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I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2022/2463 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 14 December 2022****establishing an instrument for providing support to Ukraine for 2023 (macro-financial assistance +)**

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 212 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) An association agreement between the Union and Ukraine ⁽²⁾, including a Deep and Comprehensive Free Trade Area, entered into force on 1 September 2017.
- (2) In 2014, Ukraine embarked on an ambitious reform programme with the aim of stabilising its economy and improving the livelihoods of its citizens. The fight against corruption, as well as constitutional, electoral and judicial reforms, are among the top priorities on the agenda. The implementation of those reforms was supported by consecutive macro-financial assistance programmes, under which Ukraine has received assistance from the Union in the form of loans for a total of EUR 6,6 billion.
- (3) The emergency macro-financial assistance, which was made available in the context of mounting threat, right before the Russian invasion, pursuant to Decision (EU) 2022/313 of the European Parliament and of the Council ⁽³⁾, provided EUR 1,2 billion in loans to Ukraine, disbursed in two instalments, each of EUR 600 million, in March and May 2022.
- (4) The Union's exceptional macro-financial assistance of up to EUR 1 billion, made available pursuant to Decision (EU) 2022/1201 of the European Parliament and of the Council ⁽⁴⁾, provided swift and urgent support to the Ukrainian budget and was fully disbursed in two tranches on 1 and 2 August 2022. That assistance constituted the first stage of the planned exceptional macro-financial assistance to Ukraine of up to EUR 9 billion, announced by the Commission in its communication of 18 May 2022 entitled 'Ukraine Relief and Reconstruction' and endorsed by the European Council of 23-24 June 2022.

⁽¹⁾ Position of the European Parliament of 24 November 2022 (not yet published in the Official Journal) and position of the Council at first reading of 10 December 2022 (not yet published in the Official Journal). Position of the European Parliament of 14 December 2022.

⁽²⁾ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (OJ L 161, 29.5.2014, p. 3).

⁽³⁾ Decision (EU) 2022/313 of the European Parliament and of the Council of 24 February 2022 providing macro-financial assistance to Ukraine (OJ L 55, 28.2.2022, p. 4).

⁽⁴⁾ Decision (EU) 2022/1201 of the European Parliament and of the Council of 12 July 2022 providing exceptional macro-financial assistance to Ukraine (OJ L 186, 13.7.2022, p. 1).

- (5) Decision (EU) 2022/1628 of the European Parliament and of the Council ⁽⁵⁾ constituted a further step in the implementation of the Union's planned exceptional macro-financial assistance. It established the basis for providing to Ukraine a further amount of up to EUR 5 billion in the form of loans on highly concessional terms, of which EUR 2 billion was disbursed on 18 October, with the remaining EUR 3 billion to be disbursed by the end of 2022.
- (6) Russia's unprovoked and unjustified war of aggression against Ukraine since 24 February 2022 has caused Ukraine a loss of access to financial markets and a significant drop in public revenue, while public expenditure to address the humanitarian situation and to maintain the continuity of State services has increased markedly. In that very uncertain and volatile situation, the best estimates of Ukraine's funding needs by the International Monetary Fund (IMF) in the summer of 2022 pointed to an extraordinary funding gap of around USD 39 billion in 2022, of which around half could be met thanks to international assistance. The swift provision by the Union of the macro-financial assistance to Ukraine under Decision (EU) 2022/1628 was, given the extraordinary circumstances, considered to be an appropriate short-term response to the sizeable risks to Ukraine's macro-financial stability. The further amount of up to EUR 5 billion of exceptional macro-financial assistance under that Decision was to support Ukraine's macro-financial stabilisation, strengthen the immediate resilience of the country and sustain its capacity towards recovery, thereby contributing to the public debt sustainability of Ukraine and its ability to ultimately be in a position to meet its financial obligations.
- (7) Since the beginning of Russia's war of aggression against Ukraine, the Union, its Member States and European financial institutions have mobilised EUR 19,7 billion for Ukraine's economic, social and financial resilience. That amount combines support from the Union budget, in the amount of EUR 12,4 billion, including the exceptional macro-financial assistance and support from the European Investment Bank and the European Bank for Reconstruction and Development, fully or partially guaranteed by the Union budget, as well as further financial support by Member States, in the amount of EUR 7,3 billion.
- (8) In addition, the Council decided on assistance measures to support the Ukrainian armed forces under the European Peace Facility, in the amount of EUR 3,1 billion under Council Decision (CFSP) 2021/509 ⁽⁶⁾, and a military assistance mission in support of Ukraine with EUR 0,1 billion for the common costs under Council Decision (CFSP) 2022/1968 ⁽⁷⁾. The Union and its Member States have also delivered unprecedented in-kind emergency response via the Union Civil Protection Mechanism under Regulation (EU) 2021/836 of the European Parliament and of the Council ⁽⁸⁾, constituting the largest emergency operation since the creation of that mechanism, and channelling millions of emergency items to Ukraine and the region.
- (9) The European Council of 23 June 2022 decided to grant the status of candidate country to Ukraine. Ongoing strong support to Ukraine is a key priority for the Union. As the damage from Russia's war of aggression to the Ukrainian economy, citizens and businesses is tremendous, ongoing strong support to Ukraine requires an organised collective approach as set out in the instrument for providing Union support to Ukraine (macro-financial assistance +) established by this Regulation (the 'Instrument').
- (10) Russia's war of aggression against Ukraine represents a strategic geopolitical threat to the Union as a whole and requires Member States to stand strong and united. It is therefore essential that Union support be deployed rapidly and be able to adapt flexibly and gradually for immediate relief and short-term rehabilitation on the way to future reconstruction.

⁽⁵⁾ Decision (EU) 2022/1628 of the European Parliament and of the Council of 20 September 2022 providing exceptional macro-financial assistance to Ukraine, reinforcing the common provisioning fund by guarantees by the Member States and by specific provisioning for some financial liabilities related to Ukraine guaranteed under Decision No 466/2014/EU, and amending Decision (EU) 2022/1201 (OJ L 245, 22.9.2022, p. 1).

⁽⁶⁾ Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528 (OJ L 102, 24.3.2021, p. 14).

⁽⁷⁾ Council Decision (CFSP) 2022/1968 of 17 October 2022 on a European Union Military Assistance Mission in support of Ukraine (EUMAM Ukraine) (OJ L 270, 18.10.2022, p. 85).

⁽⁸⁾ Regulation (EU) 2021/836 of the European Parliament and of the Council of 20 May 2021 amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism (OJ L 185, 26.5.2021, p. 1).

- (11) The general objective of the Instrument is to contribute to closing the funding gap of Ukraine in 2023, notably by providing highly concessional short-term financial relief to Ukraine's State budget in a predictable, continuous, orderly and timely manner, including financing the rehabilitation and initial support towards post-war reconstruction, where appropriate, with a view to supporting Ukraine on its path towards European integration.
- (12) To attain the Instrument's general objective, the assistance should be provided to support macro-financial stability in Ukraine, and to ease Ukraine's external financing constraints. The Commission should implement the support under the Instrument in accordance with the key principles and objectives of the measures taken within the different areas of external action and other relevant Union policies.
- (13) The provision of rehabilitation support, repair, and maintenance of critical functions and infrastructure as well as relief for people in need and for most affected areas in terms of material and social support, temporary housing, residential and infrastructural construction should also count among the main areas of support under the Instrument.
- (14) The Instrument should also support the strengthening of the capacity of Ukrainian authorities to prepare for the future post-war reconstruction and for the early preparatory phase of the pre-accession process, as appropriate, including the strengthening of Ukraine's institutions, reforming and reinforcing the effectiveness of public administration as well as transparency, structural reforms and good governance at all levels.
- (15) The Instrument will support the Union's external policy towards Ukraine. The Commission and the European External Action Service should work closely together throughout the support operation in order to coordinate, and ensure the consistency of, the Union's external policy. The support to Ukraine under the Instrument will continue to contribute significantly to satisfying Ukraine's funding needs as estimated by the IMF, the World Bank and other international financial institutions, taking into account Ukraine's capacity to finance itself with its own resources. The determination of the amount of the support also takes into account the expected financial contributions from bilateral and multilateral donors, as well as the pre-existing deployment of the Union's other external financing instruments in Ukraine and the added value of the overall Union involvement.
- (16) The situation of Ukraine requires a step-by-step approach whereby an instrument focusing on macro-financial stability as well as immediate relief and rehabilitation should be accompanied by continuous support under the Neighbourhood, Development and International Cooperation Instrument – Global Europe established by Regulation (EU) 2021/947 of the European Parliament and of the Council ⁽⁹⁾ and the humanitarian aid operations under Council Regulation (EC) No 1257/96 ⁽¹⁰⁾.
- (17) This Regulation should lay down the resources available for the Instrument for the period from 1 January 2023 to 31 December 2023 with possible disbursements until 31 March 2024. A maximum amount of EUR 18 billion should be made available in the form of loans. In addition, for the period from 1 January 2023 to 31 December 2027, this Regulation should provide for an interest rate subsidy. To ensure coverage of interest costs during the lifetime of the loans, contributions from the Member States beyond 2027 should be renewed and continue as external assigned revenue unless covered through other means in future multiannual financial frameworks. Therefore it might be possible to extend the contributions from the Member States beyond 2027.

⁽⁹⁾ Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009 (OJ L 209, 14.6.2021, p. 1).

⁽¹⁰⁾ Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid (OJ L 163, 2.7.1996, p. 1).

- (18) This Regulation should provide the possibility for the Member States to make available additional resources, as external assigned revenue, to be implemented under the memorandum of understanding (MoU) of the Instrument. Such a possibility for additional contribution should also be made for interested third countries and parties as external assigned revenues, in accordance with Article 21(2), points (d) and (e), of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽¹¹⁾ (the 'Financial Regulation'). To foster synergies and complementarities, it is appropriate to allow that such additional contributions from the Member States, from interested third countries and parties could also be made available to the programmes established under Regulations (EU) 2021/947 and (EC) No 1257/96 to finance measures contributing to the objectives of the Instrument.
- (19) Voluntary contributions by the Member States should be irrevocable, unconditional and on demand. For that purpose, the Member States should enter into a contribution agreement within the meaning of Article 22(2) of the Financial Regulation with the Commission. Such contribution agreement should cover the contribution to the interest rate subsidy and, should the Member States wish to provide them, also additional amounts.
- (20) The support under the Instrument should be made available under the precondition that Ukraine continue to respect effective democratic mechanisms and its institutions, including a multi-party parliamentary system, and the rule of law, and to guarantee respect for human rights.
- (21) The support under the Instrument should be linked to policy conditions to be set out in a MoU. Those conditions should also include commitments to strengthen the country's economic performance and resilience, the business environment, facilitate critical reconstruction and address challenges in the energy sector.
- (22) The policy conditions should be complemented by stringent reporting requirements, aiming to ensure that the funds are used in an efficient, transparent and accountable manner.
- (23) In view of the situation in Ukraine, it is appropriate to provide for a mid-term review of the MoU.
- (24) The support under the Instrument should be released subject to the respect of preconditions, satisfactory implementation and progress towards the implementation of the policy conditions.
- (25) It is appropriate to provide for the possibility to reassess the funding needs of Ukraine and to reduce, suspend or cancel the support if those needs decrease fundamentally during the period of the disbursement of the support under the Instrument compared to the initial projections. It is also appropriate to provide for the possibility to suspend or cancel the disbursements in case the requirements for the release of the support under the Instrument are not fulfilled.
- (26) In the context of Ukraine's urgent financing needs, it is appropriate to organise the financial assistance under the diversified funding strategy provided for in Article 220a of the Financial Regulation and established as a single funding method therein, which is expected to enhance the liquidity of Union bonds and the attractiveness and cost-effectiveness of Union issuance.

⁽¹¹⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

- (27) Given the difficult situation of Ukraine caused by Russia's war of aggression and to support Ukraine on its long-term stability path, it is appropriate to provide loans to Ukraine on highly concessional terms with a maximum duration of 35 years and to not start the repayment of the principal before 2033. It is also appropriate to derogate from Article 220(5), point (e), of the Financial Regulation and to allow the Union the possibility to cover the interest rate costs and to waive the administrative costs that would otherwise be borne by Ukraine. The interest rate subsidy should be granted as an instrument deemed appropriate to ensure the effectiveness of the support under the Instrument within the meaning of Article 220(1) of the Financial Regulation. It should be financed from additional voluntary contributions by the Member States and should become available gradually as the agreements with the Member States enter into force.
- (28) It should be possible for Ukraine to request the interest rate subsidy and the waiver of administrative costs each year.
- (29) The financial liability from loans under this Regulation should not be supported by the External Action Guarantee, by derogation from Article 31(3), second sentence, of Regulation (EU) 2021/947. Support under the Instrument should constitute financial assistance within the meaning of Article 220(1) of the Financial Regulation. In considering the financial risks and the budgetary coverage, no provisioning should be constituted for the financial assistance in the form of loans under the Instrument and, by derogation from Article 211(1) of the Financial Regulation, no provisioning rate as a percentage of the amount referred to in Article 4(1) of this Regulation should be set.
- (30) Council Regulation (EU, Euratom) 2020/2093 ⁽¹²⁾ currently does not allow for coverage of the financial liability arising from loans under the Instrument. Pending its possible amendment, which would allow, as a guarantee, the mobilisation of budgetary resources over and above the multiannual financial framework (MFF) ceilings and up to the limits of the ceilings referred to in Article 3(1) and (2) of Council Decision (EU, Euratom) 2020/2053 ⁽¹³⁾, it is appropriate to seek an alternative solution providing additional resources.
- (31) Voluntary contributions by Member States in the form of guarantees have been identified as an appropriate tool to provide the protection allowing the borrowing and lending operations under this Regulation. The Member States' guarantees should constitute an appropriate safeguard ensuring the Union's ability to repay the borrowings supporting the loans under the Instrument.
- (32) The guarantees provided by Member States should cover the support under the Instrument in the form of loans of up to EUR 18 000 000 000. It is important that Member States complete the applicable national procedures to provide the guarantees as a matter of the utmost priority. Given the urgency of the situation, the time needed for the completion of those procedures should not delay the disbursement of the required financial support to Ukraine in the form of loans under this Regulation. At the same time, the financial support under the Instrument in the form of loans should be made available progressively, as the guarantees provided by Member States enter into force. In view of the principle of sound financial management and prudence, the Commission should arrange the loans taking due consideration of its credit standing. However, the support should become available for the full amount of up to EUR 18 000 000 000 as of the date of application of an amendment to Regulation (EU, Euratom) 2020/2093, or its successor, which provides for a guarantee of the loans under the Instrument under the Union budget over and above the MFF ceilings and up to the limits of the ceilings referred to in Article 3(1) and (2) of Decision (EU, Euratom) 2020/2053.

⁽¹²⁾ Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (OJ L 433I, 22.12.2020, p. 11).

⁽¹³⁾ Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ L 424, 15.12.2020, p. 1).

- (33) The Member States' guarantees should be irrevocable, unconditional and on demand. Those guarantees should ensure the Union's ability to repay the funds borrowed on the capital markets or from financial institutions. The guarantees should cease to be callable as of the date of application of an amendment to Regulation (EU, Euratom) 2020/2093, or its successor, which provides for a guarantee of the loans under the Instrument under the Union budget over and above the MFF ceilings and up to the limits of the ceilings referred to in Article 3(1) and (2) of Decision (EU, Euratom) 2020/2053. The guarantees should be called in the event that the Union does not receive a timely payment from Ukraine in respect of the loans under the Instrument, including, in particular, in cases of changes to the payment schedule for any reason whatsoever as well as expected and unexpected non-payments.
- (34) Amounts recovered under the loan agreements in respect of the loans under the Instrument should be reimbursed to the Member States that have honoured the guarantee calls, by derogation from Article 211(4), point (c), of the Financial Regulation.
- (35) Before calling on the guarantees provided by the Member States, the Commission, at its sole discretion and responsibility as the Union institution entrusted with the implementation of the general budget of the Union in accordance with Article 317 of the Treaty on the Functioning of the European Union, should examine all measures available under the diversified funding strategy provided for in Article 220a of the Financial Regulation, in accordance with the limits set out in this Regulation. In the relevant call on guarantees, the Commission should inform the Member States about the examination, as appropriate.
- (36) The relative share of the contributions of each Member State (contribution key) to the overall guaranteed amount should correspond to the relative shares of Member States in the total gross national income (GNI) of the Union. The calls on the guarantees should be made pro rata, applying the contribution key. Until all the guarantee agreements between the Commission and the Member States enter into force, the contribution key should be proportionately adjusted on a temporary basis.
- (37) It is appropriate that the Commission and Ukraine conclude a loan agreement for the loan support, within the framework of the conditions set out in the MoU. In order to ensure that the Union's financial interests linked to the support under the Instrument are protected efficiently, Ukraine should take appropriate measures regarding the prevention of and fight against fraud, corruption and any other irregularities linked to that support. In addition, provision should be made in the loan agreement and in the financing agreement for the Commission to carry out checks, for the Court of Auditors to carry out audits and for the European Public Prosecutor's Office to exercise its competences, in accordance with Articles 129 and 220 of the Financial Regulation.
- (38) Since the objective of this Regulation, namely to contribute to closing the funding gap of Ukraine in 2023, notably by providing highly concessional short-term relief to Ukraine's State budget in a predictable, continuous, orderly and timely manner, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (39) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁴⁾.

⁽¹⁴⁾ 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).

- (40) In view of the urgency entailed by the exceptional circumstances caused by Russia's unprovoked and unjustified war of aggression, it is considered to be appropriate to invoke the exception to the eight-week period provided for in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.
- (41) In light of the situation in Ukraine, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

UNION SUPPORT TO UKRAINE

SECTION 1

General provisions

Article 1

Subject matter

1. This Regulation establishes an instrument for providing Union support to Ukraine (macro-financial assistance +) (the 'Instrument') in the form of loans, non-repayable support and an interest rate subsidy.
2. It lays down the objectives of the Instrument, its financing, the forms of Union funding under it and the rules for providing such funding.

Article 2

Objectives of the Instrument

1. The general objective of the Instrument shall be to provide short-term financial relief to Ukraine in a predictable, continuous, orderly and timely manner, financing of rehabilitation and initial support towards post-war reconstruction, where appropriate, with a view to supporting Ukraine on its path towards European integration.
2. To reach the general objective, the main specific objectives shall in particular be to support:
 - (a) macro-financial stability, and to ease Ukraine's external and internal financing constraints;
 - (b) a reform agenda gearing towards the early preparatory phase of the pre-accession process, as appropriate, including strengthening Ukraine's institutions, reforming and reinforcing the effectiveness of public administration as well as transparency, structural reforms and good governance at all levels;
 - (c) rehabilitation of critical functions and infrastructure and relief for people in need.

*Article 3***Areas of support**

To achieve its objectives, the Instrument shall support notably the following:

- (a) the financing of Ukraine's funding needs, with a view to maintaining the macro-financial stability of the country;
- (b) rehabilitation, for instance in restoring critical infrastructure, such as energy infrastructure, water systems, transport networks, internal roads or bridges, or in strategic economic sectors and social infrastructure, such as healthcare facilities, schools, and housing for relocated persons, including temporary and social housing;
- (c) sectoral and institutional reforms, including anti-corruption and judicial reforms, respect for the rule of law, good governance, and modernisation of the national and local institutions;
- (d) preparation for the reconstruction of Ukraine;
- (e) support for the alignment of the regulatory framework of Ukraine to that of the Union and Ukraine's integration into the single market, as well as strengthening economic development and improving competitiveness;
- (f) the strengthening of Ukraine's administrative capacity through appropriate means, including the use of technical assistance.

*Article 4***Available support under the Instrument**

1. The support under the Instrument in the form of loans, shall be available, subject to Article 5, for an amount of up to EUR 18 000 000 000 for the period from 1 January 2023 to 31 December 2023 with possible disbursement until 31 March 2024.

The support shall become available progressively, as Member States' guarantees enter into force in accordance with Article 5(4), while never exceeding the amounts covered by those guarantee agreements.

However, as of the date of application of an amendment to Regulation (EU, Euratom) 2020/2093, or its successor, that provides for a guarantee of the loans referred to in the first subparagraph of this paragraph under the Union budget over and above the MFF ceilings and up to the limits of the ceilings referred to in Article 3(1) and (2) of Decision (EU, Euratom) 2020/2053, the second subparagraph of this paragraph shall cease to apply and the support referred to in the first subparagraph of this paragraph shall become available in full.

2. Additional support under the Instrument for the period from 1 January 2023 to 31 December 2027 shall also be available, subject to Article 7(1), for covering the expenditure pursuant to Article 17. This additional support may be available beyond 31 December 2027 subject to Article 7(1).

3. Additional amounts available in accordance with Article 7(2) and (4) of this Regulation may be implemented as non-repayable support where provided for in the MoU to be concluded in accordance with Article 9 of this Regulation or in accordance with Regulations (EU) 2021/947 and (EC) No 1257/96 to finance measures achieving the objectives referred to in Article 2(2), points (b) and (c), of this Regulation in accordance with the rules of those Regulations.

4. The amounts referred to in paragraph 3 may cover support expenditure for the implementation of the Instrument and for the achievement of its objectives, including administrative support associated with the preparation, follow-up, monitoring, control, audit and evaluation activities necessary for such implementation, as well as expenditure at headquarters and Union delegations for the administrative and coordination support needed for the Instrument, and to manage operations financed under the Instrument, including information and communication actions, and corporate information technology systems.

*Article 5***Contributions in the form of guarantees by Member States**

1. Member States may contribute by providing guarantees of up to a total amount of EUR 18 000 000 000 in respect of the support under the Instrument in the form of loans referred to in Article 4(1).
2. Where contributions from the Member States are made, they shall be provided in the form of irrevocable, unconditional and on-demand guarantees through a guarantee agreement to be concluded with the Commission, in accordance with Article 6.
3. The relative share of the contribution of the Member State concerned (contribution key) to the amount referred to in paragraph 1 of this Article shall correspond to the relative share of that Member State in the total GNI of the Union, as resulting from heading 'General Revenue' of the budget for 2023, Part A ('Financing of the Union's annual budget, Introduction'), Table 4, column (1), set out in the general budget of the Union for the financial year 2023, as definitively adopted on 23 November 2022.
4. The guarantees shall become effective in respect of each Member State as of the date of entry into force of the guarantee agreement, referred to in Article 6, between the Commission and the Member State concerned.
5. Amounts resulting from calls on the guarantees shall constitute external assigned revenue in accordance with Article 21(2), point (a)(ii), of the Financial Regulation for the repayment of financial liabilities from the support under the Instrument in the form of loans referred to in Article 4(1) of this Regulation.
6. Before calling on guarantees provided by the Member States, the Commission, at its sole discretion and responsibility, shall examine all measures available under the diversified funding strategy provided for in Article 220a of the Financial Regulation, in accordance with the limits set out in this Regulation. Such examination shall not affect the irrevocable, unconditional and on-demand nature of the guarantees provided pursuant to paragraph 2 of this Article. In the call on guarantees, the Commission shall inform the Member States about the examination, as appropriate.
7. By way of derogation from Article 211(4), point (c), of the Financial Regulation, amounts recovered from Ukraine in respect of the support under the Instrument in the form of loans referred to in Article 4(1) of this Regulation shall be reimbursed to those Member States up to the amount of the guarantee calls honoured by Member States pursuant to Article 6, point (a), of this Regulation.

*Article 6***Guarantee agreements**

The Commission shall conclude a guarantee agreement with each Member State that provides a guarantee referred to in Article 5. That agreement shall set out the rules governing the guarantee, which shall be the same for all Member States, including, in particular, provisions:

- (a) establishing the obligation of the Member States to honour guarantee calls made by the Commission in respect of the support under the Instrument in the form of loans referred to in Article 4(1);
- (b) ensuring that the guarantee calls are made pro rata, applying the contribution key referred to in Article 5(3); on a temporary basis, the contribution key shall be proportionately adjusted until all the guarantee agreements between the Commission and the Member States enter into force in accordance with Article 5(4);
- (c) providing that the guarantee calls ensure the Union's ability to repay the funds borrowed, pursuant to Article 16(1), on the capital markets or from financial institutions following a non-payment by Ukraine, including cases of changes to the payment schedule for any reason whatsoever as well as expected and unexpected non-payments;

- (d) ensuring that where a Member State fails, in full or in part, to honour a guarantee call in time, the Commission, in order to cover for the part corresponding to the Member State concerned, shall have the right to make additional guarantee calls on guarantees provided by other Member States. Such additional calls shall be made pro rata to the relative share of each of the other Member States in the GNI of the Union as referred to in Article 5(3) and adapted without taking into account the relative share of the Member State concerned. The Member State which failed to honour the guarantee call shall remain liable to honour it, and shall also be liable for any resulting costs. The other Member States shall be reimbursed any additional contributions from the amounts recovered by the Commission from the Member State which failed to honour a call. The guarantee called from a Member State shall be limited, in all circumstances, to the overall amount of guarantee contributed by that Member State under the guarantee agreement;
- (e) regarding the payment conditions;
- (f) ensuring that the guarantee shall cease to be callable as of the date of application of an amendment to Regulation (EU, Euratom) 2020/2093, or its successor, which provides for a guarantee of the loans referred to in Article 4(1) of this Regulation under the Union budget over and above the MFF ceilings and up to the limits of the ceilings referred to in Article 3(1) and (2) of Decision (EU, Euratom) 2020/2053.

Article 7

Contributions by Member States and third parties

1. Member States may contribute to the Instrument with the amounts referred to in Article 4(2). The relative share of the contribution of the Member State concerned to those amounts shall correspond to the relative share of that Member State in the total GNI of the Union. For the contributions for year *n*, the GNI-based relative share shall be calculated as the share in the total GNI of the Union, as resulting from the respective column in the revenue part of the last annual Union budget or amending annual Union budget adopted for the year *n*-1.

The support under the Instrument under this paragraph shall become available in respect of any amount set in an agreement between the Commission and the respective Member State after that agreement enters into force.

2. Member States may contribute to the Instrument with additional amounts as referred to in Article 4(3).
3. The contributions referred to in paragraphs 1 and 2 of this Article shall constitute external assigned revenue in accordance with Article 21(2), point (a)(ii), of the Financial Regulation.
4. Interested third countries and parties may also contribute to non-repayable support under the Instrument with additional amounts referred to in Article 4(3), of this Regulation in particular related to the specific objectives referred to in Article 2(2), points (b) and (c), of this Regulation. Those contributions shall constitute external assigned revenue in accordance with Article 21(2), points (d) and (e), of the Financial Regulation.

SECTION 2

Conditions for support under the instrument

Article 8

Precondition for the support under the Instrument

1. A precondition for granting the support under the Instrument shall be that Ukraine continue to uphold and respect effective democratic mechanisms, including a multi-party parliamentary system, and the rule of law, and to guarantee respect for human rights.

2. The Commission and the European External Action Service shall monitor the fulfilment of the precondition set out in paragraph 1 throughout the period of the support provided under the Instrument, in particular before disbursements are made, taking, as appropriate, duly into account the Commission's regular enlargement report. The circumstances in Ukraine and the consequences of the application there of martial law shall also be taken account.
3. Paragraphs 1 and 2 of this Article shall apply in accordance with Council Decision 2010/427/EU ⁽¹⁵⁾.

Article 9

Memorandum of Understanding

1. The Commission shall conclude a memorandum of understanding (MoU) with Ukraine which shall in particular establish the policy conditions, the indicative financial planning and the reporting requirements as referred to in Article 10 to which the Union support under the Instrument is to be linked.

The policy conditions shall be linked, as appropriate, in the context of the overall situation in Ukraine, to the objectives and their implementation referred to respectively in Articles 2 and 3 and to the precondition set out in Article 8. They shall include commitment to the principles of sound financial management with focus on anti-corruption, fight against organised crime, anti-fraud and avoidance of conflict of interests and the establishment of a transparent and accountable framework for the management of rehabilitation and, where appropriate, reconstruction.

2. The MoU may be reviewed by the Commission at mid-term. The Commission may amend the MoU following the review.
3. The MoU shall be adopted and amended in accordance with the examination procedure referred to in Article 19(2).

Article 10

Reporting requirements

1. Reporting requirements for Ukraine shall be included in the MoU and shall ensure, in particular, the efficiency, transparency and accountability of the use of the support provided under the Instrument.
2. The Commission shall verify, at regular intervals, the implementation of the reporting requirements and the progress made towards fulfilling the policy conditions set out in the MoU. The Commission shall inform the European Parliament and the Council of the results of that verification.

SECTION 3

Release of the support under the instrument, assessment and information obligations

Article 11

Release of the support under the Instrument

1. Subject to the requirements referred to in Article 12, the support under the Instrument shall be made available by the Commission in instalments. The Commission shall decide on the timeframe for the disbursement of each instalment. An instalment may be disbursed in one or more tranches.

⁽¹⁵⁾ Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, 3.8.2010, p. 30).

2. The release of the support under the Instrument shall be managed by the Commission based on its assessment of the implementation of the policy conditions included in the MoU.

Article 12

Decision on release of the support under the Instrument

1. Ukraine shall submit a request for funds ahead of the disbursement of each instalment, accompanied by a report in accordance with the provisions of the MoU.
2. The Commission shall decide on the release of the instalments subject to its assessment of the following requirements:
 - (a) respect for the precondition set out in Article 8;
 - (b) the satisfactory implementation of the reporting requirements agreed in the MoU;
 - (c) satisfactory progress towards the implementation of the policy conditions set out in the MoU.
3. Before the maximum amount of the support under the Instrument is disbursed, the Commission shall verify the fulfilment of all the policy conditions set out in the MoU.

Article 13

Reduction, suspension and cancellation of the support under the Instrument

1. If the funding needs of Ukraine decrease fundamentally during the period of the disbursement of the Union's support under the Instrument compared to the initial projections, the Commission may reduce the amount of the support, suspend it or cancel it.
2. Where the requirements set out in Article 12(2) are not met, the Commission shall suspend or cancel the disbursement of the support under the Instrument.

Article 14

Assessment of implementation of the support under the Instrument

During the implementation of the Instrument, the Commission shall assess, by means of an operational assessment, which may be conducted together with the operational assessment provided for under Decisions (EU) 2022/1201 and (EU) 2022/1628, the soundness of Ukraine's financial arrangements, the administrative procedures, and the internal and external control mechanisms which are relevant to the support under the Instrument.

Article 15

Information to the European Parliament and to the Council

The Commission shall inform the European Parliament and the Council of developments regarding the Union support under the Instrument, including disbursements thereof, and developments in the operations referred to in Article 11, and shall provide those institutions with the relevant documents in due time. In case of suspension or cancellation pursuant to Article 13(2), it shall without delay inform the European Parliament and the Council of the reasons for the suspension or cancellation.

