognition and execution of the freezing order and execute that order without delay and with the same speed and priority as for a similar domestic case after the executing authority has received the freezing certificate.
2. Where the issuing authority has indicated in the freezing certificate that the execution of the freezing order is to be carried out on a specific date, the executing authority shall take as full account as possible thereof. Where the issuing authority has indicated that coordination is needed between the Member States involved, the executing authority and the issuing authority shall coordinate with each other in order to agree on the date of execution of the freezing order. Where no agreement can be reached, the executing authority shall decide on the date of execution of the freezing order, taking as full account as possible of the interests of the issuing authority.
3. Without prejudice to paragraph 5, where the issuing authority has stated in the freezing certificate that immediate freezing is necessary since there are legitimate grounds to believe that the property in question will imminently be removed or destroyed, or in view of any investigative or procedural needs in the issuing State, the executing authority shall decide on the recognition of the freezing order no later than 48 hours after it has been received by the executing authority. No later than 48 hours after such a decision has been taken, the executing authority shall take the concrete measures necessary to execute the order.

4. The executing authority shall communicate, without delay and by any means capable of producing a written record, the decision on the recognition and execution of the freezing order to the issuing authority.
5. Where it is not possible, in a specific case, to meet the time limits set out in paragraph 3, the executing authority shall immediately inform the issuing authority by any means, giving the reasons for which it was not possible to meet those time limits, and shall consult with the issuing authority on an appropriate schedule for the recognition or the execution of the freezing order.
6. The expiry of the time limits set out in paragraph 3 shall not relieve the executing authority of its obligation to take a decision on the recognition and execution of the freezing order, and to execute that order, without delay.

Article 10

Postponement of the execution of freezing orders

1. The executing authority may postpone the execution of a freezing order transmitted in accordance with Article 4 where:
 - (a) its execution might damage an ongoing criminal investigation, in which case the execution of the freezing order may be postponed until such time as the executing authority considers reasonable;
 - (b) the property is already the subject of an existing freezing order, in which case the execution of the freezing order may be postponed until that existing order is withdrawn; or
 - (c) the property is already subject to an existing order issued in the course of other proceedings in the executing State, in which case the execution of the freezing order may be postponed until that existing order is withdrawn; however, this point shall only apply where the existing order would have priority, under national law, over subsequent national freezing orders in criminal matters.
2. The executing authority shall, immediately and by any means capable of producing a written record, report to the issuing authority on the postponement of the execution of the freezing order, specifying the grounds for the postponement and, where possible, the expected duration of the postponement.
3. As soon as the grounds for postponement have ceased to exist, the executing authority shall immediately take the measures necessary for the execution of the freezing order and inform the issuing authority thereof by any means capable of producing a written record.

Article 11

Confidentiality

1. During the execution of a freezing order, the issuing authority and the executing authority shall take due account of the confidentiality of the investigation in the context of which the freezing order was issued.
2. Except to the extent necessary to execute the freezing order, the executing authority shall guarantee the confidentiality of the facts and substance of the freezing order in accordance with its national law. Without prejudice to paragraph 3 of this Article, as soon as the freezing order has been executed, the executing authority shall inform the affected persons thereof in accordance with Article 32.
3. To protect ongoing investigations, the issuing authority may request the executing authority to postpone informing affected persons of the execution of the freezing order under Article 32. As soon as it is no longer necessary to postpone informing affected persons in order to protect ongoing investigations, the issuing authority shall inform the executing authority accordingly so that the executing authority can inform the affected persons of the execution of the freezing order in accordance with Article 32.
4. If the executing authority cannot comply with the confidentiality obligations under this Article, it shall notify the issuing authority immediately and, where possible, prior to the execution of the freezing order.

Article 12

Duration of freezing orders

1. The property subject to a freezing order shall remain frozen in the executing State until the competent authority of that state has responded definitively to a confiscation order transmitted in accordance with Article 14 or until the issuing authority has informed the executing authority of any decision or measure that renders the order unenforceable or causes it to be withdrawn in accordance with Article 27(1).

2. The executing authority may, taking into account the circumstances of the case, make a reasoned request to the issuing authority to limit the period for which the property is to be frozen. Such a request, including any relevant supporting information, shall be transmitted by any means capable of producing a written record under conditions that allow the issuing authority to establish the authenticity of the request. When examining such a request, the issuing authority shall take all interests into account, including those of the executing authority. The issuing authority shall respond to the request as soon as possible. If the issuing authority does not agree to the limitation, it shall inform the executing authority of the reasons thereof. In such a case, the property shall remain frozen in accordance with paragraph 1. If the issuing authority does not respond within six weeks of receiving the request, the executing authority shall no longer be obliged to execute the freezing order.

Article 13

Impossibility to execute a freezing order

1. Where the executing authority considers that it is impossible to execute a freezing order, it shall notify the issuing authority thereof without delay.
2. Before notifying the issuing authority in accordance with paragraph 1, the executing authority, where appropriate, shall consult with the issuing authority.
3. The non-execution of a freezing order under this Article may only be justified where the property:
 - (a) has already been confiscated;
 - (b) has disappeared;
 - (c) has been destroyed;
 - (d) cannot be found in the location indicated on the freezing certificate; or
 - (e) cannot be found because its location has not been indicated in a sufficiently precise manner, despite the consultations referred to in paragraph 2.
4. As regards the situations under points (b), (d) and (e) of paragraph 3, where the executing authority subsequently obtains information that allows it to locate the property, the executing authority may execute the freezing order without a new freezing certificate having to be transmitted, provided that, prior to executing the freezing order, the executing authority has verified with the issuing authority that the freezing order is still valid.
5. Notwithstanding paragraph 3, where the issuing authority has indicated that property of equivalent value could be frozen, the executing authority shall not be required to execute the freezing order where one of the circumstances set out in paragraph 3 exists and there is no property of equivalent value that can be frozen.

CHAPTER III

TRANSMISSION, RECOGNITION AND EXECUTION OF CONFISCATION ORDERS

Article 14

Transmission of confiscation orders

1. A confiscation order shall be transmitted by means of a confiscation certificate. The issuing authority shall transmit the confiscation certificate provided for in Article 17 directly to the executing authority or, where applicable, to the central authority referred to in Article 24(2), by any means capable of producing a written record under conditions that allow the executing authority to establish the authenticity of the confiscation certificate.
2. Member States may make a declaration stating that, when a confiscation certificate is transmitted to them with a view to the recognition and execution of a confiscation order, the issuing authority is to transmit the original confiscation order or a certified copy thereof together with the confiscation certificate. However, only the confiscation certificate has to be translated, in accordance with Article 17(2).
3. Member States may make the declaration referred to in paragraph 2 prior to the date of application of this Regulation or at a later date. Member States may withdraw such a declaration at any time. Member States shall inform the Commission when they make or withdraw such a declaration. The Commission shall make such information available to all Member States and to the EJN.
4. As regards a confiscation order concerning an amount of money, where the issuing authority has reasonable grounds to believe that the person against whom the confiscation order was issued has property or income in a Member State, it shall transmit the confiscation certificate to that Member State.

5. As regards a confiscation order concerning specific items of property, where the issuing authority has reasonable grounds to believe that such items are located in a Member State, it shall transmit the confiscation certificate to that Member State.
6. The issuing authority shall inform the executing authority if it is aware of any affected persons. The issuing authority shall also, upon request, provide the executing authority with any information relevant to any claim that such affected persons may have in relation to the property, including any information identifying those persons.
7. Where, despite the information having been made available in accordance with Article 24(3), the competent executing authority is unknown to the issuing authority, the issuing authority shall make all necessary inquiries, including through the contact points of the EJN, in order to determine which authority is competent for the recognition and execution of the confiscation order.
8. Where the authority in the executing State which receives a confiscation certificate is not competent to recognise the confiscation order or to take the measures necessary for its execution, that authority shall immediately transmit the confiscation certificate to the competent executing authority in its Member State and shall inform the issuing authority accordingly.

Article 15

Transmission of a confiscation order to one or more executing States

1. A confiscation certificate shall only be transmitted, pursuant to Article 14, to one executing State at any one time, unless paragraph 2 or 3 of this Article applies.
2. Where a confiscation order concerns specific items of property, the confiscation certificate may be transmitted to more than one executing State at the same time where:
 - (a) the issuing authority has reasonable grounds to believe that different items of property covered by the confiscation order are located in different executing States; or
 - (b) the confiscation of a specific item of property covered by the confiscation order would require action in more than one executing State.
3. Where a confiscation order concerns an amount of money, the confiscation certificate may be transmitted to more than one executing State at the same time where the issuing authority considers that there is a specific need to do so, in particular where:
 - (a) the property concerned has not been frozen under this Regulation; or
 - (b) the estimated value of the property which may be confiscated in the issuing State and in any one executing State is not likely to be sufficient for the confiscation of the full amount covered by the confiscation order.

Article 16

Consequences of transmission of confiscation orders

1. The transmission of a confiscation order, in accordance with Articles 14 and 15, shall not restrict the right of the issuing State to execute the order.
2. The total amount obtained from the execution of a confiscation order concerning an amount of money shall not exceed the maximum amount specified in that order, regardless of whether that order was transmitted to one or to several executing States.
3. The issuing authority shall immediately inform the executing authority by any means capable of producing a written record where:
 - (a) it considers that there is a risk that confiscation in excess of the maximum amount may occur, in particular on the basis of information received from the executing authority pursuant to point (b) of Article 21(1);
 - (b) all or a part of the confiscation order has been executed in the issuing State or in a different executing State, in which case it shall specify the amount for which the confiscation order has not yet been executed; or
 - (c) after the transmission of a confiscation certificate in accordance with Article 14, an authority of the issuing State receives any sum of money which has been paid in respect of the confiscation order.

Where point (a) of the first subparagraph applies, the issuing authority shall inform the executing authority as soon as possible when the risk referred to in that point ceases to exist.

*Article 17***Standard confiscation certificate**

1. In order to transmit a confiscation order, the issuing authority shall complete the confiscation certificate set out in Annex II, shall sign it and shall certify its content as being accurate and correct.
2. The issuing authority shall provide the executing authority with a translation of the confiscation certificate in an official language of the executing State or in any other language that the executing State will accept in accordance with paragraph 3.
3. Any Member State may, at any time, state in a declaration submitted to the Commission that it will accept translations of confiscation certificates in one or more official languages of the Union other than the official language or languages of that Member State. The Commission shall make the declarations available to all Member States and to the EJN.

*Article 18***Recognition and execution of confiscation orders**

1. The executing authority shall recognise a confiscation order transmitted in accordance with Article 14 and shall take the measures necessary for its execution in the same way as for a domestic confiscation order issued by an authority of the executing State, unless the executing authority invokes one of the grounds for non-recognition and non-execution provided for in Article 19 or one of the grounds for postponement provided for in Article 21.
2. Where a confiscation order concerns a specific item of property, the issuing authority and executing authority may, where the law of the issuing State so provides, agree that confiscation in the executing State can be carried out through the confiscation of a sum of money corresponding to the value of the property that was to be confiscated.
3. Where a confiscation order concerns an amount of money and the executing authority is unable to obtain payment of that amount, it shall execute the confiscation order in accordance with paragraph 1 on any item of property that is available for that purpose. Where necessary, the executing authority shall convert the amount of money to be confiscated into the currency of the executing State at the daily euro exchange rate as published in the C series of the Official Journal of the European Union for the date on which the confiscation order was issued.
4. Any part of the amount of money that is recovered pursuant to the confiscation order in any State other than the executing State shall be deducted in full from the amount to be confiscated in the executing State.
5. Where the issuing authority has issued a confiscation order but has not issued a freezing order, the executing authority may, as part of the measures provided for in paragraph 1, decide to freeze the property concerned of its own motion in accordance with its national law with a view to subsequent execution of the confiscation order. In such a case, the executing authority shall inform the issuing authority without delay and, where possible, prior to freezing the property concerned.
6. As soon as the execution of the confiscation order has been completed, the executing authority shall inform, by any means capable of producing a written record, the issuing authority of the results of the execution.

*Article 19***Grounds for non-recognition and non-execution of confiscation orders**

1. The executing authority may decide not to recognise or execute a confiscation order only where:
 - (a) executing the confiscation order would be contrary to the principle of *ne bis in idem*;
 - (b) there is a privilege or immunity under the law of the executing State that would prevent the confiscation of the property concerned or there are rules on the determination or limitation of criminal liability that relate to the freedom of the press or the freedom of expression in other media that prevent the execution of the confiscation order;
 - (c) the confiscation certificate is incomplete or manifestly incorrect and has not been completed following the consultation referred to in paragraph 2;

- (d) the confiscation order relates to a criminal offence committed, wholly or partially, outside the territory of the issuing State and, wholly or partially, in the territory of the executing State and the conduct in connection with which the confiscation order was issued does not constitute a criminal offence under the law of the executing State;
- (e) the rights of affected persons would make it impossible under the law of the executing State to execute the confiscation order, including where that impossibility is a consequence of the application of legal remedies in accordance with Article 33;
- (f) in a case falling under Article 3(2), the conduct in connection with which the confiscation order was issued does not constitute a criminal offence under the law of the executing State; however, in cases that involve taxes or duties or customs and exchange regulations, the recognition or execution of the confiscation order shall not be refused on the grounds that the law of the executing State does not impose the same kind of taxes or duties or does not provide for the same type of rules as regards taxes and duties or the same type of customs and exchange regulations as the law of the issuing State;
- (g) according to the confiscation certificate, the person against whom the confiscation order was issued did not appear in person at the trial that resulted in the confiscation order linked to a final conviction, unless the confiscation certificate states that, in accordance with further procedural requirements defined in the law of the issuing State, the person:
 - (i) was summoned in person in due time and was thereby informed of the scheduled date and place of the trial that resulted in the confiscation order, or actually received, by other means, official information of the scheduled date and place of that trial in such a manner that it was established unequivocally that that person was aware of the scheduled trial, and was informed in due time that such a confiscation order could be handed down if that person did not appear at the trial;
 - (ii) being aware of the scheduled trial, had given a mandate to a lawyer, who was either appointed by the person concerned or by the State, to defend that person at the trial and was actually defended by that lawyer at the trial; or
 - (iii) after having been served with the confiscation order and having been expressly informed of the right to a retrial or an appeal, in which the person would have the right to participate and which would allow a re-examination of the merits of the case including an examination of fresh evidence, and which could lead to the original confiscation order being reversed, expressly stated that he or she did not contest the confiscation order, or did not request a retrial or appeal within the applicable time limits;
- (h) in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the confiscation order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, in particular the right to an effective remedy, the right to a fair trial or the right of defence.

2. In any of the cases referred to in paragraph 1, before deciding not to recognise or execute the confiscation order, whether wholly or partially, the executing authority shall consult the issuing authority by any appropriate means and, where appropriate, shall request the issuing authority to supply any necessary information without delay.

3. Any decision not to recognise or execute the confiscation order shall be taken without delay and notified immediately to the issuing authority by any means capable of producing a written record.

Article 20

Time limits for recognition and execution of confiscation orders

1. The executing authority shall take the decision on the recognition and execution of the confiscation order without delay and, without prejudice to paragraph 4, no later than 45 days after the executing authority has received the confiscation certificate.

2. The executing authority shall communicate, without delay and by any means capable of producing a written record, the decision on the recognition and execution of the confiscation order to the issuing authority.

3. Unless grounds for postponement under Article 21 exist, the executing authority shall take the concrete measures necessary to execute the confiscation order without delay and, at least, with the same speed and priority as for a similar domestic case.

4. Where it is not possible, in a specific case, to meet the time limit set out in paragraph 1, the executing authority shall inform the issuing authority without delay by any means, giving the reasons for which it was not possible to meet that time limit, and shall consult with the issuing authority on an appropriate schedule for the recognition and execution of the confiscation order.

5. The expiry of the time limit set out in paragraph 1 shall not relieve the executing authority of its obligation to take a decision on the recognition and execution of the confiscation order, and to execute that order, without delay.

Article 21

Postponement of the execution of confiscation orders

1. The executing authority may postpone the recognition or execution of a confiscation order transmitted in accordance with Article 14 where:

- (a) its execution might damage an ongoing criminal investigation, in which case the execution of the confiscation order may be postponed until such time as the executing authority considers reasonable;
- (b) as regards a confiscation order concerning an amount of money, it considers that there is a risk that the total amount obtained from the execution of that confiscation order might considerably exceed the amount specified in the confiscation order because of the simultaneous execution of the confiscation order in more than one Member State;
- (c) the property is already the subject of ongoing confiscation proceedings in the executing State; or
- (d) a legal remedy as referred to in Article 33 has been invoked.

2. Notwithstanding Article 18(5), for as long as the execution of a confiscation order is postponed, the competent authority of the executing State shall take all the measures it would take in a similar domestic case to prevent the property from no longer being available for the purpose of the execution of the confiscation order.

3. The executing authority shall, without delay and by any means capable of producing a written record, report to the issuing authority on the postponement of the execution of the confiscation order, specifying the grounds for the postponement and, where possible, the expected duration of the postponement.

4. As soon as the grounds for postponement have ceased to exist, the executing authority shall take, without delay, the measures necessary for the execution of the confiscation order and inform the issuing authority thereof by any means capable of producing a written record.

Article 22

Impossibility to execute a confiscation order

1. Where the executing authority considers that it is impossible to execute a confiscation order, it shall notify the issuing authority thereof without delay.

2. Before notifying the issuing authority in accordance with paragraph 1, the executing authority, where appropriate, shall consult with the issuing authority, taking into account also the possibilities provided for under Article 18(2) or (3).

3. The non-execution of a confiscation order under this Article may only be justified where the property:

- (a) has already been confiscated;
- (b) has disappeared;
- (c) has been destroyed;
- (d) cannot be found in the location indicated on the confiscation certificate; or
- (e) cannot be found because its location has not been indicated in a sufficiently precise manner, despite the consultations referred to in paragraph 2.

4. As regards the situations under points (b), (d) and (e) of paragraph 3, where the executing authority subsequently obtains information that allows it to locate the property, the executing authority may execute the confiscation order without a new confiscation certificate having to be transmitted, provided that, prior to executing the confiscation order, the executing authority has verified with the issuing authority that the confiscation order is still valid.

5. Notwithstanding paragraph 3, where the issuing authority has indicated that property of equivalent value could be confiscated, the executing authority shall not be required to execute the confiscation order where one of the circumstances set out in paragraph 3 exists and there is no property of equivalent value that can be confiscated.

CHAPTER IV

GENERAL PROVISIONS

*Article 23***Law governing execution**

1. The execution of the freezing order or confiscation order shall be governed by the law of the executing State and its authorities shall be solely competent to decide on the procedures for its execution and to determine all the measures relating thereto.
2. A freezing order or confiscation order issued against a legal person shall be executed even where the executing State does not recognise the principle of criminal liability of legal persons.
3. Notwithstanding Article 18(2) and (3), the executing State may not impose alternative measures to the freezing order transmitted pursuant to Article 4 or confiscation order transmitted pursuant to Article 14 without the consent of the issuing State.

*Article 24***Notification of the competent authorities**

1. By 19 December 2020, each Member State shall inform the Commission of the authority or authorities as defined in points (8) and (9) of Article 2 that are competent under its law in the cases where that Member State is, the issuing State or the executing State, respectively.
2. Where necessary, due to the structure of its internal legal system, each Member State may designate one or more central authorities to be responsible for the administrative transmission and reception of freezing certificates and confiscation certificates and for assisting its competent authorities. Each Member State shall inform the Commission of any such authority that it so designates.
3. The Commission shall make the information received under this Article available to all Member States and to the EJN.

*Article 25***Communication**

1. Where necessary, the issuing authority and the executing authority shall consult each other without delay to ensure the efficient application of this Regulation, using any appropriate means of communication.
2. All communications, including those intended to deal with difficulties concerning the transmission or authentication of any document needed for the execution of the freezing order or confiscation order, shall be made directly between the issuing authority and the executing authority and, where a Member State has designated a central authority in accordance with Article 24(2), shall be made, where appropriate, with the involvement of that central authority.

*Article 26***Multiple orders**

1. If the executing authority receives two or more freezing orders or confiscation orders from different Member States issued against the same person and that person does not have sufficient property in the executing State to satisfy all of the orders, or if the executing authority receives two or more freezing orders or confiscation orders in respect of the same specific item of property, the executing authority shall decide which of the orders to execute in accordance with the law of the executing State, without prejudice to the possibility of postponing the execution of a confiscation order in accordance with Article 21.
2. In taking its decision, the executing authority shall give priority to the interests of victims where possible. It shall also take all other relevant circumstances into account, including the following:
 - (a) whether the assets are already frozen;
 - (b) the dates of the respective orders and their dates of transmission;

- (c) the seriousness of the criminal offence concerned; and
- (d) the place where the criminal offence was committed.

Article 27

Termination of the execution of a freezing order or confiscation order

1. Where the freezing order or confiscation order can no longer be executed or is no longer valid, the issuing authority shall withdraw the freezing order or confiscation order without delay.
2. The issuing authority shall immediately inform the executing authority, by any means capable of producing a written record, of the withdrawal of a freezing order or confiscation order and of any decision or measure that causes a freezing order or confiscation order to be withdrawn.
3. The executing authority shall terminate the execution of the freezing order or confiscation order, in so far as the execution has not yet been completed, as soon as it has been informed by the issuing authority in accordance with paragraph 2. The executing authority shall send, without undue delay and by any means capable of producing a written record, a confirmation of the termination to the issuing State.

Article 28

Management and disposal of frozen and confiscated property

1. The management of frozen and confiscated property shall be governed by the law of the executing State.
2. The executing State shall manage the frozen or confiscated property with a view to preventing its depreciation in value. To that end, the executing State, having regard to Article 10 of Directive 2014/42/EU, shall be able to sell or transfer frozen property.
3. Frozen property and money obtained after selling such property in accordance with paragraph 2 shall remain in the executing State until a confiscation certificate has been transmitted and the confiscation order has been executed, without prejudice to the possibility of restituting property under Article 29.
4. The executing State shall not be required to sell or return specific items covered by a confiscation order, where those items constitute cultural objects, as defined in point (1) of Article 2 of Directive 2014/60/EU of the European Parliament and of the Council ⁽¹⁾. This Regulation shall not affect the obligation to return cultural objects under that Directive.