CHAPTER II

SPECIFIC PROVISIONS RELATED TO THE IMPLEMENTATION OF THE SUPPORT

*Article 16***Borrowing and lending operations**

1. In order to finance the support under the Instrument in the form of loans, the Commission shall be empowered, on behalf of the Union, to borrow the necessary funds on the capital markets or from financial institutions in accordance with Article 220a of the Financial Regulation.
2. The detailed terms of the support under the Instrument in the form of loans shall be laid down in a loan agreement in accordance with Article 220 of the Financial Regulation, to be concluded between the Commission and Ukraine. The loans shall have a maximum duration of 35 years.
3. By derogation from Article 31(3), second sentence, of Regulation (EU) 2021/947, macro-financial assistance provided to Ukraine in the form of loans under the Instrument shall not be supported by the External Action Guarantee.

No provisioning for the loans under this Regulation shall be constituted and, by derogation from Article 211(1) of the Financial Regulation, no provisioning rate as a percentage of the amount referred to in Article 4(1) of this Regulation shall be set.

*Article 17***Interest rate subsidy**

1. By derogation from Article 220(5), point (e), of the Financial Regulation and subject to available resources, the Union may bear interest by granting an interest rate subsidy and cover administrative costs related to the borrowing and lending, with the exception of costs related to early repayment of the loan, in respect of the loans under this Regulation.
2. Ukraine may request the interest rate subsidy and coverage of the administrative costs by the Union each year.

*Article 18***Financing agreement for non-repayable support**

The detailed terms of the non-repayable support referred to in Article 4(3) of this Regulation shall be laid down in a financing agreement to be concluded between the Commission and Ukraine. By derogation from Article 220(5) of the Financial Regulation, the financing agreement shall contain only provisions referred to in Article 220(5), points (a), (b) and (c), thereof. The financing agreement shall include provisions on the protection of the Union's financial interests, checks, audits, prevention of fraud and other irregularities, and the recovery of funds.

CHAPTER III

COMMON AND FINAL PROVISIONS

*Article 19***Committee procedure**

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

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

Article 20

Annual report

1. The Commission shall submit to the European Parliament and to the Council, an assessment of the implementation of Chapter I of this Regulation, including an evaluation of that implementation. That report shall:

- (a) examine the progress made in implementing the Union's support under the Instrument;
- (b) assess the economic situation and prospects of Ukraine, as well as the implementation of the requirements and conditions referred to in Section 2 of Chapter I of this Regulation;
- (c) indicate the connection between the requirements and conditions set out in the MoU, Ukraine's ongoing macro-financial situation and the Commission's decisions to release the instalments of the support under the Instrument.

2. Not later than two years after the end of the availability period, the Commission shall submit to the European Parliament and to the Council an *ex-post* evaluation report, assessing the results and efficiency of the completed Union's support under the Instrument and the extent to which it has contributed to the aims of the assistance.

Article 21

Final provisions

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

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

Done at Strasbourg, 14 December 2022.

For the European Parliament

The President

R. METSOLA

For the Council

The President

M. BEK

DIRECTIVES

DIRECTIVE (EU) 2022/2464 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 December 2022

amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting

(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 Articles 50 and 114 thereof,

Having regard to the proposal from the European Commission,

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

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

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

Whereas:

- (1) In its communication of 11 December 2019 entitled 'The European Green Deal' (the 'Green Deal'), the European Commission made a commitment to review the provisions concerning non-financial reporting of Directive 2013/34/EU of the European Parliament and of the Council ⁽³⁾. The Green Deal is the new growth strategy of the Union. It aims to transform the Union into a modern, resource-efficient and competitive economy with no net emissions of greenhouse gases (GHG) by 2050. It also aims to protect, conserve and enhance the Union's natural capital, and protect the health and well-being of Union citizens from environment-related risks and impacts. The Green Deal aims to decouple economic growth from resource use, and ensure that all regions and Union citizens participate in a socially just transition to a sustainable economic system whereby no person and no place is left behind. It will contribute to the objective of building an economy that works for the people, strengthening the Union's social market economy, helping to ensure that it is ready for the future and that it delivers stability, jobs, growth and sustainable investment.

These goals are especially important considering the socio-economic damage caused by the COVID-19 pandemic and the need for a sustainable, inclusive and fair recovery. Regulation (EU) 2021/1119 of the European Parliament and of the Council ⁽⁴⁾ makes the objective of climate neutrality by 2050 binding in the Union. Moreover, in its Communication of 20 May 2020 entitled 'EU Biodiversity Strategy for 2030: Bringing nature back into our lives', the Commission commits to ensuring that by 2050 all of the world's ecosystems are restored, resilient and adequately protected. That strategy aims to put Europe's biodiversity on a path to recovery by 2030.

⁽¹⁾ OJ C 517, 22.12.2021, p. 51.

⁽²⁾ Position of the European Parliament of 10 November 2022 (not yet published in the Official Journal) and decision of the Council of 28 November 2022.

⁽³⁾ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

⁽⁴⁾ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

- (2) In its Communication of 8 March 2018 entitled 'Action Plan: Financing Sustainable Growth' (the 'Action Plan on Financing Sustainable Growth'), the Commission set out measures to achieve the following objectives: reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth, manage financial risks stemming from climate change, resource depletion, environmental degradation and social issues, and foster transparency and long-termism in financial and economic activity. The disclosure by certain categories of undertakings of relevant, comparable and reliable sustainability information is a prerequisite for meeting those objectives. The European Parliament and the Council have adopted a number of legislative acts as part of the implementation of the Action Plan on Financing Sustainable Growth. Regulation (EU) 2019/2088 of the European Parliament and of the Council ⁽⁵⁾ governs how financial market participants and financial advisers are to disclose sustainability information to end investors and asset owners.

Regulation (EU) 2020/852 of the European Parliament and of the Council ⁽⁶⁾ creates a classification system of environmentally sustainable economic activities with the aim of scaling up sustainable investments and combatting greenwashing of financial products that unduly claim to be sustainable. Regulation (EU) 2019/2089 of the European Parliament and of the Council ⁽⁷⁾, complemented by Commission Delegated Regulations (EU) 2020/1816 ⁽⁸⁾, (EU) 2020/1817 ⁽⁹⁾ and (EU) 2020/1818 ⁽¹⁰⁾, introduces environmental, social and governance ('ESG') disclosure requirements for benchmark administrators and minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks.

Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹¹⁾ requires large institutions which have issued securities that are admitted to trading on a regulated market to disclose information on ESG risks from 28 June 2022. The prudential framework for investment firms established by Regulation (EU) 2019/2033 of the European Parliament and of the Council ⁽¹²⁾ and Directive (EU) 2019/2034 of the European Parliament and of the Council ⁽¹³⁾ contains provisions concerning the introduction of an ESG risk dimension in the Supervisory Review and Evaluation Process ('SREP') by competent authorities, and contains ESG risk disclosure requirements for investment firms, applicable from 26 December 2022. On 6 July 2021, the Commission also adopted a proposal for a Regulation of the European Parliament and of the Council on European green bonds, following up on the Action Plan on Financing Sustainable Growth.

⁽⁵⁾ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

⁽⁶⁾ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

⁽⁷⁾ Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (OJ L 317, 9.12.2019, p. 17).

⁽⁸⁾ Commission Delegated Regulation (EU) 2020/1816 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published (OJ L 406, 3.12.2020, p. 1).

⁽⁹⁾ Commission Delegated Regulation (EU) 2020/1817 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the minimum content of the explanation on how environmental, social and governance factors are reflected in the benchmark methodology (OJ L 406, 3.12.2020, p. 12).

⁽¹⁰⁾ Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks (OJ L 406, 3.12.2020, p. 17).

⁽¹¹⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁽¹²⁾ Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

⁽¹³⁾ Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).

- (3) In its Communication of 17 June 2019 entitled 'Guidelines on non-financial reporting: Supplement on reporting climate-related information' ('Guidelines on reporting climate-related information'), the Commission highlighted the benefits for companies of reporting on climate-related information particularly by increasing awareness and understanding of climate-related risks and opportunities within the company, diversifying the investor base, creating a lower cost of capital and improving constructive dialogue with all stakeholders. Furthermore, diversity on company boards might have an influence on decision-making, corporate governance and resilience.
- (4) In its conclusions of 5 December 2019 on the deepening of the Capital Markets Union, the Council stressed the importance of reliable, comparable and relevant information on sustainability risks, opportunities and impacts, and called on the Commission to consider the development of a European non-financial reporting standard.
- (5) In its resolution of 29 May 2018 on sustainable finance ⁽¹⁴⁾, the European Parliament called for the further development of non-financial reporting requirements in the framework of Directive 2013/34/EU. In its resolution of 17 December 2020 on sustainable corporate governance ⁽¹⁵⁾, the European Parliament welcomed the Commission's commitment to review Directive 2013/34/EU and expressed the need to set up a comprehensive Union framework on non-financial reporting that contains mandatory Union non-financial reporting standards. The European Parliament called for the expansion of the scope of the reporting requirements to additional categories of undertakings and for the introduction of an audit requirement.
- (6) In its resolution of 25 September 2015 entitled 'Transforming our world: the 2030 Agenda for Sustainable Development' (the '2030 Agenda') the United Nations (UN) General Assembly adopted a new global sustainable development framework. The 2030 Agenda has at its core the UN Sustainable Development Goals ('SDGs') and covers the three dimensions of sustainability: economic, social and environmental. The Commission Communication of 22 November 2016 entitled 'Next steps for a sustainable European future: European action for sustainability' linked the SDGs to the Union policy framework to ensure that all Union actions and policy initiatives, both within and outside the Union, take those goals on board at the outset. In its conclusions of 20 June 2017 on 'A sustainable European future: The EU response to the 2030 Agenda for Sustainable Development', the Council confirmed the commitment of the Union and its Member States to the implementation of the 2030 Agenda in a full, coherent, comprehensive, integrated and effective manner, in close cooperation with partners and other stakeholders.
- (7) Directive 2014/95/EU of the European Parliament and of the Council ⁽¹⁶⁾ amended Directive 2013/34/EU as regards disclosure of non-financial information by certain large undertakings and groups. Directive 2014/95/EU introduced a requirement on undertakings to report information on, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters. With regard to those topics, Directive 2014/95/EU required undertakings to disclose information under the following reporting areas: business model; policies, including due diligence processes; the outcome of those policies; risks and risk management; and key performance indicators relevant to the business.
- (8) Many stakeholders consider the term 'non-financial' to be inaccurate, in particular because it implies that the information in question has no financial relevance. Increasingly, however, such information does have financial relevance. Many organisations, initiatives and practitioners in the field of sustainability reporting refer to 'sustainability information'. It is therefore preferable to use the term 'sustainability information' in place of 'non-financial information'. Directive 2013/34/EU should therefore be amended to take account of that change in terminology.

⁽¹⁴⁾ OJ C 76, 9.3.2020, p. 23.

⁽¹⁵⁾ OJ C 445, 29.10.2021, p. 94.

⁽¹⁶⁾ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1).

- (9) If undertakings carried out better sustainability reporting, the ultimate beneficiaries would be individual citizens and savers, including trade unions and workers' representatives who would be adequately informed and therefore able to better engage in social dialogue. Savers who want to invest sustainably will have the opportunity to do so, while all citizens would benefit from a stable, sustainable and inclusive economic system. To realise such benefits, the sustainability information disclosed in the annual reports of undertakings first has to reach two primary groups of users. The first group of users consists of investors, including asset managers, who want to better understand the risks and opportunities that sustainability issues pose for their investments and the impacts of those investments on people and the environment. The second group of users consists of civil society actors, including non-governmental organisations and social partners, which wish to better hold undertakings to account for their impacts on people and the environment. Other stakeholders might also make use of sustainability information disclosed in annual reports, in particular to foster comparability across and within market sectors.

The business partners of undertakings, including customers, might rely on sustainability information to understand and, where necessary, report on their sustainability risks and impacts throughout their own value chains. Policy makers and environmental agencies can use such information, in particular on an aggregate basis, to monitor environmental and social trends, to contribute to environmental accounts, and to inform public policy. Few individual citizens and consumers directly consult undertakings' annual reports, but they might use sustainability information indirectly, for example, when considering the advice or opinions of financial advisers or non-governmental organisations. Many investors and asset managers purchase sustainability information from third-party data providers, who collect information from various sources, including public corporate reports.

- (10) The market for sustainability information is rapidly growing, and the role of third-party data providers is gaining in importance given the new obligations that investors and asset managers need to fulfil. With the increased availability of disaggregated data, sustainability information should come at a more reasonable cost. The amendments to Directive 2013/34/EU provided for in this amending Directive are expected to increase the comparability of data and harmonise standards. It is expected that the practices of third-party data providers will improve and that expertise will grow in this area, with a potential for job creation.
- (11) There has been a very significant increase in demand for corporate sustainability information in recent years, especially on the part of the investment community. That increase in demand is driven by the changing nature of risks to undertakings and growing investor awareness of the financial implications of those risks. That is especially the case for climate-related financial risks. There is also growing awareness of the risks and opportunities for undertakings and for investments resulting from other environmental issues, such as biodiversity loss, and from health and social issues, including child labour and forced labour. The increase in demand for sustainability information is also driven by the growth in investment products that explicitly seek to meet certain sustainability standards or achieve certain sustainability objectives and to ensure coherence with the ambition of the Paris Agreement under the United Nations Framework Convention on Climate Change adopted on 12 December 2015 (the 'Paris Agreement'), the UN Convention on Biological Diversity and Union policies. Part of that increase is the logical consequence of previously adopted Union legislation, notably Regulations (EU) 2019/2088 and (EU) 2020/852. Some of that increase would have happened in any case, due to fast-changing citizen awareness, consumer preferences and market practices. The COVID-19 pandemic has further accelerated the increase in users' information needs, in particular as it has exposed the vulnerabilities of workers and undertakings' value chains. Information on environmental impacts is also relevant in the context of mitigating future pandemics, with human disturbance of ecosystems being increasingly linked to the occurrence and spread of diseases.
- (12) Undertakings themselves stand to benefit from carrying out high-quality reporting on sustainability matters. The growth in the number of investment products that aim to pursue sustainability objectives means that good sustainability reporting can enhance an undertaking's access to financial capital. Sustainability reporting can help undertakings to identify and manage their own risks and opportunities related to sustainability matters. It can provide a basis for better dialogue and communication between undertakings and their stakeholders, and can help undertakings to improve their reputation. Moreover, a consistent basis for sustainability reporting in the form of sustainability reporting standards would lead to relevant and sufficient information being provided and thus significantly decrease ad hoc requests for information.

- (13) The Commission report of 21 April 2021 on the review clauses in Directives 2013/34/EU, 2014/95/EU, and 2013/50/EU and its accompanying fitness check on the EU framework for public reporting by companies ('Commission report on the review clauses and its accompanying fitness check') identified problems as to the effectiveness of Directive 2014/95/EU. There is significant evidence that many undertakings do not disclose material information on all major sustainability-related topics, including climate-related information such as all GHG emissions, and factors that affect biodiversity. The report also identified the limited comparability and reliability of sustainability information as significant problems. Additionally, many undertakings from which users need sustainability information are not obliged to report such information. Accordingly, there is a clear need for a robust and affordable reporting framework that is accompanied by effective auditing practices to ensure the reliability of data and avoid greenwashing and double counting.
- (14) In the absence of policy action, the gap between users' information needs and the sustainability information provided by undertakings is expected to grow. That gap has significant negative consequences. Investors are unable to take sufficient account of sustainability-related risks and opportunities in their investment decisions. The aggregation of multiple investment decisions that do not take adequate account of sustainability-related risks has the potential to create systemic risks that threaten financial stability. The European Central Bank (ECB) and international organisations, such as the Financial Stability Board, have drawn attention to those systemic risks, in particular as regards climate. Investors are also less able to channel financial resources to undertakings and economic activities that address and do not exacerbate social and environmental problems, which undermines the objectives of the Green Deal, the Action Plan on Financing Sustainable Growth and the Paris Agreement. Non-governmental organisations, social partners, communities affected by undertakings' activities, and other stakeholders are less able to hold undertakings accountable for their impacts on people and the environment. This creates an accountability deficit and could lead to lower levels of citizen trust in businesses, which in turn could have negative impacts on the efficient functioning of the social market economy. The lack of generally accepted metrics and methods for measuring, valuing, and managing sustainability-related risks is also an obstacle to the efforts of undertakings to ensure that their business models and activities are sustainable. The lack of sustainability information provided by undertakings also limits the ability of stakeholders, including civil society actors, trade unions and workers' representatives, to enter into dialogue with undertakings on sustainability matters.
- (15) The Commission report on the review clauses and its accompanying fitness check also identified a significant increase in requests to undertakings for information about sustainability matters aimed at addressing the existing information gap between users' information needs and the available corporate sustainability information. In addition, ongoing expectations on undertakings to use a variety of different frameworks and standards are likely to continue and may even intensify as the value placed on sustainability information continues to grow. In the absence of policy action to build consensus on the information that undertakings should report, there will be significant increases in terms of cost and burden for reporting undertakings and for users of such information.
- (16) The existing information gap makes it more likely that individual Member States will introduce increasingly divergent national rules or standards. Different reporting requirements in different Member States could create additional costs and complexity for undertakings operating across borders and therefore undermine the internal market, and could undermine the right of establishment and the free movement of capital across the Union. Such different reporting requirements could also make reported information less comparable across borders, undermining the capital markets union.
- (17) Articles 19a and 29a of Directive 2013/34/EU apply to large undertakings that are public-interest entities with an average number of employees in excess of 500, and to public-interest entities that are parent undertakings of a large group with an average number of employees in excess of 500 on a consolidated basis, respectively. In view of the growth of users' needs for sustainability information, additional categories of undertakings should be required to report sustainability information. It is therefore appropriate to require all large undertakings and all undertakings, except micro undertakings, whose securities are admitted to trading on a regulated market in the Union to report sustainability information. The provisions of this amending Directive amending Articles 19a and 29a of Directive 2013/34/EU explicitly set out the scope of the reporting requirements with reference to Articles 2 and 3 of Directive 2013/34/EU. Therefore, they do not simplify or modify another requirement and the restriction of exemptions for public-interest entities provided for in Article 40 of Directive 2013/34/EU does not apply. In particular, public-interest entities should not be treated as large undertakings for the purposes of the application of the sustainability

reporting requirements. Accordingly, small and medium-sized undertakings whose securities are admitted to trading on a regulated market in the Union that are public-interest entities should be allowed to report in accordance with the sustainability reporting standards for small and medium-sized undertakings. In addition, all undertakings that are parent undertakings of large groups should prepare sustainability reporting at group level. Moreover, since Article 8 of Regulation (EU) 2020/852 refers to Article 19a and Article 29a of Directive 2013/34/EU, the undertakings added to the scope of the sustainability reporting requirements will also have to comply with Article 8 of Regulation (EU) 2020/852.

- (18) The requirement provided for in this amending Directive that also large undertakings whose securities are not admitted to trading on a regulated market in the Union should disclose information on sustainability matters is mainly justified by concerns about the impacts and accountability of such undertakings, including through their value chain. In this respect, all large undertakings should be subject to the same requirements to report sustainability information publicly. In addition, financial market participants also need information from those large undertakings whose securities are not admitted to trading on a regulated market in the Union.
- (19) The requirement provided for in this amending Directive that third-country undertakings whose securities are admitted to trading on a regulated market in the Union should also disclose information on sustainability matters is aimed at responding to the needs of financial market participants for information from such undertakings in order to enable them to understand the risks and impacts of their investments and to comply with the disclosure requirements laid down in Regulation (EU) 2019/2088.
- (20) Third-country undertakings which have a significant activity on the territory of the Union should also be required to provide sustainability information, especially on their impacts on social and environmental matters, in order to ensure that third-country undertakings are accountable for their impacts on people and the environment and that there is a level playing field for companies operating in the internal market. Therefore, third-country undertakings which generate a net turnover of more than EUR 150 million in the Union and which have a subsidiary undertaking or a branch on the territory of the Union should be subject to Union sustainability reporting requirements. To ensure the proportionality and enforceability of such requirements, the threshold of having a net turnover of more than EUR 40 million should apply to the branches of third-country undertakings, and the thresholds related to being considered a large undertaking or a small or medium-sized undertaking, except micro undertakings, whose securities are admitted to trading on a regulated market in the Union should apply to the subsidiary undertakings of third-country undertakings, as such subsidiary undertakings and branches should be responsible for publishing the sustainability report of the third-country undertaking. The sustainability reports published by the subsidiary undertaking or branch of a third-country undertaking should be prepared in accordance with standards to be adopted by 30 June 2024 by the Commission through delegated acts.

The subsidiary undertaking or branch of a third-country undertaking should also be able to report in accordance with the standards applying to undertakings established in the Union, or in accordance with standards which are deemed equivalent pursuant to an implementing act. In the event that not all the information required under this amending Directive is provided by the third-country undertaking, despite the best efforts of the subsidiary undertaking or branch of that third-country undertaking to obtain the necessary information, that subsidiary undertaking or branch should provide all the information in its possession and issue a statement indicating that the third-country undertaking did not make the rest of the required information available. In order to ensure the quality and reliability of the reporting, the sustainability reports of third-country undertakings should be published accompanied by an assurance opinion expressed by a person or firm authorised to give an opinion on the assurance of sustainability reporting, either under the national law of the third-country undertaking or of a Member State. In the event that such an assurance opinion is not provided, the subsidiary undertaking or branch of the third-country undertaking should issue a statement indicating that the third-country undertaking did not provide the necessary assurance opinion. The sustainability report should be made accessible free of charge to the public through the central, commercial or companies registers of the Member States, or alternatively on the website of the subsidiary undertaking or the branch of the third-country undertaking.

Member States should be able to inform the Commission on an annual basis of the subsidiary undertakings or branches of the third-country undertakings that fulfilled the publication requirement and of the cases where a report was published but the subsidiary undertaking or branch of the third-country undertaking has stated that it could not get the necessary information from the third-country undertaking. The Commission should make publicly available on its website a list of the third-country undertakings that have published a sustainability report.

- (21) Considering the growing relevance of sustainability-related risks and taking into account that small and medium-sized undertakings whose securities are admitted to trading on a regulated market in the Union comprise a significant proportion of all undertakings whose securities are admitted to trading on a regulated market in the Union, in order to ensure investor protection, it is appropriate to require that also small and medium-sized undertakings, except micro undertakings, whose securities are admitted to trading on a regulated market in the Union disclose information on sustainability matters. The introduction of such a requirement will help to ensure that financial market participants can include smaller undertakings whose securities are admitted to trading on a regulated market in the Union in investment portfolios, on the basis that they report the sustainability information that financial market participants need.

It will therefore help to protect and enhance the access of smaller undertakings whose securities are admitted to trading on a regulated market in the Union to financial capital, and avoid discrimination against such undertakings on the part of financial market participants. The introduction of the requirement for small and medium-sized undertakings, except micro undertakings, whose securities are admitted to trading on a regulated market in the Union to disclose information on sustainability matters is also necessary to ensure that financial market participants have the information they need from investee undertakings to be able to comply with their own sustainability disclosure requirements laid down in Regulation (EU) 2019/2088. Small and medium-sized undertakings whose securities are admitted to trading on a regulated market in the Union should be given the possibility of reporting in accordance with standards that are proportionate to their capacities and resources, and relevant to the scale and complexity of their activities. Small and medium-sized undertakings whose securities are not admitted to trading on a regulated market in the Union should also have the possibility of choosing to use such proportionate standards on a voluntary basis.

The sustainability reporting standards for small and medium-sized undertakings will constitute a reference for undertakings that are within the scope of the requirements introduced by this amending Directive regarding the level of sustainability information that they could reasonably request from small and medium-sized undertakings that are suppliers or clients in the value chains of such undertakings. Small and medium-sized undertakings whose securities are admitted to trading on a regulated market in the Union should, in addition, be given sufficient time to prepare for the application of the provisions requiring sustainability reporting, due to their smaller size and more limited resources, and taking account of the difficult economic circumstances created by the COVID-19 pandemic. Therefore, the provisions on corporate sustainability reporting as regards small and medium-sized undertakings, except micro undertakings, whose securities are admitted to trading on a regulated market in the Union should apply for financial years starting on or after 1 January 2026. Following that date, for a transitional period of two years, small and medium-sized undertakings whose securities are admitted to trading on a regulated market in the Union should have the possibility of opting-out from the sustainability reporting requirements laid down in this amending Directive, provided they briefly state in their management report why the sustainability information has not been provided.

- (22) Member States should be free to assess the impact of their national transposition measures on small and medium-sized undertakings, in order to ensure that they are not disproportionately affected, with specific attention to be given to micro-undertakings and to avoiding an unnecessary administrative burden. Member States should consider introducing measures to support small and medium-sized undertakings in applying the sustainability reporting standards.

- (23) Directive 2004/109/EC of the European Parliament and of the Council ⁽¹⁷⁾ applies to undertakings whose securities are admitted to trading on a regulated market in the Union. In order to ensure that undertakings whose securities are admitted to trading on a regulated market in the Union, including third-country issuers, fall under the same sustainability reporting requirements, Directive 2004/109/EC should contain the necessary cross-references to any requirement on sustainability reporting in the annual financial report.
- (24) Point (i) of the first subparagraph of Article 23(4) and the fourth subparagraph of Article 23(4) of Directive 2004/109/EC empower the Commission to adopt measures to set up a mechanism for the determination of equivalence of information required under that Directive, and for the establishment of general equivalence criteria regarding accounting standards, respectively. The third subparagraph of Article 23(4) of Directive 2004/109/EC also empowers the Commission to take the necessary decisions on the equivalence of accounting standards which are used by third-country issuers. In order to reflect the inclusion of the sustainability requirements in Directive 2004/109/EC, the Commission should be empowered to establish a mechanism for the determination of equivalence of sustainability reporting standards applied by third-country issuers, similar to what is provided for in Commission Regulation (EC) No 1569/2007 ⁽¹⁸⁾ which sets out the criteria for the determination of equivalence of accounting standards applied by third-country issuers. For the same reason, the Commission should also be empowered to take the necessary decisions on the equivalence of sustainability reporting standards that are used by third-country issuers. The amendments introduced by this amending Directive will ensure consistent equivalence regimes for sustainability reporting requirements and for financial reporting requirements regarding the annual financial report.
- (25) Article 19a(3) and Article 29a(3) of Directive 2013/34/EU exempt all subsidiary undertakings from the obligation to report non-financial information where such undertakings and their subsidiary undertakings are included in the consolidated management report of their parent undertaking, provided that report includes non-financial information reported pursuant to that Directive. It is necessary, however, to ensure that sustainability information is easily accessible for users, and to ensure that there is transparency as regards which parent undertaking of the exempted subsidiary undertaking is reporting at group level. It is therefore necessary to require those subsidiary undertakings to include in their management report the name and registered office of the parent undertaking that is reporting sustainability information at group level, the weblinks to the consolidated management report of their parent undertaking and a reference in their management report to the fact that they are exempted from sustainability reporting. Member States should be able to require that the parent undertaking publish the consolidated management report in the languages they accept and that the parent undertaking provide any necessary translation in such languages. Such exemption should also apply where the parent undertaking reporting at group level is a third-country undertaking reporting sustainability information in accordance with equivalent sustainability reporting standards.

Directive 2004/109/EC, as amended by this amending Directive, should provide for appropriate mechanisms to determine the equivalence of sustainability reporting standards, and undertakings whose securities are admitted to trading on a regulated market in the Union and undertakings whose securities are not admitted to trading on a regulated market in the Union should be required to report in accordance with the same sustainability reporting standards. In this context, the implementing acts adopted by the Commission pursuant to point (i) of the first subparagraph of Article 23(4) and the fourth subparagraph of Article 23(4) of Directive 2004/109/EC establishing a mechanism for the determination of equivalence of standards should be used to determine whether to exempt subsidiary undertakings of third-country parent undertakings under the regime of Directive 2013/34/EU. Therefore, the subsidiary undertaking should be exempted when the consolidated sustainability reporting is carried out in accordance with the sustainability reporting standards adopted by the Commission pursuant to Article 29b of Directive 2013/34/EU introduced by this amending Directive or in a manner equivalent to those sustainability reporting standards, as determined in accordance with an implementing act on the equivalence of sustainability

⁽¹⁷⁾ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

⁽¹⁸⁾ Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council (OJ L 340, 22.12.2007, p. 66).

reporting standards adopted pursuant to the third subparagraph of Article 23(4) of Directive 2004/109/EC. Such exemption should not apply to large undertakings whose securities are admitted to trading on a regulated market in the Union for reasons of investor protection, in order to ensure greater transparency as regards such undertakings.

- (26) Article 23 of Directive 2013/34/EU exempts parent undertakings from the obligation to prepare consolidated financial statements and a consolidated management report where parent undertakings are subsidiary undertakings of another parent undertaking that complies with that obligation. It should be specified, however, that the exemption regime for consolidated financial statements and consolidated management reports operates independently from the exemption regime for consolidated sustainability reporting. An undertaking can therefore be exempted from consolidated financial reporting requirements but not from consolidated sustainability reporting requirements where its ultimate parent undertaking prepares consolidated financial statements and consolidated management reports in accordance with Union law, or in accordance with equivalent requirements if the undertaking is established in a third country, but does not carry out consolidated sustainability reporting in accordance with Union law, or in accordance with equivalent requirements if the undertaking is established in a third country. It is necessary that parent undertakings reporting at group level provide an adequate understanding of the risks for, and impacts of, their subsidiary undertakings, including information on their due diligence processes where appropriate. There might be cases where the differences between the situation of the group and that of its individual subsidiary undertakings, or between the situation of individual subsidiary undertakings in different territories are particularly significant and would, in the absence of additional information about the individual subsidiary undertaking concerned, cause the user of the information to reach a substantially different conclusion about the risks for, or impacts of, the subsidiary undertaking.
- (27) Credit institutions and insurance undertakings play a key role in the transition towards a fully sustainable and inclusive economic and financial system in line with the Green Deal. They can have significant positive and negative impacts via their lending, investment and underwriting activities. Credit institutions and insurance undertakings other than those that are required to comply with Directive 2013/34/EU, including cooperatives and mutual undertakings, should therefore be subject to sustainability reporting requirements, provided that they meet certain size criteria. Users of sustainability information would thus be enabled to assess both the impacts of such credit institutions and insurance undertakings on society and the environment and the risks arising from sustainability matters that such credit institutions and insurance undertakings could face. Directive 2013/34/EU provides for three possible criteria to determine whether an undertaking is to be considered a 'large undertaking', namely the balance sheet total, net turnover and the average number of employees during the financial year.