Article 29

Restitution of frozen property to the victim

1. Where the issuing authority or another competent authority of the issuing State has issued a decision, in accordance with its national law, to restitute frozen property to the victim, the issuing authority shall include information on that decision in the freezing certificate or communicate information on that decision to the executing authority at a later stage.
2. Where the executing authority has been informed of a decision to restitute frozen property to the victim as referred to in paragraph 1, it shall take the necessary measures to ensure that, where the property concerned has been frozen, that property is restituted as soon as possible to the victim, in accordance with the procedural rules of the executing State, where necessary via the issuing State, provided that:
 - (a) the victim's title to the property is not contested;
 - (b) the property is not required as evidence in criminal proceedings in the executing State; and
 - (c) the rights of affected persons are not prejudiced.

The executing authority shall inform the issuing authority where property is transferred directly to the victim.

3. Where the executing authority is not satisfied that the conditions of paragraph 2 have been met, it shall consult with the issuing authority without delay and by any appropriate means in order to find a solution. If no solution can be found, the executing authority may decide not to restitute the frozen property to the victim.

⁽¹⁾ Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (OJ L 159, 28.5.2014, p. 1).

*Article 30***Disposal of confiscated property or money obtained after selling such property**

1. Where the issuing authority or another competent authority of the issuing State has issued a decision, in accordance with its national law, either to restitute confiscated property to the victim or to compensate the victim, the issuing authority shall include information on that decision in the confiscation certificate or communicate, at a later stage, information on that decision to the executing authority.
2. Where the executing authority has been informed of a decision to restitute confiscated property to the victim as referred to in paragraph 1, it shall take the necessary measures to ensure that, where the property concerned has been confiscated, that property is restituted as soon as possible to the victim, where necessary via the issuing State. The executing authority shall inform the issuing authority where property is transferred directly to the victim.
3. Where it is not possible for the executing authority to restitute the property to the victim in accordance with paragraph 2, but money has been obtained as a result of the execution of a confiscation order in relation to that property, the corresponding sum shall be transferred to the victim for the purposes of restitution, where necessary via the issuing State. The executing authority shall inform the issuing authority where money is transferred directly to the victim. Any remaining property shall be disposed of in accordance with paragraph 7.
4. Where the executing authority has been informed of a decision to compensate the victim as referred to in paragraph 1, and money has been obtained as a result of the execution of a confiscation order, the corresponding sum, in so far as it does not exceed the amount indicated in the certificate, shall be transferred to the victim for the purposes of compensation, where necessary via the issuing State. The executing authority shall inform the issuing authority where money is transferred directly to the victim. Any remaining property shall be disposed of in accordance with paragraph 7.
5. Where proceedings to restitute property to, or compensate, the victim are pending in the issuing State, the issuing authority shall inform the executing authority accordingly. The executing State shall refrain from disposing of the confiscated property until the information on the decision to restitute property to, or compensate, the victim has been communicated to the executing authority, even in cases where the confiscation order has already been executed.
6. Without prejudice to paragraphs 1 to 5, property other than money that has been obtained as a result of the execution of the confiscation order shall be disposed of in accordance with the following rules:
 - (a) the property may be sold, in which case the proceeds of the sale are to be disposed of in accordance with paragraph 7;
 - (b) the property may be transferred to the issuing State provided that, where the confiscation order covers an amount of money, the issuing authority has given its consent to the transfer of property to the issuing State;
 - (c) subject to point (d), if it is not possible to apply point (a) or (b), the property may be disposed of in another way in accordance with the law of the executing State; or
 - (d) the property may be used for public interest or social purposes in the executing State in accordance with its law, subject to the consent of the issuing State.
7. Unless the confiscation order is accompanied by a decision to restitute property to the victim or to compensate the victim in accordance with paragraphs 1 to 5, or unless otherwise agreed by the Member States involved, the executing State shall dispose of the money obtained as a result of the execution of a confiscation order as follows:
 - (a) if the amount obtained from the execution of the confiscation order is equal to or less than EUR 10 000, the amount shall accrue to the executing State; or
 - (b) if the amount obtained from the execution of the confiscation order is more than EUR 10 000, 50 % of the amount shall be transferred by the executing State to the issuing State.

*Article 31***Costs**

1. Each Member State shall bear its own costs resulting from the application of this Regulation, without prejudice to the provisions relating to the disposal of confiscated property set out in Article 28.
2. The executing authority may submit a proposal to the issuing authority that the costs be shared where it appears, either before or after the execution of a freezing order or confiscation order, that the execution of the order would entail large or exceptional costs.

Such proposals shall be accompanied by a detailed breakdown of the costs incurred by the executing authority. Following such a proposal the issuing authority and the executing authority shall consult with each other. Where appropriate, Eurojust may facilitate such consultations.

The consultations, or at least the result thereof, shall be recorded by any means capable of producing a written record.

Article 32

Obligation to inform affected persons

1. Without prejudice to Article 11, following the execution of a freezing order or following the decision to recognise and execute a confiscation order, the executing authority shall inform, to the extent possible, the affected persons known to it of such execution and of such decision without delay, in accordance with procedures under its national law.
2. The information to be provided in accordance with paragraph 1 shall specify the name of the issuing authority and the legal remedies available under the law of the executing State. The information shall also specify, at least in a brief manner, the reasons for the order.
3. Where appropriate, the executing authority may ask the issuing authority for assistance in carrying out the tasks referred to in paragraph 1.

Article 33

Legal remedies in the executing State against the recognition and execution of a freezing order or confiscation order

1. Affected persons shall have the right to effective legal remedies in the executing State against the decision on the recognition and execution of freezing orders pursuant to Article 7 and confiscation orders pursuant to Article 18. The right to a legal remedy shall be invoked before a court in the executing State in accordance with its law. As regards confiscation orders, the invocation of a legal remedy may have suspensive effect where the law of the executing State so provides.
2. The substantive reasons for issuing the freezing order or confiscation order shall not be challenged before a court in the executing State.
3. The competent authority of the issuing State shall be informed of any legal remedy invoked in accordance with paragraph 1.
4. This Article is without prejudice to the application in the issuing State of safeguards and legal remedies in accordance with Article 8 of Directive 2014/42/EU.

Article 34

Reimbursement

1. Where the executing State is liable under its law for damage to an affected person resulting from the execution of a freezing order transmitted to it pursuant to Article 4 or confiscation order transmitted to it pursuant to Article 14, the issuing State shall reimburse the executing State for any damages paid to the affected person. However, where the issuing State can demonstrate to the executing State that the damage, or any part thereof, was exclusively due to the conduct of the executing State, the issuing and executing States shall agree between themselves on the amount to be reimbursed.
2. Paragraph 1 is without prejudice to the law of the Member States on claims by natural or legal persons for compensation for damage.

CHAPTER V

FINAL PROVISIONS

Article 35

Statistics

1. Member States shall regularly collect comprehensive statistics from the relevant authorities. They shall maintain those statistics and shall send them to the Commission each year. Those statistics shall include, in addition to the information referred to in Article 11(2) of Directive 2014/42/EU, the number of freezing orders and confiscation orders received by a Member State from other Member States that were recognised and executed, and the recognition and execution of which were refused.

2. Each year, Member States shall also send the following statistics to the Commission, where they are available at a central level in the Member State concerned:

- (a) the number of cases in which a victim was compensated or granted restitution of the property obtained by the execution of a confiscation order under this Regulation; and
- (b) the average period required for the execution of freezing orders and confiscation orders under this Regulation.

Article 36

Amendments to the certificate and the form

The Commission is empowered to adopt delegated acts in accordance with Article 37 concerning any amendment to the certificates set out in Annexes I and II. Such amendments shall be in accordance with this Regulation and shall not affect it.

Article 37

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 36 shall be conferred on the Commission for an indeterminate period of time from 19 December 2020.
3. The delegation of power referred to in Article 36 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 36 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 38

Reporting and review

By 20 December 2025, and every five years thereafter, the Commission shall submit a report to the European Parliament, to the Council and to the European Economic and Social Committee on the application of this Regulation, including on:

- (a) the possibility for Member States to make and withdraw declarations under Articles 4(2) and 14(2);
- (b) the interaction between the respect for fundamental rights and the mutual recognition of freezing orders and confiscation orders;
- (c) the application of Articles 28, 29 and 30 in relation to the management and disposal of frozen and confiscated property, the restitution of property to victims and the compensation of victims.

Article 39

Replacement

This Regulation replaces the provisions of Framework Decision 2003/577/JHA as regards the freezing of property between the Member States bound by this Regulation as from 19 December 2020.

This Regulation replaces Framework Decision 2006/783/JHA between the Member States bound by this Regulation as from 19 December 2020.

For the Member States bound by this Regulation, references to Framework Decision 2003/577/JHA as regards freezing of property and references to Framework Decision 2006/783/JHA shall be construed as references to this Regulation.

Article 40

Transitional provisions

1. This Regulation shall apply to freezing certificates and confiscation certificates transmitted on or after 19 December 2020.
2. Freezing certificates and confiscation certificates transmitted before 19 December 2020 shall continue to be governed by Framework Decisions 2003/577/JHA and 2006/783/JHA, between the Member States bound by this Regulation until the final execution of the freezing order or confiscation order.

Article 41

Entry into force

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

It shall apply from 19 December 2020.

However, Article 24 shall apply from 18 December 2018.

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

Done at Strasbourg, 14 November 2018.

For the European Parliament

The President

A. TAJANI

For the Council

The President

K. EDTSTADLER

ANNEX I

FREEZING CERTIFICATE

SECTION A:

Issuing State:

Issuing authority:

Validating authority (if applicable):

Executing State:

Executing authority (if known):

SECTION B: Urgency and/or requested date for execution

1. Please indicate the particular grounds for urgency:

There are legitimate grounds to believe that the property in question will imminently be removed or destroyed, namely:

.....

Investigative or procedural needs in the issuing State, namely:

.....

2. Date for execution:

A specific date is requested, namely:

Coordination needed between the Member States involved

Grounds for this request:

.....

SECTION C: Affected person(s)

Identity of the person(s) against whom the freezing order is issued, or of the person(s) that owns/own the property that is covered by the freezing order (if more than one person is affected, please provide the information for each person):

1. Identification data

(i) In the case of natural person(s)

Name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number, if available:

Type and number of the identity document(s) (identity card or passport), if available:

Date of birth:

Place of birth:

Residence and/or known address (if the address is not known, the last known address):

Language(s) which the affected person understands

Please indicate the position of the affected person in the proceedings:

person against whom the freezing order is directed

person that owns the property that is covered by the freezing order

(ii) In the case of legal person(s)

Name:

Legal form:

Shortened name, commonly used name or trading name, if applicable:

Registered seat:

Registration number:

Address:

Name of the representative:

Please indicate the position of the affected person in the proceedings:

- person against whom the freezing order is directed
 person that owns the property that is covered by the freezing order

2. If different from the address above, please give the location where the freezing order is to be executed:

.....

3. Third parties whose rights in relation to the property that is covered by the freezing order are directly prejudiced by the order (identity and grounds):

.....

.....

4. Provide any other information that will assist with the execution of the freezing order:

.....

SECTION D: Information on property to which the order relates

1. Please indicate if the order concerns:

- an amount of money
 specific item(s) of property (corporeal or incorporeal, movable or immovable)
 property of equivalent value (in the context of value-based confiscation)

2. If the order concerns an amount of money or property of equivalent value to that amount of money:

— The amount for execution in the executing State, in figures and words (indicate currency):

.....

— The total amount covered by the order, in figures and words (indicate currency):

.....

Additional information:

— Grounds for believing that the affected person has property/income in the executing State:

.....

— Description of the property/source of income of the affected person(when possible):

.....

— Exact location of the property/source of income of the affected person (if not known, the last known location):

.....

— Details of the bank account of the affected person (if known):

.....

3. If the order concerns specific item(s) of property or property of equivalent value to such property:

Grounds for the transmission of the order to the executing State:

- the specific item(s) of property is/are located in the executing State
 the specific item(s) of property is/are registered in the executing State

- the issuing authority has reasonable grounds to believe that all or part of the specific item(s) of property covered by the order is/are located in the executing State.

Additional information:

- Grounds for believing that the specific item(s) of property is/are located in the executing State:

.....

- Description of the item of property:

.....

- Location of the item of property (if not known, the last known location):

.....

- Other relevant information (e.g. appointment of a judicial administrator):

.....

SECTION E: Grounds for issuing the freezing order

1. Summary of the facts

Set out the reasons why the freezing order is issued, including:

- summary of the facts, including a description of the criminal offence(s):

.....

.....

- stage of the investigation:

.....

.....

- grounds for freezing:

.....

.....

- other relevant information:

.....

.....

2. Nature and legal classification of the criminal offence(s) in relation to which the freezing order was issued and the applicable legal provision(s):

.....

.....

3. Is the criminal offence in relation to which the freezing order is issued punishable in the issuing State by a custodial sentence of a maximum of at least three years and included in the list of criminal offences set out below? (please tick the relevant box). Where the freezing order concerns several criminal offences, please indicate numbers in the list of criminal offences below (corresponding to the criminal offences as described under points 1 and 2 above).

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption
- fraud, including fraud and other criminal offences affecting the Union's financial interests as defined in Directive (EU) 2017/1371
- laundering of the proceeds of crime
- counterfeiting currency, including the euro
- computer-related crime

- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- facilitation of unauthorised entry and residence
- murder or grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint or hostage-taking
- racism and xenophobia
- organised or armed robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and piracy of products
- forgery of administrative documents and trafficking therein
- forgery of means of payment
- illicit trafficking in hormonal substances and other growth promoters
- illicit trafficking in nuclear or radioactive materials
- trafficking in stolen vehicles
- rape
- arson
- crimes within the jurisdiction of the International Criminal Court
- unlawful seizure of aircraft or ships
- sabotage

4. Any other relevant information (e.g. relation between the property and the criminal offence):

.....

SECTION F: Confidentiality of the order and/or request for specific formalities

Need to maintain the information in the order confidential after execution:

.....

Need for specific formalities at the time of execution:

.....

SECTION G: Where a freezing certificate has been transmitted to more than one executing State, provide the following information:

1. A freezing certificate has been transmitted to the following other executing State(s) (State and authority):

.....

.....

2. A freezing certificate has been transmitted to more than one executing State for the following reasons:

Where the freezing order concerns specific items of property:

- Different items of property covered by the order are believed to be located in different executing States
- The freezing of a specific item of property requires action in more than one executing State

Where the freezing order concerns an amount of money:

- The estimated value of the property which may be frozen in the issuing State and in any one executing State is not likely to be sufficient for the freezing of the full amount covered by the order
- Other specific needs:

.....

- 3. Value of assets, if known, in each executing State:
.....
.....
- 4. Where the freezing of the specific item(s) of property requires action in more than one executing State, description of the action to be taken in the executing State:
.....
.....

SECTION H: Relation to an earlier freezing order and/or other order(s) or request(s)

Please indicate whether this freezing order relates to an earlier order or request (e.g. freezing order, European Investigation Order, European arrest warrant or mutual legal assistance). If applicable, provide the following information relevant to identify the previous order or request:

- Type of the order/request:
.....
- Date of issue:
.....
- Authority to which the order/request was transmitted:
.....
- Reference number given by the issuing authority:
.....
- Reference number(s) given by the executing authority(ies):
.....

SECTION I: Confiscation

Please indicate whether:

- this freezing certificate is accompanied by a confiscation certificate issued in the issuing State (reference number of the confiscation certificate):
.....
- the property shall remain frozen in the executing State pending the transmission and execution of the confiscation order (estimated date for submission of the confiscation certificate, if possible):
.....

SECTION J: Alternative measures

- 1. Please indicate whether the issuing State allows for the application by the executing State of alternative measures where it is not possible to execute the freezing order, either wholly or partially:
 Yes
 No
- 2. If yes, state which measures may be applied:
.....

SECTION K: RESTITUTION OF FROZEN PROPERTY

- 1. Please indicate if a decision to restitute frozen property to the victim has been issued:
 Yes
 No
If yes, please specify the following concerning the decision to restitute frozen property to the victim:
Authority that issued the decision (official name):
.....
Date of the decision:

Reference number of the decision (if available):

Description of the property to be restituted:

Name of the victim:

Address of the victim:

If the victim's title to the property is contested, please provide details (persons contesting the title, reasons, etc.):

.....

If rights of affected persons could be prejudiced as a result of the restitution, please provide details (the affected persons, the rights that could be prejudiced, reasons, etc.):

.....

.....

2. Is a demand for restitution of frozen property to the victim pending in the issuing State?

No

Yes, the outcome will be communicated to the executing authority

The issuing authority shall be notified in case of direct transfer to the victim.

SECTION L: Legal remedies

Authority in the issuing State which can supply further information on procedures for seeking legal remedies in the issuing State and on whether legal assistance, interpretation and translation is available:

The issuing authority (see Section M)

The validating authority (see Section N)

Other:

.....

SECTION M: Details of the issuing authority

Type of the issuing authority:

judge, court, public prosecutor

another competent authority designated by the issuing State

Name of the authority:

Name of the contact person:

Post held (title/grade):

File No:

Address:

Tel. No (country code) (area/city code):

Fax No (country code) (area/city code):

Email:

Languages in which it is possible to communicate with the issuing authority:

If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the execution of the order:

Name/Title/Organisation:

Address:

Email/Tel. No:

Signature of the issuing authority and/or its representative certifying the content of the freezing certificate as accurate and correct:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

SECTION N: Details of the authority which validated the freezing order

Please indicate the type of authority which has validated the freezing order, if applicable:

- judge or court
- public prosecutor

Name of the validating authority:

Name of the contact person:

Post held (title/grade):

File No:

Address:

Tel. No (country code) (area/city code):

Fax No (country code) (area/city code):

Email:

Languages in which it is possible to communicate with the validating authority:

Please indicate the main contact point for the executing authority:

- issuing authority
- validating authority

Signature and details of the validating authority and/or its representative:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

SECTION O: Central authority

Where a central authority has been made responsible for the administrative transmission and reception of freezing certificates in the issuing State, please indicate:

Name of the central authority:

Name of the contact person:

Post held (title/grade):

File No:

Address:

Tel. No (country code) (area/city code):

Fax No (country code) (area/city code):

Email:

SECTION P: Attachments

Please indicate any attachments to the certificate:

ANNEX II

CONFISCATION CERTIFICATE

SECTION A:

Issuing State:

Issuing authority:

Executing State:

Executing authority (if known):

SECTION B: Confiscation order

1. Court which issued the confiscation order (official name):

.....

2. Reference number of the confiscation order (if available):

.....

3. The confiscation order was issued on (date):

.....

4. The confiscation order became final on (date):

.....

SECTION C: Affected person(s)

Identity of the person(s) against whom the confiscation order is issued, or of the person(s) that owns/own the property that is covered by the confiscation order (if more than one person is affected, please provide the information for each person):

1. Identification data

(i) In the case of natural person(s)

Name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number, if available:

Type and number of the identity document(s) (identity card or passport), if available:

.....

Date of birth:

Place of birth:

Residence and/or known address (if address is not known, the last known address):

.....

Language(s) which the affected person understands:

Please indicate the position of the affected person in the proceedings:

person against whom the confiscation order is directed

person that owns the property that is covered by the confiscation order

(ii) In the case of legal person(s)

Name:

Legal form:

Shortened name, commonly used name or trading name, if applicable:

Registered seat:

Registration number:

Address:

Name of the representative:

Please indicate the position of the affected person in the proceedings:

person against whom the confiscation order is directed

person that owns the property that is covered by the confiscation order

2. If different from the address above, please give the location where the confiscation order is to be executed:
.....

3. Third parties whose rights in relation to the property that is covered by the confiscation order are directly prejudiced by the order (identity and grounds):
.....
.....

4. Provide any other information that will assist with the execution of the confiscation order:
.....

SECTION D: Information on property to which the order relates

1. The court has decided that the property:

is the proceeds of a criminal offence, or its equivalent, whether the full amount of the value or only part of the value of such proceeds

constitutes the instrumentalities of a criminal offence, or the value of such instrumentalities

is subject to confiscation through the application in the issuing State of any of the powers of confiscation provided for in Directive 2014/42/EU (including extended confiscation)

is subject to confiscation under any other provisions relating to powers of confiscation, including confiscation without a final conviction, under the law of the issuing State following proceedings in relation to a criminal offence

2. Please indicate if the order concerns:

an amount of money

specific item(s) of property (corporeal or incorporeal, movable or immovable)

property of equivalent value (in the context of value-based confiscation)

3. If the order concerns an amount of money or property of equivalent value to that amount of money:

— The amount for execution in the executing State, in figures and words (indicate currency):
.....

— The total amount covered by the order, in figures and words (indicate currency):
.....

Additional information:

— Grounds for believing that the affected person has property/income in the executing State:
.....

— Description of the property/source of income of the affected person (when possible):
.....

— Exact location of the property/source of income of the affected person (if not known, the last known location):
.....

— Details of the bank account of the affected person (if known):
.....

4. If the order concerns specific item(s) of property or property of equivalent value to such property:
 Grounds for the transmission of the order to the executing State:
- the specific item(s) of property is/are located in the executing State
 - the specific item(s) of property is/are registered in the executing State
 - the issuing authority has reasonable grounds to believe that all or part of the specific item(s) of property covered by the order is/are located in the executing State.

Additional information:

— Grounds for believing that the specific item(s) of property is/are located in the executing State:

.....

— Description of the item of property

.....

— Location of the item of property (if not known, the last known location):

.....

— Other relevant information (e.g. appointment of a judicial administrator):

.....

5. Information on conversion and transfer of property

If the order concerns a specific item of property, state whether it is provided for under the law of the issuing State that the confiscation in the executing State can be carried out through the confiscation of a sum of money corresponding to the value of the property to be confiscated:

Yes

No

SECTION E: Freezing order

Please indicate whether:

the confiscation order is accompanied by a freezing order issued in the issuing State (reference number of the freezing certificate):

.....

the property has been frozen in accordance with an earlier freezing order transmitted to the executing State

— date of issue of the freezing order:

— date of transmission of the freezing order:

— the authority to which it was transmitted:

— reference number given by the issuing authority:

— reference number given by the executing authorities:

SECTION F: Grounds for issuing the confiscation order

1. Summary of the facts and the reasons why the confiscation order is issued, including a description of the criminal offence(s) and other relevant information:

.....

2. Nature and legal classification of the criminal offence(s) in relation to which the confiscation order was issued and the applicable legal provision(s):

.....