The criterion of net turnover needs to be adapted for credit institutions and for insurance undertakings by referring to the definition of net turnover in Council Directives 86/635/EEC ⁽¹⁹⁾ and 91/674/EEC ⁽²⁰⁾ instead of the general definition laid down in Directive 2013/34/EU. To ensure coherence with the reporting requirements of Directive 86/635/EEC, Member States should be able to choose not to apply sustainability reporting requirements to credit institutions listed in Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council ⁽²¹⁾.

- (28) The list of sustainability matters on which undertakings are required to report should be as consistent as possible with the definition of the term 'sustainability factors' laid down in Regulation (EU) 2019/2088, and should prevent a mismatch between information required by data users and information to be reported by undertakings. That list should also correspond to the needs and expectations of users and undertakings, who often use the terms 'environmental', 'social' and 'governance' as a means of categorising the three main sustainability matters. However,

⁽¹⁹⁾ Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

⁽²⁰⁾ Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

⁽²¹⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

the definition of the term 'sustainability factors' laid down in Regulation (EU) 2019/2088 does not explicitly include governance matters. The definition of the term 'sustainability matters' in Directive 2013/34/EU as amended by this amending Directive should therefore cover environmental, social and human rights, and governance factors, and incorporate the definition of the term 'sustainability factors' laid down in Regulation (EU) 2019/2088. The reporting requirements of Directive 2013/34/EU should be without prejudice to national reporting obligations.

- (29) Article 19a(1) and Article 29a(1) of Directive 2013/34/EU require reporting not only on information to the extent necessary for an understanding of the undertaking's development, performance and position, but also on information necessary for an understanding of the impact of the undertaking's activities on environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters. Those Articles therefore require undertakings to report both on the impacts of the activities of the undertaking on people and the environment, and on how sustainability matters affect the undertaking. That is referred to as the double materiality perspective, in which the risks to the undertaking and the impacts of the undertaking each represent one materiality perspective. The fitness check on corporate reporting shows that those two perspectives are often not well understood or applied. It is therefore necessary to clarify that undertakings should consider each materiality perspective in its own right, and should disclose information that is material from both perspectives as well as information that is material from only one perspective.
- (30) Article 19a(1) and Article 29a(1) of Directive 2013/34/EU require undertakings to disclose information about five reporting areas: business model; policies, including due diligence processes implemented; the outcome of those policies; risks and risk management; and key performance indicators relevant to the business. Article 19a(1) of Directive 2013/34/EU does not contain explicit references to other reporting areas that users of information consider relevant, some of which align with disclosures included in international frameworks, including the recommendations of the Task Force on Climate-related Financial Disclosures. Disclosure requirements should be specified in sufficient detail to ensure that undertakings report information on their resilience in relation to risks related to sustainability matters. In addition to the reporting areas identified in Article 19a(1) and Article 29a(1) of Directive 2013/34/EU, undertakings should be required to disclose information about their business strategy and the resilience of the business model and strategy in relation to risks related to sustainability matters. They should also be required to disclose any plans they may have to ensure that their business model and strategy are compatible with the transition to a sustainable economy and with the objectives of limiting global warming to 1,5 °C in line with the Paris Agreement and achieving climate neutrality by 2050, as established in Regulation (EU) 2021/1119, with no or limited overshoot.

It is especially important that plans related to the climate be based on the latest science, including Intergovernmental Panel on Climate Change (IPCC) reports and reports by the European Scientific Advisory Board on Climate Change. Information disclosed in accordance with Article 8 of Regulation (EU) 2020/852 about the amount of capital expenditure (CapEx) or operating expenditure (OpEx) associated with taxonomy-aligned activities could support financial and investment plans related to such plans where appropriate. Undertakings should also be required to disclose whether and how their business model and strategy take account of the interests of stakeholders; any opportunities for the undertaking arising from sustainability matters; the implementation of the aspects of the business strategy which affect, or are affected by, sustainability matters; any sustainability targets set by the undertaking and the progress made towards achieving them; the role of the board and management with regard to sustainability matters; the principal actual and potential adverse impacts connected with the undertaking's activities; and how the undertaking has identified the information that it reports on. Once the disclosure of elements, such as targets and the progress towards achieving them, is required, a separate requirement to disclose the outcomes of policies is no longer necessary.

- (31) To ensure consistency with international instruments such as the UN 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' ('UN Guiding Principles on Business and Human Rights'), the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct, the due diligence disclosure requirements should be specified in greater detail than is currently the case in point (b) of Article 19a(1) and point (b) of Article 29a(1) of Directive 2013/34/EU. Due diligence is the process that undertakings carry out to identify, monitor, prevent, mitigate, remediate or bring an

end to the principal actual and potential adverse impacts connected with their activities and identifies how undertakings address those adverse impacts. Impacts connected with an undertaking's activities include impacts directly caused by the undertaking, impacts to which the undertaking contributes, and impacts which are otherwise linked to the undertaking's value chain. The due diligence process concerns the whole value chain of the undertaking including its own operations, its products and services, its business relationships and its supply chains. In line with the UN Guiding Principles on Business and Human Rights, an actual or potential adverse impact is to be considered a principal impact where it ranks among the greatest impacts connected with the undertaking's activities based on: the gravity of the impact on people or the environment; the number of individuals that are or could be affected, or the scale of damage to the environment; and the ease with which the harm could be remediated, restoring the environment or affected people to their prior state.

- (32) Directive 2013/34/EU does not require the disclosure of information on intangible resources other than intangible assets recognised in the balance sheet. It is widely recognised that information on intangible assets and other intangible factors, including internally generated intangible resources, is underreported, impeding the proper assessment of an undertaking's development, performance and position, and the monitoring of investments. To enable investors to better understand the increasing gap between the accounting book value of many undertakings and their market valuation, which is observed in many sectors of the economy, adequate reporting on intangible resources should be required of all large undertakings and all undertakings, except micro-undertakings, whose securities are admitted to trading on a regulated market in the Union. Nonetheless, certain information on intangible resources is intrinsic to sustainability matters, and should therefore be part of sustainability reporting. For example, information about employees' skills, competences, experience, loyalty to the undertaking and motivation for improving processes, goods and services, is sustainability information regarding social matters that could also be considered as information on intangible resources. Likewise, information about the quality of the relationships between the undertaking and its stakeholders, including customers, suppliers and communities affected by the activities of the undertaking, is sustainability information relevant to social or governance matters that could also be considered as information on intangible resources. Such examples illustrate how in some cases it is not possible to distinguish information on intangible resources from information on sustainability matters.
- (33) Article 19a(1) and Article 29a(1) of Directive 2013/34/EU do not specify whether the information to be reported is to be forward-looking or information about past performance. There is currently a lack of forward-looking disclosures, which users of sustainability information especially value. Articles 19a and 29a of Directive 2013/34/EU should therefore specify that the sustainability information reported is to include forward-looking and retrospective information and both qualitative and quantitative information. Information should be based on conclusive scientific evidence where appropriate. Information should also be harmonized, comparable and based on uniform indicators where appropriate, while allowing for reporting that is specific to individual undertakings and does not endanger the commercial position of the undertaking. Reported sustainability information should also take into account short-, medium- and long-term time horizons and contain information about the undertaking's whole value chain, including its own operations, its products and services, its business relationships and its supply chain, as appropriate. Information about the undertaking's whole value chain would include information related to its value chain within the Union and information that covers third countries if the undertaking's value chain extends outside the Union. For the first three years of the application of the measures to be adopted by the Member States in accordance with this amending Directive, in the event that not all the necessary information regarding the value chain is available, the undertaking should explain the efforts made to obtain the information about its value chain, the reasons why that information could not be obtained, and the plans of the undertaking to obtain such information in the future.

- (34) It is not the objective of this amending Directive to require undertakings to disclose intellectual capital, intellectual property, know-how or the results of innovation that would qualify as trade secrets as defined in Directive (EU) 2016/943 of the European Parliament and of the Council⁽²²⁾. Reporting requirements provided for in this amending Directive should therefore be without prejudice to Directive (EU) 2016/943.
- (35) Article 19a(1) and Article 29a(1) of Directive 2013/34/EU require undertakings to include in their non-financial reporting references to, and additional explanations of, amounts reported in the annual financial statements. Those Articles do not, however, require undertakings to make references to other information in the management report or to add additional explanations to that information. Thus, there is currently a lack of consistency between non-financial information reported and the rest of the information disclosed in the management report. It is necessary to lay down clear requirements in this regard.
- (36) Article 19a(1) and Article 29a(1) of Directive 2013/34/EU require undertakings to provide a clear and reasoned explanation for not pursuing policies in relation to one or more of the matters listed in those Articles, where the undertaking does not do so. The different treatment of disclosures on the policies that undertakings may have, compared to the other reporting areas included in those Articles, has created confusion among reporting undertakings and has not helped to improve the quality of the reported information. Therefore, there is no need to maintain such different treatment of policies in that Directive. The sustainability reporting standards should determine what information needs to be disclosed in relation to each of the reporting areas mentioned in Articles 19a and 29a of Directive 2013/34/EU as amended by this amending Directive.
- (37) Undertakings that fall under the scope of Article 19a(1) and Article 29a(1) of Directive 2013/34/EU may rely on national, Union-based or international reporting frameworks, and where they do so, they have to specify which frameworks they have relied upon. However, Directive 2013/34/EU does not require undertakings to use a common reporting framework or standard, and it does not prevent undertakings from choosing not to use any reporting framework or standards at all. As required by Article 2 of Directive 2014/95/EU, on 5 July 2017, the Commission adopted a Communication entitled ‘Guidelines on non-financial reporting (methodology for reporting non-financial information)’ (‘Guidelines on non-financial reporting’), providing for non-binding guidelines for undertakings that fall under the scope of that Directive.

On 17 June 2019, the Commission adopted its Guidelines on reporting climate-related information, containing additional guidelines, specifically on reporting climate-related information. Those Guidelines on reporting climate-related information explicitly incorporated the recommendations of the Task Force on Climate-related Financial Disclosures. Available evidence indicates that the Guidelines on non-financial reporting did not have a significant impact on the quality of non-financial reporting by undertakings under the scope of Articles 19a and 29a of Directive 2013/34/EU. The voluntary nature of the guidelines means that undertakings are free to decide whether to apply them or not. The guidelines can therefore not ensure on their own the comparability of the information disclosed by different undertakings, or the disclosure of all information that users of that information consider relevant. That is why there is a need for mandatory common sustainability reporting standards to ensure that information is comparable and that all relevant information is disclosed. Building on the double materiality principle, standards should cover all information that is material to users of that information. Common sustainability reporting standards are also necessary to enable the assurance and digitalisation of sustainability reporting and to facilitate its supervision and enforcement.

The development of mandatory common sustainability reporting standards is necessary to reach a situation in which sustainability information has a status comparable to that of financial information. The adoption of sustainability reporting standards by means of delegated acts would ensure harmonised sustainability reporting across the Union.

⁽²²⁾ Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

Therefore, an undertaking would be compliant with the sustainability reporting requirements of Directive 2013/34/EU by reporting in accordance with the sustainability reporting standards. When defining such standards, it is essential to give due consideration, to the greatest extent possible, to the main sustainability reporting standards used worldwide, while not lowering the ambition of this amending Directive and delegated acts adopted pursuant thereto.

- (38) No existing standard or framework satisfies the Union's needs for sustainability reporting by itself. Information required by Directive 2013/34/EU needs to cover information relevant from each of the materiality perspectives, needs to cover all sustainability matters and needs to be aligned, where appropriate, with other obligations under Union law to disclose sustainability information, including obligations laid down in Regulations (EU) 2019/2088 and (EU) 2020/852. In addition, mandatory sustainability reporting standards for Union undertakings should be commensurate with the level of ambition of the Green Deal and the Union's objective of climate neutrality by 2050 as well as with the intermediate targets under Regulation (EU) 2021/1119. It is therefore necessary to empower the Commission to adopt Union sustainability reporting standards, enabling their rapid adoption and ensuring that the content of those sustainability reporting standards is consistent with the Union's needs.
- (39) The European Financial Reporting Advisory Group (EFRAG) is a non-profit association established under Belgian law that serves the public interest by providing advice to the Commission on the endorsement of international financial reporting standards. EFRAG has established a reputation as a European centre of expertise on corporate reporting and is well placed to foster coordination between Union sustainability reporting standards and international initiatives that seek to develop standards that are consistent across the world. In March 2021, a multi-stakeholder task force set up by EFRAG published recommendations for the possible development of sustainability reporting standards for the Union. Those recommendations contain proposals to develop a coherent and comprehensive set of sustainability reporting standards, covering all sustainability matters from a double materiality perspective. Those recommendations also contain a detailed roadmap for developing such standards, and proposals for mutually reinforcing cooperation between global standard-setting initiatives and standard-setting initiatives of the Union. In March 2021, the EFRAG Board President published recommendations for possible governance changes to EFRAG in the event that it were to be asked to develop technical advice about sustainability reporting standards. The EFRAG Board President's recommendations include the setting up of a new sustainability reporting pillar within EFRAG, while not significantly modifying the existing financial reporting pillar. In March 2022, the EFRAG General Assembly appointed the members of the newly created EFRAG Sustainability Reporting Board. When adopting sustainability reporting standards, the Commission should take account of technical advice that EFRAG will develop.

In order to ensure high-quality standards that contribute to the European public good and meet the needs of undertakings and of users of the information reported, EFRAG should have sufficient public funding to ensure its independence. Its technical advice should be developed with proper due process, public oversight and transparency, and based on the expertise of a balanced representation of relevant stakeholders, including undertakings, investors, civil society organisations and trade unions, and should be accompanied by cost-benefit analyses. Participation in EFRAG's work at technical level should be conditional on expertise in sustainability reporting and should not be conditional on any financial contribution, without prejudice to the participation of public bodies and national standard-setting organisations in that work. A transparent process avoiding conflicts of interest should be guaranteed. To ensure that Union sustainability reporting standards take account of the views of the Member States, before adopting those standards the Commission should consult the Member State Expert Group on Sustainable Finance, referred to in Regulation (EU) 2020/852, (the 'Member State Expert Group on Sustainable Finance') and the Accounting Regulatory Committee, referred to in Regulation (EC) No 1606/2002 of the European Parliament and of the Council ⁽²³⁾, (the 'Accounting Regulatory Committee') in relation to EFRAG's technical advice.

⁽²³⁾ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

The European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) play a role in drafting regulatory technical standards pursuant to Regulation (EU) 2019/2088 and there needs to be coherence between those regulatory technical standards and sustainability reporting standards. Under Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽²⁴⁾, ESMA also plays a role in promoting supervisory convergence in the enforcement of corporate reporting by issuers whose securities are admitted to trading on a regulated market in the Union and who will be required to report in accordance with those sustainability reporting standards. Therefore, ESMA, EBA and EIOPA should be required to provide an opinion on EFRAG's technical advice. Such opinions should be provided within two months of the date of receipt of the request from the Commission. In addition, the Commission should consult the European Environment Agency, the European Union Agency for Fundamental Rights, the ECB, the Committee of European Auditing Oversight Bodies (CEAOB) and the Platform on Sustainable Finance to ensure that the sustainability reporting standards are coherent with relevant Union policy and law. Where any of those entities decide to submit an opinion, they should do so within two months of the date of being consulted by the Commission.

- (40) In order to foster democratic control, scrutiny and transparency, the Commission should, at least once a year, consult the European Parliament, and jointly the Member State Expert Group on Sustainable Finance and the Accounting Regulatory Committee on EFRAG's work programme as regards the development of sustainability reporting standards.
- (41) Sustainability reporting standards should be coherent with other Union law. Those standards should in particular be aligned with the disclosure requirements laid down in Regulation (EU) 2019/2088, and they should take account of underlying indicators and methodologies set out in the various delegated acts adopted pursuant to Regulation (EU) 2020/852, disclosure requirements applicable to benchmark administrators pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council ⁽²⁵⁾, the minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, and of any work carried out by the EBA in the implementation of the Pillar III disclosure requirements of Regulation (EU) No 575/2013.

Standards should take account of Union environmental law, including Regulation (EC) No 1221/2009 of the European Parliament and of the Council ⁽²⁶⁾ and Directive 2003/87/EC of the European Parliament and of the Council ⁽²⁷⁾, and should take account of Commission Recommendation 2013/179/EU ⁽²⁸⁾, its annexes and their updates. Other relevant Union law, including Directive 2010/75/EU of the European Parliament and of the Council ⁽²⁹⁾, and other requirements laid down in Union law for undertakings as regards directors' duties and due diligence should also be taken into account.

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

⁽²⁵⁾ Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

⁽²⁶⁾ Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

⁽²⁷⁾ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁽²⁸⁾ Commission Recommendation 2013/179/EU of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations (OJ L 124, 4.5.2013, p. 1).

⁽²⁹⁾ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

- (42) Sustainability reporting standards should take account of the Guidelines on non-financial reporting and the Guidelines on reporting climate-related information. They should also take account of other reporting requirements in Directive 2013/34/EU that are not directly related to sustainability, with the aim of providing the users of the reported information with a better understanding of the development, performance, position and impact of the undertaking, by maximising the links between the sustainability information and other information reported in accordance with Directive 2013/34/EU.
- (43) Sustainability reporting standards should be proportionate and should not impose an unnecessary administrative burden on companies that are required to use them. In order to minimise disruption for undertakings that already report sustainability information, sustainability reporting standards should take account of existing standards and frameworks for sustainability reporting and accounting where appropriate. Such existing standards and frameworks include the Global Reporting Initiative, the Sustainability Accounting Standards Board, the International Integrated Reporting Council, the International Accounting Standards Board, the Task Force on Climate-related Financial Disclosures, the Carbon Disclosure Standards Board, and CDP, formerly known as the Carbon Disclosure Project.

Union standards should take account of any sustainability reporting standards developed under the auspices of International Financial Reporting Standards Foundation. To avoid unnecessary regulatory fragmentation that could have negative consequences for undertakings operating globally, Union sustainability reporting standards should contribute to the process of convergence of sustainability reporting standards at global level, by supporting the work of the International Sustainability Standards Board (ISSB). Union sustainability reporting standards should reduce the risk of inconsistent reporting requirements for undertakings that operate globally by integrating the content of global baseline standards to be developed by the ISSB, to the extent that the content of those baseline standards is consistent with the Union's legal framework and the objectives of the Green Deal.

- (44) In the Green Deal the Commission committed itself to support businesses and other stakeholders in developing standardised natural capital accounting practices within the Union and internationally, with the aim of ensuring appropriate management of environmental risks and mitigation opportunities, and reduce related transaction costs.

The Transparent Project sponsored under the Programme for the Environment and Climate Action (LIFE programme) established by Regulation (EU) 2021/783 of the European Parliament and of the Council⁽³⁰⁾ is developing the first natural capital accounting methodology, which will make existing methods easier to compare and more transparent while lowering the threshold for companies to adopt and use the systems in support of future-proofing their business. The Natural Capital Protocol is also an important reference in the field of natural capital accounting. While natural capital accounting methods serve principally to strengthen internal management decisions, they should be duly considered when establishing sustainability reporting standards. Some natural capital accounting methodologies seek to assign a monetary value to the environmental impacts of companies' activities, which may help users of sustainability information to better understand such impacts. It is therefore appropriate that sustainability reporting standards should be able to include monetised indicators of sustainability impacts if that is deemed necessary.

- (45) Sustainability reporting standards should also take account of internationally recognised principles and frameworks on responsible business conduct, corporate social responsibility, and sustainable development, including the SDGs, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct and related sectoral guidelines, the Global Compact, the International Labour Organization's (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the ISO 26000 standard on social responsibility, and the UN Principles for Responsible Investment.

⁽³⁰⁾ Regulation (EU) 2021/783 of the European Parliament and of the Council of 29 April 2021 establishing a Programme for the Environment and Climate Action (LIFE), and repealing Regulation (EU) No 1293/2013 (OJ L 172, 17.5.2021, p. 53).

- (46) It should be ensured that the information reported by undertakings in accordance with the sustainability reporting standards meets the needs of users and does not place a disproportionate burden in terms of effort and cost on the reporting undertakings and those that are indirectly affected as part of the value chain of those undertakings. The sustainability reporting standards should therefore specify the information that undertakings are to disclose on all major environmental factors, including their impacts and dependencies on climate, air, land, water and biodiversity. Regulation (EU) 2020/852 provides a classification of the environmental objectives of the Union.

For reasons of coherence, it is appropriate to use a similar classification to identify the environmental factors that should be addressed by sustainability reporting standards. The sustainability reporting standards should consider and specify any geographical or other contextual information that undertakings should disclose to provide an understanding of their principal impacts on sustainability matters and the principal risks to the undertaking arising from sustainability matters. When specifying the information about environmental factors that undertakings are to disclose, coherence should be ensured with the definitions laid down in Article 2 of Regulation (EU) 2020/852 and the reporting requirements laid down in Article 8 of that Regulation and in the delegated acts adopted pursuant to that Regulation.

- (47) With regard to climate-related information, users are interested in knowing about undertakings' physical and transition risks, and about their resilience as regards, and plans to adapt to, different climate scenarios and plans to adapt to the Union's objective of climate neutrality by 2050. They are also interested in the level and scope of GHG emissions and removals attributed to the undertaking, including the extent to which the undertaking uses offsets and the source of those offsets. Achieving a climate neutral economy requires the alignment of GHG accounting and offsetting standards. Users need reliable information regarding offsets that addresses concerns regarding possible double counting and overestimations, given the risks to the achievement of climate-related targets that double counting and overestimations can create. Users are also interested to know the efforts made by companies to effectively reduce absolute GHG emissions as part of their climate mitigation and adaptation strategies, including scope 1, scope 2 and, where relevant, scope 3 emissions.

With regard to scope 3 emissions, a priority for users is to receive information about which scope 3 categories are significant in the case of the undertaking, and about the emissions in each of those scope 3 categories. The sustainability reporting standards should therefore specify the information undertakings should report with regard to such matters.

- (48) Achieving a climate-neutral and circular economy without diffuse pollution requires the full mobilisation of all economic sectors. Reducing energy use and increasing energy efficiency is key in this respect, as energy is used across supply chains. Energy aspects should therefore be duly considered in sustainability reporting standards, in particular in relation to environmental matters, including climate-related matters.
- (49) Sustainability reporting standards should specify the information that undertakings should disclose on social factors, including working conditions, social partner involvement, collective bargaining, equality, non-discrimination, diversity and inclusion, and human rights. Such information should cover the impacts of the undertaking on people, including workers, and on human health. The information that undertakings disclose about human rights should include information about forced labour and child labour in their value chains where relevant. Sustainability reporting requirements concerning forced labour should not free public authorities of their responsibility to address, through trade policy and diplomatic means, the import of goods produced as a result of human rights abuses, including forced labour. Undertakings should also be able to report on possible risks and trends regarding employment and incomes.

Sustainability reporting standards that address social factors should specify the information that undertakings should disclose with regard to the principles of the European Pillar of Social Rights that are relevant to businesses, including equal opportunities for all and working conditions. The Action Plan on the European Pillar of Social Rights, adopted by the Commission on 4 March 2021, calls for stronger requirements on undertakings to report on social issues. The sustainability reporting standards should also specify the information that undertakings should disclose with regard to the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions, including the UN Convention on the Rights of Persons with Disabilities, the UN Declaration on the Rights of Indigenous Peoples, the UN

Convention on the Rights of the Child, the ILO Declaration on Fundamental Principles and Rights at Work, the fundamental conventions of the ILO, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, and the Charter of Fundamental Rights of the European Union. Reporting carried out on social factors, as well as on environmental and governance factors, should be proportionate to the scope and the goals of this amending Directive. Sustainability reporting standards that address gender equality and equal pay for work of equal value should specify, amongst other things, information to be reported about the gender pay gap, taking account of other relevant Union law. Sustainability reporting standards that address employment and inclusion of people with disabilities should specify, amongst other things, information to be reported about accessibility measures taken by the undertaking.

Sustainability reporting standards that address training and skills development should specify, amongst other things, information to be reported about the proportion and breakdown of workers participating in training. Sustainability reporting standards that address collective bargaining should specify, amongst other things, information to be disclosed about the existence of works councils as well as the existence of collective agreements and the proportion of workers covered by such agreements. Sustainability reporting standards that address participation of workers should specify, amongst other things, information to be disclosed about the participation of workers in administrative and supervisory boards. Sustainability reporting standards that address diversity should specify, amongst other things, information to be reported on gender diversity at top management and the number of members of the under-represented sex on their boards.

- (50) Users need information about governance factors. Governance factors that are most relevant to users are listed by authoritative reporting frameworks such as the Global Reporting Initiative and the Task Force on Climate-related Financial Disclosures, as well as by authoritative global frameworks such as the Global Governance Principles of the International Corporate Governance Network and the G20/OECD Principles of Corporate Governance. Sustainability reporting standards should specify the information that undertakings should disclose on governance factors. Such information should cover the role of an undertaking's administrative, management and supervisory bodies with regard to sustainability matters, the expertise and skills needed to fulfil that role or the access such bodies have to such expertise and skills, whether the company has a policy in terms of incentives which are offered to members of those bodies and which are linked to sustainability matters, and information on an undertaking's internal control and risk management systems in relation to the sustainability reporting process. Users also need information about undertakings' corporate culture and approach to business ethics, which are recognised elements of authoritative frameworks on corporate governance, such as the Global Governance Principles of the International Corporate Governance Network, including information about anti-corruption and anti-bribery, and about the undertaking's activities and commitments aimed at exerting its political influence, including its lobbying activities.

Information about the management of the undertaking and the quality of relationships with customers, suppliers and communities affected by the activities of the undertaking, helps users to understand an undertaking's risks and impacts related to sustainability matters. Information about relationships with suppliers includes payment practices relating to the date or period for payment, the rate of interest for late payment or the compensation for recovery costs referred to in Directive 2011/7/EU of the European Parliament and of the Council ⁽³¹⁾. Every year, thousands of businesses, especially small and medium-sized enterprises ('SMEs'), suffer an administrative and financial burden because they are paid late, or not at all. Ultimately, late payments lead to insolvency and bankruptcy, with destructive effects on entire value chains. Increasing the amount of information about payment practices should empower other undertakings to identify prompt and reliable payers, detect unfair payment practices, access information about the businesses they trade with, and negotiate fairer payment terms.

⁽³¹⁾ Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ L 48, 23.2.2011, p. 1).

- (51) The sustainability reporting standards should promote a more integrated view of all the information published by undertakings in the management report to provide users of that information with a better understanding of the development, performance, position and impact of the undertaking. The sustainability reporting standards should distinguish, as necessary, between information that undertakings should disclose when reporting at individual level and the information that undertakings should disclose when reporting at group level. The sustainability reporting standards should also contain guidance for undertakings on the process for identifying the sustainability information that should be included in the management report, since an undertaking should only be required to disclose the information relevant to understanding its impacts on sustainability matters, and the information relevant to understanding how sustainability matters affect its development, performance and position.
- (52) Member States should ensure that sustainability reporting is carried out in compliance with workers' rights to information and consultation. The management of the undertaking should therefore inform workers' representatives at the appropriate level and discuss with them relevant information and the means of obtaining and verifying sustainability information. This implies for the purpose of this amending Directive the establishment of dialogue and exchange of views between workers' representatives and central management or any other level of management that could be more appropriate, at such times, in such fashion and with such content as would enable workers' representatives to express their opinion. Their opinion should be communicated, where applicable, to the relevant administrative, management or supervisory bodies.
- (53) Undertakings in the same sector are often exposed to similar sustainability-related risks, and they often have similar impacts on society and the environment. Comparisons between undertakings in the same sector are especially valuable to investors and other users of sustainability information. Sustainability reporting standards should therefore specify both information that undertakings in all sectors should disclose and information that undertakings should disclose depending on their sector of activity. Sector-specific sustainability reporting standards are especially important in the case of sectors associated with high sustainability risks for or impacts on the environment, human rights and governance, including sectors listed in Sections A to H and Section L of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council ⁽³²⁾, and the relevant activities within those sectors. When adopting sector-specific sustainability reporting standards, the Commission should ensure the information specified by those sustainability reporting standards is proportionate to the scale of the risks and impacts related to sustainability matters specific to each sector, taking account of the fact that the risks and impacts of some sectors are higher than for others. The Commission should also take account of the fact that not all activities within such sectors are necessarily associated with high sustainability risks or impacts. For undertakings that operate in sectors particularly reliant on natural resources, sector-specific sustainability reporting standards would require the disclosure of nature-related impacts on and risks for biodiversity and ecosystems.

Sustainability reporting standards should also take account of the difficulties that undertakings may encounter in gathering information from actors throughout their value chain, especially from suppliers that are small or medium-sized undertakings and from suppliers in emerging markets and economies. Sustainability reporting standards should specify disclosures concerning value chains that are proportionate and relevant to the scale and complexity of the activities of the undertakings, and the capacities and characteristics of undertakings in value chains, especially those capacities and characteristics of undertakings that are not subject to the sustainability reporting requirements provided for in this amending Directive. Sustainability reporting standards should not specify disclosures that would require undertakings to obtain information from small and medium-sized undertakings in their value chain that exceeds the information to be disclosed in accordance with the sustainability reporting standards for small and medium-sized undertakings. This should be without prejudice to any Union requirements on undertakings to conduct a due diligence process.

⁽³²⁾ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

- (54) To meet the information needs of users in a timely manner, and in particular given the urgency to meet the information needs of financial market participants subject to the requirements laid down in the delegated acts adopted pursuant to Article 4(6) and (7) of Regulation (EU) 2019/2088, the Commission should adopt a first set of sustainability reporting standards by means of delegated acts by 30 June 2023. That set of sustainability reporting standards should specify the information that undertakings should disclose with regard to all reporting areas and sustainability matters, and that financial market participants need to comply with the disclosure obligations laid down in Regulation (EU) 2019/2088. The Commission should adopt a second set of sustainability reporting standards by means of delegated acts by 30 June 2024, specifying complementary information that undertakings should disclose about sustainability matters and reporting areas, where necessary, and information that is specific to the sector in which an undertaking operates. The Commission should review those sustainability reporting standards, including the sustainability reporting standards for small and medium-sized undertakings, every three years to take account of relevant developments, including the development of international standards.
- (55) Directive 2013/34/EU does not require that undertakings provide their management reports in a digital format, which hinders the findability and usability of the reported information. Users of sustainability information increasingly expect such information to be findable, comparable and machine-readable in digital formats. Member States should be able to require that undertakings subject to the sustainability reporting requirements of Directive 2013/34/EU make their management reports available on their websites, free of charge to the public. Digitalisation creates opportunities to exploit information more efficiently and holds the potential for significant cost savings for both users and undertakings. Digitalisation also enables the centralisation at Union and Member State level of data in an open and accessible format that facilitates reading and allows for the comparison of data. Undertakings should therefore be required to prepare their management report in the electronic reporting format specified in Article 3 of Commission Delegated Regulation (EU) 2019/815 ⁽³³⁾, and to mark up their sustainability reporting, including the disclosures required by Article 8 of Regulation (EU) 2020/852, in accordance with the electronic reporting format specified in Delegated Regulation (EU) 2019/815 once that is determined.

A digital taxonomy for the Union sustainability reporting standards will be necessary to allow the reported information to be tagged in accordance with those sustainability reporting standards. These requirements should feed into the work on digitalisation announced by the Commission in its Communication of 19 February 2020 entitled 'A European strategy for data' and in its Communication of 24 September 2020 entitled 'Digital Finance Strategy for the EU'. These requirements would also complement the creation of a European single access point (ESAP) for public corporate information as envisaged in the Commission's Communication of 24 September 2020 entitled 'A Capital Markets Union for people and businesses - new action plan' in which the need to provide comparable information in a digital format is also considered.

- (56) To allow for the inclusion of the reported sustainability information in the ESAP, Member States should ensure that undertakings whose securities are not admitted to trading on a regulated market in the Union publish their management report, including sustainability reporting, in the electronic reporting format specified in Article 3 of Delegated Regulation (EU) 2019/815.
- (57) Article 19a(4) of Directive 2013/34/EU enables Member States to exempt undertakings from including in the management report the non-financial statement required under Article 19a(1) of that Directive. Member States are allowed to do so where the undertaking concerned prepares a separate report that is published together with the management report in accordance with Article 30 of that Directive, or where that report is made publicly available on the undertaking's website within a reasonable period of time not exceeding 6 months after the balance sheet date, and is referred to in the management report. The same possibility exists for the consolidated non-financial statement referred to in Directive 2013/34/EU. Twenty Member States have used that option. The possibility of publishing a separate report hinders, however, the availability of information that connects financial information and information on sustainability matters. It also hinders the findability and accessibility of information for users, especially investors, who are interested in both financial and sustainability information. Possible different publication times for financial and sustainability information exacerbate that problem. Publication in a separate

⁽³³⁾ Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format (OJ L 143, 29.5.2019, p. 1).

report can also give the impression, internally and externally, that sustainability information belongs to a category of less relevant information, which can impact negatively on the perceived reliability of the information. Undertakings should therefore report sustainability information in a clearly identifiable dedicated section of the management report and Member States should no longer be allowed to exempt undertakings from the obligation to include in the management report information on sustainability matters.

Such obligation would also help to clarify the role of national competent authorities in supervising sustainability reporting, as part of the management report prepared in accordance with Directive 2004/109/EC. In addition, undertakings required to report sustainability information should in no case be exempted from the obligation to publish the management report, as it is important to ensure that sustainability information is publicly available.

- (58) Article 20 of Directive 2013/34/EU requires undertakings whose securities are admitted to trading on a regulated market in the Union to include a corporate governance statement in their management report, which has to contain, among other information, a description of the diversity policy applied by the undertaking in relation to its administrative, management and supervisory bodies. Article 20 of Directive 2013/34/EU leaves flexibility to undertakings to decide what aspects of diversity they report on. It does not explicitly oblige undertakings to include information on any particular aspect of diversity. In order to progress towards a more gender-balanced participation in economic decision-making, it is necessary to ensure that undertakings whose securities are admitted to trading on a regulated market in the Union always report on their gender diversity policies and the implementation thereof. However, to avoid an unnecessary administrative burden, such undertakings should have the possibility of reporting some of the information required by Article 20 of Directive 2013/34/EU alongside other sustainability information. If they decide to do so, the corporate governance statement should include a reference to the undertaking's sustainability reporting, and the information required under Article 20 of Directive 2013/34/EU should remain subject to the assurance requirements of the corporate governance statement.
- (59) Article 33 of Directive 2013/34/EU requires Member States to ensure that the members of the administrative, management and supervisory bodies of an undertaking have collective responsibility for ensuring that the annual financial statements, the consolidated financial statements, the management report, the consolidated management report, the corporate governance statement and the consolidated corporate governance statement are drawn up and published in accordance with the requirements of that Directive. That collective responsibility should be extended to the digitalisation requirements laid down in Delegated Regulation (EU) 2019/815, to the requirement to comply with Union sustainability reporting standards and to the requirement to mark up sustainability reporting.
- (60) The assurance profession distinguishes between limited assurance engagements and reasonable assurance engagements. The conclusion of a limited assurance engagement is usually provided in a negative form of expression by stating that no matter has been identified by the practitioner to conclude that the subject matter is materially misstated. In a limited assurance engagement, the auditor performs fewer tests than in a reasonable assurance engagement. The amount of work for a limited assurance engagement is therefore less than for a reasonable assurance engagement. The amount of work in a reasonable assurance engagement entails extensive procedures including consideration of internal controls of the reporting undertaking and substantive testing, and is therefore significantly greater than in a limited assurance engagement.

The conclusion of a reasonable assurance engagement is usually provided in a positive form of expression and results in providing an opinion on the measurement of the subject matter against previously defined criteria. Directive 2013/34/EU requires Member States to ensure that the statutory auditor or audit firm checks whether the non-financial statement or the separate report has been provided. It does not require that an independent provider of assurance services verify the information, although it allows Member States to require such verification where they so wish. The absence of an assurance requirement concerning sustainability reporting, in contrast to the requirement for the statutory auditor to carry out statutory audits based on a reasonable assurance engagement, would threaten the credibility of the sustainability information disclosed, thus failing to meet the needs of the

intended users of that information. Although the objective is to have a similar level of assurance for financial and sustainability reporting, the absence of a commonly agreed standard for the assurance of sustainability reporting creates the risk of different understandings and expectations of what a reasonable assurance engagement would consist of for different categories of sustainability information, especially with regard to forward-looking and qualitative disclosures.

Therefore, a progressive approach to enhancing the level of the assurance required for sustainability information should be considered, starting with an obligation on the statutory auditor or audit firm to express an opinion about the compliance of the sustainability reporting with Union requirements based on a limited assurance engagement. That opinion should cover the compliance of the sustainability reporting with Union sustainability reporting standards, the process carried out by the undertaking to identify the information reported pursuant to the sustainability reporting standards and compliance with the requirement to mark up sustainability reporting. The auditor should also assess whether the undertaking's reporting complies with the reporting requirements of Article 8 of Regulation (EU) 2020/852. To ensure a common understanding and common expectations of what a reasonable assurance engagement would consist of, the statutory auditor or audit firm should be required to express an opinion based on a reasonable assurance engagement about the compliance of the sustainability reporting with Union requirements, when the Commission adopts assurance standards for reasonable assurance of sustainability reporting by means of delegated acts no later than 1 October 2028, following an assessment to determine if reasonable assurance is feasible for auditors and undertakings.

The gradual approach from limited assurance engagements to reasonable assurance engagements would also allow for the progressive development of the assurance market for sustainability information, and of undertakings' reporting practices. Finally, such gradual approach would phase in the increase in costs for reporting undertakings, given that assurance of sustainability reporting based on a reasonable assurance engagement is more costly than assurance of sustainability reporting based on a limited assurance engagement. Undertakings subject to sustainability reporting requirements should be able to decide to have an assurance opinion on their sustainability reporting based on a reasonable assurance engagement if they so wish, and in such cases they should be deemed to have complied with the obligation to have an opinion based on a limited assurance engagement. The opinion based on a reasonable assurance engagement concerning forward-looking information is only an assurance that such information has been prepared in accordance with applicable standards.

- (61) Statutory auditors or audit firms already verify the financial statements and the management report. The assurance of sustainability reporting by the statutory auditors or audit firms would help to ensure the connectivity between, and consistency of, financial and sustainability information, which is particularly important for users of sustainability information. However, there is a risk of further concentration of the audit market, which could risk the independence of auditors and increase audit fees or fees relating to the assurance of sustainability reporting.

Considering the key role of statutory auditors when providing assurance of sustainability reporting and ensuring reliable sustainability information, the Commission has announced that it will act to further enhance audit quality and to create a more open and diversified audit market, which are the conditions for the successful application of this amending Directive. In addition, it is desirable to offer undertakings a broader choice of independent assurance services providers for the assurance of sustainability reporting. Member States should therefore be allowed to accredit independent assurance services providers in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council⁽³⁴⁾ to provide an assurance opinion on sustainability reporting, which should be published together with the management report. In addition, Member States should be given the option of allowing

⁽³⁴⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

a statutory auditor, other than the one(s) carrying out the statutory audit of the financial statements, to express an assurance opinion on sustainability reporting. Furthermore, if they allow independent assurance services providers to carry out the assurance of sustainability reporting, Member States should also allow a statutory auditor, other than the one(s) carrying out the statutory audit of the financial statements, to express an assurance opinion on sustainability reporting.

Member States should set out requirements that ensure the quality of the assurance of sustainability reporting carried out by independent assurance services providers and consistent outcomes in the assurance of sustainability reporting. Therefore, all independent assurance services providers should be subject to requirements that are equivalent to the requirements set out in Directive 2006/43/EC of the European Parliament and of the Council ⁽³⁵⁾ as regards the assurance of sustainability reporting, while being adapted to the characteristics of independent assurance services providers which do not carry out statutory audits. In particular, Member States should set out equivalent requirements as regards training and examination, continuing education, quality assurance systems, professional ethics, independence, objectivity, confidentiality and professional secrecy, appointment and dismissal, the organisation of the work of independent assurance services providers, investigations and sanctions, and the reporting of irregularities. This would also guarantee a level playing field among all persons and firms allowed by Member States to provide an assurance opinion on sustainability reporting, including statutory auditors. If an undertaking seeks the opinion of an accredited independent assurance services provider other than the statutory auditor on its sustainability reporting, it should not in addition need to request an assurance opinion on its sustainability reporting from the statutory auditor.

Independent assurance services providers that have already been accredited by a Member State for the assurance of sustainability reporting should continue to be allowed to do so. Likewise, Member States should ensure that independent assurance services providers that, by the date of application of the new requirements on training and examination, are undergoing their accreditation process are not subject to those new accreditation requirements, provided they complete that process within two years of the date of application of those new requirements. Member States should, however, ensure that all the independent assurance services providers accredited by a Member State for the assurance of sustainability reporting within two years of the date of application of the new accreditation requirements, acquire the necessary knowledge in sustainability reporting and the assurance of sustainability reporting through continued professional education.

- (62) In order to foster the free movement of services, Member States should allow independent assurance services providers established in a different Member State to carry out the assurance of sustainability reporting in their territory. This would also favour opening up the assurance market even when not all Member States allow for the accreditation of independent assurance services providers in their territory. Where independent assurance services providers carry out the assurance of sustainability reporting in the territory of a host Member State, that host Member State should be able to decide to supervise independent assurance services providers, given the possibility to leverage on the implemented framework for the supervision of auditors carrying out the assurance of sustainability reporting.
- (63) Member States should ensure that when an undertaking is required by Union law to have elements of its sustainability reporting verified by an accredited independent third party, the report of the accredited independent third party should be made available either as an annex to the management report or by any other publicly accessible means. Such making available of that report should not pre-empt the outcome of the assurance opinion of which the third-party verification should remain independent. It should not entail any duplication of work between the auditor or the independent assurance services provider that expresses the assurance opinion and the accredited independent third party.

⁽³⁵⁾ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

- (64) Directive 2006/43/EC sets out rules concerning the statutory audit of annual and consolidated financial statements. It is necessary to ensure that consistent rules apply to the audit of financial statements and the assurance of sustainability reporting by the statutory auditor. Directive 2006/43/EC should apply where the assurance opinion on sustainability reporting is expressed by a statutory auditor or an audit firm.
- (65) The rules on the approval and recognition of statutory auditors and audit firms should allow statutory auditors to qualify also for the assurance of sustainability reporting. Member States should ensure that statutory auditors who wish to qualify for the assurance of sustainability reporting have the necessary level of theoretical knowledge of subjects relevant to the assurance of sustainability reporting and the ability to apply such knowledge in practice.

Therefore, statutory auditors should complete practical training of at least eight months in the assurance of annual and consolidated sustainability reporting or in other sustainability-related services, taking account of previous employment experience. However, statutory auditors that have already been approved or recognised in a Member State should continue to be allowed to carry out the assurance of sustainability reporting. Likewise, Member States should ensure that natural persons who are undergoing the approval process at the date of application of the requirements for the assurance of sustainability reporting established by this amending Directive are not subject to those requirements, provided they complete the process within the following two years. Member States should, however, ensure that statutory auditors approved within two years of the date of application of those requirements and who wish to carry out the assurance of sustainability reporting acquire the necessary knowledge in sustainability reporting and the assurance of sustainability reporting via continued professional education. Natural persons who decide to be approved only as statutory auditors for statutory audit should be able to decide at a later point in time to qualify also for the assurance of sustainability reporting. In order to do so, such persons should meet the necessary requirements set out by Member States to ensure that they also have the necessary level of theoretical knowledge of subjects relevant to the assurance of sustainability reporting and the ability to apply such knowledge in practice.

- (66) It should be ensured that the requirements imposed on auditors as regards the statutory audit and the assurance of sustainability reporting they carry out are consistent. Therefore, there should be at least one designated person who is actively involved in carrying out the assurance of sustainability reporting ('key sustainability partner'). When carrying out the assurance of sustainability reporting, statutory auditors should be required to devote sufficient time and assign sufficient resources and expertise in order to carry out their duties appropriately. The client account record should specify the fees charged for the assurance of sustainability reporting and an assurance file should be created to include information related to the assurance of sustainability reporting. Where the same statutory auditor carries out the statutory audit of annual financial statements and the assurance of sustainability reporting, it should be possible to include the assurance file in the audit file. However, requirements imposed on statutory auditors relating to the assurance of sustainability reporting should only apply to those statutory auditors that carry out the assurance of sustainability reporting.
- (67) Statutory auditors or audit firms that carry out the assurance of sustainability reporting should have a high level of technical and specialised expertise in the field of sustainability.
- (68) Directive 2006/43/EC requires Member States to put appropriate rules in place to avoid the fees on the statutory audit being influenced or determined by the provision of additional services to the audited entity or being based on any form of contingency. That Directive also requires Member States to ensure that statutory auditors carrying out statutory audits comply with the rules on professional ethics, independence, objectivity, confidentiality and professional secrecy. For reasons of coherence, it is appropriate that those rules be extended to statutory auditors carrying out the assurance of sustainability reporting.

- (69) In order to provide for uniform assurance practices and high-quality assurance of sustainability reporting across the Union, the Commission should be empowered to adopt sustainability assurance standards by means of delegated acts. Member States should be given the possibility of applying national assurance standards, procedures or requirements, as long as the Commission has not adopted an assurance standard by means of delegated acts covering the same subject matter. Such assurance standards should set out the procedures that the auditor is to perform in order to draw its conclusions on the assurance of sustainability reporting. Therefore, the Commission should adopt assurance standards for limited assurance by means of delegated acts before 1 October 2026. With a view to facilitating the harmonisation of the assurance of sustainability reporting across Member States, the CEAOB should be encouraged to adopt non-binding guidelines to set out the procedures to be performed when expressing an assurance opinion on sustainability reporting, pending the adoption by the Commission of an assurance standard covering the same subject matter.
- (70) Directive 2006/43/EC sets out rules on the statutory audit of a group of undertakings. Similar rules should be set out for the assurance of consolidated sustainability reporting.
- (71) Directive 2006/43/EC requires statutory auditors or audit firms to present the results of their statutory audit in an audit report. Similar rules should be set out for the assurance of sustainability reporting. The results of the assurance of sustainability reporting should be presented in an assurance report. Where the same statutory auditor carries out the statutory audit of annual financial statements and the assurance of sustainability reporting, it should be possible to present the information about the assurance of sustainability reporting in the audit report.
- (72) Directive 2006/43/EC requires Member States to set up a system of quality assurance review of statutory auditors and audit firms. To ensure that quality assurance reviews also take place for the assurance of sustainability reporting and that the persons who carry out quality assurance reviews have appropriate professional education and relevant experience in sustainability reporting and in the assurance of sustainability reporting, that requirement to set up a system of quality assurance review should be extended to the assurance of sustainability reporting. As a transitional measure, until 31 December 2025, the persons who carry out quality assurance reviews of the assurance of sustainability reporting should be exempted from the requirement to have relevant experience in sustainability reporting and in the assurance of sustainability reporting or in other sustainability-related services.
- (73) Directive 2006/43/EC requires Member States to have in place an investigations and sanctions regime for statutory auditors and audit firms carrying out statutory audits. That Directive also requires Member States to organise an effective system of public oversight, and to ensure that regulatory arrangements for public oversight systems permit effective cooperation at Union level in respect of Member States' oversight activities. Such requirements should be extended to statutory auditors and audit firms that conduct assurance of sustainability reporting in order to ensure the consistency of the investigations, sanctions and oversight frameworks set up for the auditor's work in the statutory audit and the assurance of sustainability reporting.
- (74) Directive 2006/43/EC contains rules on the appointment and dismissal of statutory auditors and audit firms carrying out statutory audits. Those rules should be extended to the assurance of sustainability reporting to ensure the consistency of the rules imposed on auditors as regards their work on the statutory audit and the assurance of sustainability reporting.
- (75) Pursuant to Article 6 of Directive 2007/36/EC of the European Parliament and of the Council ⁽³⁶⁾, Member States are required to ensure that shareholders of undertakings whose securities are admitted to trading on a regulated market in the Union, acting individually or collectively, have the right to put items on the agenda of the general meeting, provided that each such item is accompanied by a justification or a draft resolution to be adopted in the general meeting, and that they have the right to table draft resolutions for items included or to be included on the agenda of a general meeting, as the case may be. Where those rights are subject to the condition that the relevant shareholder or shareholders hold a minimum stake in the undertaking, such minimum stake is not to exceed 5 % of the share capital. As regards the assurance of sustainability reporting, shareholders should be able to exercise the rights set

⁽³⁶⁾ Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p. 17).

out in Article 6 of Directive 2007/36/EC in order to table draft resolutions to be adopted in the general meeting, requiring that, firstly, an accredited third party that does not belong to the same audit firm or network as the statutory auditor or audit firm carrying out the statutory audit prepare a report on certain elements of the sustainability reporting and, secondly, that such report be made available to the general meeting.

For undertakings subject to the sustainability reporting requirements introduced by this amending Directive and that do not fall within the scope of Article 6 of Directive 2007/36/EC, shareholders which represent more than 5 % of the voting rights or 5 % of the capital of the undertaking, acting individually or collectively, should also be given the right to table a draft resolution to be adopted in the general meeting, requiring that, firstly, an accredited third party that does not belong to the same audit firm or network as the statutory auditor or audit firm carrying out the statutory audit prepare a report on certain elements of the sustainability reporting and, secondly, that such report be made available to the general meeting.

- (76) Directive 2006/43/EC requires Member States to ensure that each public-interest entity has an audit committee, and specifies its tasks with regard to the statutory audit. That audit committee should be assigned with certain tasks with regard to the assurance of sustainability reporting. Those tasks should include the obligation to inform the administrative or supervisory body of the public-interest entity of the outcome of the assurance of sustainability reporting, and to explain how the audit committee contributed to the integrity of sustainability reporting and what the role of the audit committee was in that process. Member States should be able to allow functions assigned to the audit committee relating to sustainability reporting and relating to the assurance of sustainability reporting, to be performed by the administrative or supervisory body as a whole or by a dedicated body established by the administrative or supervisory body.
- (77) Directive 2006/43/EC contains requirements for registration and oversight of third-country auditors and audit entities. To ensure that a consistent framework exists for the work of auditors in both the statutory audit and the assurance of sustainability reporting, it is necessary to extend those requirements to the assurance of sustainability reporting.
- (78) Regulation (EU) No 537/2014 of the European Parliament and of the Council ⁽³⁷⁾ applies to statutory auditors and audit firms carrying out statutory audits of public-interest entities. To ensure the independence of the statutory auditor when carrying out a statutory audit, that Regulation establishes a limit concerning the fees for other services that the statutory auditor can obtain. It is important to clarify that the assurance of sustainability reporting should not count in the calculation of that limit. In addition, Regulation (EU) No 537/2014 prohibits the provision of certain non-audit services over certain periods when the statutory auditor is carrying out the statutory audit. Services related to the preparation of sustainability reporting, including any consulting services, should also be considered as prohibited services over the period prescribed in Regulation (EU) No 537/2014. The prohibition of the provision of such services should apply in all cases where the statutory auditor carries out the statutory audit of financial statements.

To ensure the independence of the statutory auditor, certain non-audit services should also be prohibited when the statutory auditor is carrying out the assurance of sustainability reporting. Regulation (EU) No 537/2014 requires statutory auditors to report irregularities to the audited entity and, under certain circumstances, to authorities designated by the Member States as responsible for investigating such irregularities. Such obligation should also be extended, as appropriate, to statutory auditors and audit firms as regards their work on the assurance of sustainability reporting of public-interest entities.

⁽³⁷⁾ Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77).

- (79) Directive 2004/109/EC assigns to national supervisors the task of enforcing compliance with corporate reporting requirements by undertakings whose securities are admitted to trading on a regulated market in the Union. Article 4 of that Directive specifies the content to be included in the annual financial reports, but lacks an explicit reference to Articles 19a and 29a of Directive 2013/34/EU, which require the preparation of a non-financial statement and a consolidated non-financial statement. As a consequence, national competent authorities of some Member States have no legal mandate to supervise those non-financial statements, especially where those non-financial statements are published in a separate report, outside of the annual financial report, which Member States may currently allow. It is therefore necessary to insert into Article 4(5) of Directive 2004/109/EC a reference to sustainability reporting. It is also necessary to require that the persons responsible within the issuer confirm in the annual financial report that, to the best of their knowledge, the management report is prepared in accordance with the sustainability reporting standards.

In addition, given the novel character of the sustainability reporting requirements, ESMA should issue guidelines for national competent authorities to promote convergent supervision of sustainability reporting by issuers subject to Directive 2004/109/EC. Those guidelines should only apply to the supervision of undertakings whose securities are admitted to trading on a regulated market in the Union.

- (80) In order to specify the requirements set out in this amending Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of establishing sustainability reporting standards and establishing standards for the assurance of sustainability reporting. 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⁽³⁸⁾. 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.
- (81) The Commission should submit a report to the European Parliament and to the Council on the implementation of this amending Directive, including, *inter alia*: an assessment of the achievement of the goals of this amending Directive, including the convergence of reporting practices between Member States; an assessment of the number of small and medium-sized undertakings using sustainability reporting standards voluntarily; an assessment of whether and how the scope of the reporting requirements should be further extended, in particular in relation to small and medium-sized undertakings and to third-country undertakings operating directly on the Union internal market without a subsidiary undertaking or a branch on the territory of the Union; an assessment of the implementation of the reporting requirements on subsidiary undertakings and branches of third-country undertakings introduced by this amending Directive, including an assessment of the number of third-country undertakings which have a subsidiary undertaking or a branch subject to reporting requirements in accordance with Directive 2013/34/EU; an assessment of the enforcement mechanism and of the relevant thresholds set out in Directive 2013/34/EU; an assessment of whether and how to ensure the accessibility for people with disabilities to the sustainability reporting published by undertakings falling under the scope of this amending Directive.

The report on the implementation of this amending Directive should be published by 30 April 2029 and every three years thereafter, and should be accompanied, if appropriate, by legislative proposals. By 31 December 2028, the Commission should review and report on the level of concentration of the sustainability assurance market. The review should take into account the national regimes applicable to independent assurance services providers and assess whether and to what extent such national regimes contribute to opening up the assurance market. By 31 December 2028, the Commission should assess possible legal measures to ensure sufficient diversification of the sustainability assurance market and appropriate sustainability reporting quality. The report on the level of concentration of the sustainability assurance market should be transmitted to the European Parliament and the Council by 31 December 2028 and be accompanied, if appropriate, by legislative proposals.

⁽³⁸⁾ OJ L 123, 12.5.2016, p. 1.

- (82) Since the objectives of this amending Directive cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this amending Directive does not go beyond what is necessary in order to achieve those objectives.
- (83) Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU should therefore be amended accordingly.
- (84) The ECB was consulted and delivered an opinion on 7 September 2021,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2013/34/EU

Directive 2013/34/EU is amended as follows:

- (1) in Article 1, the following paragraphs are added:

‘3. The coordination measures prescribed by Articles 19a, 29a, 29d, 30 and 33, point (aa) of the second subparagraph of Article 34(1), Article 34(2) and (3) and Article 51 of this Directive shall also apply to the laws, regulations and administrative provisions of the Member States relating to the following undertakings regardless of their legal form, provided that those undertakings are large undertakings, or small and medium-sized undertakings, except micro undertakings, which are public-interest entities as defined in point (a) of point (1) of Article 2 of this Directive:

- (a) insurance undertakings within the meaning of Article 2(1) of Council Directive 91/674/EEC (*);
- (b) credit institutions as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (**).

Member States may choose not to apply the coordination measures referred to in the first subparagraph of this paragraph to the undertakings listed in points (2) to (23) of Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council (***).

4. The coordination measures prescribed by Articles 19a, 29a and 29d shall not apply to financial products listed in points (b) and (f) of point (12) of Article 2 of Regulation (EU) 2019/2088 of the European Parliament and of the Council (****).

5. The coordination measures prescribed by Articles 40a to 40d shall also apply to the laws, regulations and administrative provisions of the Member States relating to subsidiary undertakings and branches of undertakings which are not governed by the law of a Member State but whose legal form is comparable with the types of undertakings listed in Annex I.

(*) Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

(**) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

(***) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(****) Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).;

(2) Article 2 is amended as follows:

(a) point (5) is replaced by the following:

‘(5) “net turnover” means the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover; however, for insurance undertakings referred to in point (a) of the first subparagraph of Article 1(3) of this Directive, “net turnover” shall be defined in accordance with Article 35 and point 2 of Article 66 of Council Directive 91/674/EEC (*); for credit institutions referred to in point (b) of the first subparagraph of Article 1(3) of this Directive, “net turnover” shall be defined in accordance with point (c) of Article 43(2) of Council Directive 86/635/EEC (**); and for undertakings falling under the scope of Article 40a(1) of this Directive, “net turnover” means the revenue as defined by or within the meaning of the financial reporting framework on the basis of which the financial statements of the undertaking are prepared;

(*) Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

(**) Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).’;

(b) the following points are added:

‘(17) “sustainability matters” means environmental, social and human rights, and governance factors, including sustainability factors defined in point (24) of Article 2 of Regulation (EU) 2019/2088;

(18) “sustainability reporting” means reporting information related to sustainability matters in accordance with Articles 19a, 29a and 29d;

(19) “key intangible resources” means resources without physical substance on which the business model of the undertaking fundamentally depends and which are a source of value creation for the undertaking;

(20) “independent assurance services provider” means a conformity assessment body accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council (*) for the specific conformity assessment activity referred to in point (aa) of the second subparagraph of Article 34(1) of this Directive.

(*) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).’;

(3) in Article 19(1), the following subparagraph is added:

‘Large undertakings, and small and medium-sized undertakings, except micro undertakings, which are public-interest entities as defined in point (a) of point (1) of Article 2 shall report information on the key intangible resources and explain how the business model of the undertaking fundamentally depends on such resources and how such resources are a source of value creation for the undertaking.’;

(4) Article 19a is replaced by the following:

‘Article 19a

Sustainability reporting

1. Large undertakings, and small and medium-sized undertakings, except micro undertakings, which are public-interest entities as defined in point (a) of point (1) of Article 2 shall include in the management report information necessary to understand the undertaking’s impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking’s development, performance and position.

The information referred to in the first subparagraph shall be clearly identifiable within the management report, through a dedicated section of the management report.

2. The information referred to in paragraph 1 shall contain:

(a) a brief description of the undertaking's business model and strategy, including:

- (i) the resilience of the undertaking's business model and strategy in relation to risks related to sustainability matters;
- (ii) the opportunities for the undertaking related to sustainability matters;
- (iii) the plans of the undertaking, including implementing actions and related financial and investment plans, to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1,5 °C in line with the Paris Agreement under the United Nations Framework Convention on Climate Change adopted on 12 December 2015 (the 'Paris Agreement') and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119 of the European Parliament and of the Council (*), and, where relevant, the exposure of the undertaking to coal-, oil- and gas-related activities;
- (iv) how the undertaking's business model and strategy take account of the interests of the undertaking's stakeholders and of the impacts of the undertaking on sustainability matters;
- (v) how the undertaking's strategy has been implemented with regard to sustainability matters;

(b) a description of the time-bound targets related to sustainability matters set by the undertaking, including, where appropriate, absolute greenhouse gas emission reduction targets at least for 2030 and 2050, a description of the progress the undertaking has made towards achieving those targets, and a statement of whether the undertaking's targets related to environmental factors are based on conclusive scientific evidence;

(c) a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, and of their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills;

(d) a description of the undertaking's policies in relation to sustainability matters;

(e) information about the existence of incentive schemes linked to sustainability matters which are offered to members of the administrative, management and supervisory bodies;

(f) a description of:

- (i) the due diligence process implemented by the undertaking with regard to sustainability matters, and, where applicable, in line with Union requirements on undertakings to conduct a due diligence process;
- (ii) the principal actual or potential adverse impacts connected with the undertaking's own operations and with its value chain, including its products and services, its business relationships and its supply chain, actions taken to identify and monitor those impacts, and other adverse impacts which the undertaking is required to identify pursuant to other Union requirements on undertakings to conduct a due diligence process;
- (iii) any actions taken by the undertaking to prevent, mitigate, remediate or bring an end to actual or potential adverse impacts, and the result of such actions;

(g) a description of the principal risks to the undertaking related to sustainability matters, including a description of the undertaking's principal dependencies on those matters, and how the undertaking manages those risks;

(h) indicators relevant to the disclosures referred to in points (a) to (g).

Undertakings shall report the process carried out to identify the information that they have included in the management report in accordance with paragraph 1 of this Article. The information listed in the first subparagraph of this paragraph shall include information related to short-, medium- and long-term time horizons, as applicable.

3. Where applicable, the information referred to in paragraphs 1 and 2 shall contain information about the undertaking's own operations and about its value chain, including its products and services, its business relationships and its supply chain.