3. Is the criminal offence in relation to which the confiscation order is issued punishable in the issuing State by a custodial sentence of a maximum of at least three years and included in the list of criminal offences set out below? (please tick the relevant box). Where the confiscation order concerns several criminal offences, please indicate numbers in the list of criminal offences below (corresponding to the criminal offences as described under points 1 and 2 above).

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption
- fraud, including fraud and other criminal offences affecting the Union's financial interests as defined in Directive (EU) 2017/1371
- laundering of the proceeds of crime
- counterfeiting currency, including the euro
- computer-related crime
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- facilitation of unauthorised entry and residence
- murder or grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint or hostage-taking
- racism and xenophobia
- organised or armed robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and piracy of products
- forgery of administrative documents and trafficking therein
- forgery of means of payment
- illicit trafficking in hormonal substances and other growth promoters
- illicit trafficking in nuclear or radioactive materials
- trafficking in stolen vehicles
- rape
- arson
- crimes within the jurisdiction of the International Criminal Court
- unlawful seizure of aircraft or ships
- sabotage

4. Any other relevant information (e.g. relation between the property and the criminal offence):

SECTION G: Where a confiscation certificate has been transmitted to more than one executing State, provide the following information:

1. A confiscation certificate has been transmitted to the following other executing State(s) (State and authority):

2. A confiscation certificate has been transmitted to more than one executing State for the following reasons:
Where the confiscation order concerns specific items of property:
- Different items of property covered by the order are believed to be located in different executing States
 - The confiscation of a specific item of property requires action in more than one executing State
- Where the confiscation order concerns an amount of money:
- The property concerned has not been frozen under Regulation (EU) 2018/1805
 - The estimated value of the property which may be confiscated in the issuing State and in any one executing State is not likely to be sufficient for the confiscation of the full amount covered by the order
 - Other specific needs:
.....
3. Value of assets, if known, in each executing State:
.....
.....
4. Where the confiscation of the specific item(s) of property requires action in more than one executing State, description of the action to be taken in the executing State:
.....

SECTION H: Proceedings resulting in the confiscation order

Please indicate if the person against whom the confiscation order was issued appeared in person at the trial that resulted in the confiscation order linked to a final conviction:

1. Yes, the person appeared in person at the trial.
2. No, the person did not appear in person at the trial
3. No, in accordance with national procedural rules there were no hearings held.
4. If you have ticked the box under point 2, please confirm the existence of one of the following:
 - 4.1a. the person was summoned in person on (day/month/year) ... and thereby informed of the scheduled date and place of the trial that resulted in the confiscation order and was informed that a confiscation order could be handed down if he or she does not appear at the trial

OR

 - 4.1b. the person was not summoned in person but actually received, by other means, official information of the scheduled date and place of the trial that resulted in the confiscation order, in such a manner that it was established unequivocally that he or she was aware of the scheduled trial, and was informed that a confiscation order may be handed down if he or she does not appear at the trial

OR

 - 4.2. being aware of the scheduled trial, the person had given a mandate to a lawyer, who was either appointed by the person concerned or by the state, to defend him or her at the trial, and was actually defended by that lawyer at the trial

OR

 - 4.3. the person was served with the confiscation order on (day/month/year) ... and was expressly informed about the right to a retrial or an appeal, in which he or she had the right to participate and which allowed a re-examination of the merits of the case including an examination of fresh evidence, and which could lead to the original confiscation order being reversed, and
 - the person expressly stated that he or she did not contest the confiscation order

OR

 - the person did not request a retrial or appeal within the applicable time limits

5. If you have ticked the box under points 4.1b, 4.2 or 4.3, please provide information about how the relevant condition has been met:

SECTION I: Alternative measures, including custodial sanctions

1. Please indicate whether the issuing State allows for the application by the executing State of alternative measures where it is not possible to execute the confiscation order, either wholly or partially:

- Yes
 No

2. If yes, state which measures may be applied:

Custody (maximum period):

.....

Community service (or equivalent) (maximum period):

.....

Other measures (description):

.....

SECTION J: Decision to restitute property to, or compensate, the victim

1. Please indicate, where relevant:

An issuing authority or another competent authority of the issuing State has issued a decision to compensate the victim with, or restitute to the victim, the following sum of money:

.....

An issuing authority or another competent authority of the issuing State has issued a decision to restitute the following property other than money to the victim:

.....

Proceedings to restitute property to, or compensate, the victim are pending in the issuing State and the outcome will be communicated to the executing authority

2. Details of the decision to restitute property to, or compensate, the victim:

Authority that issued the decision (official name):

Date of the decision:

Date on which the decision became final:

Reference number of the decision (if available):

Description of the property to be restituted:

Name of the victim:

Address of the victim:

The issuing authority shall be notified in case of direct transfer to the victim.

SECTION K: Details of the issuing authority

Name of authority:

Name of the contact person:

Post held (title/grade):

File No:

Address:

Tel. No (country code) (area/city code):

Fax No (country code) (area/city code):

Email:

Languages in which it is possible to communicate with the issuing authority:

If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the execution of the order or the transfer of the property:

.....
 Name/Title/Organisation:

Address:

Email/Tel. No:

Signature of the issuing authority and/or its representative certifying the content of the confiscation certificate as accurate and correct:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

SECTION L: Central authority

Where a central authority has been made responsible for the administrative transmission and reception of confiscation certificates in the issuing State, please indicate:

Name of the central authority:

Name of the contact person:

Post held (title/grade):

File No:

Address:

Tel. No (country code) (area/city code):

Fax No (country code) (area/city code):

Email:

SECTION M: Payment details of the Issuing State

IBAN:

BIC:

Name of bank account holder:

SECTION N: Attachments

Please indicate any attachments to the certificate:

REGULATION (EU) 2018/1806 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 14 November 2018****listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement****(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 77(2)(a) thereof,

Having regard to the proposal from the European Commission,

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

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

Whereas:

- (1) Council Regulation (EC) No 539/2001 ⁽²⁾ has been substantially amended several times ⁽³⁾. In the interests of clarity and rationality, that Regulation should be codified.
- (2) This Regulation provides for full harmonisation as regards the third countries whose nationals are subject to a requirement to be in possession of a visa for the crossing of Member States' external borders (also referred to herein as 'the visa requirement') and those whose nationals are exempt from that requirement.
- (3) The determination of the third countries whose nationals are subject to, or exempt from, the visa requirement should be made on the basis of a considered, case-by-case assessment of a variety of criteria. That assessment should be made periodically and could lead to legislative proposals to amend Annex I to this Regulation, which lists the third countries whose nationals are required to be in possession of a visa when crossing the external borders of the Member States, and Annex II to this Regulation, which lists the third countries whose nationals are exempt from the requirement to be in possession of a visa when crossing the external borders of the Member States for stays of no more than 90 days in any 180-day period, notwithstanding the possibility of having country-specific amendments to those Annexes in particular circumstances, for instance as a result of a visa liberalisation process or as the ultimate consequence of a temporary suspension of the exemption from the visa requirement (also referred to herein as 'the visa exemption').
- (4) The composition of the lists of third countries in Annexes I and II should be, and should remain, consistent with the criteria set out in this Regulation. References to third countries in respect of which the situation has changed as regards those criteria should be transferred from one Annex to the other.
- (5) Developments in international law entailing changes in the status or designation of certain States or entities should be reflected in Annexes I and II.
- (6) As the Agreement on the European Economic Area ⁽⁴⁾ exempts nationals of Iceland, Liechtenstein and Norway from the visa requirement, those countries should not be included in the list in Annex II.
- (7) Since the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, on the free movement of persons ⁽⁵⁾ provides for free movement without visas for nationals of Switzerland and of the Member States, Switzerland should not be included in the list in Annex II.
- (8) As regards recognised refugees and stateless persons, without prejudice to obligations under international agreements signed by the Member States and in particular the European Agreement on the Abolition of Visas for

⁽¹⁾ Position of the European Parliament of 2 October 2018 (not yet published in the Official Journal) and decision of the Council of 6 November 2018.

⁽²⁾ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

⁽³⁾ See Annex III.

⁽⁴⁾ OJ L 1, 3.1.1994, p. 3.

⁽⁵⁾ OJ L 114, 30.4.2002, p. 6.

Refugees of the Council of Europe, signed at Strasbourg on 20 April 1959, the decision as to the visa requirement or exemption should be based on the third country in which those persons reside and which issued their travel documents. However, given the differences in the national law applicable to recognised refugees and to stateless persons, Member States should be able to decide whether those categories of persons should be exempted, where the third country in which those persons reside and which issued their travel documents is a third country whose nationals are exempt from the visa requirement.

- (9) In accordance with Regulation (EC) No 1931/2006 of the European Parliament and of the Council ⁽¹⁾ an exemption from the visa requirement should be laid down for holders of a local border traffic permit.
- (10) It should be possible for Member States to provide for exemptions from the visa requirement for holders of certain passports other than ordinary passports.
- (11) In specific cases where special visa rules are warranted, it should be possible for Member States to exempt certain categories of persons from the visa requirement or impose it on them in accordance with public international law or custom.
- (12) It should be possible for Member States to exempt from the visa requirement recognised refugees, all stateless persons, both those covered by the United Nations Convention relating to the Status of Stateless Persons of 28 September 1954 and those outside of the scope of that Convention, and school pupils travelling on school excursions, where the persons of these categories reside in a third country that is included in the list in Annex II to this Regulation.
- (13) The arrangements governing exemptions from the visa requirement should fully reflect actual practices. Certain Member States grant exemptions from the visa requirement for nationals of third countries included in the list of third countries whose nationals are required to be in possession of a visa when crossing the external borders of the Member States and who are members of the armed forces travelling on North Atlantic Treaty Organization (NATO) or Partnership for Peace business. For reasons of legal certainty, those exemptions, which are based on international obligations external to Union law, should be referred to in this Regulation.
- (14) Full visa reciprocity is an objective which the Union should pursue in a proactive manner in its relations with third countries, thus contributing to improving the credibility and consistency of the Union's external policy.
- (15) Provision should be made for a Union mechanism enabling the principle of reciprocity to be implemented if one of the third countries included in the list in Annex II decides to make the nationals of one or more Member States subject to a visa requirement. That mechanism should provide for a Union response as an act of solidarity, if such a third country applies a visa requirement for nationals of at least one Member State.
- (16) Upon receipt of a notification from a Member State that a third country included in the list in Annex II applies a visa requirement for nationals of that Member State, all Member States should react in common, thus providing a Union response to a situation which affects the Union as a whole and subjects its citizens to different treatment.
- (17) In order to ensure the appropriate involvement of the European Parliament and of the Council in the second phase of application of the reciprocity mechanism, given the particularly sensitive political nature of the suspension of the exemption from the visa requirement for all the nationals of a third country included in the list in Annex II and its horizontal implications for the Member States, the Schengen associated countries and the Union itself, in particular for their external relations and for the overall functioning of the Schengen area, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of certain elements of the reciprocity mechanism. Conferring such power on the Commission takes into account the need for political discussion on the Union policy on visas in the Schengen area. It reflects also the need to ensure sufficient transparency and legal certainty in the application of the reciprocity mechanism to all the nationals of the third country concerned, in particular through the corresponding temporary amendment of Annex II to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽²⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

⁽¹⁾ Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405, 30.12.2006, p. 1).

⁽²⁾ OJ L 123, 12.5.2016, p. 1.

- (18) This Regulation should provide for a mechanism for the temporary suspension of the exemption from the visa requirement for a third country included in the list in Annex II ('the suspension mechanism') in an emergency situation, where an urgent response is needed in order to solve the difficulties faced by at least one Member State, and taking the overall impact of the emergency situation on the Union as a whole into account.
- (19) In order to ensure the efficient application of the suspension mechanism and of certain provisions of the reciprocity mechanism, and in particular in order to allow for all relevant factors and the possible implications of the application of those mechanisms to be adequately taken into account, implementing powers should be conferred on the Commission with regard to the determination of the categories of nationals of the third country concerned who should be subject to a temporary suspension of the exemption from the visa requirement within the framework of the reciprocity mechanism, and of the corresponding duration of that suspension, as well as with regard to the suspension mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾. The examination procedure should be used for the adoption of such implementing acts.
- (20) It is necessary to avoid and counter any abuse resulting from an exemption from the visa requirement for short-stay visits for nationals of a third country where they pose a threat to the public policy (ordre public) and the internal security of the Member State concerned.
- (21) The suspension mechanism should make it possible for Member States to notify circumstances leading to a possible suspension and for the Commission to trigger the suspension mechanism on its own initiative.
- (22) In particular, the use of the suspension mechanism should be facilitated by short reference periods and deadlines, allowing for a fast procedure, and the possible grounds of suspension should include a decrease in cooperation on readmission as well as a substantial increase in risks to the public policy or internal security of Member States. That decrease in cooperation should cover a substantial increase in the refusal rate of readmission applications, including for third-country nationals having transited through the third country concerned, where a readmission agreement concluded between the Union or a Member State and that third country provides for such a readmission obligation. The Commission should also be able to trigger the suspension mechanism in the event that the third country fails to cooperate on readmission, in particular where a readmission agreement has been concluded between the third country concerned and the Union.
- (23) For the purposes of the suspension mechanism, a substantial increase indicates an increase exceeding a threshold of 50 %. It could also indicate a lower increase if the Commission deemed it applicable in the particular case notified by the Member State concerned.
- (24) For the purposes of the suspension mechanism, a low recognition rate indicates a recognition rate of asylum applications of around 3 or 4 %. It could also indicate a higher recognition rate if the Commission deemed it applicable in the particular case notified by the Member State concerned.
- (25) It is necessary to avoid and counter any abuse of the visa exemption where it leads to an increase in migratory pressure, resulting from, for example, an increase in unfounded asylum applications, and also when it leads to unfounded applications for residence permits.
- (26) With a view to ensuring that the specific requirements which were used to assess the appropriateness of a visa exemption, granted as a result of a successful conclusion of a visa liberalisation dialogue, continue to be fulfilled over time, the Commission should monitor the situation in the third countries concerned. The Commission should pay particular attention to the situation of human rights in the third countries concerned.
- (27) The Commission should report regularly to the European Parliament and to the Council, at least once a year, for a period of seven years after the entry into force of visa liberalisation for a particular third country, and thereafter whenever the Commission considers it necessary, or upon request by the European Parliament or by the Council.
- (28) The Commission should, before taking any decision to temporarily suspend the visa exemption for nationals of a third country, take into account the situation of human rights in that third country and the possible consequences of a suspension of the visa exemption for that situation.

⁽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).

- (29) The suspension of the exemption from the visa requirement by an implementing act should cover certain categories of nationals of the third country concerned, by reference to the relevant types of travel documents and, where appropriate, to additional criteria, such as persons travelling for the first time to the territory of the Member States. The implementing act should determine the categories of nationals to which the suspension should apply, taking into account the specific circumstances notified by one or several Member States or reported by the Commission and the principle of proportionality.
- (30) In order to ensure the appropriate involvement of the European Parliament and of the Council in the implementation of the suspension mechanism, given the politically sensitive nature of a suspension of an exemption from the visa requirement for all nationals of a third country included in the list in Annex II to this Regulation and its horizontal implications for the Member States and the Union itself, in particular for their external relations and for the overall functioning of the Schengen area, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the temporary suspension of the exemption from the visa requirement for the nationals of the third countries concerned. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (31) With a view to ensuring that the visa regime is administered openly and that the persons concerned are informed, Member States should communicate to the Commission and to the other Member States the measures which they take pursuant to this Regulation. For the same reasons, that information should also be published in the *Official Journal of the European Union*.
- (32) The conditions governing entry into the territory of the Member States or the issue of visas should not affect the rules governing the recognition of the validity of travel documents.
- (33) In accordance with the principle of proportionality as set out in Article 5 of the Treaty on European Union, the recourse to a Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement is both a necessary and an appropriate means of ensuring that the common policy on visas operates efficiently.
- (34) This Regulation should be without prejudice to the application of international agreements concluded by the European Community before the entry into force of Regulation (EC) No 539/2001 which give rise to the need to derogate from the common policy on visas, while taking into account the case-law of the Court of Justice of the European Union.
- (35) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁾, which fall within the area referred to in point B of Article 1 of Council Decision 1999/437/EC ⁽²⁾.
- (36) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽³⁾, which fall within the area referred to in points B and C of Article 1 of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽⁴⁾.
- (37) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

⁽²⁾ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

⁽³⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁴⁾ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁾, which fall within the area referred to in points B and C of Article 1 of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2011/350/EU ⁽²⁾.

- (38) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC ⁽³⁾; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (39) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽⁴⁾; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

Article 1

This Regulation determines the third countries whose nationals are subject to, or exempt from, the visa requirement, on the basis of a case-by-case assessment of a variety of criteria relating, inter alia, to illegal immigration, public policy and security, economic benefit, in particular in terms of tourism and foreign trade, and the Union's external relations with the relevant third countries, including, in particular, considerations of human rights and fundamental freedoms, as well as the implications of regional coherence and reciprocity.

Article 2

For the purposes of this Regulation, 'visa' means a visa as defined in point (a) of Article 2(2) of Regulation (EC) No 810/2009 of the European Parliament and of the Council ⁽⁵⁾.

Article 3

1. Nationals of third countries listed in Annex I shall be required to be in possession of a visa when crossing the external borders of the Member States.
2. Without prejudice to the requirements stemming from the European Agreement on the Abolition of Visas for Refugees of the Council of Europe signed at Strasbourg on 20 April 1959, recognised refugees and stateless persons shall be required to be in possession of a visa when crossing the external borders of the Member States if the third country where they are resident and which has issued them with their travel document is a third country listed in Annex I to this Regulation.

Article 4

1. Nationals of third countries listed in Annex II shall be exempt from the requirement set out in Article 3(1) for stays of no more than 90 days in any 180-day period.
2. The following persons shall also be exempt from the visa requirement:
 - (a) the nationals of third countries listed in Annex I to this Regulation who are holders of a local border traffic permit issued by the Member States pursuant to Regulation (EC) No 1931/2006 when those holders exercise their right within the context of the local border traffic regime;

⁽¹⁾ OJ L 160, 18.6.2011, p. 21.

⁽²⁾ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

⁽³⁾ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

⁽⁴⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

⁽⁵⁾ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

- (b) school pupils who are nationals of a third country listed in Annex I to this Regulation, who reside in a Member State applying Council Decision 94/795/JHA⁽¹⁾ and who are travelling in the context of a school excursion as members of a group of school pupils accompanied by a teacher from the school in question;
- (c) recognised refugees and stateless persons and other persons who do not hold the nationality of any country, who reside in a Member State and who are holders of a travel document issued by that Member State.

Article 5

Nationals of new third countries formerly part of third countries listed in Annexes I and II shall be subject respectively to Articles 3 and 4 unless and until the Council decides otherwise under the procedure laid down in the relevant provision of the TFEU.

Article 6

1. A Member State may provide for exceptions from the visa requirement provided for in Article 3 or from the exemption from the visa requirement provided for in Article 4 as regards:

- (a) holders of diplomatic passports, service/official passports or special passports;
- (b) civilian air and sea crew members in the performance of their duties;
- (c) civilian sea crew members, when they go ashore, who hold a seafarer's identity document issued in accordance with the International Labour Organisation Conventions No 108 of 13 May 1958 or No 185 of 19 June 2003 or the International Maritime Organization Convention on Facilitation of International Maritime Traffic of 9 April 1965;
- (d) crew and members of emergency or rescue missions in the event of a disaster or an accident;
- (e) civilian crew of ships navigating in international inland waters;
- (f) holders of travel documents issued by intergovernmental international organisations of which at least one Member State is a member, or by other entities recognised by the Member State concerned as subjects of international law, to officials of those organisations or entities.

2. A Member State may exempt from the visa requirement provided for in Article 3:

- (a) a school pupil having the nationality of a third country listed in Annex I, who resides in a third country listed in Annex II or in Switzerland and Liechtenstein and who is travelling in the context of a school excursion as a member of a group of school pupils accompanied by a teacher from the school in question;
- (b) recognised refugees and stateless persons if the third country where they reside and which issued their travel document is one of the third countries listed in Annex II;
- (c) members of the armed forces travelling on NATO or Partnership for Peace business and holders of identification and movement orders provided for by the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces of 19 June 1951;
- (d) without prejudice to the requirements stemming from the European Agreement on the Abolition of Visas for Refugees of the Council of Europe signed at Strasbourg on 20 April 1959, recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in the United Kingdom or in Ireland and are holders of a travel document issued by the United Kingdom or Ireland, which is recognised by the Member State concerned.

3. A Member State may provide for exceptions from the exemption from the visa requirement provided for in Article 4 as regards persons carrying out a paid activity during their stay.

Article 7

Where a third country listed in Annex II applies a visa requirement for nationals of at least one Member State, the following provisions shall apply:

- (a) within 30 days of the implementation by the third country of the visa requirement, the Member State concerned shall notify the European Parliament, the Council and the Commission thereof in writing.

⁽¹⁾ Council Decision 94/795/JHA of 30 November 1994 on a joint action adopted by the Council on the basis of Article K.3.2.b of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State (OJ L 327, 19.12.1994, p. 1).

That notification shall:

- (i) specify the date of implementation of the visa requirement and the types of travel documents and visas concerned;
- (ii) include a detailed explanation of the preliminary measures that the Member State concerned has taken with a view to ensuring visa-free travel with the third country in question and all relevant information.

Information relating to that notification shall be published without delay by the Commission in the *Official Journal of the European Union*, including information on the date of implementation of the visa requirement and the types of travel documents and visas concerned.