For the first three years of the application of the measures to be adopted by the Member States in accordance with Article 5(2) of Directive (EU) 2022/2464 of the European Parliament and of the Council (**), and in the event that not all the necessary information regarding its value chain is available, the undertaking shall explain the efforts made to obtain the necessary information about its value chain, the reasons why not all of the necessary information could be obtained, and its plans to obtain the necessary information in the future.

Where applicable, the information referred to in paragraphs 1 and 2 shall also contain references to, and additional explanations of, the other information included in the management report in accordance with Article 19, and the amounts reported in the annual financial statements.

Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance and position, and the impact of its activity.

4. Undertakings shall report the information referred to in paragraphs 1 to 3 of this Article in accordance with the sustainability reporting standards adopted pursuant to Article 29b.

5. The management of the undertaking shall inform the workers' representatives at the appropriate level and discuss with them the relevant information and the means of obtaining and verifying sustainability information. The workers' representatives' opinion shall be communicated, where applicable, to the relevant administrative, management or supervisory bodies.

6. By way of derogation from paragraphs 2 to 4 of this Article, and without prejudice to paragraphs 9 and 10 of this Article, small and medium-sized undertakings referred to in paragraph 1 of this Article, small and non-complex institutions defined in point (145) of Article 4(1) of Regulation (EU) No 575/2013, captive insurance undertakings defined in point (2) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council (***) and captive reinsurance undertakings defined in point (5) of Article 13 of that Directive may limit their sustainability reporting to the following information:

- (a) a brief description of the undertaking's business model and strategy;
- (b) a description of the undertaking's policies in relation to sustainability matters;
- (c) the principal actual or potential adverse impacts of the undertaking on sustainability matters, and any actions taken to identify, monitor, prevent, mitigate or remediate such actual or potential adverse impacts;
- (d) the principal risks to the undertaking related to sustainability matters and how the undertaking manages those risks;
- (e) key indicators necessary for the disclosures referred to in points (a) to (d).

Small and medium-sized undertakings, small and non-complex institutions and captive insurance and reinsurance undertakings that rely on the derogation referred to in the first subparagraph shall report in accordance with the sustainability reporting standards for small and medium-sized undertakings referred to in Article 29c.

7. For financial years starting before 1 January 2028, by way of derogation from paragraph 1 of this Article, small and medium-sized undertakings which are public-interest entities as defined in point (a) of point (1) of Article 2 may decide not to include in their management report the information referred to in paragraph 1 of this Article. In such cases, the undertaking shall, nevertheless, briefly state in its management report why the sustainability reporting was not provided.

8. Undertakings that comply with the requirements set out in paragraphs 1 to 4 of this Article and undertakings that rely on the derogation laid down in paragraph 6 of this Article shall be deemed to have complied with the requirement set out in the third subparagraph of Article 19(1).

9. Provided that the conditions set out in the second subparagraph of this paragraph are met, an undertaking which is a subsidiary undertaking shall be exempted from the obligations set out in paragraphs 1 to 4 of this Article ("the exempted subsidiary undertaking") if such undertaking and its subsidiary undertakings are included in the consolidated management report of a parent undertaking, drawn up in accordance with Articles 29 and 29a. An undertaking which is a subsidiary undertaking of a parent undertaking that is established in a third country shall also be exempted from the obligations set out in paragraphs 1 to 4 of this Article where such undertaking and its subsidiary undertakings are included in the consolidated sustainability reporting of that parent undertaking that is established in a third country and where that consolidated sustainability reporting is carried out in accordance with the sustainability reporting standards adopted pursuant to Article 29b or in a manner equivalent to those sustainability reporting standards, as determined in accordance with an implementing act on the equivalence of sustainability reporting standards adopted pursuant to the third subparagraph of Article 23(4) of Directive 2004/109/EC of the European Parliament and of the Council (****).

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

- (a) the management report of the exempted subsidiary undertaking contains all of the following information:
 - (i) the name and registered office of the parent undertaking that reports information at group level in accordance with this Article or in a manner equivalent to the sustainability reporting standards adopted pursuant to Article 29b of this Directive, as determined in accordance with an implementing act on the equivalence of sustainability reporting standards adopted pursuant to the third subparagraph of Article 23(4) of Directive 2004/109/EC;
 - (ii) the weblinks to the consolidated management report of the parent undertaking or, where applicable, to the consolidated sustainability reporting of the parent undertaking, as referred to in the first subparagraph of this paragraph, and to the assurance opinion referred to in point (aa) of the second subparagraph of Article 34(1) of this Directive or to the assurance opinion referred to in point (b) of this subparagraph;
 - (iii) the information that the undertaking is exempted from the obligations set out in paragraphs 1 to 4 of this Article;
- (b) if the parent undertaking is established in a third country, its consolidated sustainability reporting and the assurance opinion on the consolidated sustainability reporting, expressed by one or more person(s) or firm(s) authorised to give an opinion on the assurance of sustainability reporting under the law governing that parent undertaking, are published in accordance with Article 30 of this Directive, and in accordance with the law of the Member State by which the exempted subsidiary undertaking is governed;
- (c) if the parent undertaking is established in a third country, the disclosures laid down in Article 8 of Regulation (EU) 2020/852 of the European Parliament and of the Council (*****), covering the activities carried out by the exempted subsidiary undertaking established in the Union and its subsidiary undertakings, are included in the management report of the exempted subsidiary undertaking, or in the consolidated sustainability reporting carried out by the parent undertaking established in a third country.

The Member State by whose national law the exempted subsidiary undertaking is governed may require that the consolidated management report or, where applicable, the consolidated sustainability report, of the parent undertaking is published in a language that that Member State accepts, and that any necessary translation into such language is provided. Any translation that has not been certified shall include a statement to that effect.

Undertakings which are exempted from preparing a management report in accordance with Article 37 shall not be obliged to provide the information referred to in points (a)(i) to (iii) of the second subparagraph of this paragraph, provided that such undertakings publish the consolidated management report in accordance with Article 37.

For the purposes of the first subparagraph of this paragraph, and where Article 10 of Regulation (EU) No 575/2013 applies, credit institutions referred to in point (b) of the first subparagraph of Article 1(3) of this Directive that are permanently affiliated to a central body which supervises them under the conditions laid down in Article 10 of Regulation (EU) No 575/2013 shall be treated as subsidiary undertakings of that central body.

For the purposes of the first subparagraph of this paragraph, insurance undertakings referred to in point (a) of the first subparagraph of Article 1(3) of this Directive that are part of a group, on the basis of financial relationships as referred to in point (c)(ii) of Article 212(1) of Directive 2009/138/EC, and which are subject to group supervision in accordance with points (a) to (c) of Article 213(2) of that Directive shall be treated as subsidiary undertakings of the parent undertaking of that group.

10. The exemption laid down in paragraph 9 shall also apply to public-interest entities subject to the requirements of this Article, with the exception of large undertakings which are public-interest entities defined in point (a) of point (1) of Article 2 of this Directive.

- (*) Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Law) (OJ L 243, 9.7.2021, p. 1).
- (**) Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (OL L 322, 16.12.2022, p. 15).
- (***) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).
- (****) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).
- (*****) Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).;

(5) Article 20(1) is amended as follows:

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

‘(g) a description of the diversity policy applied in relation to the undertaking’s administrative, management and supervisory bodies with regard to gender and other aspects such as, age, disabilities or educational and professional background, the objectives of that diversity policy, how it has been implemented and the results in the reporting period. If no such policy is applied, the statement shall contain an explanation as to why that is the case.’;

(b) the following subparagraph is added:

‘Undertakings subject to Article 19a shall be deemed to have complied with the obligation laid down in point (g) of the first subparagraph of this paragraph where they include the information required under that point as part of their sustainability reporting and a reference thereto is included in the corporate governance statement.’;

(6) Article 23 is amended as follows:

(a) in paragraph 4, point (b) is replaced by the following:

‘(b) the consolidated financial statements referred to in point (a) and the consolidated management report of the larger body of undertakings are drawn up by the parent undertaking of that body, in accordance with the law of the Member State by which that parent undertaking is governed, in accordance with this Directive, with the exception of the requirements laid down in Article 29a, or in accordance with international accounting standards adopted in accordance with Regulation (EC) No 1606/2002;’;

(b) in paragraph 8, point (b)(i) is replaced by the following:

‘(i) in accordance with this Directive, with the exception of the requirements laid down in Article 29a;’;

(c) in paragraph 8, point (b)(iii) is replaced by the following:

‘(iii) in a manner equivalent to consolidated financial statements and consolidated management reports drawn up in accordance with this Directive, with the exception of the requirements laid down in Article 29a, or’;

(7) Article 29a is replaced by the following:

‘Article 29a

Consolidated sustainability reporting

1. Parent undertakings of a large group as referred to in Article 3(7) shall include in the consolidated management report information necessary to understand the group’s impacts on sustainability matters, and information necessary to understand how sustainability matters affect the group’s development, performance and position.

The information referred to in the first subparagraph shall be clearly identifiable within the consolidated management report, through a dedicated section of the consolidated management report.

2. The information referred to in paragraph 1 shall contain:

(a) a brief description of the group’s business model and strategy, including:

(i) the resilience of the group’s business model and strategy in relation to risks related to sustainability matters;

(ii) the opportunities for the group related to sustainability matters;

(iii) the plans of the group, including implementing actions and related financial and investment plans, to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1,5 °C in line with the Paris Agreement and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119 and where relevant, the exposure of the group to coal-, oil- and gas-related activities;

(iv) how the group’s business model and strategy take account of the interests of the group’s stakeholders and of the impacts of the group on sustainability matters;

(v) how the group’s strategy has been implemented with regard to sustainability matters;

(b) a description of the time-bound targets related to sustainability matters set by the group, including, where appropriate, absolute greenhouse gas emission reduction targets at least for 2030 and 2050, a description of the progress the group has made towards achieving those targets, and a statement of whether the group’s targets related to environmental factors are based on conclusive scientific evidence;

(c) a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, and of their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills;

- (d) a description of the group's policies in relation to sustainability matters;
- (e) information about the existence of incentive schemes linked to sustainability matters which are offered to members of the administrative, management and supervisory bodies;
- (f) a description of:
 - (i) the due diligence process implemented by the group with regard to sustainability matters, and, where applicable, in line with Union requirements on undertakings to conduct a due diligence process;
 - (ii) the principal actual or potential adverse impacts connected with the group's own operations and with its value chain, including its products and services, its business relationships and its supply chain, actions taken to identify and monitor those impacts, and other adverse impacts which the parent undertaking is required to identify pursuant to other Union requirements to conduct a due diligence process;
 - (iii) any actions taken by the group to prevent, mitigate, remediate or bring an end to actual or potential adverse impacts, and the result of such actions;
- (g) a description of the principal risks to the group related to sustainability matters, including the group's principal dependencies on those matters, and how the group manages those risks;
- (h) indicators relevant to the disclosures referred to in points (a) to (g).

Parent undertakings shall report the process carried out to identify the information that they have included in the consolidated management report in accordance with paragraph 1 of this Article. The information listed in the first subparagraph of this paragraph shall include information related to short-, medium- and long-term time horizons, as applicable.

3. Where applicable, the information referred to in paragraphs 1 and 2 shall contain information about the group's own operations and about its value chain, including its products and services, its business relationships and its supply chain.

For the first three years of the application of the measures to be adopted by the Member States in accordance with Article 5(2) of Directive (EU) 2022/2464, and in the event that not all the necessary information regarding its value chain is available, the parent undertaking shall explain the efforts made to obtain the necessary information about its value chain, the reasons why not all of the necessary information could be obtained, and its plans to obtain the necessary information in the future.

Where applicable, the information referred to in paragraphs 1 and 2 shall also include references to, and additional explanations of, the other information included in the consolidated management report in accordance with Article 29 of this Directive and the amounts reported in the consolidated financial statements.

Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the group, provided that such omission does not prevent a fair and balanced understanding of the group's development, performance, and position, and the impact of its activity.

4. Where the reporting undertaking identifies significant differences between the risks for, or impacts of, the group and the risks for, or impacts of, one or more of its subsidiary undertakings, the undertaking shall provide an adequate understanding of, as appropriate, the risks for, and impacts of, the subsidiary undertaking or subsidiary undertakings concerned.

Undertakings shall indicate which subsidiary undertakings included in the consolidation are exempted from annual or consolidated sustainability reporting pursuant to Articles 19a(9) or 29a(8) respectively.

5. Parent undertakings shall report the information referred to in paragraphs 1 to 3 of this Article in accordance with the sustainability reporting standards adopted pursuant to Article 29b.

6. The management of the parent undertaking shall inform the workers' representatives at the appropriate level and discuss with them the relevant information and the means of obtaining and verifying sustainability information. The workers' representatives' opinion shall be communicated, where applicable, to the relevant administrative, management or supervisory bodies.

7. A parent undertaking that complies with the requirements set out in paragraphs 1 to 5 of this Article shall be deemed to have complied with the requirements set out in the third subparagraph of Article 19(1) and Article 19a.

8. Provided that the conditions set out in the second subparagraph of this paragraph are met, a parent undertaking which is a subsidiary undertaking shall be exempted from the obligations set out in paragraphs 1 to 5 of this Article (the "exempted parent undertaking") if such parent undertaking and its subsidiary undertakings are included in the consolidated management report of another undertaking, drawn up in accordance with Article 29 and this Article. A parent undertaking which is a subsidiary undertaking of a parent undertaking that is established in a third country shall also be exempted from the obligations set out in paragraphs 1 to 5 of this Article where such parent undertaking and its subsidiary undertakings are included in the consolidated sustainability reporting of that parent undertaking that is established in a third country and where that consolidated sustainability reporting is carried out in accordance with the sustainability reporting standards adopted pursuant to Article 29b or in a manner equivalent to those sustainability reporting standards, as determined in accordance with an implementing act on the equivalence of sustainability reporting standards adopted pursuant to the third subparagraph of Article 23(4) of Directive 2004/109/EC.

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

(a) the management report of the exempted parent undertaking contains all of the following information:

- (i) the name and registered office of the parent undertaking that reports information at group level in accordance with this Article, or in a manner equivalent to the sustainability reporting standards adopted pursuant to Article 29b of this Directive, as determined in accordance with an implementing act on the equivalence of sustainability reporting standards adopted pursuant to the third subparagraph of Article 23(4) of Directive 2004/109/EC;
- (ii) the weblinks to the consolidated management report of the parent undertaking or, where applicable, to the consolidated sustainability reporting of the parent undertaking, as referred to in the first subparagraph of this paragraph, and to the assurance opinion referred to in point (aa) of the second subparagraph of Article 34(1) of this Directive or to the assurance opinion referred to in point (b) of this subparagraph;
- (iii) the information that the parent undertaking is exempted from the obligations set out in paragraphs 1 to 5 of this Article;

(b) if the parent undertaking is established in a third country, its consolidated sustainability reporting and the assurance opinion, expressed by one or more person(s) or firm(s) authorised to give an opinion on the assurance of sustainability reporting under the national law governing the parent undertaking, are published in accordance with Article 30, and in accordance with the law of the Member State by which the exempted parent undertaking is governed;

- (c) if the parent undertaking is established in a third country, the disclosures laid down in Article 8 of Regulation (EU) 2020/852, covering the activities carried out by the subsidiary undertaking established in the Union and exempted from sustainability reporting on the basis of Article 19a(9) of this Directive, shall be included in the management report of the exempted parent undertaking, or in the consolidated sustainability reporting carried out by the parent undertaking established in a third country.

The Member State by whose national law the exempted parent undertaking is governed may require that the consolidated management report or, where applicable, the consolidated sustainability report of the parent undertaking is published in a language that that Member State accepts, and that any necessary translation into such language is provided. Any translation that has not been certified shall include a statement to that effect.

Parent undertakings which are exempted from preparing a management report pursuant to Article 37 shall not be obliged to provide the information referred to in points (a)(i) to (a)(iii) of the second subparagraph of this paragraph, provided that such undertakings publish the consolidated management report in accordance with Article 37.

For the purposes of the first subparagraph of this paragraph, and where Article 10 of Regulation (EU) No 575/2013 applies, credit institutions referred to in point (b) of the first subparagraph of Article 1(3) of this Directive that are permanently affiliated to a central body which supervises them under the conditions laid down in Article 10 of Regulation (EU) No 575/2013 shall be treated as subsidiary undertakings of that central body.

For the purposes of the first subparagraph of this paragraph, insurance undertakings referred to in point (a) of the first subparagraph of Article 1(3) of this Directive that are part of a group, on the basis of financial relationships referred to in point (c)(ii) of Article 212(1) of Directive 2009/138/EC, and which are subject to group supervision in accordance with points (a) to (c) of Article 213(2) of that Directive shall be treated as subsidiary undertakings of the parent undertaking of that group.

9. The exemption laid down in paragraph 8 shall also apply to public-interest entities subject to the requirements of this Article, with the exception of large undertakings which are public-interest entities defined in point (a) of point (1) of Article 2 of this Directive.;

- (8) the following chapter is inserted:

‘CHAPTER 6a

SUSTAINABILITY REPORTING STANDARDS

Article 29b

Sustainability reporting standards

1. The Commission shall adopt delegated acts in accordance with Article 49 supplementing this Directive to provide for sustainability reporting standards. Those sustainability reporting standards shall specify the information that undertakings are to report in accordance with Articles 19a and 29a and, where relevant, shall specify the structure to be used to present that information.

In the delegated acts referred to in the first subparagraph of this paragraph the Commission shall, by 30 June 2023, specify the information that undertakings are to report in accordance with Article 19a(1) and (2), and Article 29a(1) and (2) where appropriate, which shall at least include the information that financial market participants subject to the disclosure obligations of Regulation (EU) 2019/2088 need in order to comply with those obligations.

In the delegated acts referred to in the first subparagraph the Commission shall, by 30 June 2024, specify:

- (i) complementary information that undertakings are to report with regard to the sustainability matters and reporting areas listed in Article 19a(2), where necessary;
- (ii) information that undertakings are to report that is specific to the sector in which they operate.

The reporting requirements laid down in the delegated acts referred to in the first subparagraph shall not enter into force earlier than four months after their adoption by the Commission.

When adopting delegated acts to specify the information required under point (ii) of the third subparagraph, the Commission shall pay particular attention to the scale of the risks and impacts related to sustainability matters for each sector, taking account of the fact that risks and impacts are higher for some sectors than for others.

The Commission shall, at least every three years after their date of application, review the delegated acts adopted pursuant to this Article, taking into consideration the technical advice of the European Financial Reporting Advisory Group (EFRAG), and, where necessary, it shall amend such delegated acts to take into account relevant developments, including developments with regard to international standards.

The Commission shall, at least once a year, consult the European Parliament, and consult jointly the Member State Expert Group on Sustainable Finance, referred to in Article 24 of Regulation (EU) 2020/852, and the Accounting Regulatory Committee, referred to in Article 6 of Regulation (EC) No 1606/2002, on EFRAG's work programme as regards the development of sustainability reporting standards.

2. The sustainability reporting standards shall ensure the quality of reported information, by requiring that it is understandable, relevant, verifiable, comparable and represented in a faithful manner. The sustainability reporting standards shall avoid imposing a disproportionate administrative burden on undertakings, including by taking account, to the greatest extent possible, of the work of global standard-setting initiatives for sustainability reporting as required by point (a) of paragraph 5.

The sustainability reporting standards shall, taking into account the subject matter of a particular sustainability reporting standard:

- (a) specify the information that undertakings are to disclose about the following environmental factors:
 - (i) climate change mitigation, including as regards scope 1, scope 2 and, where relevant, scope 3 greenhouse gas emissions;
 - (ii) climate change adaptation;
 - (iii) water and marine resources;
 - (iv) resource use and the circular economy;
 - (v) pollution;
 - (vi) biodiversity and ecosystems;
- (b) specify the information that undertakings are to disclose about the following social and human rights factors:
 - (i) equal treatment and opportunities for all, including gender equality and equal pay for work of equal value, training and skills development, the employment and inclusion of people with disabilities, measures against violence and harassment in the workplace, and diversity;

- (ii) working conditions, including secure employment, working time, adequate wages, social dialogue, freedom of association, existence of works councils, collective bargaining, including the proportion of workers covered by collective agreements, the information, consultation and participation rights of workers, work-life balance, and health and safety;
 - (iii) respect for the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions, including the UN Convention on the Rights of Persons with Disabilities, the UN Declaration on the Rights of Indigenous Peoples, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and the fundamental conventions of the International Labour Organization, the European Convention for the protection of Human Rights and Fundamental Freedoms, the European Social Charter, and the Charter of Fundamental Rights of the European Union;
- (c) specify the information that undertakings are to disclose about the following governance factors:
- (i) the role of the undertaking's administrative, management and supervisory bodies with regard to sustainability matters, and their composition, as well as their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills;
 - (ii) the main features of the undertaking's internal control and risk management systems, in relation to the sustainability reporting and decision-making process;
 - (iii) business ethics and corporate culture, including anti-corruption and anti-bribery, the protection of whistleblowers and animal welfare;
 - (iv) activities and commitments of the undertaking related to exerting its political influence, including its lobbying activities;
 - (v) the management and quality of relationships with customers, suppliers and communities affected by the activities of the undertaking, including payment practices, especially with regard to late payment to small and medium-sized undertakings.

3. The sustainability reporting standards shall specify the forward-looking, retrospective, qualitative and quantitative information, as appropriate, to be reported by undertakings.

4. Sustainability reporting standards shall take account of the difficulties that undertakings may encounter in gathering information from actors throughout their value chain, especially from those which are not subject to the sustainability reporting requirements laid down in Article 19a or 29a and from suppliers in emerging markets and economies. Sustainability reporting standards shall specify disclosures on value chains that are proportionate and relevant to the capacities and the characteristics of undertakings in value chains, and to the scale and complexity of their activities, especially those of undertakings that are not subject to the sustainability reporting requirements in Article 19a or 29a. Sustainability reporting standards shall not specify disclosures that would require undertakings to obtain information from small and medium-sized undertakings in their value chain that exceeds the information to be disclosed pursuant to the sustainability reporting standards for small and medium-sized undertakings referred to in Article 29c.

The first subparagraph is without prejudice to Union requirements on undertakings to conduct a due diligence process.

5. When adopting delegated acts pursuant to paragraph 1, the Commission shall, to the greatest extent possible, take account of:

- (a) the work of global standard-setting initiatives for sustainability reporting, and existing standards and frameworks for natural capital accounting and for greenhouse gas accounting, responsible business conduct, corporate social responsibility, and sustainable development;

- (b) the information that financial market participants need in order to comply with their disclosure obligations laid down in Regulation (EU) 2019/2088 and the delegated acts adopted pursuant to that Regulation;
- (c) the criteria, indicators and methodologies set out in the delegated acts adopted pursuant to Regulation (EU) 2020/852, including the technical screening criteria established pursuant to Article 10(3), Article 11(3), Article 12(2), Article 13(2), Article 14(2) and Article 15(2) of that Regulation and the reporting requirements set out in the delegated act adopted pursuant to Article 8 of that Regulation;
- (d) the disclosure requirements applicable to benchmark administrators in the benchmark statement and in the benchmark methodology and the minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks in accordance with Commission Delegated Regulations (EU) 2020/1816 ⁽¹⁾*, (EU) 2020/1817 ⁽²⁾* and (EU) 2020/1818 ⁽³⁾*;
- (e) the disclosures specified in the implementing acts adopted pursuant to Article 434a of Regulation (EU) No 575/2013;
- (f) Commission Recommendation 2013/179/EU ⁽⁴⁾*;
- (g) Directive 2003/87/EC of the European Parliament and of the Council ⁽⁵⁾*;
- (h) Regulation (EU) 2021/1119;
- (i) Regulation (EC) No 1221/2009 of the European Parliament and of the Council ⁽⁶⁾*;
- (j) Directive (EU) 2019/1937 of the European Parliament and of the Council ⁽⁷⁾*.

Article 29c

Sustainability reporting standards for small and medium-sized undertakings

1. The Commission shall, by 30 June 2024, adopt delegated acts in accordance with Article 49 supplementing this Directive to provide for sustainability reporting standards proportionate and relevant to the capacities and the characteristics of small and medium-sized undertakings and to the scale and complexity of their activities. Those sustainability reporting standards shall specify for the small and medium-sized undertakings referred to in point (1) (a) of Article 2 the information that is to be reported in accordance with Article 19a(6).

The reporting requirements laid down in the delegated acts referred to in the first subparagraph shall not enter into force earlier than four months after their adoption by the Commission.

2. Sustainability reporting standards for small and medium-sized undertakings shall take into account the criteria set out in Article 29b(2) to (5). They shall also, to the extent possible, specify the structure to be used to present that information.

3. The Commission shall, at least every three years after their date of application, review the delegated acts adopted pursuant to this Article, taking into consideration the technical advice of the EFRAG and, where necessary, it shall amend such delegated acts to take into account relevant developments, including developments with regard to international standards.

⁽¹⁾* Commission Delegated Regulation (EU) 2020/1816 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published (OJ L 406, 3.12.2020, p. 1).

⁽²⁾* Commission Delegated Regulation (EU) 2020/1817 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the minimum content of the explanation on how environmental, social and governance factors are reflected in the benchmark methodology (OJ L 406, 3.12.2020, p. 12).

⁽³⁾* Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks (OJ L 406, 3.12.2020, p. 17).

⁽⁴⁾* Commission Recommendation 2013/179/EU of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations (OJ L 124, 4.5.2013, p. 1).

⁽⁵⁾* Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁽⁶⁾* Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

⁽⁷⁾* Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).;

(9) the following chapter is inserted:

‘CHAPTER 6b

SINGLE ELECTRONIC REPORTING FORMAT

Article 29d

Single electronic reporting format

1. Undertakings subject to the requirements of Article 19a of this Directive shall prepare their management report in the electronic reporting format specified in Article 3 of Commission Delegated Regulation (EU) 2019/815 (*) and shall mark up their sustainability reporting, including the disclosures provided for in Article 8 of Regulation (EU) 2020/852, in accordance with the electronic reporting format specified in that Delegated Regulation.

2. Parent undertakings subject to the requirements of Article 29a shall prepare their consolidated management report in the electronic reporting format specified in Article 3 of Delegated Regulation (EU) 2019/815 and shall mark up their sustainability reporting, including the disclosures provided for in Article 8 of Regulation (EU) 2020/852, in accordance with the electronic reporting format specified in that Delegated Regulation.

(*) Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format (OJ L 143, 29.5.2019, p. 1).;

(10) in Article 30, paragraph 1 is replaced by the following:

‘1. Member States shall ensure that undertakings publish within a reasonable period of time, which shall not exceed 12 months after the balance sheet date, the duly approved annual financial statements and the management report, in the electronic reporting format referred to in Article 29d of this Directive where applicable, together with the opinion and statement submitted by the statutory auditor or audit firm referred to in Article 34 of this Directive, as laid down by the laws of each Member State in accordance with Chapter III of Title 1 of Directive (EU) 2017/1132 of the European Parliament and of the Council (*).

Member States may require undertakings subject to Articles 19a and 29a to make the management report available to the public on their website, free of charge. Where an undertaking does not have a website, Member States may require it to make a written copy of its management report available upon request.

Where an independent assurance services provider expresses the opinion referred to in point (aa) of the second subparagraph of Article 34(1), that opinion shall be published together with the documents referred to in the first subparagraph of this paragraph.

Member States may, however, exempt undertakings from the obligation to publish the management report where a copy of all or part of any such report can be easily obtained upon request at a price not exceeding its administrative cost.

The exemption laid down in the fourth subparagraph of this paragraph shall not apply to undertakings subject to the requirements on sustainability reporting laid down in Articles 19a and 29a.

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

(11) in Article 33, paragraph 1 is replaced by the following:

‘1. Member States shall ensure that the members of the administrative, management and supervisory bodies of an undertaking, acting within the competences assigned to them by national law, have collective responsibility for ensuring that the following documents are drawn up and published in accordance with the requirements of this Directive and, where applicable, with the international accounting standards adopted pursuant to Regulation (EC) No 1606/2002, with Delegated Regulation (EU) 2019/815, with the sustainability reporting standards referred to in Article 29b or Article 29c of this Directive, and with the requirements of Article 29d of this Directive:

- (a) the annual financial statements, the management report and the corporate governance statement when provided separately; and
- (b) the consolidated financial statements, the consolidated management reports and the consolidated corporate governance statement when provided separately.’;

(12) the title of Chapter 8 is replaced by the following:

‘Auditing and assurance of sustainability reporting’;

(13) Article 34 is amended as follows:

(a) in paragraph 1, the second subparagraph is amended as follows:

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

‘(ii) whether the management report has been prepared in accordance with the applicable legal requirements, excluding the requirements on sustainability reporting laid down in Article 19a of this Directive’;

(ii) the following point is inserted:

‘(aa) where applicable, express an opinion based on a limited assurance engagement as regards the compliance of the sustainability reporting with the requirements of this Directive, including the compliance of the sustainability reporting with the sustainability reporting standards adopted pursuant to Article 29b or Article 29c, the process carried out by the undertaking to identify the information reported pursuant to those sustainability reporting standards, and the compliance with the requirement to mark up sustainability reporting in accordance with Article 29d, and as regards the compliance with the reporting requirements provided for in Article 8 of Regulation (EU) 2020/852’;

(b) paragraph 3 is replaced by the following:

‘3. Member States may allow a statutory auditor or an audit firm other than the one(s) carrying out the statutory audit of financial statements to express the opinion referred to in point (aa) of the second subparagraph of paragraph 1.’;

(c) the following paragraphs are added:

‘4. Member States may allow an independent assurance services provider established in their territory to express the opinion referred to in point (aa) of the second subparagraph of paragraph 1, provided that such independent assurance services provider is subject to requirements that are equivalent to those set out in Directive 2006/43/EC of the European Parliament and of the Council (*) as regards the assurance of sustainability reporting as defined in point 22 of Article 2 of that Directive, in particular the requirements on:

- (a) training and examination, ensuring that independent assurance services providers acquire the necessary expertise concerning sustainability reporting and the assurance of sustainability reporting;
- (b) continuing education;
- (c) quality assurance systems;
- (d) professional ethics, independence, objectivity, confidentiality and professional secrecy;
- (e) appointment and dismissal;
- (f) investigations and sanctions;
- (g) the organisation of the work of the independent assurance services provider, in particular in terms of sufficient resources and personnel and the maintenance of client account records and files; and
- (h) reporting irregularities.

Member States shall ensure that, where an independent assurance services provider expresses the opinion referred to in point (aa) of the second subparagraph of paragraph 1 of this Article, that opinion is prepared in accordance with Articles 26a, 27a and 28a of Directive 2006/43/EC and that, where applicable, the audit committee, or a dedicated committee, reviews and monitors the independence of the independent assurance services provider in accordance with point (e) of Article 39(6) of Directive 2006/43/EC.