If the third country decides to lift the visa requirement before the expiry of the deadline referred to in the first subparagraph of this point, the notification shall not be made or shall be withdrawn and the information shall not be published;

- (b) the Commission shall, immediately following the date of the publication referred to in the third subparagraph of point (a) and in consultation with the Member State concerned, take steps with the authorities of the third country in question, in particular in the political, economic and commercial fields, in order to restore or introduce visa-free travel and shall inform the European Parliament and the Council of those steps without delay;
- (c) if within 90 days of the date of the publication referred to in the third subparagraph of point (a) and despite all the steps taken in accordance with point (b), the third country has not lifted the visa requirement, the Member State concerned may request the Commission to suspend the exemption from the visa requirement for certain categories of nationals of that third country. Where a Member State makes such a request, it shall inform the European Parliament and the Council thereof;
- (d) the Commission shall, when considering further steps in accordance with point (e), (f) or (h), take into account the outcome of the measures taken by the Member State concerned with a view to ensuring visa-free travel with the third country in question, the steps taken in accordance with point (b), and the consequences of the suspension of the exemption from the visa requirement for the external relations of the Union and its Member States with the third country in question;
- (e) if the third country concerned has not lifted the visa requirement, the Commission shall, at the latest within six months of the date of the publication referred to in the third subparagraph of point (a) and subsequently at intervals not exceeding six months within a total period which may not extend beyond the date on which the delegated act referred to in point (f) enters into force or is objected to:
 - (i) adopt, at the request of the Member State concerned or on its own initiative, an implementing act temporarily suspending the exemption from the visa requirement for certain categories of nationals of the third country concerned for a period of up to six months. That implementing act shall fix a date, within 90 days of its entry into force, on which the suspension of the exemption from the visa requirement is to take effect, taking into account the available resources in the consulates of the Member States. When adopting subsequent implementing acts, the Commission may extend the period of that suspension by further periods of up to six months and may modify the categories of nationals of the third country in question for which the exemption from the visa requirement is suspended.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(2). Without prejudice to the application of Article 6, during the periods of suspension all the categories of nationals of the third country referred to in the implementing act shall be required to be in possession of a visa when crossing the external borders of the Member States; or

- (ii) submit to the committee referred to in Article 11(1) a report assessing the situation and stating the reasons why it decided not to suspend the exemption from the visa requirement and inform the European Parliament and the Council thereof.

All relevant factors, such as those referred to in point (d), shall be taken into account in that report. The European Parliament and the Council may have a political discussion on the basis of that report;

- (f) if within 24 months of the date of the publication referred to in the third subparagraph of point (a), the third country concerned has not lifted the visa requirement, the Commission shall adopt a delegated act in accordance with Article 10 temporarily suspending the exemption from the visa requirement for a period of 12 months for the nationals of that third country. The delegated act shall fix a date, within 90 days of its entry into force, on which the suspension of the exemption from the visa requirement is to take effect, taking into account the available resources in the consulates of the Member States and shall amend Annex II accordingly. That amendment shall be made by inserting next to the name of the third country in question a footnote indicating that the exemption from the visa requirement is suspended with regard to that third country and specifying the period of that suspension.

From the date when the suspension of the exemption from the visa requirement for the nationals of the third country concerned takes effect or when an objection to the delegated act is expressed pursuant to Article 10(7), any implementing act adopted pursuant to point (e) of this Article concerning that third country shall expire. Where the Commission submits a legislative proposal as referred to in point (h), the period of suspension of the exemption from the visa requirement referred to in the first subparagraph of this point shall be extended by six months. The footnote referred to in that subparagraph shall be amended accordingly.

Without prejudice to the application of Article 6, during the periods of that suspension the nationals of the third country concerned by the delegated act shall be required to be in possession of a visa when crossing the external borders of the Member States;

- (g) any subsequent notification made by another Member State pursuant to point (a) concerning the same third country during the period of application of measures adopted pursuant to point (e) or (f) with regard to that third country shall be merged into the ongoing procedures without the deadlines or periods set out in those points being extended;
- (h) if within six months of the entry into force of the delegated act referred to in point (f) the third country in question has not lifted the visa requirement, the Commission may submit a legislative proposal to amend this Regulation in order to transfer the reference to the third country from Annex II to Annex I;
- (i) the procedures referred to in points (e), (f) and (h) shall not affect the right of the Commission to submit at any time a legislative proposal to amend this Regulation in order to transfer the reference to the third country concerned from Annex II to Annex I;
- (j) where the third country in question lifts the visa requirement, the Member State concerned shall immediately notify the European Parliament, the Council and the Commission thereof. The notification shall be published without delay by the Commission in the *Official Journal of the European Union*.

Any implementing or delegated act adopted pursuant to point (e) or (f) concerning the third country in question shall expire seven days after the publication referred to in the first subparagraph of this point. Where the third country in question has introduced a visa requirement for nationals of two or more Member States, the implementing or delegated act concerning that third country shall expire seven days after the publication of the notification concerning the last Member State whose nationals were subject to the visa requirement by that third country. The footnote referred to in the first subparagraph of point (f) shall be deleted upon expiry of the delegated act concerned. The information concerning that expiry shall be published without delay by the Commission in the *Official Journal of the European Union*.

Where the third country in question lifts the visa requirement without the Member State concerned notifying it in accordance with the first subparagraph of this point, the Commission shall on its own initiative proceed without delay with the publication referred to in that subparagraph, and the second subparagraph of this point shall apply.

Article 8

1. By way of derogation from Article 4, the exemption from the visa requirement for nationals of a third country listed in Annex II shall be temporarily suspended, based on relevant and objective data, in accordance with this Article.
2. A Member State may notify the Commission if it is confronted, over a two-month period, compared with the same period in the preceding year or compared with the last two months prior to the implementation of the exemption from the visa requirement for nationals of a third country listed in Annex II, with one or more of the following circumstances:
 - (a) a substantial increase in the number of nationals of that third country refused entry or found to be staying in the Member State's territory without a right to do so;
 - (b) a substantial increase in the number of asylum applications from the nationals of that third country for which the recognition rate is low;
 - (c) a decrease in cooperation on readmission with that third country, substantiated by adequate data, in particular a substantial increase in the refusal rate of readmission applications submitted by the Member State to that third country for its own nationals or, where a readmission agreement concluded between the Union or that Member State and that third country so provides, for third-country nationals having transited through that third country;
 - (d) an increased risk or imminent threat to the public policy or internal security of Member States, in particular a substantial increase in serious criminal offences, linked to the nationals of that third country, substantiated by objective, concrete and relevant information and data provided by the competent authorities.

The notification referred to in the first subparagraph of this paragraph shall state the reasons on which it is based and shall include relevant data and statistics as well as a detailed explanation of the preliminary measures that the Member State concerned has taken with a view to remedying the situation. In its notification, the Member State concerned may specify the categories of nationals of the third country concerned which are to be covered by an implementing act under point (a) of paragraph 6, specifying the detailed reasons for doing so. The Commission shall inform the European Parliament and the Council immediately of such notification.

3. Where the Commission, taking into account the relevant data, reports and statistics, has concrete and reliable information that the circumstances referred to in point (a), (b), (c) or (d) of paragraph 2 are occurring in one or more Member States, or that the third country is not cooperating on readmission, in particular where a readmission agreement has been concluded between that third country and the Union, the Commission shall inform the European Parliament and the Council promptly of its analysis, and the provisions of paragraph 6 shall apply.

For the purposes of the first subparagraph, non-cooperation on readmission may consist in, for instance:

- refusing or failing to process readmission applications in due time;
- failing to issue travel documents in due time for the purposes of returning within the deadlines set out in the readmission agreement or refusing to accept European travel documents issued following the expiry of the deadlines set out in the readmission agreement; or
- terminating or suspending the readmission agreement.

4. The Commission shall monitor the continuous compliance with the specific requirements, which are based on Article 1 and which were used to assess the appropriateness of granting visa liberalisation, by the third countries whose nationals have been exempted from the visa requirement when travelling to the territory of Member States as a result of the successful conclusion of a visa liberalisation dialogue conducted between the Union and that third country.

In addition, the Commission shall report regularly to the European Parliament and to the Council, at least once a year, for a period of seven years after the date of entry into force of visa liberalisation for that third country, and thereafter whenever the Commission considers it to be necessary, or upon request by the European Parliament or by the Council. The report shall focus on the third countries which the Commission considers, based on concrete and reliable information, are no longer complying with certain requirements.

Paragraph 6 shall apply where a report of the Commission shows that one or more of the specific requirements is no longer complied with as regards a particular third country.

5. The Commission shall examine any notification made pursuant to paragraph 2, taking the following into account:

- (a) whether any of the circumstances referred to in paragraph 2 exist;
- (b) the number of Member States affected by any of the circumstances referred to in paragraph 2;
- (c) the overall impact of the circumstances referred to in paragraph 2 on the migratory situation in the Union as it appears from the data provided by the Member States or available to the Commission;
- (d) the reports prepared by the European Border and Coast Guard, the European Asylum Support Office or the European Union Agency for Law Enforcement Cooperation (Europol) or any other institution, body, office or agency of the Union or international organisation competent in matters covered by this Regulation, if the circumstances so require in the specific case;
- (e) the information which the Member State concerned may have given in its notification in relation to possible measures under point (a) of paragraph 6;
- (f) the overall question of public policy and internal security, in consultation with the Member State concerned.

The Commission shall inform the European Parliament and the Council of the results of its examination.

6. Where, on the basis of the analysis referred to in paragraph 3, the report referred to in paragraph 4, or the examination referred to in paragraph 5, and taking into account the consequences of a suspension of the exemption from the visa requirement for the external relations of the Union and its Member States with the third country concerned, while working in close cooperation with that third country to find alternative long-term solutions, the Commission decides that action is needed, or where a simple majority of Member States have notified the Commission of the existence of circumstances referred to in point (a), (b), (c) or (d) of paragraph 2, the following provisions shall apply:

- (a) the Commission shall adopt an implementing act temporarily suspending the exemption from the visa requirement for the nationals of the third country concerned for a period of nine months. The suspension shall apply to certain

categories of nationals of the third country concerned, by reference to the relevant types of travel documents and, where appropriate, to additional criteria. When deciding to which categories the suspension is to apply, the Commission shall, based on the information available, include categories that are broad enough in order to efficiently contribute to remedying the circumstances referred to in paragraphs 2, 3 and 4 in each specific case, while respecting the principle of proportionality. The Commission shall adopt the implementing act within one month of:

- (i) receiving the notification referred to in paragraph 2;
- (ii) being made aware of the information referred to in paragraph 3;
- (iii) presenting the report referred to in paragraph 4; or
- (iv) receiving the notification from a simple majority of Member States of the existence of circumstances referred to in point (a), (b), (c) or (d) of paragraph 2.

That implementing act shall be adopted in accordance with the examination procedure referred to in Article 11(2). It shall fix the date on which the suspension of the exemption from the visa requirement is to take effect.

During the period of suspension, the Commission shall establish an enhanced dialogue with the third country concerned with a view to remedying the circumstances in question.

- (b) Where the circumstances referred to in paragraphs 2, 3 and 4 of this Article persist, the Commission shall adopt, at the latest two months before the expiry of the nine-month period referred to in point (a) of this paragraph, a delegated act in accordance with Article 10, temporarily suspending the application of Annex II for a period of 18 months for all nationals of the third country concerned. The delegated act shall take effect from the date of expiry of the implementing act referred to in point (a) of this paragraph and shall amend Annex II accordingly. That amendment shall be made by inserting a footnote next to the name of the third country in question, indicating that the exemption from the visa requirement is suspended with regard to that third country and specifying the period of that suspension.

Where the Commission has submitted a legislative proposal pursuant to paragraph 7, the period of suspension of the exemption from the visa requirement provided for in the delegated act shall be extended by six months. The footnote shall be amended accordingly.

Without prejudice to the application of Article 6, during the period of suspension, the nationals of the third country concerned shall be required to be in possession of a visa when crossing the external borders of the Member States.

A Member State which, in accordance with Article 6, provides for new exemptions from the visa requirement for a category of nationals of the third country covered by the act suspending the exemption from the visa requirement shall communicate those measures in accordance with Article 12.

7. Before the end of the period of validity of the delegated act adopted pursuant to point (b) of paragraph 6, the Commission shall submit a report to the European Parliament and to the Council. The report may be accompanied by a legislative proposal to amend this Regulation in order to transfer the reference to the third country concerned from Annex II to Annex I.

8. Where the Commission has submitted a legislative proposal pursuant to paragraph 7, it may extend the validity of the implementing act adopted pursuant to point (a) of paragraph 6 of this Article by a period not exceeding 12 months. The decision to extend the validity of the implementing act shall be adopted in accordance with the examination procedure referred to in Article 11(2).

Article 9

1. By 10 January 2018, the Commission shall submit a report to the European Parliament and to the Council assessing the effectiveness of the reciprocity mechanism provided for in Article 7 and shall, if necessary, submit a legislative proposal to amend this Regulation. The European Parliament and the Council shall act on any such proposal in accordance with the ordinary legislative procedure.

2. By 29 March 2021, the Commission shall submit a report to the European Parliament and to the Council assessing the effectiveness of the suspension mechanism provided for in Article 8 and shall, if necessary, submit a legislative proposal to amend this Regulation. The European Parliament and the Council shall act on any such proposal in accordance with the ordinary legislative procedure.

Article 10

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 point (f) of Article 7 shall be conferred on the Commission for a period of five years from 9 January 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The power to adopt delegated acts referred to in point (b) of Article 8(6) shall be conferred on the Commission for a period of five years from 28 March 2017. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
4. The delegation of power referred to in point (f) of Article 7 and in point (b) of Article 8(6) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
5. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
6. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
7. A delegated act adopted pursuant to point (f) of Article 7 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.
8. A delegated act adopted pursuant to point (b) of Article 8(6) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.

Article 11

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.
3. 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 12

1. Member States shall communicate to the other Member States and the Commission the measures they take pursuant to Article 6, within five working days of the adoption of those measures.
2. The Commission shall publish the measures communicated pursuant to paragraph 1 in the *Official Journal of the European Union* for information.

Article 13

This Regulation shall not affect the competence of Member States with regard to the recognition of States and territorial units and passports, travel and identity documents issued by their authorities.

Article 14

Regulation (EC) No 539/2001 is repealed.

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 IV.

Article 15

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

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

Done at Strasbourg, 14 November 2018.

For the European Parliament

The President

A. TAJANI

For the Council

The President

K. EDTSTADLER

ANNEX I

**LIST OF THIRD COUNTRIES WHOSE NATIONALS ARE REQUIRED TO BE IN POSSESSION OF A VISA
WHEN CROSSING THE EXTERNAL BORDERS OF THE MEMBER STATES**

1. STATES

Afghanistan

Armenia

Angola

Azerbaijan

Bangladesh

Burkina Faso

Bahrain

Burundi

Benin

Bolivia

Bhutan

Botswana

Belarus

Belize

Democratic Republic of the Congo

Central African Republic

Congo

Côte d'Ivoire

Cameroon

China

Cuba

Cape Verde

Djibouti

Dominican Republic

Algeria

Ecuador

Egypt

Eritrea

Eswatini

Ethiopia

Fiji

Gabon

Ghana

The Gambia

Guinea

Equatorial Guinea

Guinea-Bissau
Guyana
Haiti
Indonesia
India
Iraq
Iran
Jamaica
Jordan
Kenya
Kyrgyzstan
Cambodia
Comoros
North Korea
Kuwait
Kazakhstan
Laos
Lebanon
Sri Lanka
Liberia
Lesotho
Libya
Morocco
Madagascar
Mali
Myanmar/Burma
Mongolia
Mauritania
Maldives
Malawi
Mozambique
Namibia
Niger
Nigeria
Nepal
Oman
Papua New Guinea
Philippines
Pakistan
Qatar
Russia
Rwanda

Saudi Arabia
Sudan
Sierra Leone
Senegal
Somalia
Suriname
South Sudan
São Tomé and Príncipe
Syria
Chad
Togo
Thailand
Tajikistan
Turkmenistan
Tunisia
Turkey
Tanzania
Uganda
Uzbekistan
Vietnam
Yemen
South Africa
Zambia
Zimbabwe

2. ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE

- Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999
 - The Palestinian Authority
-

ANNEX II

LIST OF THIRD COUNTRIES WHOSE NATIONALS ARE EXEMPT FROM THE REQUIREMENT TO BE IN POSSESSION OF A VISA WHEN CROSSING THE EXTERNAL BORDERS OF THE MEMBER STATES FOR STAYS OF NO MORE THAN 90 DAYS IN ANY 180-DAY PERIOD

1. STATES

former Yugoslav Republic of Macedonia ⁽¹⁾

Andorra

United Arab Emirates ⁽²⁾

Antigua and Barbuda

Albania ⁽¹⁾

Argentina

Australia

Bosnia and Herzegovina ⁽¹⁾

Barbados

Brunei

Brazil

Bahamas

Canada

Chile

Colombia

Costa Rica

Dominica ⁽²⁾

Micronesia ⁽²⁾

Grenada ⁽²⁾

Georgia ⁽³⁾

Guatemala

Honduras

Israel

Japan

Kiribati ⁽²⁾

Saint Kitts and Nevis

South Korea

Saint Lucia ⁽²⁾

⁽¹⁾ The exemption from the visa requirement shall only apply to holders of biometric passports.

⁽²⁾ The exemption from the visa requirement shall apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Union.

⁽³⁾ The exemption from the visa requirement shall be limited to the holders of biometric passports issued by Georgia in line with standards of the International Civil Aviation Organisation (ICAO).

Monaco

Moldova ⁽¹⁾

Montenegro ⁽²⁾

Marshall Islands ⁽³⁾

Mauritius

Mexico

Malaysia

Nicaragua

Nauru ⁽³⁾

New Zealand

Panama

Peru ⁽³⁾

Palau ⁽³⁾

Paraguay

Serbia (excluding holders of Serbian passports issued by the Serbian Coordination Directorate (in Serbian: *Koordinaciona uprava*)) ⁽²⁾

Solomon Islands

Seychelles

Singapore

San Marino

El Salvador

Timor-Leste ⁽³⁾

Tonga ⁽³⁾

Trinidad and Tobago

Tuvalu ⁽³⁾

Ukraine ⁽⁴⁾

United States

Uruguay

Holy See

Saint Vincent and the Grenadines ⁽³⁾

Venezuela

Vanuatu ⁽³⁾

Samoa

⁽¹⁾ The exemption from the visa requirement shall be limited to the holders of biometric passports issued by Moldova in line with standards of the International Civil Aviation Organisation (ICAO).

⁽²⁾ The exemption from the visa requirement shall only apply to holders of biometric passports.

⁽³⁾ The exemption from the visa requirement shall apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Union.

⁽⁴⁾ The exemption from the visa requirement shall be limited to the holders of biometric passports issued by Ukraine in line with standards of the International Civil Aviation Organisation (ICAO).

2. SPECIAL ADMINISTRATIVE REGIONS OF THE PEOPLE'S REPUBLIC OF CHINA

Hong Kong SAR ⁽¹⁾

Macao SAR ⁽²⁾

3. BRITISH CITIZENS WHO ARE NOT NATIONALS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE PURPOSES OF UNION LAW

British nationals (Overseas)

British overseas territories citizens (BOTC)

British overseas citizens (BOC)

British protected persons (BPP)

British subjects (BS)

4. ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE

Taiwan ⁽³⁾

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⁽¹⁾ The exemption from the visa requirement shall only apply to holders of a 'Hong Kong Special Administrative Region' passport.

⁽²⁾ The exemption from the visa requirement shall only apply to holders of a 'Região Administrativa Especial de Macau' passport.

⁽³⁾ The exemption from the visa requirement shall only apply to holders of passports issued by Taiwan which include an identity card number.

ANNEX III

REPEALED REGULATION WITH LIST OF ITS SUCCESSIVE AMENDMENTS

Council Regulation (EC) No 539/2001
(OJ L 81, 21.3.2001, p. 1)

Council Regulation (EC) No 2414/2001
(OJ L 327, 12.12.2001, p. 1)

Council Regulation (EC) No 453/2003
(OJ L 69, 13.3.2003, p. 10)

Act of Accession of 2003, Annex II, point 18(B)

Council Regulation (EC) No 851/2005
(OJ L 141, 4.6.2005, p. 3)

Council Regulation (EC) No 1791/2006
(OJ L 363, 20.12.2006, p. 1)

Only the eleventh indent of Article 1(1) as regards Regulation (EC) No 539/2001, and point 11(B)(3) of the Annex

Council Regulation (EC) No 1932/2006
(OJ L 405, 30.12.2006, p. 23)

Council Regulation (EC) No 1244/2009
(OJ L 336, 18.12.2009, p. 1)

Regulation (EU) No 1091/2010 of the European Parliament and of the Council
(OJ L 329, 14.12.2010, p. 1)

Regulation (EU) No 1211/2010 of the European Parliament and of the Council
(OJ L 339, 22.12.2010, p. 6)

Council Regulation (EU) No 517/2013
(OJ L 158, 10.6.2013, p. 1)

Only the fourth indent of Article 1(1)(k) and point 13(B)(2) of the Annex

Regulation (EU) No 610/2013 of the European Parliament and of the Council
(OJ L 182, 29.6.2013, p. 1)

Only Article 4

Regulation (EU) No 1289/2013 of the European Parliament and of the Council
(OJ L 347, 20.12.2013, p. 74)

Regulation (EU) No 259/2014 of the European Parliament and of the Council
(OJ L 105, 8.4.2014, p. 9)

Regulation (EU) No 509/2014 of the European Parliament and of the Council
(OJ L 149, 20.5.2014, p. 67)

Regulation (EU) 2017/371 of the European Parliament and of the Council
(OJ L 61, 8.3.2017, p. 1)

Regulation (EU) 2017/372 of the European Parliament and of the Council
(OJ L 61, 8.3.2017, p. 7)

Regulation (EU) 2017/850 of the European Parliament and of the Council
(OJ L 133, 22.5.2017, p. 1)

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ANNEX IV

CORRELATION TABLE

Regulation (EC) No 539/2001	This Regulation
Article -1	Article 1
Article 1(1), first subparagraph	Article 3(1)
Article 1(1), second subparagraph	Article 3(2)
Article 1(2), first subparagraph	Article 4(1)
Article 1(2), second subparagraph, introductory wording	Article 4(2), introductory wording
Article 1(2), second subparagraph, first indent	Article 4(2)(a)
Article 1(2), second subparagraph, second indent	Article 4(2)(b)
Article 1(2), second subparagraph, third indent	Article 4(2)(c)
Article 1(3)	Article 5
Article 1(4)	Article 7
Article 1a(1) and (2)	Article 8(1) and (2)
Article 1a(2a)	Article 8(3)
Article 1a(2b)	Article 8(4)
Article 1a(3)	Article 8(5)
Article 1a(4)	Article 8(6)
Article 1a(5)	Article 8(7)
Article 1a(6)	Article 8(8)
Article 1b	Article 9(1)
Article 1c	Article 9(2)
Article 2	Article 2
Article 4	Article 6
Article 4a	Article 11
Article 4b(1) and (2)	Article 10(1) and (2)
Article 4b(2a)	Article 10(3)
Article 4b(3)	Article 10(4)
Article 4b(3a)	Article 10(5)
Article 4b(4)	Article 10(6)
Article 4b(5)	Article 10(7)
Article 4b(6)	Article 10(8)
Article 5	Article 12
Article 6	Article 13
Article 7	Article 14
Article 8	Article 15
Annex I	Annex I
Annex II	Annex II
—	Annex III
—	Annex IV

REGULATION (EU) 2018/1807 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 14 November 2018
on a framework for the free flow of non-personal data in the European Union
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) The digitisation of the economy is accelerating. Information and Communications Technology is no longer a specific sector, but the foundation of all modern innovative economic systems and societies. Electronic data are at the centre of those systems and can generate great value when analysed or combined with services and products. At the same time, the rapid development of the data economy and emerging technologies such as Artificial Intelligence, Internet of Things products and services, autonomous systems, and 5G are raising novel legal issues surrounding questions of access to and reuse of data, liability, ethics and solidarity. Work should be considered on the issue of liability, in particular through the implementation of self-regulatory codes and other best practices, taking into account recommendations, decisions and actions taken without human interaction along the entire value chain of data processing. Such work might also include appropriate mechanisms for determining liability, for transferring responsibility among cooperating services, for insurance and for auditing.
- (2) Data value chains are built on different data activities: data creation and collection; data aggregation and organisation; data processing; data analysis, marketing and distribution; use and re-use of data. The effective and efficient functioning of data processing is a fundamental building block in any data value chain. However, the effective and efficient functioning of data processing, and the development of the data economy in the Union, are hampered, in particular, by two types of obstacles to data mobility and to the internal market: data localisation requirements put in place by Member States' authorities and vendor lock-in practices in the private sector.
- (3) The freedom of establishment and the freedom to provide services under the Treaty on the Functioning of the European Union ("TFEU") apply to data processing services. However, the provision of those services is hampered or sometimes prevented by certain national, regional or local requirements to locate data in a specific territory.
- (4) Such obstacles to the free movement of data processing services and to the right of establishment of service providers originate from requirements in the laws of Member States to locate data in a specific geographical area or territory for the purpose of data processing. Other rules or administrative practices have an equivalent effect by imposing specific requirements which make it more difficult to process data outside a specific geographical area or territory within the Union, such as requirements to use technological facilities that are certified or approved within a specific Member State. Legal uncertainty as to the extent of legitimate and illegitimate data localisation requirements further limits the choices available to market players and to the public sector regarding the location of data processing. This Regulation in no way limits the freedom of businesses to conclude contracts specifying where data are to be located. This Regulation is merely intended to safeguard that freedom by ensuring that an agreed location can be situated anywhere within the Union.

⁽¹⁾ OJ C 227, 28.6.2018, p. 78.

⁽²⁾ Position of the European Parliament of 4 October 2018 (not yet published in the Official Journal) and decision of the Council of 6 November 2018.

- (5) At the same time, data mobility in the Union is also inhibited by private restrictions: legal, contractual and technical issues hindering or preventing users of data processing services from porting their data from one service provider to another or back to their own information technology (IT) systems, not least upon termination of their contract with a service provider.
- (6) The combination of those obstacles has led to a lack of competition between cloud service providers in the Union, to various vendor lock-in issues, and to a serious lack of data mobility. Likewise, data-localisation policies have undermined the ability of research and development companies to facilitate collaboration between firms, universities, and other research organisations with the aim of driving innovation.
- (7) For reasons of legal certainty and because of the need for a level playing field within the Union, a single set of rules for all market participants is a key element for the functioning of the internal market. In order to remove obstacles to trade and distortions of competition resulting from divergences between national laws and to prevent the emergence of further likely obstacles to trade and significant distortions of competition, it is necessary to adopt uniform rules applicable in all Member States.
- (8) The legal framework on the protection of natural persons with regard to the processing of personal data, and on respect for private life and the protection of personal data in electronic communications and in particular Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹⁾ and Directives (EU) 2016/680 ⁽²⁾ and 2002/58/EC ⁽³⁾ of the European Parliament and of the Council are not affected by this Regulation.
- (9) The expanding Internet of Things, artificial intelligence and machine learning, represent major sources of non-personal data, for example as a result of their deployment in automated industrial production processes. Specific examples of non-personal data include aggregate and anonymised datasets used for big data analytics, data on precision farming that can help to monitor and optimise the use of pesticides and water, or data on maintenance needs for industrial machines. If technological developments make it possible to turn anonymised data into personal data, such data are to be treated as personal data, and Regulation (EU) 2016/679 is to apply accordingly.
- (10) Under Regulation (EU) 2016/679, Member States may neither restrict nor prohibit the free movement of personal data within the Union for reasons connected with the protection of natural persons with regard to the processing of personal data. This Regulation establishes the same principle of free movement within the Union for non-personal data except when a restriction or a prohibition is justified by public security reasons. Regulation (EU) 2016/679 and this Regulation provide a coherent set of rules that cater for free movement of different types of data. Furthermore, this Regulation does not impose an obligation to store the different types of data separately.
- (11) In order to create a framework for the free flow of non-personal data in the Union and the foundation for developing the data economy and enhancing the competitiveness of Union industry, it is necessary to lay down a clear, comprehensive and predictable legal framework for the processing of data other than personal data in the internal market. A principle-based approach that provides for cooperation among Member States, as well as self-regulation, should ensure that the framework is flexible enough to take into account the evolving needs of users, service providers and national authorities in the Union. In order to avoid the risk of overlaps with existing mechanisms, thereby avoiding higher burdens both for Member States and businesses, detailed technical rules should not be established.
- (12) This Regulation should not affect data processing in so far as it is carried out as part of an activity which falls outside the scope of Union law. In particular, it should be recalled that, in accordance with Article 4 of the Treaty on European Union ("TEU"), national security is the sole responsibility of each Member State.

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

⁽²⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

⁽³⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

- (13) The free flow of data within the Union will play an important role in achieving data-driven growth and innovation. Like businesses and consumers, Member States' public authorities and bodies governed by public law stand to benefit from increased freedom of choice regarding data-driven service providers, from more competitive prices and from a more efficient provision of services to citizens. Given the large amounts of data that public authorities and bodies governed by public law handle, it is of the utmost importance that they lead by example by taking up data processing services and that they refrain from making data localisation restrictions when they make use of data processing services. Therefore, public authorities and bodies governed by public law should be covered by this Regulation. In this regard, the principle of the free flow of non-personal data for which this Regulation provides should apply also to general and consistent administrative practices and to other data localisation requirements in the field of public procurement, without prejudice to Directive 2014/24/EU of the European Parliament and of the Council ⁽¹⁾.
- (14) As in the case of Directive 2014/24/EU, this Regulation is without prejudice to laws, regulations, and administrative provisions which relate to the internal organisation of Member States and that allocate, among public authorities and bodies governed by public law, powers and responsibilities for the processing of data without contractual remuneration of private parties, as well as the laws, regulations and administrative provisions of Member States that provide for the implementation of those powers and responsibilities. While public authorities and bodies governed by public law are encouraged to consider the economic and other benefits of outsourcing to external service providers, they might have legitimate reasons to choose self-provisioning of services or insourcing. Consequently, nothing in this Regulation obliges Member States to contract out or externalise the provision of services that they wish to provide themselves or to organise by means other than public contracts.
- (15) This Regulation should apply to natural or legal persons who provide data processing services to users residing or having an establishment in the Union, including those who provide data processing services in the Union without an establishment in the Union. This Regulation should therefore not apply to data processing services taking place outside the Union and to data localisation requirements relating to such data.
- (16) This Regulation does not lay down rules relating to the determination of applicable law in commercial matters and is therefore without prejudice to Regulation (EC) No 593/2008 of the European Parliament and of the Council ⁽²⁾. In particular, to the extent that the law applicable to a contract has not been chosen in accordance with that Regulation, a contract for the provision of services is, in principle, governed by the law of the country of the service provider's habitual residence.
- (17) This Regulation should apply to data processing in the broadest sense, encompassing the usage of all types of IT systems, whether located on the premises of the user or outsourced to a service provider. It should cover data processing of different levels of intensity, from data storage (Infrastructure-as-a-Service (IaaS)) to the processing of data on platforms (Platform-as-a-Service (PaaS)) or in applications (Software-as-a-Service (SaaS)).
- (18) Data localisation requirements represent a clear barrier to the free provision of data processing services across the Union and to the internal market. As such, they should be banned unless they are justified on grounds of public security, as defined by Union law, in particular within the meaning of Article 52 TFEU, and satisfy the principle of proportionality enshrined in Article 5 TEU. In order to give effect to the principle of free flow of non-personal data across borders, to ensure the swift removal of existing data localisation requirements and to enable, for operational reasons, the processing of data in multiple locations across the Union, and since this Regulation provides for measures to ensure data availability for regulatory control purposes, Member States should only be able to invoke public security as a justification for data localisation requirements.
- (19) The concept of 'public security', within the meaning of Article 52 TFEU and as interpreted by the Court of Justice, covers both the internal and external security of a Member State, as well as issues of public safety, in order, in particular, to facilitate the investigation, detection and prosecution of criminal offences. It presupposes the existence of a genuine and sufficiently serious threat affecting one of the fundamental interests of society, such as a threat to the functioning of institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or the peaceful coexistence of nations, or a risk to military interests. In compliance with the principle of proportionality, data localisation requirements that are justified on grounds of public security should be suitable for attaining the objective pursued, and should not go beyond what is necessary to attain that objective.

⁽¹⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

⁽²⁾ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

- (20) In order to ensure the effective application of the principle of free flow of non-personal data across borders, and to prevent the emergence of new barriers to the smooth functioning of the internal market, Member States should immediately communicate to the Commission any draft act that introduces a new data localisation requirement or modifies an existing data localisation requirement. Those draft acts should be submitted and assessed in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council ⁽¹⁾.
- (21) Moreover, in order to eliminate potential existing barriers, during a transitional period of 24 months from the date of application of this Regulation, Member States should carry out a review of existing laws, regulations or administrative provisions of a general nature laying down data localisation requirements and communicate to the Commission any such data localisation requirement that they consider being in compliance with this Regulation, together with a justification for it. This should enable the Commission to examine the compliance of any remaining data localisation requirements. The Commission should be able, where appropriate, to make comments to the Member State in question. Such comments could include a recommendation to amend or repeal the data localisation requirement.
- (22) The obligations to communicate existing data localisation requirements and draft acts to the Commission established by this Regulation should apply to regulatory data localisation requirements and draft acts of a general nature, but not to decisions addressed to a specific natural or legal person.
- (23) In order to ensure the transparency of data localisation requirements in the Member States laid down in a law, regulation or administrative provision of a general nature for natural and legal persons, such as service providers and users of data processing services, Member States should publish information on such requirements on a national online single information point, and regularly update that information. Alternatively, Member States should provide up-to-date information on such requirements to a central information point established under another Union act. In order to appropriately inform natural and legal persons of data localisation requirements across the Union, Member States should notify to the Commission the addresses of such single information points. The Commission should publish this information on its own website, along with a regularly updated consolidated list of all data localisation requirements in force in Member States, including summarised information on those requirements.
- (24) Data localisation requirements frequently stem from a lack of trust in cross-border data processing, deriving from the presumed unavailability of data for the purposes of the competent authorities of the Member States, such as for inspection and audit for regulatory or supervisory control. Such lack of trust cannot be overcome solely by the nullity of contractual terms prohibiting lawful access to data by competent authorities for the performance of their official duties. Therefore, this Regulation should clearly stipulate that it does not affect the powers of competent authorities to request or obtain access to data in accordance with Union or national law, and that competent authorities cannot be refused access to data on the basis that the data are processed in another Member State. Competent authorities could impose functional requirements to support access to data, such as requiring that system descriptions are to be kept in the Member State concerned.
- (25) Natural or legal persons who are subject to obligations to provide data to competent authorities can comply with such obligations by providing and guaranteeing effective and timely electronic access to the data to competent authorities, regardless of the Member State in the territory of which the data are processed. Such access can be ensured through concrete terms and conditions in contracts between the natural or legal person subject to the obligation to provide access and the service provider.
- (26) Where a natural or legal person is subject to an obligation to provide data and fails to comply with that obligation, the competent authority should be able to seek assistance from competent authorities in other Member States. In such cases, competent authorities should use specific cooperation instruments in Union law or under international agreements, depending on the subject matter in a given case, such as, in the area of police

⁽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).

cooperation, criminal or civil justice or in administrative matters respectively, Council Framework Decision 2006/960/JHA ⁽¹⁾, Directive 2014/41/EU of the European Parliament and of the Council ⁽²⁾, the Convention on Cybercrime of the Council of Europe ⁽³⁾, Council Regulation (EC) No 1206/2001 ⁽⁴⁾, Council Directive 2006/112/EC ⁽⁵⁾ and Council Regulation (EU) No 904/2010 ⁽⁶⁾. In the absence of such specific cooperation mechanisms, competent authorities should cooperate with each other with a view to providing access to the data sought, through designated single points of contact.

- (27) Where a request for assistance entails obtaining access to any premises of a natural or legal person including to any data processing equipment and means, by the requested authority, such access must be in accordance with Union law or national procedural law, including any requirement to obtain prior judicial authorisation.
- (28) This Regulation should not allow users to attempt to evade the application of national law. It should therefore provide for the imposition, by Member States, of effective, proportionate and dissuasive penalties on users which prevent competent authorities from receiving access to their data necessary for the performance of the competent authorities' official duties under Union and national law. In urgent cases, where a user abuses its right, Member States should be able to impose strictly proportionate interim measures. Any interim measures requiring the re-localisation of data for longer than 180 days following the re-localisation would deviate from the free movement of data principle for a significant period and should, therefore, be communicated to the Commission for the examination of their compatibility with Union law.
- (29) The ability to port data without hindrance is a key factor in facilitating user choice and effective competition on markets for data processing services. The real or perceived difficulties in porting data cross-border also undermine the confidence of professional users when taking up cross-border offers, and thereby their confidence in the internal market. Whereas individual consumers benefit from existing Union law, the ability to switch between service providers is not facilitated for those users who act in the course of their business or professional activities. Consistent technical requirements across the Union, whether concerning technical harmonisation, mutual recognition or voluntary harmonisation, also contribute to developing a competitive internal market for data processing services.
- (30) In order to take full advantage of the competitive environment, professional users should be able to make informed choices and to easily compare the individual components of various data processing services offered in the internal market, including in respect of the contractual terms and conditions of porting data upon the termination of a contract. In order to align with the innovation potential of the market and to take into account the experience and expertise of the service providers and professional users of data processing services, the detailed information and operational requirements for data porting should be defined by market players through self-regulation, encouraged, facilitated and monitored by the Commission, in the form of Union codes of conduct which might include model contractual terms and conditions.
- (31) In order to be effective and to make switching between service providers and data porting easier, such codes of conduct should be comprehensive and should cover at least the key aspects that are important during the process of porting data, such as the processes used for, and the location of, data back-ups; the available data formats and supports; the required IT configuration and minimum network bandwidth; the time required prior to initiating the porting process and the time during which the data will remain available for porting; and the guarantees for accessing data in the case of the bankruptcy of the service provider. The codes of conduct should also make clear that vendor lock-in is not an acceptable business practice, should provide for trust-increasing technologies, and should be regularly updated in order to keep pace with technological developments. The Commission should ensure that all relevant stakeholders, including associations of small and medium-sized enterprises (SMEs) and start-ups, users and cloud service providers are consulted throughout the process. The Commission should evaluate the development, and the effectiveness of the implementation, of such codes of conduct.

⁽¹⁾ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p. 89).

⁽²⁾ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

⁽³⁾ Convention on Cybercrime of the Council of Europe, CETS No 185.

⁽⁴⁾ Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

⁽⁵⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁽⁶⁾ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).

- (32) Where a competent authority in one Member State requests assistance from another Member State in order to obtain access to data pursuant to this Regulation, it should submit, through a designated single point of contact, a duly justified request to the latter's designated single point of contact, which should include a written explanation of the reasons and the legal bases for seeking access to the data. The single point of contact designated by the Member State whose assistance is requested should facilitate the transmission of the request to the relevant competent authority in the requested Member State. In order to ensure effective cooperation, the authority to which a request is transmitted should without undue delay provide assistance in response to a given request or provide information on difficulties experienced in fulfilling such request, or on its grounds for refusing it.
- (33) Enhancing trust in the security of cross-border data processing should reduce the propensity of market players and the public sector to use data localisation as a proxy for data security. It should also improve the legal certainty for companies as regards compliance with the applicable security requirements when they outsource their data processing activities to service providers, including to those in other Member States.
- (34) Any security requirements related to data processing that are applied in a justified and proportionate manner on the basis of Union or national law in compliance with Union law in the Member State of residence or establishment of the natural or legal persons whose data are concerned should continue to apply to processing of that data in another Member State. Those natural or legal persons should be able to fulfil such requirements either themselves or through contractual clauses in contracts with service providers.
- (35) Security requirements set at national level should be necessary and proportionate to the risks posed to the security of data processing in scope of the national law in which these requirements are set.
- (36) Directive (EU) 2016/1148 of the European Parliament and of the Council ⁽¹⁾ provides for legal measures to boost the overall level of cybersecurity in the Union. Data processing services constitute one of the digital services covered by that Directive. According to that Directive, Member States are to ensure that digital service providers identify and take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network and information systems which they use. Such measures should ensure a level of security appropriate to the risk presented, and should take into account the security of systems and facilities; incident handling; business continuity management; monitoring, auditing and testing; and compliance with international standards. These elements are to be further specified by the Commission in implementing acts under that Directive.
- (37) The Commission should submit a report on the implementation of this Regulation, in particular with a view to determining the need for modifications in the light of technological or market developments. That report should in particular evaluate this Regulation, especially its application to data sets composed of both personal and non-personal data, as well as the implementation of the public security exception. Before this Regulation starts to apply, the Commission should also publish informative guidance on how to handle data sets composed of both personal and non-personal data, in order that companies, including SMEs, better understand the interaction between this Regulation and Regulation (EU) 2016/679, and to ensure that both Regulations are complied with.
- (38) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, and should be interpreted and applied in accordance with those rights and principles, including the rights to the protection of personal data, the freedom of expression and information and the freedom to conduct a business.
- (39) Since the objective of this Regulation, namely to ensure the free flow of data other than personal data in the Union, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

⁽¹⁾ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation aims to ensure the free flow of data other than personal data within the Union by laying down rules relating to data localisation requirements, the availability of data to competent authorities and the porting of data for professional users.

Article 2

Scope

1. This Regulation applies to the processing of electronic data other than personal data in the Union, which is:
 - (a) provided as a service to users residing or having an establishment in the Union, regardless of whether the service provider is established or not in the Union; or
 - (b) carried out by a natural or legal person residing or having an establishment in the Union for its own needs.
2. In the case of a data set composed of both personal and non-personal data, this Regulation applies to the non-personal data part of the data set. Where personal and non-personal data in a data set are inextricably linked, this Regulation shall not prejudice the application of Regulation (EU) 2016/679.
3. This Regulation does not apply to an activity which falls outside the scope of Union law.

This Regulation is without prejudice to laws, regulations, and administrative provisions that relate to the internal organisation of Member States and that allocate, among public authorities and bodies governed by public law defined in point (4) of Article 2(1) of Directive 2014/24/EU, powers and responsibilities for the processing of data without contractual remuneration of private parties, as well as the laws, regulations, and administrative provisions of Member States that provide for the implementation of those powers and responsibilities.

Article 3

Definitions

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

- (1) 'data' means data other than personal data as defined in point (1) of Article 4 of Regulation (EU) 2016/679;
- (2) 'processing' means any operation or set of operations which is performed on data or on sets of data in electronic format, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- (3) 'draft act' means a text drafted for the purpose of being enacted as a law, regulation or administrative provision of a general nature, the text being at the stage of preparation at which substantive amendments can still be made;
- (4) 'service provider' means a natural or legal person who provides data processing services;
- (5) 'data localisation requirement' means any obligation, prohibition, condition, limit or other requirement provided for in the laws, regulations or administrative provisions of a Member State or resulting from general and consistent administrative practices in a Member State and in bodies governed by public law, including in the field of public procurement, without prejudice to Directive 2014/24/EU, which imposes the processing of data in the territory of a specific Member State or hinders the processing of data in any other Member State;
- (6) 'competent authority' means an authority of a Member State or any other entity authorised by national law to perform a public function or to exercise official authority, that has the power to obtain access to data processed by a natural or legal person for the performance of its official duties, as provided for by Union or national law;
- (7) 'user' means a natural or legal person, including a public authority or a body governed by public law, using or requesting a data processing service;
- (8) 'professional user' means a natural or legal person, including a public authority or a body governed by public law, using or requesting a data processing service for purposes related to its trade, business, craft, profession or task.

*Article 4***Free movement of data within the Union**

1. Data localisation requirements shall be prohibited, unless they are justified on grounds of public security in compliance with the principle of proportionality.

The first subparagraph of this paragraph is without prejudice to paragraph 3 and to data localisation requirements laid down on the basis of existing Union law.

2. Member States shall immediately communicate to the Commission any draft act which introduces a new data localisation requirement or makes changes to an existing data localisation requirement in accordance with the procedures set out in Articles 5, 6 and 7 of Directive (EU) 2015/1535.

3. By 30 May 2021, Member States shall ensure that any existing data localisation requirement that is laid down in a law, regulation or administrative provision of a general nature and that is not in compliance with paragraph 1 of this Article is repealed.

By 30 May 2021, if a Member State considers that an existing measure containing a data localisation requirement is in compliance with paragraph 1 of this Article and can therefore remain in force, it shall communicate that measure to the Commission, together with a justification for maintaining it in force. Without prejudice to Article 258 TFEU, the Commission shall, within a period of six months from the date of receipt of such communication, examine the compliance of that measure with paragraph 1 of this Article and shall, where appropriate, make comments to the Member State in question, including, where necessary, recommending the amendment or the repeal of the measure.

4. Member States shall make the details of any data localisation requirements laid down in a law, regulation or administrative provision of a general nature and applicable in their territory publicly available via a national online single information point which they shall keep up-to-date, or provide up-to-date details of any such localisation requirements to a central information point established under another Union act.

5. Member States shall inform the Commission of the address of their single information point referred to in paragraph 4. The Commission shall publish the link(s) to such point(s) on its website, along with a regularly updated consolidated list of all data localisation requirements referred to in paragraph 4, including summarised information on those requirements.