Member States shall ensure that independent assurance services providers accredited before 1 January 2024 for the assurance of sustainability reporting, in accordance with Regulation (EC) No 765/2008, are not subject to the training and examination requirements referred to in point (a) of the first subparagraph of this paragraph.

Member States shall ensure that independent assurance services providers that on 1 January 2024 are undergoing the accreditation process in accordance with the relevant national requirements are not subject to the training and examination requirements referred to in point (a) of the first subparagraph as regards the assurance of sustainability reporting, provided they complete that process by 1 January 2026.

Member States shall ensure that the independent assurance services providers referred to in the third and fourth subparagraphs acquire the necessary knowledge in sustainability reporting and the assurance of sustainability reporting via the continuing education requirement referred to in point (b) of the first subparagraph.

If a Member State, pursuant to the first subparagraph, decides to allow an independent assurance services provider to express the opinion referred to in point (aa) of the second subparagraph of paragraph 1, it shall also allow a statutory auditor other than the one(s) carrying out the statutory audit of financial statements to do so, as provided for in paragraph 3.

5. From 6 January 2027, a Member State that has made use of the option provided for in paragraph 4 (the “host Member State”) shall allow independent assurance services provider established in a Member State other than the host Member State (the “home Member State”) to carry out the assurance of sustainability reporting.

The home Member State shall be responsible for the supervision of the independent assurance services providers established in its territory, unless the host Member State decides to supervise the assurance of sustainability reporting carried out by independent assurance services providers in its territory.

If the host Member State decides to supervise the assurance of sustainability reporting carried out in its territory by independent assurance services providers registered in another Member State, the host Member State shall:

- (a) not impose more stringent requirements or liability on such independent assurance services providers than those required for assurance of sustainability reporting by the national laws for the independent assurance services providers or auditors established in that host Member State; and
- (b) inform other Member States about its decision to supervise the assurance of sustainability reporting carried out by independent assurance services providers established in other Member States.

6. Member States shall ensure that where an undertaking is required by Union law to have elements of its sustainability reporting verified by an accredited independent third party, the report of the accredited independent third party is made available either as an annex to the management report or by other publicly accessible means.

(*) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).;

(14) the following chapter is inserted:

‘CHAPTER 9a

REPORTING CONCERNING THIRD-COUNTRY UNDERTAKINGS

Article 40a

Sustainability reports concerning third-country undertakings

1. A Member State shall require that a subsidiary undertaking established in its territory whose ultimate parent undertaking is governed by the law of a third country publish and make accessible a sustainability report covering the information specified in points (a)(iii) to (a)(v), points (b) to (f) and, where appropriate, point (h) of Article 29a(2) at the group level of that ultimate third-country parent undertaking.

The first subparagraph shall only apply to large subsidiary undertakings and to small and medium-sized subsidiary undertakings, except micro undertakings, which are public-interest entities as defined in point (a) of point (1) of Article 2.

A Member State shall require that a branch located in its territory, and which is a branch of an undertaking governed by the law of a third country, which is either not part of a group or is ultimately held by an undertaking that is formed in accordance with the law of a third country publish and make accessible a sustainability report covering the information specified in points (a)(iii) to (a)(v), points (b) to (f) and, where appropriate, point (h) of Article 29a(2), at the group level, or, if not applicable, the individual level, of the third-country undertaking.

The rule referred to in the third subparagraph shall only apply to a branch where the third-country undertaking does not have a subsidiary undertaking as referred to in the first subparagraph, and where the branch generated a net turnover of more than EUR 40 million in the preceding financial year.

The first and third subparagraphs shall only apply to the subsidiary undertakings or branches referred to in those subparagraphs where the third-country undertaking, at its group level, or, if not applicable, the individual level, generated a net turnover of more than EUR 150 million in the Union for each of the last two consecutive financial years.

Member States may require subsidiary undertakings or branches referred to in the first and third subparagraphs to send them information about the net turnover generated in their territory and in the Union by the third-country undertakings.

2. Member States shall require that the sustainability report communicated by the subsidiary undertaking or branch as referred to in paragraph 1 is drawn up in accordance with the standards adopted pursuant to Article 40b.

By way of derogation from the first subparagraph of this paragraph, the sustainability report referred to in paragraph 1 of this Article may be drawn up in accordance with the sustainability reporting standards adopted pursuant to Article 29b or in a manner equivalent to those sustainability reporting standards, as determined in accordance with an implementing act on the equivalence of sustainability reporting standards adopted pursuant to the third subparagraph of Article 23(4) of Directive 2004/109/EC.

Where the information required to draw up the sustainability report referred to in the first subparagraph of this paragraph is not available, the subsidiary undertaking or branch referred to in paragraph 1 shall request the third-country undertaking to provide them with all information necessary to enable them to meet their obligations.

In the event that not all the required information is provided, the subsidiary undertaking or branch referred to in paragraph 1 shall draw up, publish and make accessible the sustainability report referred to in paragraph 1, containing all information in its possession, obtained or acquired, and issue a statement indicating that the third-country undertaking did not make the necessary information available.

3. Member States shall require that the sustainability report referred to in paragraph 1 is published accompanied by an assurance opinion expressed by one or more person(s) or firm(s) authorised to give an opinion on the assurance of sustainability reporting under the national law of the third-country undertaking or of a Member State.

In the event that the third-country undertaking does not provide the assurance opinion in accordance with the first subparagraph, the subsidiary undertaking or branch shall issue a statement indicating that the third-country undertaking did not make the necessary assurance opinion available.

4. Member States may inform the Commission on an annual basis of the subsidiary undertakings or branches of third-country undertakings that fulfilled the publication requirement laid down in Article 40d and of the cases where a report was published but where the subsidiary undertaking or branch has acted in accordance with the fourth subparagraph of paragraph 2 of this Article. The Commission shall make publicly available on its website a list of the third-country undertakings that publish a sustainability report.

*Article 40b***Sustainability reporting standards for third-country undertakings**

The Commission shall adopt by 30 June 2024 a delegated act in accordance with Article 49 supplementing this Directive to provide for sustainability reporting standards for third-country undertakings that specify the information that is to be included in the sustainability reports referred to in Article 40a.

*Article 40c***Responsibility for drawing up, publishing and making accessible sustainability reports concerning third-country undertakings**

Member States shall provide that the branches of third-country undertakings are responsible for ensuring, to the best of their knowledge and ability, that their sustainability report is drawn up in accordance with Article 40a, and that that report is published and made accessible in accordance with Article 40d.

Member States shall provide that the members of the administrative, management and supervisory bodies of the subsidiary undertakings referred to in Article 40a have collective responsibility for ensuring, to the best of their knowledge and ability, that their sustainability report is drawn up in accordance with Article 40a, and that that report is published and made accessible in accordance with Article 40d.

*Article 40d***Publication**

1. The subsidiary undertakings and branches referred to in Article 40a(1) of this Directive shall publish their sustainability report, together with the assurance opinion and, where applicable, the statement mentioned in the fourth subparagraph of Article 40a(2) of this Directive, within 12 months of the balance sheet date of the financial year for which the report is drawn up, as provided for by each Member State, in accordance with Articles 14 to 28 of Directive (EU) 2017/1132 and, where relevant, in accordance with Article 36 of that Directive.

2. Where the sustainability report together with the assurance opinion and, where applicable, with the statement published in accordance with paragraph 1 of this Article, are not made accessible, free of charge, to the public on the website of the register referred to in Article 16 of Directive (EU) 2017/1132, Member States shall ensure that the sustainability report together with the assurance opinion and, where applicable, with the statement published by the undertakings in accordance with paragraph 1 of this Article, are made accessible to the public in at least one of the official languages of the Union, free of charge, no later than 12 months after the balance sheet date of the financial year for which the report is drawn up, on the website of the subsidiary undertaking or the branch as referred to in Article 40a(1) of this Directive.;

(15) the title of Chapter 11 is replaced by the following:

‘CHAPTER 11

TRANSITIONAL AND FINAL PROVISIONS’;

(16) The following article is inserted:

‘Article 48i

Transitional provisions

1. Until 6 January 2030, Member States shall permit a Union subsidiary undertaking which is subject to Article 19a or 29a and whose parent undertaking is not governed by the law of a Member State to prepare consolidated sustainability reporting, in accordance with the requirements of Article 29a, that includes all Union subsidiary undertakings of such parent undertaking that are subject to Article 19a or 29a.

Until 6 January 2030, Member States shall permit the consolidated sustainability reporting referred to in the first subparagraph of this paragraph to include the disclosures laid down in Article 8 of Regulation (EU) 2020/852, covering the activities carried out by all Union subsidiary undertakings of the parent undertaking referred to in the first subparagraph of this paragraph that are subject to Article 19a or 29a of this Directive.

2. The Union subsidiary undertaking referred to in paragraph 1 shall be one of the Union subsidiary undertakings of the group that generated the greatest turnover in the Union in at least one of the preceding five financial years, on a consolidated basis where applicable.

3. The consolidated sustainability reporting referred to in paragraph 1 of this Article shall be published in accordance with Article 30.

4. For the purpose of the exemption laid down in Article 19a(9) and Article 29a(8), reporting in accordance with paragraph 1 of this Article shall be considered to be reporting by a parent undertaking at group level with respect to the undertakings included in the consolidation. Reporting in accordance with the second subparagraph of paragraph 1 of this Article shall be considered to fulfil the conditions referred to in point (c) of the second subparagraph of Article 19a(9) and point (c) of the second subparagraph of Article 29a(8), respectively.;

(17) Article 49 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

‘2. The power to adopt delegated acts referred to in Article 1(2), Article 3(13), Articles 29b, 29c and 40b, and Article 46(2) shall be conferred on the Commission for a period of 5 years from 5 January 2023. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 1(2), Article 3(13), Articles 29b, 29c and 40b, and Article 46(2) 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 that 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.’;

(b) the following paragraph is inserted:

‘3b. When adopting delegated acts pursuant to Articles 29b and 29c, the Commission shall take into consideration technical advice from EFRAG, provided that:

- (a) such advice has been developed with proper due process, public oversight and transparency, with the expertise and balanced participation of relevant stakeholders, and with sufficient public funding to ensure its independence, and on the basis of a work programme on which the Commission has been consulted;
- (b) such advice is accompanied by cost-benefit analyses that include analyses of the impacts of the technical advice on sustainability matters;
- (c) such advice is accompanied by an explanation of how it takes account of the elements listed in Article 29b(5);
- (d) participation in EFRAG’s work at technical level is based on expertise in sustainability reporting and is not conditional on a financial contribution.

Points (a) and (d) are without prejudice to the participation of public bodies and national standard-setting organisations in the technical work of EFRAG.

The accompanying documents for the EFRAG technical advice shall be submitted together with that technical advice.

The Commission shall consult jointly the Member State Expert Group on Sustainable Finance, referred to in Article 24 of Regulation (EU) 2020/852, and the Accounting Regulatory Committee, referred to in Article 6 of Regulation (EC) No 1606/2002, on the draft delegated acts prior to their adoption as referred to in Articles 29b and 29c of this Directive.

The Commission shall request the opinion of the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) on the technical advice provided by EFRAG, in particular with regard to its consistency with Regulation (EU) 2019/2088 and the delegated acts adopted pursuant to that Regulation. ESMA, EBA and EIOPA shall provide their opinions within two months of the date of receipt of the request from the Commission.

The Commission shall also consult the European Environment Agency, the European Union Agency for Fundamental Rights, the European Central Bank, the Committee of European Auditing Oversight Bodies and the Platform on Sustainable Finance established pursuant to Article 20 of Regulation (EU) 2020/852 on the technical advice provided by EFRAG prior to the adoption of delegated acts referred to in Articles 29b and 29c of this Directive. If any of those bodies decide to submit an opinion, they shall do so within two months of the date of being consulted by the Commission.’;

(c) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Article 1(2), Article 3(13), Articles 29b, 29c or 40b, or Article 46(2) 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 the Council.’.

Article 2

Amendments to Directive 2004/109/EC

Directive 2004/109/EC is amended as follows:

(1) in Article 2(1) the following point is added:

‘(r) “sustainability reporting” means sustainability reporting as defined in point (18) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council (*).

(*) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).’;

(2) Article 4 is amended as follows:

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

‘(c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole and that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face and, where appropriate, that it is prepared in accordance with sustainability reporting standards referred to in Article 29b of Directive 2013/34/EU and with the specifications adopted pursuant to Article 8(4) of Regulation (EU) 2020/852 of the European Parliament and of the Council (*).

(*) Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).’;

(b) paragraphs 4 and 5 are replaced by the following:

‘4. The financial statements shall be audited in accordance with the first subparagraph of Article 34(1) and Article 34(2) of Directive 2013/34/EU.

The statutory auditor shall deliver the opinion and statement on the management report referred to in points (a) and (b) of the second subparagraph of Article 34(1) and in Article 34(2) of Directive 2013/34/EU.

The audit report, referred to in Article 28 of Directive 2006/43/EC of the European Parliament and of the Council (*), signed by the person or persons responsible for carrying out the work set out in Article 34(1) and (2) of Directive 2013/34/EU shall be disclosed in full to the public together with the annual financial report.

Where applicable, an assurance opinion on sustainability reporting shall be provided in accordance with point (aa) of the second subparagraph of Article 34(1) and Article 34(2) to (5) of Directive 2013/34/EU.

The assurance report on sustainability reporting referred to in Article 28a of Directive 2006/43/EC shall be disclosed in full to the public together with the annual financial report.

5. The management report shall be drawn up in accordance with Articles 19, 19a and 20, and Article 29d(1) of Directive 2013/34/EU, and shall include the specifications adopted pursuant to Article 8(4) of Regulation (EU) 2020/852, when drawn up by undertakings referred to in those provisions.

Where the issuer is required to prepare consolidated accounts, the consolidated management report shall be drawn up in accordance with Articles 29 and 29a and Article 29d(2) of Directive 2013/34/EU and shall include the specifications adopted pursuant to Article 8(4) of Regulation (EU) 2020/852, when drawn up by undertakings referred to in those provisions.

(*) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).’;

(3) Article 23(4) is amended as follows:

(a) the third and fourth subparagraphs are replaced by the following:

‘The Commission shall, in accordance with the procedure referred to in Article 27(2) of this Directive, take the necessary decisions on the equivalence of accounting standards under the conditions set out in Article 30(3) of this Directive and on the equivalence of sustainability reporting standards as referred to in Article 29b of Directive 2013/34/EU which are used by third-country issuers. If the Commission decides that the accounting standards or the sustainability reporting standards of a third country are not equivalent, it may allow the issuers concerned to continue using such standards during an appropriate transitional period.

In the context of the third subparagraph of this paragraph, the Commission shall also adopt, by means of delegated acts adopted in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions laid down in Articles 27a and 27b, measures that aim to establish general equivalence criteria regarding accounting standards and sustainability reporting standards relevant to issuers of more than one country.’;

(b) the following subparagraph is added:

‘The criteria that the Commission shall use when assessing the equivalence of sustainability reporting standards used by third-country issuers referred to in the third subparagraph shall at least ensure the following:

(a) that the sustainability reporting standards require undertakings to disclose information on environmental, social and governance factors;

- (b) that the sustainability reporting standards require undertakings to disclose information necessary to understand their impacts on sustainability matters, and information necessary to understand how sustainability matters affect their development, performance and position.’;

(4) the following Article is inserted:

‘Article 28d

ESMA guidelines

After consulting the European Environment Agency and the European Union Agency for Fundamental Rights, ESMA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 on the supervision of sustainability reporting by national competent authorities.’.

Article 3

Amendments to Directive 2006/43/EC

Directive 2006/43/EC is amended as follows:

(1) Article 1 is replaced by the following:

‘Article 1

Subject matter

This Directive establishes rules concerning the statutory audit of annual and consolidated accounts and the assurance of annual and consolidated sustainability reporting.’;

(2) Article 2 is amended as follows:

(a) points 2 to 6 are replaced by the following:

- ‘2. “statutory auditor” means a natural person who is approved in accordance with this Directive by the competent authorities of a Member State to carry out statutory audits and, where applicable, the assurance of sustainability reporting;
3. “audit firm” means a legal person or any other entity, regardless of its legal form, that is approved in accordance with this Directive by the competent authorities of a Member State to carry out statutory audits and, where applicable, the assurance of sustainability reporting;
4. “third-country audit entity” means an entity, regardless of its legal form, which carries out audits of the annual or consolidated financial statements, or, where applicable, the assurance of sustainability reporting of a company incorporated in a third country, other than an entity which is registered as an audit firm in any Member State as a consequence of approval in accordance with Article 3;
5. “third-country auditor” means a natural person who carries out audits of the annual or consolidated financial statements or, where applicable, the assurance of sustainability reporting of a company incorporated in a third country, other than a person who is registered as a statutory auditor in any Member State as a consequence of approval in accordance with Articles 3 and 44;
6. “group auditor” means the statutory auditor(s) or audit firm(s) carrying out the statutory audit of the consolidated accounts or, where applicable, the assurance of consolidated sustainability reporting.’;

(b) the following point is inserted:

‘16a. “key sustainability partner(s)” means:

- (a) the statutory auditor(s) designated by an audit firm for a particular assurance engagement concerning sustainability reporting as being primarily responsible for carrying out the assurance of sustainability reporting on behalf of the audit firm; or
- (b) in the case of the assurance of consolidated sustainability reporting at least the statutory auditor(s) designated by an audit firm as being primarily responsible for carrying out the assurance of sustainability reporting at the level of the group and the statutory auditor(s) designated as being primarily responsible at the level of material subsidiaries; or
- (c) the statutory auditor(s) who sign(s) the assurance report on sustainability reporting referred to in Article 28a;’

(c) the following points are added:

- ‘21. “sustainability reporting” means sustainability reporting as defined in point (18) of Article 2 of Directive 2013/34/EU;
- 22. “assurance of sustainability reporting” means the performance of procedures resulting in the opinion expressed by the statutory auditor or audit firm in accordance with point (aa) of the second subparagraph of Article 34(1) and Article 34(2) of Directive 2013/34/EU;
- 23. “independent assurance services provider” means a conformity assessment body accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council (*) for the specific conformity assessment activity referred to in point (aa) of the second subparagraph of Article 34(1) of Directive 2013/34/EU.

(*) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).’;

(3) Article 6 is replaced by the following:

‘Article 6

Educational qualifications

1. Without prejudice to Article 11, a natural person may be approved to carry out a statutory audit only after having attained university entrance or equivalent level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university final or equivalent examination level, organised or recognised by the Member State concerned.
2. A natural person may, in addition to the approval to carry out statutory audits provided for in paragraph 1 of this Article, be approved to carry out the assurance of sustainability reporting when the additional specific requirements of Article 7(2), Article 8(3), the second subparagraph of Article 10(1) and the fourth subparagraph of Article 14(2) of this Directive are met.
3. The competent authorities referred to in Article 32 shall cooperate with each other with a view to achieving a convergence of the requirements set out in this Article. When engaging in such cooperation, those competent authorities shall take into account developments in auditing and in the audit profession and, in particular, convergence that has already been achieved by the profession. They shall cooperate with the Committee of European Auditing Oversight Bodies (CEAOB) and the competent authorities referred to in Article 20 of Regulation (EU) No 537/2014 in so far as such convergence relates to the statutory audit and assurance of sustainability reporting of public-interest entities.’;

- (4) Article 7 is replaced by the following:

'Article 7

Examination of professional competence

1. The examination of professional competence referred to in Article 6 shall guarantee the necessary level of theoretical knowledge of subjects relevant to statutory audit and the ability to apply such knowledge in practice. At least part of that examination shall be written.

2. In order for the statutory auditor to also be approved to carry out the assurance of sustainability reporting, the examination of professional competence referred to in Article 6 shall guarantee the necessary level of theoretical knowledge of subjects relevant to the assurance of sustainability reporting and the ability to apply such knowledge in practice. At least part of that examination shall be written.;

- (5) in Article 8, the following paragraph is added:

'3. In order for the statutory auditor to also be approved to carry out the assurance of sustainability reporting, the test of theoretical knowledge referred to in paragraph 1 shall also cover at least the following subjects:

- (a) legal requirements and standards relating to the preparation of annual and consolidated sustainability reporting;
- (b) sustainability analysis;
- (c) due diligence processes with regard to sustainability matters;
- (d) legal requirements and assurance standards for the sustainability reporting referred to in Article 26a.;

- (6) in Article 10(1), the following subparagraph is added:

'In order for the statutory auditor or the trainee to also be approved to carry out the assurance of sustainability reporting, at least eight months of the practical training referred to in the first subparagraph shall be on the assurance of annual and consolidated sustainability reporting or on other sustainability-related services.;

- (7) Article 12 is replaced by the following:

'Article 12

Combination of practical training and theoretical instruction

1. Member States may provide that periods of theoretical instruction in the subjects referred to in Article 8(1) and (2) shall count towards the periods of professional activity referred to in Article 11, provided that such instruction is attested by an examination recognised by the Member State. Such instruction shall not last less than one year, nor may it reduce the period of professional activity by more than four years.

2. The period of professional activity and practical training shall not be shorter than the course of theoretical instruction together with the practical training required under the first subparagraph of Article 10(1).;

- (8) in Article 14(2), the following subparagraph is added:

'In order for the statutory auditor to also be approved to carry out the assurance of sustainability reporting, the aptitude test referred to in the first subparagraph shall cover the statutory auditor's adequate knowledge of the laws and regulations of the host Member State in so far as it is relevant to the assurance of sustainability reporting.;

- (9) the following Article is inserted:

'Article 14a

Statutory auditors approved or recognised before 1 January 2024 and persons undergoing the approval process for statutory auditors on 1 January 2024

Member States shall ensure that statutory auditors that are approved or recognised to carry out statutory audits before 1 January 2024 are not subject to the requirements of Article 7(2), Article 8(3), the second subparagraph of Article 10(1) and the fourth subparagraph of Article 14(2).

Member States shall ensure that persons that on 1 January 2024 are undergoing the approval process provided for in Articles 6 to 14 are not subject to the requirements of Article 7(2), Article 8(3), the second subparagraph of Article 10(1) and the fourth subparagraph of Article 14(2), provided they complete that process by 1 January 2026.

Member States shall ensure that statutory auditors approved before 1 January 2026 who wish to carry out the assurance of sustainability reporting acquire the necessary knowledge of sustainability reporting and the assurance of sustainability reporting, including of the subjects listed in Article 8(3), via the continuing education referred to in Article 13.;

- (10) Article 16 is amended as follows:

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

'1. As regards statutory auditors, the public register shall contain at least the following information:

- (a) name, address and registration number;
- (b) if applicable, the name, address, website address and registration number of the audit firm(s) by which the statutory auditor is employed, or with whom he or she is associated as a partner or otherwise;
- (c) whether the statutory auditor is also approved for carrying out the assurance of sustainability reporting;
- (d) all other registration(s) as statutory auditor with the competent authorities of other Member States and as auditor with third countries, including the name(s) of the registration authority(ies), and, if applicable, the registration number(s), and an indication of whether the registration concerns the statutory audit, the assurance of sustainability reporting, or both.;

- (b) in paragraph 2, the following subparagraph is added:

'The register shall indicate whether third-country auditors as referred to in the first subparagraph are registered for carrying out the statutory audit, the assurance of sustainability reporting, or both.;

- (11) Article 17 is amended as follows:

- (a) in paragraph 1, point (e) is replaced by the following:

'(e) name and registration number of all statutory auditors employed by, or associated as partners or otherwise with, the audit firm, and an indication of whether they are also approved for carrying out the assurance of sustainability reporting;;

- (b) in paragraph 1, point (i) is replaced by the following:

'(i) all other registration(s) as audit firm with the competent authorities of other Member States and as audit entity with third countries, including the name(s) of the registration authority(ies), and, if applicable, the registration number(s), and an indication of whether the registration concerns the statutory audit, the assurance of sustainability reporting, or both.;

- (c) in paragraph 2, the following subparagraph is added:

‘The register shall indicate whether third-country audit entities as referred to in the first subparagraph are registered for carrying out the statutory audit, the assurance of sustainability reporting, or both.’;

- (12) Article 24b is amended as follows:

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

‘1. Member States shall ensure that, when the statutory audit is carried out by an audit firm, that audit firm designates at least one key audit partner. The audit firm shall provide the key audit partner(s) with sufficient resources and with personnel that have the necessary competence and capabilities to carry out his, her or its duties appropriately.

Member States shall ensure that, when the assurance of sustainability reporting is carried out by an audit firm, that audit firm designates at least one key sustainability partner, who may be (one of) the key audit partner(s). The audit firm shall provide the key sustainability partner(s) with sufficient resources and with personnel that have the necessary competence and capabilities to carry out his, her or its duties appropriately.

Securing audit and assurance quality, independence and competence shall be the main criteria when the audit firm selects the key audit partner(s) and, where applicable, the key sustainability partner(s) to be designated.

The key audit partner(s) shall be actively involved in the carrying-out of the statutory audit. The key sustainability partner shall be actively involved in the carrying-out of the assurance of sustainability reporting.’;

- (b) the following paragraph is inserted:

‘2a. When carrying out the assurance of sustainability reporting, the statutory auditor shall devote sufficient time to the engagement and shall assign sufficient resources to enable him or her to carry out his or her duties appropriately.’;

- (c) in paragraph 4, points (b) and (c) are replaced by the following:

‘(b) in the case of an audit firm, the name(s) of the key audit partner(s) and, where applicable, the name(s) of the key sustainability partner(s);

(c) the fees charged for the statutory audit, the fees charged for the assurance of sustainability reporting and the fees charged for other services in any financial year.’;

- (d) the following paragraph is inserted:

‘5a. A statutory auditor or an audit firm shall create an assurance file for each assurance engagement concerning sustainability reporting.

The statutory auditor or the audit firm shall document at least the data recorded pursuant to Article 22b as regards the assurance of sustainability reporting.

The statutory auditor or the audit firm shall retain any other data and documents that are of importance in support of the assurance report on sustainability reporting referred to in Article 28a and for monitoring compliance with this Directive and other applicable legal requirements as regards the assurance of sustainability reporting.

The assurance file shall be closed no later than 60 days after the date of signature of the assurance report on sustainability reporting referred to in Article 28a.

Where the same statutory auditor carries out the statutory audit of annual financial statements and the assurance of sustainability reporting, the assurance file may be included in the audit file.’;

(e) paragraph 6 is replaced by the following:

‘The statutory auditor or the audit firm shall keep records of any complaints made in writing about the performance of the statutory audits carried out and about the performance of assurance engagements concerning sustainability reporting carried out.’;

(13) Article 25 is replaced by the following:

‘Article 25

Audit and assurance fees

Member States shall ensure that adequate rules are in place which provide that fees for statutory audits and the assurance of sustainability reporting:

- (a) are not influenced or determined by the provision of additional services to the entity that is the subject of the statutory audit or the assurance of sustainability reporting; and
- (b) cannot be based on any form of contingency.’;

(14) the following Articles are inserted:

‘Article 25b

Professional ethics, independence, objectivity, confidentiality and professional secrecy as regards the assurance of sustainability reporting

The requirements in Articles 21 to 24a as regards the statutory audit of financial statements shall apply *mutatis mutandis* to the assurance of sustainability reporting.

Article 25c

Prohibited non-audit services in cases where the statutory auditor carries out the assurance of sustainability reporting of a public-interest entity

1. A statutory auditor or an audit firm carrying out the assurance of sustainability reporting of a public-interest entity, or any member of the network to which the statutory auditor or the audit firm belongs, shall not directly or indirectly provide to the public-interest entity that is the subject of the assurance of sustainability reporting, to its parent undertaking or to its controlled undertakings within the Union the prohibited non-audit services referred to in points (b) and (c) and points (e) to (k) of the second subparagraph of Article 5(1) of Regulation (EU) No 537/2014 in:

- (a) the period between the beginning of the period subject to the assurance of sustainability reporting and the issuing of the assurance report on sustainability reporting; and
- (b) the financial year immediately preceding the period referred to in point (a) of this paragraph in relation to the services referred to in point (e) of the second subparagraph of Article 5(1) of Regulation (EU) No 537/2014.

2. A statutory auditor or an audit firm carrying out the assurance of sustainability reporting of public-interest entities and, where the statutory auditor or the audit firm belongs to a network, any member of such network, may provide to the public-interest entity that is the subject of the assurance of sustainability reporting, to its parent undertaking or to its controlled undertakings non-audit services other than the prohibited non-audit services referred to in paragraph 1 of this Article, or if applicable, the prohibited non-audit services referred to in the second subparagraph of Article 5(1) of Regulation (EU) No 537/2014 or services considered by Member States to represent a threat to independence as referred to in Article 5(2) of that Regulation, subject to the approval of the audit committee after it has properly assessed threats to independence and the safeguards applied in accordance with Article 22b of this Directive.

3. When a member of a network to which the statutory auditor or the audit firm carrying out the assurance of sustainability reporting of a public-interest entity belongs provides the prohibited non-audit services referred to in paragraph 1 of this Article to an undertaking incorporated in a third country which is controlled by the public-interest entity that is the subject of assurance of sustainability reporting, the statutory auditor or the audit firm concerned shall assess whether his, her or its independence would be compromised by such provision of services by the member of the network.

If his, her or its independence is affected, the statutory auditor or the audit firm shall apply safeguards in order to mitigate the threats caused by the provision of prohibited non-audit services referred to in paragraph 1 of this Article in a third country. The statutory auditor or the audit firm may continue to carry out the assurance of sustainability reporting of the public-interest entity only if he, she or it can justify, in accordance with Article 22b, that the provision of such services does not affect his, her or its professional judgement and the assurance report on sustainability reporting.

Article 25d

Irregularities

Article 7 of Regulation (EU) No 537/2014 shall apply *mutatis mutandis* to a statutory auditor or an audit firm carrying out the assurance of sustainability reporting of a public-interest entity.;

(15) the following Article is inserted:

'Article 26a

Assurance standards for sustainability reporting

1. Member States shall require statutory auditors and audit firms to carry out the assurance of sustainability reporting in compliance with the assurance standards adopted by the Commission in accordance with paragraph 3.
2. Member States may apply national assurance standards, procedures or requirements as long as the Commission has not adopted an assurance standard covering the same subject matter.

Member States shall communicate the national assurance standards, procedures or requirements to the Commission at least three months before their entry into force.