*Article 5***Data availability for competent authorities**

1. This Regulation shall not affect the powers of competent authorities to request, or obtain, access to data for the performance of their official duties in accordance with Union or national law. Access to data by competent authorities may not be refused on the basis that the data are processed in another Member State.

2. Where, after requesting access to a user's data, a competent authority does not obtain access and if no specific cooperation mechanism exists under Union law or international agreements to exchange data between competent authorities of different Member States, that competent authority may request assistance from a competent authority in another Member State in accordance with the procedure set out in Article 7.

3. Where a request for assistance entails obtaining access to any premises of a natural or legal person, including to any data processing equipment and means, by the requested authority, such access must be in accordance with Union law or national procedural law.

4. Member States may impose effective, proportionate and dissuasive penalties for failure to comply with an obligation to provide data, in accordance with Union and national law.

In the case of abuse of rights by a user, a Member State may, where justified by the urgency of accessing the data and taking into account the interests of the parties concerned, impose strictly proportionate interim measures on that user. If an interim measure imposes re-localisation of data for a duration that is longer than 180 days following re-localisation, it shall be communicated within that 180-day period to the Commission. The Commission shall, in the shortest possible time, examine the measure and its compatibility with Union law, and, where appropriate, take the necessary measures. The Commission shall exchange information with the single points of contact of Member States referred to in Article 7 on experience gained in this regard.

*Article 6***Porting of data**

1. The Commission shall encourage and facilitate the development of self-regulatory codes of conduct at Union level ('codes of conduct'), in order to contribute to a competitive data economy, based on the principles of transparency and interoperability and taking due account of open standards, covering, inter alia, the following aspects:
 - (a) best practices for facilitating the switching of service providers and the porting of data in a structured, commonly used and machine-readable format including open standard formats where required or requested by the service provider receiving the data;
 - (b) minimum information requirements to ensure that professional users are provided, before a contract for data processing is concluded, with sufficiently detailed, clear and transparent information regarding the processes, technical requirements, timeframes and charges that apply in case a professional user wants to switch to another service provider or port data back to its own IT systems;
 - (c) approaches to certification schemes that facilitate the comparison of data processing products and services for professional users, taking into account established national or international norms, to facilitate the comparability of those products and services. Such approaches may include, inter alia, quality management, information security management, business continuity management and environmental management;
 - (d) communication roadmaps taking a multi-disciplinary approach to raise awareness of the codes of conduct among relevant stakeholders.
2. The Commission shall ensure that the codes of conduct are developed in close cooperation with all relevant stakeholders, including associations of SMEs and start-ups, users and cloud service providers.
3. The Commission shall encourage service providers to complete the development of the codes of conduct by 29 November 2019 and to effectively implement them by 29 May 2020.

*Article 7***Procedure for cooperation between authorities**

1. Each Member State shall designate a single point of contact which shall liaise with the single points of contact of other Member States and the Commission regarding the application of this Regulation. Member States shall notify to the Commission the designated single points of contact and any subsequent change thereto.
2. Where a competent authority in one Member State requests assistance from another Member State, pursuant to Article 5(2), in order to obtain access to data, it shall submit a duly justified request to the latter's designated single point of contact. The request shall include a written explanation of the reasons and the legal bases for seeking access to the data.
3. The single point of contact shall identify the relevant competent authority of its Member State and transmit the request received pursuant to paragraph 2 to that competent authority.
4. The relevant competent authority so requested shall, without undue delay and within a timeframe proportionate to the urgency of the request, provide a response communicating the data requested, or informing the requesting competent authority that it does not consider that the conditions for requesting assistance under this Regulation have been met.
5. Any information exchanged in the context of assistance requested and provided under Article 5(2) shall be used only in respect of the matter for which it was requested.
6. The single points of contact shall provide users with general information on this Regulation, including on the codes of conduct.

*Article 8***Evaluation and guidelines**

1. No later than 29 November 2022, the Commission shall submit a report to the European Parliament, to the Council and to the European Economic and Social Committee evaluating the implementation of this Regulation, in particular in respect of:
 - (a) the application of this Regulation, especially to data sets composed of both personal and non-personal data in the light of market developments and technological developments which might expand the possibilities for deanonymising data;

- (b) the implementation by Member States of Article 4(1), and in particular the public security exception; and
- (c) the development and effective implementation of the codes of conduct and the effective provision of information by service providers.
2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.
3. By 29 May 2019, the Commission shall publish informative guidance on the interaction of this Regulation and Regulation (EU) 2016/679, especially as regards data sets composed of both personal and non-personal data.

Article 9

Final provisions

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 apply six months after its publication.

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

Done at Strasbourg, 14 November 2018.

For the European Parliament
The President
A. TAJANI

For the Council
The President
K. EDTSTADLER

DIRECTIVES

DIRECTIVE (EU) 2018/1808 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 November 2018

amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

(1) The last substantive amendment to Council Directive 89/552/EEC ⁽⁴⁾, subsequently codified by Directive 2010/13/EU of the European Parliament and of the Council ⁽⁵⁾, was made in 2007 with the adoption of Directive 2007/65/EC of the European Parliament and of the Council ⁽⁶⁾. Since then, the audiovisual media services market has evolved significantly and rapidly due to the ongoing convergence of television and internet services. Technical developments have allowed for new types of services and user experiences. Viewing habits, particularly those of younger generations, have changed significantly. While the main TV screen remains an important device for sharing audiovisual experiences, many viewers have moved to other, portable devices to watch audiovisual content. Traditional TV content still accounts for a major share of the average daily viewing time.

However, new types of content, such as video clips or user-generated content, have gained an increasing importance and new players, including providers of video-on-demand services and video-sharing platforms, are now well-established. This convergence of media requires an updated legal framework in order to reflect developments in the market and to achieve a balance between access to online content services, consumer protection and competitiveness.

(2) On 6 May 2015, the Commission adopted a communication entitled 'A Digital Single Market Strategy for Europe' in which it announced a review of Directive 2010/13/EU.

(3) Directive 2010/13/EU should remain applicable only to those services the principal purpose of which is the provision of programmes in order to inform, entertain or educate. The principal purpose requirement should also be considered to be met if the service has audiovisual content and form which are dissociable from the main

⁽¹⁾ OJ C 34, 2.2.2017, p. 157.

⁽²⁾ OJ C 185, 9.6.2017, p. 41.

⁽³⁾ Position of the European Parliament of 2 October 2018 (not yet published in the Official Journal) and decision of the Council of 6 November 2018.

⁽⁴⁾ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17.10.1989, p. 23).

⁽⁵⁾ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

⁽⁶⁾ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 332, 18.12.2007, p. 27).

activity of the service provider, such as stand-alone parts of online newspapers featuring audiovisual programmes or user-generated videos where those parts can be considered dissociable from their main activity. A service should be considered to be merely an indissociable complement to the main activity as a result of the links between the audiovisual offer and the main activity such as providing news in written form. As such, channels or any other audiovisual services under the editorial responsibility of a provider can constitute audiovisual media services in themselves, even if they are offered on a video-sharing platform which is characterised by the absence of editorial responsibility. In such cases, it will fall to the providers with editorial responsibility to comply with Directive 2010/13/EU.

- (4) Video-sharing platform services provide audiovisual content which is increasingly accessed by the general public, in particular by young people. This is also true with regard to social media services, which have become an important medium to share information and to entertain and educate, including by providing access to programmes and user-generated videos. Those social media services need to be included in the scope of Directive 2010/13/EU because they compete for the same audiences and revenues as audiovisual media services. Furthermore, they also have a considerable impact in that they facilitate the possibility for users to shape and influence the opinions of other users. Therefore, in order to protect minors from harmful content and all citizens from incitement to hatred, violence and terrorism, those services should be covered by Directive 2010/13/EU to the extent that they meet the definition of a video-sharing platform service.
- (5) While the aim of Directive 2010/13/EU is not to regulate social media services as such, a social media service should be covered if the provision of programmes and user-generated videos constitutes an essential functionality of that service. The provision of programmes and user-generated videos could be considered to constitute an essential functionality of the social media service if the audiovisual content is not merely ancillary to, or does not constitute a minor part of, the activities of that social media service. In order to ensure clarity, effectiveness and consistency of implementation, the Commission should, where necessary, issue guidelines, after consulting the Contact Committee, on the practical application of the essential functionality criterion of the definition of a 'video-sharing platform service'. Those guidelines should be drafted with due regard for the general public interest objectives to be achieved by the measures to be taken by video-sharing platform providers and the right to freedom of expression.
- (6) Where a dissociable section of a service constitutes a video-sharing platform service for the purposes of Directive 2010/13/EU, only that section should be covered by that Directive, and only as regards programmes and user-generated videos. Video clips embedded in the editorial content of electronic versions of newspapers and magazines and animated images such as GIFs should not be covered by Directive 2010/13/EU. The definition of a video-sharing platform service should not cover non-economic activities, such as the provision of audiovisual content on private websites and non-commercial communities of interest.
- (7) In order to ensure the effective implementation of Directive 2010/13/EU, it is crucial that Member States establish and maintain up-to-date records of the media service providers and video-sharing platform providers under their jurisdiction and that they regularly share those records with their competent independent regulatory authorities or bodies and the Commission. Those records should include information about the criteria on which jurisdiction is based.
- (8) Establishing jurisdiction requires an assessment of factual situations against the criteria laid down in Directive 2010/13/EU. The assessment of such factual situations might lead to conflicting results. In applying the cooperation procedures provided for in that Directive, it is important that the Commission can base its findings on reliable facts. The European Regulators Group for Audiovisual Media Services (ERGA) should therefore be empowered to provide opinions on jurisdiction upon the Commission's request. Where the Commission, in applying those cooperation procedures, decides to consult ERGA, it should inform the Contact Committee, including about notifications received from Member States under those cooperation procedures and about ERGA's opinion.
- (9) The procedures and conditions for restricting freedom to provide and receive audiovisual media services should be the same for both linear and non-linear services.
- (10) In accordance with the case-law of the Court of Justice of the European Union (the 'Court'), it is possible to restrict the freedom to provide services guaranteed under the Treaty for overriding reasons in the general public interest, such as obtaining a high level of consumer protection, provided that such restrictions are justified, proportionate and necessary. Therefore, a Member State should be able to take certain measures to ensure respect for its consumer protection rules which do not fall in the fields coordinated by Directive 2010/13/EU. Measures taken by a Member State to enforce its national consumer protection regime, including in relation to gambling advertising, would need to be justified, proportionate to the objective pursued, and necessary as required under the Court's case-law. In any event, a receiving Member State must not take any measures which would prevent the re-transmission, in its territory, of television broadcasts coming from another Member State.

- (11) A Member State, when notifying the Commission that a media service provider has established itself in the Member State having jurisdiction in order to circumvent the stricter rules in the fields coordinated by Directive 2010/13/EU, which would be applicable to that provider if it were established in the notifying Member State, should adduce credible and duly substantiated evidence to that effect. Such evidence should detail a set of corroborating facts allowing for such circumvention to be reasonably established.
- (12) In its Communication to the European Parliament and to the Council on Better Regulation for Better Results – an EU Agenda, the Commission stressed that, when considering policy solutions, it would consider both regulatory and non-regulatory means, modelled on the Community of practice and the Principles for Better Self- and Co-regulation. A number of codes of conduct set up in the fields coordinated by Directive 2010/13/EU have proved to be well designed, in line with the Principles for Better Self- and Co-regulation. The existence of a legislative backstop was considered an important success factor in promoting compliance with a self- or co-regulatory code. It is equally important that such codes establish specific targets and objectives allowing for the regular, transparent and independent monitoring and evaluation of the objectives aimed at by the codes of conduct. The codes of conduct should also provide for effective enforcement. These principles should be followed by the self- and co-regulatory codes adopted in the fields coordinated by Directive 2010/13/EU.
- (13) Experience has shown that both self- and co-regulatory instruments, implemented in accordance with the different legal traditions of the Member States, can play an important role in delivering a high level of consumer protection. Measures aimed at achieving general public interest objectives in the emerging audiovisual media services sector are more effective if they are taken with the active support of the service providers themselves.
- (14) Self-regulation constitutes a type of voluntary initiative which enables economic operators, social partners, non-governmental organisations and associations to adopt common guidelines amongst themselves and for themselves. They are responsible for developing, monitoring and enforcing compliance with those guidelines. Member States should, in accordance with their different legal traditions, recognise the role which effective self-regulation can play as a complement to the legislative, judicial and administrative mechanisms in place and its useful contribution to the achievement of the objectives of Directive 2010/13/EU. However, while self-regulation might be a complementary method of implementing certain provisions of Directive 2010/13/EU, it should not constitute a substitute for the obligations of the national legislator. Co-regulation provides, in its minimal form, a legal link between self-regulation and the national legislator in accordance with the legal traditions of the Member States. In co-regulation, the regulatory role is shared between stakeholders and the government or the national regulatory authorities or bodies. The role of the relevant public authorities includes recognition of the co-regulatory scheme, auditing of its processes and funding of the scheme. Co-regulation should allow for the possibility of state intervention in the event of its objectives not being met. Without prejudice to the formal obligations of the Member States regarding transposition, Directive 2010/13/EU encourages the use of self- and co-regulation. This should neither oblige Member States to set up self- or co-regulation regimes, or both, nor disrupt or jeopardise current co-regulation initiatives which are already in place in Member States and which are functioning effectively.
- (15) Transparency of media ownership is directly linked to the freedom of expression, a cornerstone of democratic systems. Information concerning the ownership structure of media service providers, where such ownership results in the control of, or the exercise of a significant influence over, the content of the services provided, allows users to make an informed judgement about such content. Member States should be able to determine whether and to what extent information about the ownership structure of a media service provider should be accessible to users, provided that the essence of the fundamental rights and freedoms concerned is respected and that such measures are necessary and proportionate.
- (16) Because of the specific nature of audiovisual media services, especially the impact of those services on the way people form opinions, users have a legitimate interest in knowing who is responsible for the content of those services. In order to strengthen freedom of expression, and, by extension, to promote media pluralism and avoid conflicts of interest, it is important for Member States to ensure that users have easy and direct access at any time to information about media service providers. It is for each Member State to decide, in particular with respect to the information which may be provided on ownership structure and beneficial owners.
- (17) In order to ensure coherence and legal certainty for businesses and Member States' authorities, the notion of 'incitement to violence or hatred' should, to the appropriate extent, be understood within the meaning of Council Framework Decision 2008/913/JHA ⁽¹⁾.

⁽¹⁾ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (OJ L 328, 6.12.2008, p. 55).

- (18) Considering the evolution of the means by which content is disseminated via electronic communications networks, it is important to protect the general public from incitement to terrorism. Directive 2010/13/EU should therefore ensure that audiovisual media services do not contain public provocation to commit a terrorist offence. In order to ensure coherence and legal certainty for businesses and Member States' authorities, the notion of 'public provocation to commit a terrorist offence' should be understood within the meaning of Directive (EU) 2017/541 of the European Parliament and of the Council ⁽¹⁾.
- (19) In order to empower viewers, including parents and minors, to make informed decisions about the content to be watched, it is necessary that media service providers provide sufficient information about content that may impair minors' physical, mental or moral development. That could be done, for example, through a system of content descriptors, an acoustic warning, a visual symbol or any other means, describing the nature of the content.
- (20) The appropriate measures for the protection of minors applicable to television broadcasting services should also apply to on-demand audiovisual media services. That should increase the level of protection. The minimum harmonisation approach allows Member States to develop a higher degree of protection for content which may impair the physical, mental or moral development of minors. The most harmful content, which may impair the physical, mental or moral development of minors, but is not necessarily a criminal offence, should be subject to the strictest measures such as encryption and effective parental controls, without prejudice to the adoption of stricter measures by Member States.
- (21) Regulation (EU) 2016/679 of the European Parliament and the Council ⁽²⁾ recognises that children merit specific protection with regard to the processing of their personal data. The establishment of child protection mechanisms by media service providers inevitably leads to the processing of the personal data of minors. Given that such mechanisms aim at protecting children, personal data of minors processed in the framework of technical child protection measures should not be used for commercial purposes.
- (22) Ensuring the accessibility of audiovisual content is an essential requirement in the context of the commitments taken under the United Nations Convention on the Rights of Persons with Disabilities. In the context of Directive 2010/13/EU, the term 'persons with disabilities' should be interpreted in light of the nature of the services covered by that Directive, which are audiovisual media services. The right of persons with an impairment and of the elderly to participate and be integrated in the social and cultural life of the Union is linked to the provision of accessible audiovisual media services. Therefore, Member States should, without undue delay, ensure that media service providers under their jurisdiction actively seek to make content accessible to persons with disabilities, in particular with a visual or hearing impairment. Accessibility requirements should be met through a progressive and continuous process, while taking into account the practical and unavoidable constraints that could prevent full accessibility, such as programmes or events broadcast in real time. In order to measure the progress that media service providers have made in making their services progressively accessible to people with visual or hearing disabilities, Member States should require media service providers established on their territory to report to them on a regular basis.
- (23) The means to achieve the accessibility of audiovisual media services under Directive 2010/13/EU should include, but need not be limited to, sign language, subtitling for the deaf and hard of hearing, spoken subtitles, and audio description. However, that Directive does not cover features or services providing access to audiovisual media services, nor does it cover accessibility features of electronic programme guides (EPGs). Therefore, that Directive is without prejudice to Union law aiming to harmonise the accessibility of services providing access to audiovisual media services, such as websites, online applications and EPGs, or the provision of information on accessibility and in accessible formats.
- (24) In some cases, it might not be possible to provide emergency information in a manner that is accessible to persons with disabilities. However, such exceptional cases should not prevent emergency information from being made public through audiovisual media services.
- (25) Directive 2010/13/EU is without prejudice to the ability of Member States to impose obligations to ensure the appropriate prominence of content of general interest under defined general interest objectives such as media

⁽¹⁾ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

⁽²⁾ Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

pluralism, freedom of speech and cultural diversity. Such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in accordance with Union law. Where Member States decide to impose rules on appropriate prominence, they should only impose proportionate obligations on undertakings in the interests of legitimate public policy considerations.

- (26) In order to protect the editorial responsibility of media service providers and the audiovisual value chain, it is essential to be able to guarantee the integrity of programmes and audiovisual media services supplied by media service providers. Programmes and audiovisual media services should not be transmitted in a shortened form, altered or interrupted, or overlaid for commercial purposes, without the explicit consent of the media service provider. Member States should ensure that overlays solely initiated or authorised by the recipient of the service for private use, such as overlays resulting from services for individual communications, do not require the consent of the media service provider. Control elements of any user interface necessary for the operation of the device or programme navigation, such as volume bars, search functions, navigation menus or lists of channels, should not be covered. Legitimate overlays, such as warning information, general public interest information, subtitles or commercial communications overlays provided by the media service provider, should also not be covered. Without prejudice to Article 3(3) of Regulation (EU) 2015/2120 of the European Parliament and of the Council ⁽¹⁾, data compression techniques which reduce the size of a data file and other techniques to adapt a service to the distribution means, such as resolution and coding, without any modification of the content, should not be covered either.

Measures to protect the integrity of programmes and audiovisual media services should be imposed where they are necessary to meet general interest objectives clearly defined by Member States in accordance with Union law. Such measures should impose proportionate obligations on undertakings in the interest of legitimate public policy considerations.

- (27) With the exception of sponsorship and product placement, audiovisual commercial communications for alcoholic beverages in on-demand audiovisual media services should comply with the criteria applicable to television advertising and teleshopping for alcoholic beverages laid down in Directive 2010/13/EU. The more detailed criteria applicable to television advertising and teleshopping for alcoholic beverages are limited to spot advertising, which is by its nature separated from the programme, and therefore excludes other commercial communications which are linked to the programme or are an integral part of the programme, such as sponsorship and product placement. Consequently, those criteria should not apply to sponsorship and product placement in on-demand audiovisual media services.
- (28) Certain widely recognised nutritional guidelines exist at national and international level, such as the World Health Organisation Regional Office for Europe's nutrient profile model, in order to differentiate foods on the basis of their nutritional composition in the context of television advertising of foods to children. Member States should be encouraged to ensure that self- and co-regulation, including through codes of conduct, is used to effectively reduce the exposure of children to audiovisual commercial communications regarding foods and beverages that are high in salt, sugars, fat, saturated fats or trans-fatty acids or that otherwise do not fit those national or international nutritional guidelines.
- (29) Similarly, Member States should be encouraged to ensure that self- and co-regulatory codes of conduct are used to effectively reduce the exposure of children and minors to audiovisual commercial communications for alcoholic beverages. Certain self- or co-regulatory systems exist at Union and national level in order to market alcoholic beverages responsibly, including in audiovisual commercial communications. Those systems should be further encouraged, in particular those aiming at ensuring that responsible drinking messages accompany audiovisual commercial communications for alcoholic beverages.
- (30) It is important that minors are effectively protected from exposure to audiovisual commercial communications relating to the promotion of gambling. In this context, several self- or co-regulatory systems exist at Union and national level for the promotion of responsible gambling, including in audiovisual commercial communications.
- (31) In order to remove barriers to the free circulation of cross-border services within the Union, it is necessary to ensure the effectiveness of self- and co-regulatory measures aiming, in particular, at protecting consumers or public health.

⁽¹⁾ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1).