3. The Commission shall, no later than 1 October 2026, adopt delegated acts in accordance with Article 48a in order to supplement this Directive in order to provide for limited assurance standards setting out the procedures that the auditor(s) and the audit firm(s) shall perform in order to draw his, her or its conclusions on the assurance of sustainability reporting, including engagement planning, risk consideration and response to risks and type of conclusions to be included in the assurance report on sustainability reporting, or, where relevant, in the audit report.

The Commission shall, no later than 1 October 2028, adopt delegated acts in accordance with Article 48a in order to supplement this Directive in order to provide for reasonable assurance standards, following an assessment to determine if reasonable assurance is feasible for auditors and for undertakings. Taking into account the results of that assessment and if therefore appropriate, those delegated acts shall specify the date from which the opinion referred to in point (aa) of the second subparagraph of Article 34(1) is to be based on a reasonable assurance engagement that is based on those reasonable assurance standards.

The Commission may adopt the assurance standards referred to in the first and second subparagraphs only if they:

- (a) have been developed with proper due process, public oversight and transparency;
- (b) contribute a high level of credibility and quality to the annual or consolidated sustainability reporting; and
- (c) are conducive to the Union public good.;

(16) the following Article is inserted:

'Article 27a

Assurance of consolidated sustainability reporting

1. Member States shall ensure that in the case of assurance engagements concerning the consolidated sustainability reporting of a group of undertakings:

- (a) in relation to the consolidated sustainability reporting, the group auditor bears the full responsibility for the assurance report on sustainability reporting referred to in Article 28a;
- (b) the group auditor evaluates the assurance work performed by any independent assurance services provider(s), third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) for the purpose of the assurance of consolidated sustainability reporting and documents the nature, timing and extent of the work performed by those auditors, including, where applicable, the group auditor's review of relevant parts of those auditors' assurance documentation; and
- (c) the group auditor reviews the assurance work performed by independent assurance services provider(s), third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) for the purpose of the assurance of consolidated sustainability reporting and documents it.

The documentation retained by the group auditor shall be such as to enable the relevant competent authority to review the work of the group auditor.

For the purposes of point (c) of the first subparagraph of this paragraph, the group auditor shall request the agreement of the independent assurance services provider(s), third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) concerned to the transfer of relevant documentation during the conduct of the assurance of consolidated sustainability reporting, as a condition of the reliance by the group auditor on the work of those independent assurance services provider(s), third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s).

2. Where the group auditor is unable to comply with point (c) of the first subparagraph of paragraph 1, he, she or it shall take appropriate measures and inform the relevant competent authority.

Such measures shall, where appropriate, include carrying out additional assurance work, either directly or by outsourcing such tasks, in the relevant subsidiary.

3. Where the group auditor is subject to a quality assurance review or an investigation concerning the assurance of consolidated sustainability reporting of a group of undertakings, the group auditor shall, when requested, make available to the competent authority the relevant documentation he, she or it retains concerning the assurance work performed by the respective independent assurance services provider(s), third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) for the purpose of the assurance of consolidated sustainability reporting, including any working papers relevant to the assurance of consolidated sustainability reporting.

The competent authority may request additional documentation on the assurance work performed by any statutory auditor(s) or audit firm(s) for the purpose of the assurance of consolidated sustainability reporting from the relevant competent authorities pursuant to Article 36.

Where the assurance of sustainability reporting of a parent undertaking or a subsidiary undertaking of a group of undertakings is carried out by any auditor(s) or audit entity(ies) from a third country, the competent authority may request additional documentation on the assurance work performed by any third-country auditor(s) or third-country audit entity(ies) from the relevant competent authorities from third countries through working arrangements.

By way of derogation from the third subparagraph, where any independent assurance services provider(s), third-country auditor(s) or audit entity(ies) that have no working arrangements carried out the assurance of sustainability reporting of a parent undertaking or a subsidiary undertaking of a group of undertakings, the group auditor shall, when requested, also be responsible for ensuring proper delivery of the additional documentation on the assurance work performed by such independent assurance services provider(s), third-country auditor(s) or audit entity(ies), including the working papers relevant to the assurance of consolidated sustainability reporting. In order to ensure such delivery, the group auditor shall retain a copy of such documentation, or alternatively agree with the independent assurance services provider(s), third-country auditor(s) or audit entity(ies) that he, she or it is to be given unrestricted access to such documentation upon request, or take any other appropriate action. Where assurance working papers cannot, for legal or other reasons, be passed from a third country to the group auditor, the documentation retained by the group auditor shall include evidence that he, she or it has undertaken the appropriate procedures in order to gain access to the assurance documentation, and in the case of impediments other than legal ones arising from the legislation of the third country concerned, evidence supporting the existence of such impediments.’;

(17) in Article 28(2), point (e) is replaced by the following:

‘(e) include an opinion and a statement, both of which shall be based on the work undertaken in the course of the audit, pursuant to points (a) and (b) of the second subparagraph of Article 34(1) of Directive 2013/34/EU;’;

(18) the following Article is inserted:

‘Article 28a

Assurance report on sustainability reporting

1. The statutory auditor(s) or the audit firm(s) shall present the results of the assurance of sustainability reporting in an assurance report on sustainability reporting. That report shall be prepared in accordance with the requirements of assurance standards adopted by the Commission by means of the delegated acts adopted pursuant to Article 26a(3), or, pending adoption by the Commission of those assurance standards, in accordance with national assurance standards, as referred to in Article 26a(2).

2. The assurance report on sustainability reporting shall be in writing and shall:

- (a) identify the entity whose annual or consolidated sustainability reporting is the subject of the assurance engagement; specify the annual or consolidated sustainability reporting and the date and period it covers; and identify the sustainability reporting framework that has been applied in its preparation;
- (b) include a description of the scope of the assurance of sustainability reporting which shall, as a minimum, identify the assurance standards in accordance with which the assurance of sustainability reporting was conducted;
- (c) include the opinion referred to in point (aa) of the second subparagraph of Article 34(1) of Directive 2013/34/EU.

3. Where the assurance of sustainability reporting was carried out by more than one statutory auditor or audit firm, the statutory auditor(s) or the audit firm(s) shall agree on the results of the assurance of sustainability reporting and submit a joint report and opinion. In the case of disagreement, each statutory auditor or audit firm shall submit his, her or its opinion in a separate paragraph of the assurance report on sustainability reporting and shall state the reason for the disagreement.

4. The assurance report on sustainability reporting shall be signed and dated by the statutory auditor carrying out the assurance of sustainability reporting. Where an audit firm carries out the assurance of sustainability reporting, the assurance report on sustainability reporting shall bear the signature of at least the statutory auditor(s) carrying out the assurance of sustainability reporting on behalf of the audit firm. Where more than one statutory auditor or audit firm have been simultaneously engaged, the assurance report on sustainability reporting shall be signed by all statutory auditors or at least by the statutory auditors carrying out the assurance of sustainability reporting on behalf of every audit firm. In exceptional circumstances, Member States may provide that such signature(s) need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person.

In any event, the name(s) of the person(s) involved shall be known to the relevant competent authorities.

5. Member States may require that, where the same statutory auditor carries out the statutory audit of annual financial statements and the assurance of sustainability reporting, the assurance report on sustainability reporting may be included as a separate section of the audit report.

6. The report of the statutory auditor or the audit firm on the consolidated sustainability reporting shall comply with the requirements set out in paragraphs 1 to 5.;

(19) Article 29 is amended as follows:

(a) in paragraph 1, point (d) is replaced by the following:

‘(d) the persons who carry out quality assurance reviews shall have appropriate professional education and relevant experience in statutory audit and financial reporting and, where applicable, in sustainability reporting and in the assurance of sustainability reporting or in other sustainability-related services, combined with specific training on quality assurance reviews;’;

(b) in paragraph 1, point (f) is replaced by the following:

‘(f) the scope of the quality assurance review, supported by adequate testing of selected audit files and, where applicable, assurance files, shall include an assessment of compliance with applicable auditing standards and independence requirements and, where applicable, with assurance standards, and an assessment of the quantity and quality of resources spent, of the audit fees and fees charged for the assurance of sustainability reporting, and of the internal quality control system of the audit firm;’;

(c) in paragraph 1, point (h) is replaced by the following:

‘(h) quality assurance reviews shall take place on the basis of an analysis of the risk and, in the case of statutory auditors and audit firms carrying out statutory audits as defined in point (a) of point 1 of Article 2 and, where applicable, carrying out assurance of sustainability reporting, at least every six years;’;

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

‘(a) reviewers shall have appropriate professional education and relevant experience in statutory audit and financial reporting and, where applicable, in sustainability reporting and in the assurance of sustainability reporting or in other sustainability-related services, combined with specific training on quality assurance reviews;’;

(e) the following paragraph is inserted:

‘2a. Member States may exempt, until 31 December 2025, persons who carry out quality assurance reviews relating to the assurance of sustainability reporting from the requirement to have relevant experience in sustainability reporting and in the assurance of sustainability reporting or in other sustainability-related services.’;

(20) in Article 30, paragraphs 1 and 2 are replaced by the following:

‘1. Member States shall ensure that there are effective systems of investigations and sanctions to detect, correct and prevent inadequate execution of the statutory audit and the assurance of sustainability reporting.

2. Without prejudice to their civil liability regimes, Member States shall provide for effective, proportionate and dissuasive sanctions in respect of statutory auditors and audit firms, where statutory audits or assurance of sustainability reporting are not carried out in conformity with the provisions adopted in the implementation of this Directive, and, where applicable, with Regulation (EU) No 537/2014.

Member States may decide not to lay down rules for administrative sanctions for infringements which are already subject to national criminal law. In that event, they shall communicate to the Commission the relevant criminal law provisions.’;

(21) in Article 30a(1), the following point is inserted:

‘(ca) a temporary prohibition, of up to three years’ duration, banning the statutory auditor, the audit firm or the key sustainability partner from carrying out the assurance of sustainability reporting and/or signing assurance reports on sustainability reporting;’

(22) in Article 30a(1), the following point is inserted:

‘(da) a declaration that the assurance report on sustainability reporting does not meet the requirements of Article 28a of this Directive;’

(23) Article 32 is amended as follows:

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

‘3. The competent authority shall be governed by non-practitioners who are knowledgeable in the areas relevant to statutory audit and, where applicable, to the assurance of sustainability reporting. They shall be selected in accordance with an independent and transparent nomination procedure.’

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

‘(b) the adoption of standards on professional ethics, internal quality control of audit firms, auditing and the assurance of sustainability reporting, except where those standards are adopted or approved by other Member State authorities;’

(24) the following Article is inserted:

‘Article 36a

Regulatory arrangements between Member States as regards the assurance of sustainability reporting

The requirements of Articles 34 and 36 as regards the statutory audit of financial statements shall apply *mutatis mutandis* to the assurance of sustainability reporting;’

(25) Article 37 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘The first subparagraph shall apply to the appointment of the statutory auditor or audit firm for the purpose of the assurance of sustainability reporting.’

(b) in paragraph 2, the following subparagraph is added:

‘The first subparagraph shall apply to the appointment of the statutory auditor or audit firm for the purpose of the assurance of sustainability reporting.’

(c) paragraph 3 is replaced by the following:

‘3. Any contractual clause restricting the choice by the general meeting of shareholders or members of the audited entity pursuant to paragraph 1 to certain categories or lists of statutory auditors or audit firms as regards the appointment of a particular statutory auditor or audit firm to carry out the statutory audit and, where applicable, the assurance of sustainability reporting of that entity shall be prohibited. Any such existing clauses shall be null and void.

Member States shall ensure that shareholders or members of large undertakings subject to Articles 19a and 29a of Directive 2013/34/EU, except undertakings referred to in point (a) of point (1) of Article 2 of that Directive, and which represent more than 5 % of the voting rights or 5 % of the capital of the undertaking, acting individually or collectively, have the right to table a draft resolution to be adopted in the general meeting of shareholders or members, requiring that an accredited third party that does not belong to the same audit firm or network as the statutory auditor or audit firm carrying out the statutory audit prepare a report on certain elements of the sustainability reporting and that such report be made available to the general meeting of shareholders or members.’

(26) Article 38 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that statutory auditors or audit firms may be dismissed only where there are proper grounds. Divergence of opinions on accounting treatments, audit procedures or, where applicable, on sustainability reporting or assurance procedures shall not be proper grounds for dismissal.’;

(b) in paragraph 2, the following subparagraph is added:

‘The obligation to inform provided for in the first subparagraph shall also apply to the assurance of sustainability reporting.’;

(c) in paragraph 3, the following subparagraph is added:

‘The first subparagraph shall also apply to the assurance of sustainability reporting.’;

(27) Article 39 is amended as follows:

(a) the following paragraph is inserted:

‘4a. Member States may allow the functions assigned to the audit committee relating to sustainability reporting and relating to the assurance of sustainability reporting to be performed by the administrative or supervisory body as a whole or by a dedicated body established by the administrative or supervisory body.’;

(b) in paragraph 6, points (a) to (e) are replaced by the following:

‘(a) inform the administrative or supervisory body of the audited entity of the outcome of the statutory audit and, where applicable, of the outcome of the assurance of sustainability reporting and explain how the statutory audit and the assurance of sustainability reporting contributed to the integrity of financial reporting and sustainability reporting respectively, and what the role of the audit committee was in that process;

(b) monitor the financial and, where applicable, sustainability reporting process, including the electronic reporting process as referred to in Article 29d of Directive 2013/34/EU and the process carried out by the undertaking to identify the information reported in accordance with the sustainability reporting standards adopted pursuant to Article 29b of that Directive, and submit recommendations or proposals to ensure their integrity;

(c) monitor the effectiveness of the undertaking’s internal quality control and risk management systems and, where applicable, its internal audit, regarding the financial reporting and, where applicable, sustainability reporting of the undertaking, including its electronic reporting process as referred to in Article 29d of Directive 2013/34/EU, without breaching its independence;

(d) monitor the statutory audit of the annual and consolidated financial statements and, where applicable, the assurance of the annual and consolidated sustainability reporting, in particular its performance, taking into account any findings and conclusions by the competent authority pursuant to Article 26(6) of Regulation (EU) No 537/2014;

(e) review and monitor the independence of the statutory auditors or the audit firms in accordance with Articles 22, 22a, 22b, 24a, 24b, 25b, 25c and 25d of this Directive and with Article 6 of Regulation (EU) No 537/2014, and in particular the appropriateness of the provision of non-audit services to the audited entity in accordance with Article 5 of that Regulation.’;

(28) Article 45 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The competent authorities of a Member State shall, in accordance with Articles 15, 16 and 17 of this Directive, register every third-country auditor and audit entity, where that third-country auditor or audit entity provides an audit report concerning the annual or consolidated financial statements, or, where applicable, an assurance report concerning the annual or consolidated sustainability reporting of an undertaking incorporated outside the Union whose transferable securities are admitted to trading on a regulated market of that Member State, defined in point (21) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council (*), except where the undertaking in question is an issuer exclusively of outstanding debt securities for which one of the following applies:

- (a) such securities have been admitted to trading on a regulated market in a Member State, defined in point (21) of Article 4(1) of Directive 2014/65/EU prior to 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 50 000 or, in the case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 50 000;
- (b) such securities are admitted to trading on a regulated market in a Member State, defined in point (21) of Article 4(1) of Directive 2014/65/EU from 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 100 000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 100 000.

(*) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).;

(b) paragraphs 4 to 6 are replaced by the following:

‘4. Without prejudice to Article 46, audit reports concerning annual accounts or consolidated accounts or, where applicable, the assurance reports concerning annual or consolidated sustainability reporting referred to in paragraph 1 of this Article issued by third-country auditors or audit entities that are not registered in the Member State shall have no legal effect in that Member State.

5. A Member State may register a third-country audit entity for the purpose of the audit of financial statements only if:

- (a) the majority of the members of the administrative or management body of the third-country audit entity meet requirements which are equivalent to those laid down in Articles 4 to 10, with the exception of Article 7(2), Article 8(3) and the second subparagraph of Article 10(1);
- (b) the third-country auditor carrying out the audit on behalf of the third-country audit entity meets requirements which are equivalent to those laid down in Articles 4 to 10, with the exception of Article 7(2), Article 8(3) and the second subparagraph of Article 10(1);
- (c) the audits of the annual or consolidated financial statements referred to in paragraph 1 of this Article are carried out in accordance with international auditing standards as referred to in Article 26, as well as the requirements laid down in Articles 22, 22b and 25, or with equivalent standards and requirements;
- (d) the third-country audit entity publishes on its website an annual transparency report which includes the information referred to in Article 13 of Regulation (EU) No 537/2014 or it complies with equivalent disclosure requirements.

A Member State may register a third-country audit entity for the purpose of the assurance of sustainability reporting only if:

- (a) the majority of the members of the administrative or management body of the third-country audit entity meet requirements which are equivalent to those laid down in Articles 4 to 10;
- (b) the third-country auditor carrying out the assurance on behalf of the third-country audit entity meets requirements which are equivalent to those laid down in Articles 4 to 10;
- (c) the assurance of the annual or consolidated sustainability reporting referred to in paragraph 1 is carried out in accordance with the assurance standards referred to in Article 26a, as well as the requirements laid down in Articles 22, 22b, 25 and 25b, or with equivalent standards and requirements;
- (d) the third-country audit entity publishes on its website an annual transparency report which includes the information referred to in Article 13 of Regulation (EU) No 537/2014 or it complies with equivalent disclosure requirements.

5a. A Member State may register a third-country auditor for the purpose of the audit of financial statements only if he or she meets the requirements set out in points (b), (c) and (d) of the first subparagraph of paragraph 5 of this Article.

A Member State may register a third-country auditor for the purpose of the assurance for sustainability reporting only if he or she meets the requirements set out in points (b), (c) and (d) of the second subparagraph of paragraph 5 of this Article.

6. In order to ensure uniform conditions for the application of point (c) of the first subparagraph of paragraph 5 and point (c) of the second subparagraph of paragraph 5 of this Article, the Commission shall be empowered to decide upon the equivalence referred to therein by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Member States may assess the equivalence referred to point (c) of the first subparagraph of paragraph 5 and point (c) of the second subparagraph of paragraph 5 of this Article, as long as the Commission has not taken any such decision.

The Commission shall be empowered to adopt delegated acts in accordance with Article 48a supplementing this Directive for the purpose of establishing the general equivalence criteria to be used in assessing whether the audits of the financial statements and, where applicable, the assurance of sustainability reporting referred to in paragraph 1 of this Article are carried out in accordance with international auditing standards as defined in Article 26 and with assurance standards for sustainability reporting referred to in Article 26a, respectively, and with the requirements laid down in Articles 22, 24 and 25. Such criteria, which are applicable to all third countries, shall be used by Member States when assessing equivalence at national level.;

(29) Article 48a is amended as follows:

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

‘The power to adopt delegated acts referred to in Article 26a(2) shall be conferred on the Commission for an indeterminate period of time.’;

(b) paragraph 3 is replaced by the following:

‘3. The delegation of power referred to in Article 26(3), Article 26a(3), Article 45(6), Article 46(2) and Article 47(3) 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.’;

(c) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Article 26(3), Article 26a(3), Article 45(6), Article 46(2) or Article 47(3) 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.’.

Article 4

Amendments to Regulation (EU) No 537/2014

Regulation (EU) No 537/2014 is amended as follows:

(1) in Article 4(2), the second subparagraph is replaced by the following:

‘For the purposes of the limits specified in the first subparagraph of this paragraph, the assurance of sustainability reporting, and non-audit services other than those referred to in Article 5(1), required by Union or national legislation, shall be excluded.’;

(2) Article 5 is amended as follows:

(a) in paragraph 1, second subparagraph, point (c) is replaced by the following:

‘(c) bookkeeping and preparing accounting records and financial statements as well as preparing sustainability reporting;’;

(b) in paragraph 4, the following subparagraph is inserted after the first subparagraph:

‘The approval of the audit committee referred to in the first subparagraph shall not be needed for the provision of assurance of sustainability reporting.’.

Article 5

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 3 of this Directive by 6 July 2024. They shall immediately communicate the text of those measures to the Commission.

2. Member States shall apply the measures necessary to comply with Article 1, with the exception of point (14):

(a) for financial years starting on or after 1 January 2024:

(i) to large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU which are public-interest entities as defined in point (1) of Article 2 of that Directive exceeding on their balance sheet dates the average number of 500 employees during the financial year;

(ii) to public-interest entities as defined in point (1) of Article 2 of Directive 2013/34/EU which are parent undertakings of a large group within the meaning of Article 3(7) of that Directive exceeding on its balance sheet dates, on a consolidated basis, the average number of 500 employees during the financial year;

(b) for financial years starting on or after 1 January 2025:

(i) to large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU, other than those referred to in point (a)(i) of this subparagraph;

(ii) to parent undertakings of a large group within the meaning of Article 3(7) of Directive 2013/34/EU, other than those referred to in point (a)(ii) of this subparagraph;

(c) for financial years starting on or after 1 January 2026:

(i) to small and medium-sized undertakings within the meaning of Article 3(2) and (3) of Directive 2013/34/EU which are public-interest entities as defined in point (a) of point (1) of Article 2 of that Directive and which are not micro-undertakings as defined in Article 3(1) of that Directive;

(ii) to small and non-complex institutions defined in point (145) of Article 4(1) of Regulation (EU) No 575/2013, provided they are large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU or that they are small and medium sized undertakings within the meaning of Article 3(2) and (3) of that Directive which are public-interest entities as defined in point (a) of point (1) of Article 2 of that Directive and which are not micro-undertakings as defined in Article 3(1) of that Directive;

- (iii) to captive insurance undertakings defined in point (2) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council ⁽³⁹⁾, and captive reinsurance undertakings defined in point (5) of Article 13 of that Directive, provided that they are large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU or that they are small and medium sized undertakings within the meaning of Article 3(2) and (3) of that Directive which are public-interest entities as defined in point (a) of point (1) of Article 2 of that Directive and which are not micro-undertakings as defined in Article 3(1) of that Directive.

Member States shall apply the measures necessary to comply with point (14) of Article 1 for financial years starting on or after 1 January 2028.

Member States shall apply the measures necessary to comply with Article 2:

(a) for financial years starting on or after 1 January 2024:

- (i) to issuers as defined in point (d) of Article 2(1) of Directive 2004/109/EC which are large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU exceeding on their balance sheet dates the average number of 500 employees during the financial year;
- (ii) to issuers as defined in point (d) of Article 2(1) of Directive 2004/109/EC which are parent undertakings of a large group within the meaning of Article 3(7) of Directive 2013/34/EU exceeding on its balance sheet dates, on a consolidated basis, the average number of 500 employees during the financial year;

(b) for financial years starting on or after 1 January 2025:

- (i) to issuers as defined in point (d) of Article 2(1) of Directive 2004/109/EC which are large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU other than those referred to in point (a) (i) of this subparagraph;
- (ii) to issuers as defined in point (d) of Article 2(1) of Directive 2004/109/EC which are parent undertakings of a large group within the meaning of Article 3(7) of Directive 2013/34/EU other than those referred to in point (a) (ii) of this subparagraph;

(c) for financial years starting on or after 1 January 2026:

- (i) to issuers as defined in point (d) of Article 2(1) of Directive 2004/109/EC which are small and medium-sized undertakings within the meaning of Article 3(2) and (3) of Directive 2013/34/EU and which are not micro-undertakings as defined in Article 3(1) of Directive 2013/34/EU;
- (ii) to issuers defined as small and non-complex institutions in point (145) of Article 4(1) of Regulation (EU) No 575/2013, provided they are large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU or that they are small and medium-sized undertakings within the meaning of Article 3(2) and (3) of that Directive which are public-interest entities as defined in point (a) of point (1) of Article 2 of that Directive and which are not micro-undertakings as defined in Article 3(1) of that Directive;
- (iii) to issuers defined as captive insurance undertakings in point (2) of Article 13 of Directive 2009/138/EC, or as captive reinsurance undertakings in point (5) of Article 13 of that Directive, provided that they are large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU or that they are small and medium-sized undertakings within the meaning of Article 3(2) and (3) of that Directive which are public-interest entities as defined in point (a) of point (1) of Article 2 of that Directive and which are not micro-undertakings as defined in Article 3(1) of that Directive.

⁽³⁹⁾ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

Member States shall apply the measures necessary to comply with Article 3 for financial years starting on or after 1 January 2024.

3. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

4. 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 6

Review and reporting

1. The Commission shall submit a report to the European Parliament and to the Council on the implementation of this amending Directive, including, *inter alia*:

- (a) an assessment of the achievement of the goals of this amending Directive, including the convergence of reporting practices between Member States;
- (b) an assessment of the number of small and medium-sized undertakings voluntarily using the sustainability reporting standards referred to in Article 29c of Directive 2013/34/EU;
- (c) an assessment of whether and how the scope of the provisions amended by this amending Directive should be further extended, in particular in relation to small and medium-sized undertakings and to third-country undertakings operating directly on the Union internal market without a subsidiary or a branch on the territory of the Union;
- (d) an assessment of the implementation of the reporting requirements on subsidiaries and branches of third-country undertakings introduced by this amending Directive, including an assessment of the number of third-country undertakings which have a subsidiary undertaking or a branch reporting in accordance with Article 40a of Directive 2013/34/EU; an assessment of the enforcement mechanism and of the thresholds set out in that Article;
- (e) an assessment of whether and how to ensure the accessibility for persons with disabilities to the sustainability reports published by undertakings falling under the scope of this amending Directive.

The report shall be published by 30 April 2029 and every three years thereafter, and shall be accompanied, if appropriate, by legislative proposals.

2. By 31 December 2028, the Commission shall review and report on the level of concentration of the sustainability assurance market. That review shall take into account the national regimes applicable to independent assurance services providers and assess whether and to what extent those national regimes contribute to opening up the assurance market.

By 31 December 2028, the Commission shall assess possible legal measures to ensure sufficient diversification of the sustainability assurance market and appropriate sustainability reporting quality. The Commission shall review the measures provided for in Article 34 of Directive 2013/34/EU and assess the need to extend them to other large undertakings.

The report shall be transmitted to the European Parliament and the Council by 31 December 2028 and shall be accompanied, if appropriate, by legislative proposals.

Article 7

Entry into force and application

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 of this Directive shall apply from 1 January 2024 for financial years starting on or after 1 January 2024.

*Article 8***Addressees**

This Directive is addressed to the Member States.

Article 4 shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 14 December 2022.

For the European Parliament
The President
R. METSOLA

For the Council
The President
M. BEK

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2022/2465**of 12 December 2022****amending Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 31 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Union market for certain nitrogen fertiliser inputs depends considerably on imports from third countries. In 2021, the Union imported 2,9 million tonnes of ammonia and 4,7 million tonnes of urea to produce nitrogen fertilisers. The prices for those products have increased substantially in 2021 and have further risen during the current year.
- (2) Currently, a significant part of those inputs for nitrogen fertilisers is imported into the Union from third countries that benefit from preferential access to the Union market, and thus the imports are duty-free. Notwithstanding this, the Union imports a large volume of inputs for nitrogen fertilisers originating in countries subject to the Common Customs Tariff set out in Council Regulation (EEC) No 2658/87 ⁽¹⁾, with tariff rates currently ranging between 5,5 % and 6,5 %.
- (3) In the communication of the Commission of 23 March 2022 on safeguarding food security and reinforcing the resilience of food systems, the Commission notes that already before the Russian invasion of Ukraine, commodity markets were witnessing a significant price surge, which was reflected in agricultural markets through increases in energy and fertiliser costs, and a consequent increase in the prices of agricultural goods. The Commission notes that the invasion of Ukraine and a global commodity price boom have further driven up prices in agricultural markets and are exposing the vulnerabilities of the Union's food system, which is partially reliant on imports of fertilisers. This increases the costs for producers and affects the price of food, raising concerns as regards the purchasing power of consumers, and the income of farmers in the Union. The Commission stresses that, in the short term, the cost and availability of mineral fertilisers must be priorities, pending the transition to the use of sustainable types of fertilisers or methods of fertilising. During that period, the fertiliser industry in the Union must be able to access the necessary imports, including inputs to produce fertilisers within the Union itself. The Commission also highlights that fertiliser prices and supplies for farmers will be monitored to ensure that the prospects for Union harvests are not jeopardised.
- (4) In light thereof, it is appropriate to take action to reduce the costs faced by Union producers of fertilisers when importing inputs necessary for the production of nitrogen fertilisers.

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

- (5) Moreover, at a time of scarcity of nitrogen fertilisers on the international markets, tariffs on the importation into the Union of intermediate inputs such as ammonia and urea constitute a disincentive to supply the Union market, compared to other world markets which have no import tariffs. The tariff differential also hinders efforts for the diversification of Union imports.
- (6) It is therefore appropriate to temporarily suspend the Common Customs Tariff rates duties referred to in Article 56(2), point (c), of Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽⁷⁾ for certain nitrogen fertilisers inputs. This temporary measure should apply for a period of six months from the date of the entry into force of this Regulation. In order to allow for the effects of the measure to be assessed, the Commission should carry out a report and submit it to the Council.
- (7) At the same time, in accordance with Article 21(3) of the Treaty on European Union, the Union is to ensure consistency between the different areas of its external action as well as between its external action and other Union policies.
- (8) The situation in the relations between the Union and the Russian Federation has developed very negatively over the past years, with a particular deterioration during the recent months in terms of the Russian Federation's disregard for international law and in particular its unprovoked and unjustified war of aggression against Ukraine.
- (9) Since July 2014, the Union has progressively imposed restrictive measures against the Russian Federation. In its conclusions of 24 February 2022, the European Council stated that the Russian Federation's unprovoked and unjustified military aggression against Ukraine is grossly violating international law and the principles of the United Nations Charter and is undermining European and global security and stability.
- (10) Most recently, on 3 June 2022, the Council adopted a sixth package of sanctions against the Russian Federation over its continuous war of aggression against Ukraine and the reported atrocities committed by Russian armed forces in Ukraine.
- (11) Furthermore, while the Russian Federation is a member of the World Trade Organization, the Union is relieved, by virtue of the exceptions that apply under the Agreement Establishing the World Trade Organization, and in particular Article XXI of the GATT 1994, from the obligation to accord to products imported from the Russian Federation the advantages granted to like products imported from other countries (most-favoured-nation treatment).
- (12) It would therefore not be appropriate to allow imports from the Russian Federation to enjoy duty-free and most-favoured-nation treatment with regard to the products covered by this Regulation.
- (13) The situation between the Union and Belarus has also deteriorated over the past years, because of the regime's disregard for international law, fundamental rights and human rights. In addition, Belarus has supported the Russian Federation's war of aggression against Ukraine from its very beginning, inter alia, by allowing the Russian Federation to fire ballistic missiles from the Belarusian territory, enabling the transportation of Russian military personnel and heavy weapons, tanks, and military transporters, allowing Russian military aircraft to fly over Belarusian airspace into Ukraine, providing refuelling points, and storing Russian weapons and military equipment in Belarus.
- (14) Since October 2020, the Union has progressively imposed restrictive measures against Belarus. On 2 December 2021, the Council adopted a fifth package of sanctions having regard to continued human rights abuses and the instrumentalisation of migrants. Further packages of sanctions were adopted on 24 February, 2 March, 9 March and 3 June 2022, in view of Belarus' involvement in the Russian Federation's unjustified and unprovoked war of aggression against Ukraine. Furthermore, Belarus is not a member of the World Trade Organization. Therefore, the Union is not obliged, by virtue of the Agreement Establishing the World Trade Organization, to accord to products from Belarus most-favoured-nation treatment. In addition, trade agreements allow actions justified on the basis of applicable exception clauses, in particular security exceptions.