- (32) The market for television broadcasting has evolved and there is, therefore, a need for more flexibility with regard to audiovisual commercial communications, in particular for quantitative rules for linear audiovisual media services and product placement. The emergence of new services, including those without advertising, has led to a greater choice for viewers, who can easily switch to alternative offers.
- (33) The liberalisation of product placement has not brought about the expected take-up of this form of audiovisual commercial communication. In particular, the general prohibition of product placement, albeit with some exceptions, has not created legal certainty for media service providers. Product placement should thus be allowed in all audiovisual media services and video-sharing platform services, subject to exceptions.
- (34) Product placement should not be allowed in news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes. In particular, evidence has shown that product placement and embedded advertisements can affect children's behaviour as children are often not able to recognise the commercial content. There is thus a need to continue to prohibit product placement in children's programmes. Consumer affairs programmes are programmes offering advice to viewers or including reviews on the purchase of products and services. Allowing product placement in such programmes would blur the distinction between advertising and editorial content for viewers who may expect a genuine and honest review of products or services in such programmes.
- (35) Providers of on-demand audiovisual media services should promote the production and distribution of European works by ensuring that their catalogues contain a minimum share of European works and that they are given sufficient prominence. The labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers. Prominence involves promoting European works through facilitating access to such works. Prominence can be ensured through various means such as a dedicated section for European works that is accessible from the service homepage, the possibility to search for European works in the search tool available as part of that service, the use of European works in campaigns of that service or a minimum percentage of European works promoted from that service's catalogue, for example by using banners or similar tools.
- (36) In order to ensure adequate levels of investment in European works, Member States should be able to impose financial obligations on media service providers established on their territory. Those obligations can take the form of direct contributions to the production of and acquisition of rights in European works. The Member States could also impose levies payable to a fund, on the basis of the revenues generated by audiovisual media services that are provided in and targeted towards their territory. This Directive clarifies that, given the direct link between financial obligations and Member States' different cultural policies, a Member State is also allowed to impose such financial obligations on media service providers established in another Member State that target its territory. In that case, financial obligations should only be charged on the revenues generated through the audience in the targeted Member State. Media service providers that are required to contribute to film funding schemes in a targeted Member State should be able to benefit in a non-discriminatory way, even in the absence of an establishment in that Member State, from the aid available under respective film funding schemes to media service providers.
- (37) Broadcasters currently invest more in European audiovisual works than providers of on-demand audiovisual media services. Therefore, if a targeted Member State chooses to impose a financial obligation on a broadcaster that is under the jurisdiction of another Member State, the direct contributions to the production and acquisition of rights in European works, in particular co-productions, made by that broadcaster, should be taken into account, with due consideration for the principle of proportionality. This is without prejudice to the Member States' competence to establish, in accordance with their cultural policy and subject to compatibility with State aid rules, the level of financial contributions payable by media service providers under their jurisdiction.
- (38) A Member State, when assessing, on a case-by-case basis, whether an on-demand audiovisual media service established in another Member State is targeting audiences in its territory, should refer to indicators such as advertisement or other promotions specifically aiming at customers in its territory, the main language of the service or the existence of content or commercial communications aiming specifically at the audience in the Member State of reception.

- (39) Where a Member State imposes financial contributions on media service providers, such contributions should strive for an adequate promotion of European works while avoiding the risk of double imposition for media service providers. In this way, if the Member State where the media service provider is established imposes such a financial contribution, it should take into account any financial contributions imposed by targeted Member States.
- (40) In order to ensure that obligations relating to the promotion of European works do not undermine market development and in order to allow for the entry of new players in the market, providers with no significant presence on the market should not be subject to such requirements. This is particularly the case for providers with a low turnover or low audience. A low audience can be determined, for example, on the basis of a viewing time or sales, depending on the nature of the service, while the determination of low turnover should take into account the different sizes of audiovisual markets in Member States. It might also be inappropriate to impose such requirements in cases where, given the nature or theme of the audiovisual media services, they would be impracticable or unjustified.
- (41) It is important that broadcasters have more flexibility and are able to decide when to place advertising in order to maximise advertisers' demand and viewers' flow. It is also necessary, however, to maintain a sufficient level of consumer protection in that regard because such flexibility could expose viewers to an excessive amount of advertising during prime time. Specific limits should therefore apply within the period from 6.00 to 18.00 and from 18.00 to 24.00.
- (42) Neutral frames separate editorial content from television advertising or teleshopping spots, as well as separate individual spots. They allow the viewer to clearly distinguish when one type of audiovisual content ends and the other begins. It is necessary to clarify that neutral frames are excluded from the quantitative limit set out for television advertising. This is in order to ensure that the time used in neutral frames does not impact on the time used for advertising and that revenues generated from the advertising are not negatively affected.
- (43) Transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, or to public service announcements and charity appeals broadcast free of charge, with the exception of the costs incurred for the transmission of such appeals, should not be included in the maximum amounts of transmission time that may be allotted to television advertising and teleshopping. In addition, many broadcasters are part of larger broadcasting groups and make announcements not only in connection with their own programmes and ancillary products directly derived from those programmes, but also in relation to programmes and audiovisual media services from other entities belonging to the same broadcasting group. Transmission time allotted to such announcements should also not be included in the maximum amounts of transmission time that may be allotted to television advertising and teleshopping.
- (44) The video-sharing platform providers covered by Directive 2010/13/EU provide information society services within the meaning of Directive 2000/31/EC of the European Parliament and of the Council ⁽¹⁾. Those providers are consequently subject to the provisions on the internal market set out in that Directive, if they are established in a Member State. It is appropriate to ensure that the same rules also apply to video-sharing platform providers which are not established in a Member State with a view to safeguarding the effectiveness of the measures to protect minors and the general public set out in Directive 2010/13/EU and ensuring as much as possible a level playing field, in so far as those providers have either a parent undertaking or a subsidiary undertaking which is established in a Member State or where those providers are part of a group and another undertaking of that group is established in a Member State. Therefore, the definitions set out in Directive 2010/13/EU should be principles-based and should ensure that it is not possible for an undertaking to exclude itself from the scope of that Directive by creating a group structure containing multiple layers of undertakings established inside or outside the Union. The Commission should be informed of the providers under each Member State's jurisdiction pursuant to the rules on establishment set out in Directives 2000/31/EC and 2010/13/EU.
- (45) There are new challenges, in particular in connection with video-sharing platforms, on which users, particularly minors, increasingly consume audiovisual content. In this context, harmful content and hate speech provided on video-sharing platform services have increasingly given rise to concern. In order to protect minors and the general public from such content, it is necessary to set out proportionate rules on those matters.

⁽¹⁾ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1).

- (46) Commercial communications on video-sharing platform services are already regulated by Directive 2005/29/EC of the European Parliament and of the Council ⁽¹⁾, which prohibits unfair business-to-consumer commercial practices, including misleading and aggressive practices occurring in information society services.

As regards commercial communications concerning tobacco and related products in video-sharing platforms, the existing prohibitions provided for in Directive 2003/33/EC of the European Parliament and of the Council ⁽²⁾, as well as the prohibitions applicable to commercial communications concerning electronic cigarettes and refill containers pursuant to Directive 2014/40/EU of the European Parliament and of the Council ⁽³⁾, ensure that consumers are sufficiently protected from tobacco and related products. Since users increasingly rely on video-sharing platform services to access audiovisual content, it is necessary to ensure a sufficient level of consumer protection by aligning the rules on audiovisual commercial communications, to the appropriate extent, amongst all providers. It is therefore important that audiovisual commercial communications on video-sharing platforms are clearly identified and respect a set of minimum qualitative requirements.

- (47) A significant share of the content provided on video-sharing platform services is not under the editorial responsibility of the video-sharing platform provider. However, those providers typically determine the organisation of the content, namely programmes, user-generated videos and audiovisual commercial communications, including by automatic means or algorithms. Therefore, those providers should be required to take appropriate measures to protect minors from content that may impair their physical, mental or moral development. They should also be required to take appropriate measures to protect the general public from content that contains incitement to violence or hatred directed against a group or a member of a group on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union (the 'Charter'), or the dissemination of which constitutes a criminal offence under Union law.
- (48) In light of the nature of the providers' involvement with the content provided on video-sharing platform services, the appropriate measures to protect minors and the general public should relate to the organisation of the content and not to the content as such. The requirements in this regard as set out in Directive 2010/13/EU should therefore apply without prejudice to Articles 12 to 14 of Directive 2000/31/EC, which provide for an exemption from liability for illegal information transmitted, or automatically, intermediately and temporarily stored, or stored by certain providers of information society services. When providing services covered by Articles 12 to 14 of Directive 2000/31/EC, those requirements should also apply without prejudice to Article 15 of that Directive, which precludes general obligations to monitor such information and to actively seek facts or circumstances indicating illegal activity from being imposed on those providers, without however concerning monitoring obligations in specific cases and, in particular, without affecting orders by national authorities in accordance with national law.
- (49) It is appropriate to involve video-sharing platform providers as much as possible when implementing the appropriate measures to be taken pursuant to Directive 2010/13/EU. Co-regulation should therefore be encouraged. It should also remain possible for video-sharing platform providers to take stricter measures on a voluntary basis in accordance with Union law, respecting the freedom of expression and information and media pluralism.
- (50) The right to an effective remedy and the right to a fair trial are fundamental rights laid down in Article 47 of the Charter. The provisions of Directive 2010/13/EU should not, therefore, be construed in a way that would prevent parties from exercising their right of access to the judicial system.
- (51) When taking the appropriate measures to protect minors from harmful content and to protect the general public from content containing incitement to violence, hatred and terrorism in accordance with Directive 2010/13/EU, the applicable fundamental rights, as laid down in the Charter, should be carefully balanced. That concerns, in particular and as the case may be, the right to respect for private and family life and the protection of personal data, the freedom of expression and information, the freedom to conduct a business, the prohibition of discrimination and the rights of the child.

⁽¹⁾ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

⁽²⁾ Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (OJ L 152, 20.6.2003, p. 16).

⁽³⁾ Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1).

- (52) The Contact Committee aims at facilitating an effective implementation of Directive 2010/13/EU and should be regularly consulted on any practical problems arising from its application. The work of the Contact Committee should not be limited to the existing audiovisual policy issues, but should also cover the relevant developments arising in this sector. It is composed of representatives of the relevant national authorities of the Member States. When appointing their representatives, Member States are encouraged to promote gender parity in the composition of the Contact Committee.
- (53) Member States should ensure that their national regulatory authorities or bodies are legally distinct from the government. However, this should not preclude Member States from exercising supervision in accordance with their national constitutional law. National regulatory authorities or bodies should be considered to have achieved the requisite degree of independence if those authorities or bodies, including those that are constituted as public authorities or bodies, are functionally and effectively independent of their respective governments and of any other public or private body. That is considered essential to ensure the impartiality of decisions taken by a national regulatory authority or body. The requirement of independence should be without prejudice to the possibility for Member States to establish regulatory authorities that have oversight over different sectors, such as the audiovisual and telecommunications sectors. National regulatory authorities or bodies should have the enforcement powers and resources necessary for the fulfilment of their tasks, in terms of staffing, expertise and financial means. The activities of national regulatory authorities or bodies established under Directive 2010/13/EU should ensure respect for the objectives of media pluralism, cultural diversity, consumer protection, the proper functioning of the internal market and the promotion of fair competition.
- (54) As one of the purposes of audiovisual media services is to serve the interests of individuals and shape public opinion, it is essential that such services are able to inform individuals and society as completely as possible and with the highest level of variety. That purpose can only be achieved if editorial decisions remain free from any state interference or influence by national regulatory authorities or bodies that goes beyond the mere implementation of law and which does not serve to safeguard a legally protected right which is to be protected regardless of a particular opinion.
- (55) Effective appeal mechanisms should exist at national level. The relevant appeal body should be independent from the parties involved. Such body may be a court. The appeal procedure should be without prejudice to the division of competences within national judicial systems.
- (56) With a view to ensuring the consistent application of the Union audiovisual regulatory framework across all Member States, the Commission established ERGA by Commission Decision of 3 February 2014 ⁽¹⁾. ERGA's role is to provide technical expertise to the Commission in its work to ensure a consistent implementation of Directive 2010/13/EU in all Member States and to facilitate cooperation among the national regulatory authorities or bodies, and between the national regulatory authorities or bodies and the Commission.
- (57) ERGA has made a positive contribution to consistent regulatory practice and has provided high-level advice to the Commission on implementation matters. This calls for the formal recognition and reinforcement of its role in Directive 2010/13/EU. ERGA should therefore be established by virtue of that Directive.
- (58) The Commission should be free to consult ERGA on any matter relating to audiovisual media services and video-sharing platforms. ERGA should assist the Commission by providing technical expertise and advice and by facilitating the exchange of best practices, including on self- and co-regulatory codes of conduct. In particular, the Commission should consult ERGA in the application of Directive 2010/13/EU with a view to facilitating its convergent implementation. Upon the Commission's request, ERGA should provide non-binding opinions on jurisdiction, on measures derogating from freedom of reception and on measures addressing the circumvention of jurisdiction. ERGA should also be able to provide technical advice on any regulatory matter related to the audiovisual media services framework, including in the area of hate speech and the protection of minors, as well as on the content of audiovisual commercial communications for foods high in fat, salt or sodium and sugars.
- (59) 'Media literacy' refers to skills, knowledge and understanding that allow citizens to use media effectively and safely. In order to enable citizens to access information and to use, critically assess and create media content responsibly and safely, citizens need to possess advanced media literacy skills. Media literacy should not be limited to learning about tools and technologies, but should aim to equip citizens with the critical thinking skills required to exercise judgment, analyse complex realities and recognise the difference between opinion and fact.

⁽¹⁾ Commission Decision C(2014) 462 final of 3 February 2014 on establishing the European Regulators Group for Audiovisual Media Services.

It is therefore necessary that both media service providers and video-sharing platforms providers, in cooperation with all relevant stakeholders, promote the development of media literacy in all sections of society, for citizens of all ages, and for all media and that progress in that regard is followed closely.

- (60) Directive 2010/13/EU is without prejudice to the obligation of the Member States to respect and protect human dignity. It respects the fundamental rights and observes the principles recognised, in particular, by the Charter. In particular, Directive 2010/13/EU seeks to ensure full respect for the right to freedom of expression, the freedom to conduct a business, the right to judicial review and to promote the application of the rights of the child enshrined in the Charter.
- (61) Any measure taken by Member States under Directive 2010/13/EU is to respect the freedom of expression and information and media pluralism, as well as cultural and linguistic diversity, in accordance with the Unesco Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
- (62) The right to access political news programmes is crucial to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the Union are fully and properly protected. Given the ever-growing importance of audiovisual media services for societies and democracy, broadcasts of political news should, to the greatest extent possible, and without prejudice to copyright rules, be made available cross-border in the Union.
- (63) Directive 2010/13/EU does not concern rules of private international law, in particular rules governing the jurisdiction of the courts and the law applicable to contractual and non-contractual obligations.
- (64) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽¹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures by 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.
- (65) Directive 2010/13/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2010/13/EU is amended as follows:

(1) In Article 1, paragraph 1 is amended as follows:

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

‘(a) “audiovisual media service” means:

(i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC; such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph;

(ii) audiovisual commercial communication;’;

(b) the following point is inserted:

‘(aa) “video-sharing platform service” means a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.’;

⁽¹⁾ OJ C 369, 17.12.2011, p. 14.

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

'(b) "programme" means a set of moving images with or without sound constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider, including feature-length films, video clips, sports events, situation comedies, documentaries, children's programmes and original drama;';

(d) the following points are inserted:

'(ba) "user-generated video" means a set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a user and uploaded to a video-sharing platform by that user or any other user;

'(bb) "editorial decision" means a decision which is taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of the audiovisual media service;';

(e) the following point is inserted:

'(da) "video-sharing platform provider" means the natural or legal person who provides a video-sharing platform service;';

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

'(h) "audiovisual commercial communication" means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in, a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;';

(g) point (k) is replaced by the following:

'(k) "sponsorship" means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities or products;';

(h) point (m) is replaced by the following:

'(m) "product placement" means any form of audiovisual commercial communication consisting of the inclusion of, or reference to, a product, a service or the trade mark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration;';

(2) the title of Chapter II is replaced by the following:

'GENERAL PROVISIONS FOR AUDIOVISUAL MEDIA SERVICES';

(3) Article 2 is amended as follows:

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

'(b) if a media service provider has its head office in one Member State but editorial decisions on the audiovisual media service are taken in another Member State, the media service provider shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates. If a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in each of those Member States, the media service provider shall be deemed to be established in the Member State where it has its head office. If a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in neither of those Member States, the media service provider shall be deemed to be established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;';

(b) the following paragraphs are inserted:

'5a. Member States shall ensure that media service providers inform the competent national regulatory authorities or bodies about any changes that may affect the determination of jurisdiction in accordance with paragraphs 2, 3 and 4.

5b. Member States shall establish and maintain an up-to-date list of the media service providers under their jurisdiction and indicate on which of the criteria set out in paragraphs 2 to 5 their jurisdiction is based. Member States shall communicate that list, including any updates thereto, to the Commission.

The Commission shall ensure that such lists are made available in a centralised database. In the event of inconsistencies between the lists, the Commission shall contact the Member States concerned in order to find a solution. The Commission shall ensure that the national regulatory authorities or bodies have access to that database. The Commission shall make information in the database publicly available.

5c. Where, in applying Article 3 or 4, the Member States concerned do not agree on which Member State has jurisdiction, they shall bring the matter to the Commission's attention without undue delay. The Commission may request the European Regulators Group for Audiovisual Media Services (ERGA) to provide an opinion on the matter in accordance with point (d) of Article 30b(3). ERGA shall provide such an opinion within 15 working days from the submission of the Commission's request. The Commission shall keep the Contact Committee established by Article 29 duly informed.

When the Commission adopts a decision pursuant to Article 3(2) or (3), or Article 4(5), it shall also decide which Member State has jurisdiction.;

(4) Article 3 is replaced by the following:

Article 3

1. Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.

2. A Member State may provisionally derogate from paragraph 1 of this Article where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly, seriously and gravely infringes point (a) of Article 6(1) or Article 6a(1) or prejudices or presents a serious and grave risk of prejudice to public health.

The derogation referred to in the first subparagraph shall be subject to the following conditions:

- (a) during the previous 12 months, the media service provider has on at least two prior occasions already performed one or more instances of conduct described in the first subparagraph;
- (b) the Member State concerned has notified the media service provider, the Member State having jurisdiction over that provider and the Commission in writing of the alleged infringements and of the proportionate measures it intends to take should any such infringement occur again;
- (c) the Member State concerned has respected the right of defence of the media service provider and, in particular, has given that provider the opportunity to express its views on the alleged infringements; and
- (d) consultations with the Member State having jurisdiction over the media service provider and the Commission have not resulted in an amicable settlement within one month of the Commission's receipt of the notification referred to in point (b).

Within three months of the receipt of the notification of the measures taken by the Member State concerned and after having requested ERGA to provide an opinion in accordance with point (d) of Article 30b(3), the Commission shall take a decision on whether those measures are compatible with Union law. The Commission shall keep the Contact Committee duly informed. Where the Commission decides that those measures are not compatible with Union law, it shall require the Member State concerned to put an end to the measures in question as a matter of urgency.

3. A Member State may provisionally derogate from paragraph 1 of this Article where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly, seriously and gravely infringes point (b) of Article 6(1) or prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence.

The derogation referred to in the first subparagraph shall be subject to the following conditions:

- (a) during the previous 12 months the conduct referred to in the first subparagraph occurred at least on one prior occasion;
- and

- (b) the Member State concerned has notified the media service provider, the Member State having jurisdiction over that provider and the Commission in writing of the alleged infringement and of the proportionate measures it intends to take should any such infringement occur again.

The Member State concerned shall respect the rights of defence of the media service provider concerned and, in particular, give that provider the opportunity to express its views on the alleged infringements.

Within three months of the receipt of the notification of the measures taken by the Member State concerned and after having requested ERGA to provide an opinion in accordance with point (d) of Article 30b(3), the Commission shall take a decision on whether those measures are compatible with Union law. The Commission shall keep the Contact Committee duly informed. Where the Commission decides that those measures are not compatible with Union law, it shall require the Member State concerned to put an end to the measures in question as a matter of urgency.

4. Paragraphs 2 and 3 shall be without prejudice to the application of any procedure, remedy or sanction to the infringements in question in the Member State which has jurisdiction over the media service provider concerned.

5. Member States may, in urgent cases, no later than one month after the alleged infringement, derogate from the conditions laid down in points (a) and (b) of paragraph 3. Where this is the case, the measures taken shall be notified in the shortest possible time to the Commission and to the Member State under whose jurisdiction the media service provider falls, indicating the reasons for which the Member State considers that there is urgency. The Commission shall examine the compatibility of the notified measures with Union law in the shortest possible time. Where it comes to the conclusion that the measures are incompatible with Union law, the Commission shall require the Member State in question to urgently put an end to those measures.

6. If the Commission lacks information necessary to take a decision pursuant to paragraph 2 or 3, it shall, within one month of the receipt of the notification, request from the Member State concerned all information necessary to reach that decision. The time limit within which the Commission is to take the decision shall be suspended until that Member State has provided such necessary information. In any case, the suspension of the time limit shall not last longer than one month.

7. Member States and the Commission shall regularly exchange experiences and best practices regarding the procedure set out in this Article in the framework of the Contact Committee and ERGA.;

- (5) Article 4 is replaced by the following:

Article 4

1. Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive, provided that such rules are in compliance with Union law.

2. Where a Member State:

- (a) has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules of general public interest; and
- (b) assesses that a media service provider under the jurisdiction of another Member State provides an audiovisual media service which is wholly or mostly directed towards its territory,

it may request the Member State having jurisdiction to address any problems identified in relation to this paragraph. Both Member States shall cooperate sincerely and swiftly with a view to achieving a mutually satisfactory solution.

Upon receiving a substantiated request under the first subparagraph, the Member State having jurisdiction shall request the media service provider to comply with the rules of general public interest in question. The Member State having jurisdiction shall regularly inform the requesting Member State of the steps taken to address the problems identified. Within two months of the receipt of the request, the Member State having jurisdiction shall inform the requesting Member State and the Commission of the results obtained and explain the reasons where a solution could not be found.

Either Member State may invite the Contact Committee to examine the case at any time.

3. The Member State concerned may adopt appropriate measures against the media service provider concerned where:

- (a) it assesses that the results achieved through the application of paragraph 2 are not satisfactory; and

- (b) it has adduced evidence showing that the media service provider in question has established itself in the Member State having jurisdiction in order to circumvent the stricter rules, in the fields coordinated by this Directive, which would be applicable to it if it were established in the Member State concerned; such evidence shall allow for such circumvention to be reasonably established, without the need to prove the media service provider's intention to circumvent those stricter rules.

Such measures shall be objectively necessary, applied in a non-discriminatory manner and proportionate to the objectives which they pursue.

4. A Member State may take measures pursuant to paragraph 3 only where the following conditions are met:

- (a) it has notified the Commission and the Member State in which the media service provider is established of its intention to take such measures while substantiating the grounds on which it bases its assessment;
- (b) it has respected the rights of defence of the media service provider concerned and, in particular, has given that media service provider the opportunity to express its views on the alleged circumvention and the measures the notifying Member State intends to take; and
- (c) the Commission has decided, after having requested ERGA to provide an opinion in accordance with point (d) of Article 30b(3), that the measures are compatible with Union law, in particular that assessments made by the Member State taking the measures under paragraphs 2 and 3 of this Article are correctly founded; the Commission shall keep the Contact Committee duly informed.

5. Within three months of the receipt of the notification provided for in point (a) of paragraph 4, the Commission shall take the decision on whether those measures are compatible with Union law. Where the Commission decides that those measures are not compatible with Union law, it shall require the Member State concerned to refrain from taking the intended measures.

If the Commission lacks information necessary to take the decision pursuant to the first subparagraph, it shall, within one month of the receipt of the notification, request from the Member State concerned all information necessary to reach that decision. The time limit within which the Commission is to take the decision shall be suspended until that Member State has provided such necessary information. In any case, the suspension of the time limit shall not last longer than one month.

6. Member States shall, by appropriate means, ensure, within the framework of their national law, that media service providers under their jurisdiction effectively comply with this Directive.

7. Directive 2000/31/EC shall apply unless otherwise provided for in this Directive. In the event of a conflict between Directive 2000/31/EC and this Directive, this Directive shall prevail, unless otherwise provided for in this Directive.;

(6) the following article is inserted:

'Article 4a

1. Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. Those codes shall:

- (a) be such that they are broadly accepted by the main stakeholders in the Member States concerned;
- (b) clearly and unambiguously set out their objectives;
- (c) provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and
- (d) provide for effective enforcement including effective and proportionate sanctions.

2. Member States and the Commission may foster self-regulation through Union codes of conduct drawn up by media service providers, video-sharing platform service providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations. Those codes shall be such that they are broadly accepted by the main stakeholders at Union level and shall comply with points (b) to (d) of paragraph 1. The Union codes of conduct shall be without prejudice to the national codes of conduct.

In cooperation with the Member States, the Commission shall facilitate the development of Union codes of conduct, where appropriate, in accordance with the principles of subsidiarity and proportionality.

The signatories of Union codes of conduct shall submit the drafts of those codes and amendments thereto to the Commission. The Commission shall consult the Contact Committee on those draft codes or amendments thereto.

The Commission shall make the Union codes of conduct publicly available and may give them appropriate publicity.

3. Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in compliance with this Directive and Union law, including where their national independent regulatory authorities or bodies conclude that any code of conduct or parts thereof have proven not to be sufficiently effective. Member States shall report such rules to the Commission without undue delay.;

(7) the title of Chapter III is replaced by the following:

'PROVISIONS APPLICABLE TO AUDIOVISUAL MEDIA SERVICES';

(8) Article 5 is replaced by the following:

'Article 5

1. Each Member State shall ensure that a media service provider under its jurisdiction shall make easily, directly and permanently accessible to the recipients of a service at least the following information:

- (a) its name;
- (b) the geographical address at which it is established;
- (c) the details, including its email address or website, which allow it to be contacted rapidly in a direct and effective manner;
- (d) the Member State having jurisdiction over it and the competent regulatory authorities or bodies or supervisory bodies.

2. Member States may adopt legislative measures providing that, in addition to the information listed in paragraph 1, media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners. Such measures shall respect the fundamental rights concerned, such as the private and family life of beneficial owners. Such measures shall be necessary and proportionate and shall aim to pursue an objective of general interest.;

(9) Article 6 is replaced by the following:

'Article 6

1. Without prejudice to the obligation of Member States to respect and protect human dignity, Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any:

- (a) incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter;
- (b) public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541.

2. The measures taken for the purposes of this Article shall be necessary and proportionate and shall respect the rights and observe principles set out in the Charter.;

(10) the following article is inserted:

'Article 6a

1. Member States shall take appropriate measures to ensure that audiovisual media services provided by media service providers under their jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures. They shall be proportionate to the potential harm of the programme.

The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures.

2. Personal data of minors collected or otherwise generated by media service providers pursuant to paragraph 1 shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

3. Member States shall ensure that media service providers provide sufficient information to viewers about content which may impair the physical, mental or moral development of minors. For this purpose, media service providers shall use a system describing the potentially harmful nature of the content of an audiovisual media service.

For the implementation of this paragraph, Member States shall encourage the use of co-regulation as provided for in Article 4a(1).

4. The Commission shall encourage media service providers to exchange best practices on co-regulatory codes of conduct. Member States and the Commission may foster self-regulation, for the purposes of this Article, through Union codes of conduct as referred to in Article 4a(2).;

(11) Article 7 is replaced by the following:

Article 7

1. Member States shall ensure, without undue delay, that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures.

2. Member States shall ensure that media service providers report on a regular basis to the national regulatory authorities or bodies on the implementation of the measures referred to in paragraph 1. By 19 December 2022 and every three years thereafter, Member States shall report to the Commission on the implementation of paragraph 1.

3. Member States shall encourage media service providers to develop accessibility action plans in respect of continuously and progressively making their services more accessible to persons with disabilities. Any such action plan shall be communicated to national regulatory authorities or bodies.

4. Each Member State shall designate a single, easily accessible, including by persons with disabilities, and publicly available online point of contact for providing information and receiving complaints regarding any accessibility issues referred to in this Article.

5. Member States shall ensure that emergency information, including public communications and announcements in natural disaster situations, which is made available to the public through audiovisual media services, is provided in a manner which is accessible to persons with disabilities.;

(12) the following articles are inserted:

Article 7a

Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest.

Article 7b

Member States shall take appropriate and proportionate measures to ensure that audiovisual media services provided by media service providers are not, without the explicit consent of those providers, overlaid for commercial purposes or modified.

For the purposes of this Article, Member States shall specify the regulatory details, including exceptions, notably in relation to safeguarding the legitimate interests of users while taking into account the legitimate interests of the media service providers that originally provided the audiovisual media services.;

(13) Article 9 is replaced by the following:

Article 9

1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:

(a) audiovisual commercial communications shall be readily recognisable as such; surreptitious audiovisual commercial communication shall be prohibited;

(b) audiovisual commercial communications shall not use subliminal techniques;

- (c) audiovisual commercial communications shall not:
 - (i) prejudice respect for human dignity;
 - (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (iii) encourage behaviour prejudicial to health or safety;
 - (iv) encourage behaviour grossly prejudicial to the protection of the environment;
- (d) all forms of audiovisual commercial communications for cigarettes and other tobacco products, as well as for electronic cigarettes and refill containers shall be prohibited;
- (e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;
- (f) audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;
- (g) audiovisual commercial communications shall not cause physical, mental or moral detriment to minors; therefore, they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

2. Audiovisual commercial communications for alcoholic beverages in on-demand audiovisual media services, with the exception of sponsorship and product placement, shall comply with the criteria set out in Article 22.

3. Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a(1) regarding inappropriate audiovisual commercial communications for alcoholic beverages. Those codes shall aim to effectively reduce the exposure of minors to audiovisual commercial communications for alcoholic beverages.

4. Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a(1) regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended.

Those codes shall aim to effectively reduce the exposure of children to audiovisual commercial communications for such foods and beverages. They shall aim to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.

5. Member States and the Commission may foster self-regulation, for the purposes of this Article, through Union codes of conduct as referred to in Article 4a(2).;

(14) Article 10 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Audiovisual media services or programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products, as well as electronic cigarettes and refill containers.;

(b) paragraph 4 is replaced by the following:

'4. News and current affairs programmes shall not be sponsored. Member States may prohibit the sponsorship of children's programmes. Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes.;

(15) Article 11 is replaced by the following:

'Article 11

1. This Article shall apply only to programmes produced after 19 December 2009.

2. Product placement shall be allowed in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes.

3. Programmes that contain product placement shall meet the following requirements:
- (a) their content and organisation within a schedule, in the case of television broadcasting, or within a catalogue in the case of on-demand audiovisual media services, shall under no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
 - (b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
 - (c) they shall not give undue prominence to the product in question;
 - (d) viewers shall be clearly informed of the existence of product placement by an appropriate identification at the start and at the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

Member States may waive the requirements set out in point (d) except for programmes produced or commissioned by a media service provider or by a company affiliated with that media service provider.

4. In any event programmes shall not contain product placement of:
- (a) cigarettes and other tobacco products, as well as electronic cigarettes and refill containers, or product placement from undertakings whose principal activity is the manufacture or sale of those products;
 - (b) specific medicinal products or medical treatments available only on prescription in the Member State under whose jurisdiction the media service provider falls.;

(16) the title of Chapter IV is deleted;

(17) Article 12 is deleted;

(18) Article 13 is replaced by the following:

'Article 13

1. Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30 % share of European works in their catalogues and ensure prominence of those works.

2. Where Member States require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contribution to national funds, they may also require media service providers targeting audiences in their territories, but established in other Member States to make such financial contributions, which shall be proportionate and non-discriminatory.

3. In the case referred to in paragraph 2, the financial contribution shall be based only on the revenues earned in the targeted Member States. If the Member State where the provider is established imposes such a financial contribution, it shall take into account any financial contributions imposed by targeted Member States. Any financial contribution shall comply with Union law, in particular with State aid rules.

4. Member States shall report to the Commission by 19 December 2021 and every two years thereafter on the implementation of paragraphs 1 and 2.

5. The Commission shall, on the basis of the information provided by Member States and of an independent study, report to the European Parliament and to the Council on the application of paragraphs 1 and 2, taking into account the market and technological developments and the objective of cultural diversity.

6. The obligation imposed pursuant to paragraph 1 and the requirement on media service providers targeting audiences in other Member States set out in paragraph 2 shall not apply to media service providers with a low turnover or a low audience. Member States may also waive such obligations or requirements where they would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services.

7. The Commission shall issue guidelines regarding the calculation of the share of European works referred to in paragraph 1 and regarding the definition of low audience and low turnover referred to in paragraph 6, after consulting the Contact Committee.;

(19) in Article 19, paragraph 2 is replaced by the following:

‘2. Isolated television advertising and teleshopping spots shall be admissible in sports events. Isolated television advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.’;

(20) in Article 20, paragraph 2 is replaced by the following:

‘2. The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising, teleshopping, or both, once for each scheduled period of at least 30 minutes. The transmission of children’s programmes may be interrupted by television advertising once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. The transmission of teleshopping shall be prohibited during children’s programmes. No television advertising or teleshopping shall be inserted during religious services.’;

(21) Article 23 is replaced by the following:

‘Article 23

1. The proportion of television advertising spots and teleshopping spots within the period between 6.00 and 18.00 shall not exceed 20 % of that period. The proportion of television advertising spots and teleshopping spots within the period between 18.00 and 24.00 shall not exceed 20 % of that period.

2. Paragraph 1 shall not apply to:

- (a) announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes or with programmes and audiovisual media services from other entities belonging to the same broadcasting group;
- (b) sponsorship announcements;
- (c) product placements;
- (d) neutral frames between editorial content and television advertising or teleshopping spots, and between individual spots.’;

(22) Chapter VIII is deleted;

(23) the following Chapter is inserted:

‘CHAPTER IXA

PROVISIONS APPLICABLE TO VIDEO-SHARING PLATFORM SERVICES

Article 28a

1. For the purposes of this Directive, a video-sharing platform provider established on the territory of a Member State within the meaning of Article 3(1) of Directive 2000/31/EC shall be under the jurisdiction of that Member State.

2. A video-sharing platform provider which is not established on the territory of a Member State pursuant to paragraph 1 shall be deemed to be established on the territory of a Member State for the purposes of this Directive if that video-sharing platform provider:

- (a) has a parent undertaking or a subsidiary undertaking that is established on the territory of that Member State;
or
- (b) is part of a group and another undertaking of that group is established on the territory of that Member State.

For the purposes of this Article:

- (a) “parent undertaking” means an undertaking which controls one or more subsidiary undertakings;
- (b) “subsidiary undertaking” means an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking;
- (c) “group” means a parent undertaking, all its subsidiary undertakings and all other undertakings having economic and legal organisational links to them.

3. For the purposes of applying paragraph 2, where the parent undertaking, the subsidiary undertaking or the other undertakings of the group are each established in different Member States, the video-sharing platform provider shall be deemed to be established in the Member State where its parent undertaking is established or, in the absence of such an establishment, in the Member State where its subsidiary undertaking is established or, in the absence of such an establishment, in the Member State where the other undertaking of the group is established.

4. For the purposes of applying paragraph 3, where there are several subsidiary undertakings and each of them is established in a different Member State, the video-sharing platform provider shall be deemed to be established in the Member State where one of the subsidiary undertakings first began its activity, provided that it maintains a stable and effective link with the economy of that Member State.

Where there are several other undertakings which are part of the group and each of them is established in a different Member State, the video-sharing platform provider shall be deemed to be established in the Member State where one of these undertakings first began its activity, provided that it maintains a stable and effective link with the economy of that Member State.

5. For the purposes of this Directive, Article 3 and Articles 12 to 15 of Directive 2000/31/EC shall apply to video-sharing platform providers deemed to be established in a Member State in accordance with paragraph 2 of this Article.

6. Member States shall establish and maintain an up-to-date list of the video-sharing platform providers established or deemed to be established on their territory and indicate on which of the criteria set out in paragraphs 1 to 4 their jurisdiction is based. Member States shall communicate that list, including any updates thereto, to the Commission.

The Commission shall ensure that such lists are made available in a centralised database. In the event of inconsistencies between the lists, the Commission shall contact the Member States concerned in order to find a solution. The Commission shall ensure that the national regulatory authorities or bodies have access to that database. The Commission shall make information in the database publicly available.

7. Where, in applying this Article, the Member States concerned do not agree on which Member State has jurisdiction, they shall bring the matter to the Commission's attention without undue delay. The Commission may request ERGA to provide an opinion on the matter in accordance with point (d) of Article 30b(3). ERGA shall provide such an opinion within 15 working days from the submission of the Commission's request. The Commission shall keep the Contact Committee duly informed.

Article 28b

1. Without prejudice to Articles 12 to 15 of Directive 2000/31/EC, Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures to protect:

- (a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1);
- (b) the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter;
- (c) the general public from programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under Union law, namely public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541, offences concerning child pornography as set out in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council (*) and offences concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA.

2. Member States shall ensure that video-sharing platform providers under their jurisdiction comply with the requirements set out in Article 9(1) with respect to audiovisual commercial communications that are marketed, sold or arranged by those video-sharing platform providers.

Member States shall ensure that the video-sharing platform providers under their jurisdiction take appropriate measures to comply with the requirements set out in Article 9(1) with respect to audiovisual commercial communications that are not marketed, sold or arranged by those video-sharing platform providers, taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications.

Member States shall ensure that video-sharing platform providers clearly inform users where programmes and user-generated videos contain audiovisual commercial communications, provided that such communications are declared under point (c) of the third subparagraph of paragraph 3 or the provider has knowledge of that fact.

Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a(1) aiming at effectively reducing the exposure of children to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended. Those codes shall aim to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.

3. For the purposes of paragraphs 1 and 2, the appropriate measures shall be determined in light of the nature of the content in question, the harm it may cause, the characteristics of the category of persons to be protected as well as the rights and legitimate interests at stake, including those of the video-sharing platform providers and the users having created or uploaded the content as well as the general public interest.

Member States shall ensure that all video-sharing platform providers under their jurisdiction apply such measures. Those measures shall be practicable and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided. Those measures shall not lead to any ex-ante control measures or upload-filtering of content which do not comply with Article 15 of Directive 2000/31/EC. For the purposes of the protection of minors, provided for in point (a) of paragraph 1 of this Article, the most harmful content shall be subject to the strictest access control measures.

Those measures shall consist of, as appropriate:

- (a) including and applying in the terms and conditions of the video-sharing platform services the requirements referred to in paragraph 1;
- (b) including and applying in the terms and conditions of the video-sharing platform services the requirements set out in Article 9(1) for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers;
- (c) having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know;
- (d) establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 provided on its platform;
- (e) establishing and operating systems through which video-sharing platform providers explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (d);
- (f) establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;
- (g) establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1;
- (h) providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors;
- (i) establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the video-sharing platform provider in relation to the implementation of the measures referred to in points (d) to (h);
- (j) providing for effective media literacy measures and tools and raising users' awareness of those measures and tools.

Personal data of minors collected or otherwise generated by video-sharing platform providers pursuant to points (f) and (h) of the third subparagraph shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

4. For the purposes of the implementation of the measures referred to in paragraphs 1 and 3 of this Article, Member States shall encourage the use of co-regulation as provided for in Article 4a(1).

5. Member States shall establish the necessary mechanisms to assess the appropriateness of the measures referred to in paragraph 3 taken by video-sharing platform providers. Member States shall entrust the assessment of those measures to the national regulatory authorities or bodies.

6. Member States may impose on video-sharing platform providers measures that are more detailed or stricter than the measures referred to in paragraph 3 of this Article. When adopting such measures, Member States shall comply with the requirements set out by applicable Union law, such as those set out in Articles 12 to 15 of Directive 2000/31/EC or Article 25 of Directive 2011/93/EU.

7. Member States shall ensure that out-of-court redress mechanisms are available for the settlement of disputes between users and video-sharing platform providers relating to the application of paragraphs 1 and 3. Such mechanisms shall enable disputes to be settled impartially and shall not deprive the user of the legal protection afforded by national law.

8. Member States shall ensure that users can assert their rights before a court in relation to video-sharing platform providers pursuant to paragraphs 1 and 3.

9. The Commission shall encourage video-sharing platform providers to exchange best practices on co-regulatory codes of conduct referred to in paragraph 4.

10. Member States and the Commission may foster self-regulation through Union codes of conduct referred to in Article 4a(2).

(*) Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).;

(24) the title of Chapter XI is replaced by the following:

'REGULATORY AUTHORITIES AND BODIES OF THE MEMBER STATES';

(25) Article 30 is replaced by the following:

'Article 30

1. Each Member State shall designate one or more national regulatory authorities, bodies, or both. Member States shall ensure that they are legally distinct from the government and functionally independent of their respective governments and of any other public or private body. This shall be without prejudice to the possibility for Member States to set up regulators having oversight over different sectors.

2. Member States shall ensure that national regulatory authorities or bodies exercise their powers impartially and transparently and in accordance with the objectives of this Directive, in particular media pluralism, cultural and linguistic diversity, consumer protection, accessibility, non-discrimination, the proper functioning of the internal market and the promotion of fair competition.

National regulatory authorities or bodies shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent supervision in accordance with national constitutional law.

3. Member States shall ensure that the competences and powers of the national regulatory authorities or bodies, as well as the ways of making them accountable are clearly defined in law.

4. Member States shall ensure that national regulatory authorities or bodies have adequate financial and human resources and enforcement powers to carry out their functions effectively and to contribute to the work of ERGA. Member States shall ensure that national regulatory authorities or bodies are provided with their own annual budgets, which shall be made public.

5. Member States shall lay down in their national law the conditions and the procedures for the appointment and dismissal of the heads of national regulatory authorities and bodies or the members of the collegiate body fulfilling that function, including the duration of the mandate. The procedures shall be transparent, non-discriminatory and guarantee the requisite degree of independence. The head of a national regulatory authority or body or the members of the collegiate body fulfilling that function within a national regulatory authority or body may be dismissed if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance at national level. A dismissal decision shall be duly justified, subject to prior notification and made available to the public.

6. Member States shall ensure that effective appeal mechanisms exist at national level. The appeal body, which may be a court, shall be independent of the parties involved in the appeal.

Pending the outcome of the appeal, the decision of the national regulatory authority or body shall stand, unless interim measures are granted in accordance with national law.;

(26) the following articles are inserted:

'Article 30a

1. Member States shall ensure that national regulatory authorities or bodies take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, in particular Articles 2, 3 and 4.

2. In the context of the information exchange under paragraph 1, when national regulatory authorities or bodies receive information from a media service provider under their jurisdiction that it will provide a service wholly or mostly directed at the audience of another Member State, the national regulatory authority or body in the Member State having jurisdiction shall inform the national regulatory authority or body of the targeted Member State.

3. If the regulatory authority or body of a Member State whose territory is targeted by a media service provider under the jurisdiction of another Member State sends a request concerning the activities of that provider to the regulatory authority or body of the Member State having jurisdiction over it, the latter regulatory authority or body shall do its utmost to address the request within two months, without prejudice to stricter time limits applicable pursuant to this Directive. When requested, the regulatory authority or body of the targeted Member State shall provide any information to the regulatory authority or body of the Member State having jurisdiction that may assist it in addressing the request.

Article 30b

1. The European Regulators Group for Audiovisual Media Services (ERGA) is hereby established.

2. It shall be composed of representatives of national regulatory authorities or bodies in the field of audiovisual media services with primary responsibility for overseeing audiovisual media services, or where there is no national regulatory authority or body, by other representatives as chosen through their procedures. A Commission representative shall participate in ERGA meetings.

3. ERGA shall have the following tasks:

(a) to provide technical expertise to the Commission:

- in its task to ensure a consistent implementation of this Directive in all Member States,
- on matters related to audiovisual media services within its competence;

(b) to exchange experience and best practices on the application of the regulatory framework for audiovisual media services, including on accessibility and media literacy;

(c) to cooperate and provide its members with the information necessary for the application of this Directive, in particular as regards Articles 3, 4 and 7;

(d) to give opinions, when requested by the Commission, on the technical and factual aspects of the issues pursuant to Article 2(5c), Article 3(2) and (3), point (c) of Article 4(4) and Article 28a(7).

4. ERGA shall adopt its rules of procedure.’;

(27) Article 33 is replaced by the following:

‘Article 33

The Commission shall monitor Member States’ application of this Directive.

By 19 December 2022 at the latest, and every three years thereafter, the Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of this Directive.

By 19 December 2026 at the latest, the Commission shall submit to the European Parliament and the Council an *ex post* evaluation, accompanied where appropriate by proposals for its review, of the impact of this Directive and its added value.

The Commission shall keep the Contact Committee and ERGA duly informed of the others’ work and activities.

The Commission shall ensure that information received from Member States on any measure that they have taken in the fields coordinated by this Directive is communicated to the Contact Committee and ERGA.’;

(28) the following article is inserted:

‘Article 33a

1. Member States shall promote and take measures for the development of media literacy skills.

2. By 19 December 2022 and every three years thereafter, Member States shall report to the Commission on the implementation of paragraph 1.

3. The Commission shall, after consulting the Contact Committee, issue guidelines regarding the scope of such reports.’

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 19 September 2020. They shall immediately communicate the text of those provisions to the Commission.

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

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 3

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

Article 4

This Directive is addressed to the Member States.

Done at Strasbourg, 14 November 2018.

For the European Parliament

The President

A. TAJANI

For the Council

The President

K. EDTSTADLER

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