⁽⁷⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (15) In light thereof, the exclusion of the Russian Federation and Belarus from the scope of the autonomous tariff suspensions laid out in this Regulation is appropriate, in application of the General Rules concerning duties of Annex I to Regulation (EEC) No 2658/87, in particular Part One, Section I, part B, paragraph 1, thereof.
- (16) Accordingly, imports of inputs for nitrogen fertilisers originating in the Russian Federation and Belarus should not be subject to the duty suspension. Instead, imports of the products concerned by this Regulation from the Russian Federation and Belarus should continue to be subject to the import duty to which they were subject beforehand.
- (17) In view of the significant and sudden price increase of the inputs for production of nitrogen fertilisers, aggravated by the emergency situation that the Russian Federation's war of aggression against Ukraine provoked in the market of fertilisers, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (18) Annex I to Regulation (EEC) No 2658/87 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EEC) No 2658/87 is amended as follows:

- (1) in Part Two, Section VI, Chapter 28, the text for CN code 2814 10 00 in column 3 ('Conventional rate of duty (%)') is replaced by the following:

'5,5 (*)

(*) Customs duty autonomously suspended for a period of 6 months starting from 16 December 2022, except for Russia and Belarus where rate of 5,5 % applies, pursuant to Council Regulation (EU) 2022/2465.;

- (2) in Part Two, Section VI, Chapter 31, the text for CN codes 3102 10 10 and 3102 10 90 in column 3 ('Conventional rate of duty (%)') is replaced by the following:

'6,5 (*)

(*) Customs duty autonomously suspended for a period of 6 months starting from 16 December 2022, except for Russia and Belarus where rate of 6,5 % applies, pursuant to Council Regulation (EU) 2022/2465.;

Article 2

By 17 May 2023, the Commission shall carry out and submit to the Council a report evaluating the consequences of the duty suspension set out in this Regulation. Based on that report, the Commission shall submit, if appropriate, a legislative proposal to extend that duty suspension.

Article 3

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

It shall cease to apply on 17 June 2023.

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

Done at Brussels, 12 December 2022.

For the Council
The President
J. BORRELL FONTELLES

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2466**of 9 December 2022****entering a name in the register of protected designations of origin and protected geographical indications ('Nuez de Pedroso' (PDO))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Spain's application to register the name 'Nuez de Pedroso' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Nuez de Pedroso' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Nuez de Pedroso' (PDO) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.6. – Fruit, vegetables and cereals, fresh or processed, as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 9 December 2022.

For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 321, 25.8.2022, p. 11.

⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2467**of 14 December 2022****amending Regulation (EC) No 1484/95 as regards fixing representative prices in the poultrymeat and egg sectors and for egg albumin**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 183(b) thereof,

Having regard to Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009 ⁽²⁾, and in particular Article 5(6)(a) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽³⁾ lays down detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.
- (2) Regular monitoring of the data used to determine representative prices for poultrymeat and egg products and for egg albumin shows that the representative import prices for certain products should be amended to take account of variations in price according to origin.
- (3) Regulation (EC) No 1484/95 should therefore be amended accordingly.
- (4) Given the need to ensure that this measure applies as soon as possible after the updated data have been made available, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is replaced by the text set out in the Annex to this Regulation.

Article 2

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

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 150, 20.5.2014, p. 1.

⁽³⁾ Commission Regulation (EC) No 1484/95 of 28 June 1995 laying down detailed rules for implementing the system of additional import duties and fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and repealing Regulation No 163/67/EEC (OJ L 145, 29.6.1995, p. 47).

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

Done at Brussels, 14 December 2022.

*For the Commission,
On behalf of the President,
Wolfgang BURTSCHER
Director-General
Directorate-General for Agriculture and Rural
Development*

ANNEX

‘ANNEX I

CN code	Description	Representative price (EUR/100 kg)	Security under Article 3 (EUR/100 kg)	Origin ⁽¹⁾
0207 14 10	Fowls of the species <i>Gallus domesticus</i> , boneless cuts, frozen	267,4	10	TH

⁽¹⁾ Nomenclature laid down by Commission Implementing Regulation (EU) 2020/1470 of 12 October 2020 on the nomenclature of countries and territories for the European statistics on international trade in goods and on the geographical breakdown for other business statistics (OJ L 334, 13.10.2020, p. 2).’

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2468**of 15 December 2022****correcting Implementing Regulation (EU) 2021/2325 as regards the recognition of the control body 'IMOCERT Latinoamérica Ltda' for the purpose of importing organic products into the Union**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 ⁽¹⁾, and in particular Article 57(2) thereof,

Whereas:

- (1) Annex II to Commission Implementing Regulation (EU) 2021/2325 ⁽²⁾ sets out the list of control authorities and control bodies recognised for the purpose of equivalence and competent to carry out controls and issue certificates in third countries.
- (2) Annex II to Implementing Regulation (EU) 2021/2325 erroneously listed 'IMOCERT Latinoamérica Ltda' as a recognised body for Costa Rica. The relevant entry needs to be corrected.
- (3) Implementing Regulation (EU) 2021/2325 should therefore be corrected accordingly.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Organic Production Committee,

HAS ADOPTED THIS REGULATION:

*Article 1***Correction to Implementing Regulation (EU) 2021/2325**

In Annex II to Regulation (EU) 2021/2325, point 3 of the entry for 'IMOCERT Latinoamérica Ltda.', the row for Costa Rica is deleted.

*Article 2***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*.

⁽¹⁾ OJ L 150, 14.6.2018, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) 2021/2325 of 16 December 2021 establishing, pursuant to Regulation (EU) 2018/848 of the European Parliament and of the Council, the list of third countries and the list of control authorities and control bodies that have been recognised under Article 33(2) and (3) of Council Regulation (EC) No 834/2007 for the purpose of importing organic products into the Union (OJ L 465, 29.12.2021, p. 8).

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

Done at Brussels, 15 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

DECISIONS

COUNCIL DECISION (EU) 2022/2469

of 12 December 2022

on the position to be adopted on behalf of the European Union within the Committee on Customs established under the Free Trade Agreement between the European Union and the Republic of Singapore, as regards the amendment of Protocol 1 concerning the definition of 'originating products' and methods of administrative cooperation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Free Trade Agreement between the European Union and the Republic of Singapore ('the Agreement') was concluded by the Union by means of Council Decision (EU) 2019/1875 ⁽¹⁾, and entered into force on 21 November 2019.
- (2) Pursuant to Article 34 of Protocol 1 to the Agreement, the Committee on Customs may adopt Decisions to amend the provisions of that Protocol.
- (3) The Committee on Customs, during its first meeting, is to adopt a Decision amending Protocol 1 and its Annexes ('the Decision').
- (4) It is appropriate to establish the position to be adopted on the Union's behalf in the Committee on Customs, as the Decision will be binding on the Union.
- (5) Amendments to the Protocol were introduced on 1 January 2012, on 1 January 2017 and on 1 January 2022 in relation to the nomenclature governed by the International Convention on the Harmonized Commodity Description and Coding System ('HS'). The Decision is necessary to update Protocol 1 and its Annexes to reflect the latest version of the HS.
- (6) The scope of the annual quotas set out in Annex B(a) to Protocol 1 for canned luncheon meat, curry fish balls and cuttlefish balls should be expanded in order to allow Singaporean exporters to use them.
- (7) In order to provide for equal treatment of the economic operators in both Parties as regard the certification of the origin, Protocol 1 should be amended so that each Party may decide, according to its laws and regulations, which exporter may self-certify the origin of its originating goods. In the Union, this will allow the origin of the goods to be certified by registered exporters instead of by approved exporters, similarly to the system applied by Singapore in the context of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf in the first meeting of the Committee on Customs shall be based on the draft Decision of the Committee on Customs attached to this Decision.

Minor technical corrections to the draft Decision may be agreed by the representatives of the Union in the Committee on Customs.

⁽¹⁾ Council Decision (EU) 2019/1875 of 8 November 2019 on the conclusion of the Free Trade Agreement between the European Union and the Republic of Singapore (OJ L 294, 14.11.2019, p. 1).

Article 2

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

Done at Brussels, 12 December 2022.

For the Council
The President
Z. NEKULA

DRAFT**DECISION No 01/2022 OF THE COMMITTEE ON CUSTOMS OF THE FREE TRADE AGREEMENT
BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF SINGAPORE****of ...****modifying certain elements in Protocol 1 concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation and its Annexes**

THE COMMITTEE ON CUSTOMS,

Having regard to the Free Trade Agreement between the European Union and the Republic of Singapore (hereinafter, ‘the Agreement’), and in particular Article 34 of Protocol 1 and Article 16.2 of the Agreement,

Whereas:

- (1) Article 34 (Amendments to this Protocol) of Protocol 1 to the Agreement provides that the Parties may, by decision in the Committee on Customs established pursuant to Article 16.2 (Specialised Committees) of the Agreement, amend the provisions of Protocol 1 to the Agreement.
- (2) Amendments were introduced on 1 January 2012, on 1 January 2017 and on 1 January 2022 in relation to the nomenclature governed by the Convention on the Harmonized Commodity Description and Coding System (‘HS’). The Parties have agreed to update Protocol 1 to reflect the latest version of the HS.
- (3) The Parties have agreed to modify the scope of the annual quotas set out in Annex B(a) to Protocol 1 for canned luncheon meat, curry fish balls and cuttlefish balls.
- (4) Article 17 (Conditions for Making Out an Origin Declaration) of Protocol 1 establishes that an origin declaration may be made out, in the European Union by, inter alia, an exporter who is an approved exporter, and in Singapore by, inter alia, a registered exporter. To provide for equal treatment of the economic operators in both Parties, Protocol 1 should be amended so that each Party may decide, according to its laws and regulations, which exporter may make out an origin declaration. For that purpose, a definition of ‘exporter’ would therefore be necessary.
- (5) Considering the new definition of ‘exporter’, the term ‘exporter’ in the definition of ‘consignment’ in point (d) of Article 1(1), Article 13 (Non Alteration) and Article 14 (Exhibitions) of Protocol 1 needs to be replaced by the term ‘consignor’.
- (6) Paragraph 5 of Article 17 (Conditions for Making Out an Origin Declaration) provides that an origin declaration is to bear the original signature of the exporter in manuscript. The Parties have agreed to waive this requirement to facilitate trade and to decrease the administrative burden of benefiting from the tariff preferences of the Agreement.
- (7) In the definition of ‘ex-works price’ in point (f) of Article 1(1), it is necessary to clarify how the term ‘manufacturer’ is to be understood when the last working or processing is subcontracted.
- (8) Considering that both Parties are to apply a system of registered exporters, the document on origin made out in the Parties should be renamed from ‘origin declaration’ to ‘statement on origin’.
- (9) As a transitional measure, it should be provided that for a period of 3 months starting from the date of entry into force of this Decision, Singapore will accept origin declarations made out in accordance with Article 17 (Conditions for Making Out an Origin Declaration) and Article 18 (Approved Exporter) of Protocol 1 to the Agreement in force prior to the date of entry into force of this Decision.
- (10) Protocol 1 to the Agreement and several of its Annexes should therefore be modified,

HAS ADOPTED THIS DECISION:

Article 1

Protocol 1 to the Agreement is amended as follows:

- (1) the table of contents of Protocol 1 is replaced by the following:

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Joint Declarations

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JOINT DECLARATION CONCERNING THE REVISION OF THE RULES OF ORIGIN CONTAINED IN PROTOCOL 1';

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

‘ARTICLE 1

Definitions

1. For the purposes of this Protocol:

- (a) “ASEAN country” means a member state of the Association of Southeast Asian Nations which is not a Party to this Agreement;
- (b) “chapters” and “headings” and “sub-headings” mean the chapters, the headings (four digit codes) and sub-headings (six digit codes) used in the nomenclature which makes up the Harmonized Commodity Description and Coding System, referred to in this Protocol as the “Harmonized System” or “HS”;
- (c) “classified” refers to the classification of a product or material under a particular chapter, heading, or sub-heading of the Harmonized System;
- (d) “consignment” means products which are either sent simultaneously from one consignor to one consignee or covered by a single transport document covering their shipment from the consignor to the consignee or, in the absence of such a document, by a single invoice;
- (e) “customs value” means the value as determined in accordance with the Customs Valuation Agreement;
- (f) “ex-works price” means the price paid for the product ex-works to the manufacturer in whose undertaking the last working or processing is carried out, provided that the price includes the value of all the materials used and all other costs related to its production, minus any internal taxes which are, or may be, repaid when the product obtained is exported.

Where the actual price paid does not reflect all costs related to the manufacturing of the product which are actually incurred in the Union or in Singapore, the ex-works price means the sum of all those costs, minus any internal taxes which are, or may be, repaid when the product obtained is exported.

Where the last working or processing has been subcontracted to a manufacturer, the term “manufacturer” may refer to the enterprise that has employed the subcontractor.

- (g) “exporter” means a person, located in a Party, who, in accordance with the requirements in the laws and regulations of the Party, exports or produces the originating product and who may make out a statement on origin;
- (h) “fungible materials” means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another once they are incorporated into the finished product;
- (i) “goods” means both materials and products;
- (j) “juridical person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;
- (k) “manufacture” means any kind of working or processing including assembly;
- (l) “material” means any ingredient, raw material, component or part, etc., used in the manufacture of the product;
- (m) “person” means a natural person or juridical person;
- (n) “product” means the product being manufactured, even if it is intended for later use in another manufacturing operation;
- (o) “value of materials” means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the Union or in Singapore.’;

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

‘3. Without prejudice to Section 5, the splitting of consignments may take place where carried out by the consignor or under his responsibility provided they remain under customs supervision in the country(ies) of transit.’;

- (4) points (a) and (b) of Article 14(1) are replaced by the following:

‘(a) a consignor has consigned these products from a Party to the country in which the exhibition is held and has exhibited them there;

(b) the products have been sold or otherwise disposed of by that consignor to a person in a Party’;

- (5) Article 17 is replaced by the following:

‘ARTICLE 17

Conditions for Making Out a Statement on Origin

1. A statement on origin as referred to in Article 16 (General Requirements) may be made out by the exporter.
 2. A statement on origin may be made out if the products concerned can be considered as products originating in the Union or in Singapore and fulfil the other requirements of this Protocol.
 3. The exporter making out a statement on origin shall be prepared to submit at any time, at the request of the customs authorities of the exporting Party, all appropriate documents as referred to under Article 23 (Supporting Documents) proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Protocol.
 4. A statement on origin shall be made out by the exporter by typing, stamping or printing on the invoice, the delivery note or another commercial document, the declaration, the text of which appears in Annex E to this Protocol, in accordance with the domestic law of the exporting Party. If the statement is hand-written, it shall be written in ink in capital characters. In the case of exports from Singapore, the statement on origin shall be set out using the English version and in the case of exports from Union, the statement on origin may be set out in one of the linguistic versions in Annex E to this Protocol.
 5. By derogation from paragraph 1, a statement on origin may be made out after exportation (“retrospective statement”) on condition that it is presented in the importing Party no later than two years, in the case of the Union, and one year, in the case of Singapore, after the entry of the goods into the territory.’;
- (6) in the Table of Contents, and in Article 3(6), Article 3(13), Article 11(5), Article 14(2), Article 15(1), Article 15(3), the title of Section 5, Article 16(1), Article 16(2), the title of Article 19, Article 19(1), Article 19(2), Article 19(3), the title of Article 20, Article 20, Article 21, the title of Article 22, Article 22(1), Article 23, the title of Article 24, Article 24(1), Article 24(2), Article 25(1), Article 25(2), Article 27(1), Article 27(2), the title of Article 28, Article 28(1), Article 28(2), Article 30(1), Article 33(3), and Article 35, the term ‘origin declaration’ is replaced by the term ‘statement on origin’;
- (7) Article 18 is deleted;
- (8) Article 26 is replaced by the following:

‘ARTICLE 26

Amounts Expressed in Euro

1. For the application of the provisions of paragraph 3 of Article 22 (Exemptions from Statement on Origin) in cases where products are invoiced in a currency other than euro, amounts in the national currencies of the Member States of the Union equivalent to the amounts expressed in euro shall be fixed annually by each of the countries concerned.
2. A consignment shall benefit from the provisions of paragraph 3 of Article 22 (Exemptions from Statement on Origin) by reference to the currency in which the invoice is drawn up, according to the amount fixed by the Party concerned.

3. The amounts to be used in any given national currency shall be the equivalent in that currency of the amounts expressed in euro as at the first working day of October. The amounts shall be communicated to the European Commission by 15 October and shall apply from 1 January the following year. The European Commission shall notify all countries concerned of the relevant amounts.

4. A Member State of the Union may round up or down the amount resulting from the conversion into its national currency of an amount expressed in euro. The rounded amount may not differ from the amount resulting from the conversion by more than five percent. A Member State of the Union may retain unchanged its national currency equivalent of an amount expressed in euro if, at the time of the annual adjustment provided for in paragraph 3, the conversion of that amount, prior to any rounding-off, results in an increase of less than fifteen percent in the national currency equivalent. The national currency equivalent may be retained unchanged if the conversion would result in a decrease in that equivalent value.

5. The amounts expressed in euro shall be reviewed by the Parties in the Committee on Customs established pursuant to Article 16.2 (Specialised Committees) at the request of the Union or of Singapore. When carrying out this review, the Parties shall consider the desirability of preserving the effects of the limits concerned in real terms. For these purposes, the Parties may, by decision in the Committee on Customs, modify the amounts expressed in euro.’;

- (9) Annex B is amended as set out in Annex 1 to this Decision;
- (10) Annex B(a) is amended as set out in Annex 2 to this Decision;
- (11) Annex D is amended as set out in Annex 3 to this Decision;
- (12) Annex E is amended as set out in Annex 4 to this Decision.

Article 2

Entry into force

This Decision shall enter into force on [1 January 2023].

Done at ...,

For the EU-Singapore Committee on Customs

On behalf of the European Union

On behalf of the Republic of Singapore

ANNEX 1

Annex B to Protocol 1 is amended as follows:

- (1) in the row related to HS Heading '0305', the text in the column 'description of product' is replaced by the following:
'Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process';
- (2) in the row related to HS Heading 'ex 0306', the text in the column 'description of product' is replaced by the following:
'Crustaceans, whether in shell or not, dried, salted or in brine; smoked crustaceans, whether in shell or not, whether or not cooked before or during the smoking process; crustaceans, in shell, cooked by steaming or by boiling in water, whether or not chilled, frozen, dried, salted or in brine';
- (3) in the row related to HS Heading 'ex 0307', the text in the column 'description of product' is replaced by the following:
'Molluscs, whether in shell or not, dried, salted or in brine; smoked molluscs, whether in shell or not, whether or not cooked before or during the smoking process';
- (4) between the row related to HS Heading 'ex 0307' and the row related to HS Heading 'Chapter 4', the following rows are inserted:

'ex 0308	Aquatic invertebrates other than crustaceans and molluscs, dried, salted or in brine; smoked aquatic invertebrates other than crustaceans and molluscs, whether or not cooked before or during the smoking process	Manufacture in which all the materials of Chapter 3 used are wholly obtained
0309	Flours, meals and pellets of fish, crustaceans, molluscs and other aquatic invertebrates, fit for human consumption	Manufacture in which all the materials of Chapter 3 used are wholly obtained'

- (5) in the row related to HS Heading 'ex Chapter 15', the text in the column 'description of product' is replaced by the following:
'Animal, vegetable or microbial fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes; except for:';
- (6) in the row related to HS Heading '1509 and 1510', the text in the column 'description of product' is replaced by the following:
'Olive oil and its fractions, other oils and their fractions obtained solely from olives';
- (7) in the row related to HS Heading '1516 and 1517', the text in the column 'description of product' is replaced by the following:
'Animal, vegetable or microbial fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared;

Margarine; edible mixtures or preparations of animal, vegetable or microbial fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats and oils or their fractions of heading 15.16';
- (8) in the row related to HS Heading 'Chapter 16', the text in the column 'description of product' is replaced by the following:
'Preparations of meat, of fish, of crustaceans, molluscs or other aquatic invertebrates, or of insects';
- (9) in the row related to HS Heading 'ex Chapter 24', the text in the column 'description of product' is replaced by the following:
'Tobacco and manufactured tobacco substitutes; products, whether or not containing nicotine, intended for inhalation without combustion; other nicotine containing products intended for the intake of nicotine into the human body; except for:';

- (10) between the row related to HS Heading 'ex 2402' and the row related to HS Heading 'ex Chapter 25', the following rows are inserted:

'2404 12	Products intended for inhalation without combustion, not containing tobacco or reconstituted tobacco, and containing nicotine	Manufacture from materials of any heading, except that of the product. However, materials of the same heading as the product may be used, provided that their total value does not exceed 20 % of the ex-works price of the product or Manufacture in which the value of all the materials used does not exceed 40 % of the ex-works price of the product
ex 2404 19	Cartridges and refills, filled for electronic cigarettes	Manufacture from materials of any heading, except that of the product. However, materials of the same heading as the product may be used, provided that their total value does not exceed 20 % of the ex-works price of the product or Manufacture in which the value of all the materials used does not exceed 40 % of the ex-works price of the product
2404 91	Other products than products intended for inhalation without combustion, for oral application	Manufacture from materials of any heading, except that of the product, in which: — the individual weight of sugar and of the materials of Chapter 4 used does not exceed 20 % of the weight of the final product, and — the total combined weight of sugar and the materials of Chapter 4 used does not exceed 40 % of the weight of final product
2404 92, 2404 99	Other products than products intended for inhalation without combustion, for transdermal application and for other than oral application	Manufacture from materials of any heading, except that of the product. However, materials of the same heading as the product may be used, provided that their total value does not exceed 20 % of the ex-works price of the product or Manufacture in which the value of all the materials used does not exceed 40 % of the ex-works price of the product'

- (11) between the row related to HS Heading 'ex Chapter 38' and the row related to HS Heading '3823', the following rows are inserted:

'ex 3816	Dolomite ramming mix	Manufacture from materials of any heading, except that of the product or Manufacture in which the value of all the materials used does not exceed 40 % of the ex- works price of the product
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ex 3822	Malaria diagnostic test kits Immunological products, unmixed, not put up in measured doses or in forms or packings for retail sale Immunological products, mixed, not put up in measured doses or in forms or packings for retail sale Immunological products, put up in measured doses or in forms or packings for retail sale Blood-grouping reagents	Manufacture from materials of any heading'
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- (12) in the first row related to HS Heading '6306', the text in the column 'description of product ' is replaced by the following:

'Tarpaulins, awnings and sunblinds; tents (including temporary canopies and similar articles); sails for boats, sailboards or landcraft; camping goods';

- (13) in the row related to HS Heading '8522, the text in the column 'description of product ' is replaced by the following:

'Parts and accessories suitable for use solely or principally with the apparatus of heading 8519 or 8521';

- (14) in the row related to HS Heading '8529, the text in the column 'description of product' is replaced by the following:

'Parts suitable for use solely or principally with the apparatus of headings 8524 to 8528';

- (15) in the row related to HS Heading '8548', the text in the column 'description of product ' is replaced by the following:

'Electrical parts of machinery or apparatus, not specified or included elsewhere in this Chapter';

- (16) between the row related to HS Heading '8548' and the row related to HS Heading 'ex Chapter 86', the following row is inserted:

'8549	Electrical and electronic waste and scrap.	Manufacture from materials of any heading, except that of the product or Manufacture in which the value of all the materials used does not exceed 50 % of the ex-works price of the product'
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- (17) in the row related to HS Heading 'ex Chapter 86', the text in the column 'HS Heading' and the text in the column 'description of product' are replaced respectively by the following:

'Chapter 86' and 'Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signaling equipment of all kinds';

- (18) between the row related to HS Heading 'ex 8804' and the row related to HS Heading 'Chapter 89', the following row is inserted:

'ex 8806	Unmanned aircraft Television cameras, digital cameras and video camera recorders	Manufacture from materials of any heading, except that of the product and of heading 8529 or Manufacture in which the value of all the materials used does not exceed 50 % of the ex-works price of the product'
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- (19) in the row related to HS Heading '9013', the text in the column 'description of product' is replaced by the following:
'Lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this Chapter';
- (20) between the row related to HS Heading '9016' and the row related to HS Heading '9025', the following row is inserted:

'ex 9021	Materials for orthopedic or fracture appliances and for dental fitting: — Nails, tacks, drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper — Threaded articles and non-threaded articles of iron or steel, excluding coach screws, wood screws, screw hooks and screw rings, spring washers and other lock washers, rivets	Manufacture from materials of any heading, except that of the product or Manufacture in which the value of all the materials used does not exceed 50 % of the ex-works price of the product
	— Titanium and articles thereof, including waste and scrap	Manufacture from materials of any heading'

- (21) in the row related to HS Heading 'Chapter 94', the text in the column 'description of product' is replaced by the following:
'Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings'.

ANNEX 2

Annex B(a) to Protocol 1 is amended as follows:

- (1) paragraph 3 of the common provisions is deleted;
- (2) paragraph 4 of the common provisions is renumbered to paragraph 3;
- (3) paragraph 5 of the common provisions is renumbered to paragraph 4;
- (4) in the row related to HS Heading

‘ex 1602 32

ex 1602 41

ex 1602 49

ex 1602 50’,

the text ‘Canned luncheon meat of pork, chicken and beef (午餐肉)’ in the column ‘description of product ’ is replaced by the following:

‘Canned luncheon meat or meat loaf of pork (containing more than 40 % by weight of pork meat or meat offal), canned luncheon meat or meat loaf of chicken (containing more than 20 % by weight of chicken meat or meat offal), canned luncheon meat or meat loaf of beef (containing more than 20 % by weight of beef meat or meat offal)’;

- (5) in the row related to HS Heading ‘ex 1604 20’ the text ‘Curry fish balls made of fish meat, curry, wheat starch, salt, sugar, and compound condiments’ in the column ‘description of product’ is replaced by the following:

‘fish balls and fish cakes made of fish meat except of tuna and of mackerel, starch, salt, sugar, and compound condiments’;

- (6) the row related to HS Heading

‘ex 1605 10

ex 1605 90

ex 1605 20

ex 1605 20

ex 1605 20

ex 1605 30’

is replaced by the following:

‘ex 1605 10	Crab balls made of wheat starch, salt, sugar, compound condiments, crab meat and filling	Manufacture from materials of any heading, except that of the product
ex 1605 54	Cuttlefish balls made of fish meat, cuttlefish filling, starch, salt, sugar, and compound condiments	
ex 1605 21	Hargow made of prawn, wheat starch, tapioca, water, scallion, ginger, sugar, and salt	
ex 1605 29	Shaomai made of prawn predominantly, chicken, corn starch, vegetable oil, black pepper, sesame oil, and water	
ex 1902 20	Fried prawn wonton made of prawn, salt, oil, sugar, ginger, pepper, egg, vinegar, and soy sauce.	
ex 1605 54	Lobster flavoured balls: cuttlefish meat, fish meat and crab meat.’	

ANNEX 3

Annex D to Protocol 1 is amended as follows:

- (1) in the row related to HS Code '2909', the text in the column 'description' is replaced by the following:

'Ethers, ether-alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, acetal and hemiacetal peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulphonated, nitrated or nitrosated derivatives';

- (2) in the row related to HS Code '9013', the text in the column 'description' is replaced by the following:

'Lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this Chapter'.

ANNEX 4

Annex E to Protocol 1 is amended as follows:

- (1) in the title of Annex E, the term 'origin declaration' is replaced by the term 'statement on origin';
- (2) the first paragraph of Annex E is replaced by the following:

'The statement on origin, the text of which is given below, must be made out in accordance with the footnotes. However, the footnotes do not have to be reproduced.'
- (3) footnote (1) is replaced by the following:

'Indicate the reference number by which the exporter is identified. For the Union exporter, this will be the number assigned in accordance with the laws and regulations of the Union. For Singapore, this will be the number assigned in accordance with the laws and regulations of Singapore. Where the exporter has not been assigned a number, this field may be left blank';
- (4) the last sentence before the footnotes is replaced by the following:

'(Name of the exporter)';
- (5) footnote (4) is deleted.

**JOINT DECLARATION CONCERNING TRANSITIONAL MEASURES AFTER THE DATE OF ENTRY
INTO FORCE OF THE DECISION**

By way of derogation from Article 17 (Conditions for Making Out a Statement on Origin) of Protocol 1 to the Agreement, as amended by this Decision, Singapore shall continue to grant the preferential tariff treatment under this Agreement to goods originating in the Union and exported from the Union upon the presentation of an origin declaration made out in accordance with Article 17 (Conditions for Making Out an Origin Declaration) and Article 18 (Approved Exporter) of Protocol 1 to the Agreement in force prior to the date of entry into force of this Decision. This transitional measure shall apply for a period of 3 months starting from the date of entry into force of this Decision.

COMMISSION IMPLEMENTING DECISION (EU) 2022/2470**of 14 December 2022****laying down measures necessary for the technical development and implementation of the centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 ⁽¹⁾, and in particular Article 10, the first paragraph, points (a), (b), (c) (e) to (i), (k) and (l) thereof,

Whereas:

- (1) Regulation (EU) 2019/816 established the centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) as a system by which the central authority of a Member State or other competent authority can find out promptly and efficiently which Member States hold criminal records information on a third-country national. The existing ECRIS framework can then be used by the central authorities to request the criminal records information from those Member States in accordance with Framework Decision 2009/315/JHA ⁽²⁾. Other competent authorities can use their respective channels of communication for this purpose.
- (2) The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) established by Regulation (EU) 2018/1726 of the European Parliament and of the Council ⁽³⁾ is responsible for the development of ECRIS-TCN, including elaboration and implementation of the technical specifications and testing, as well as for the operational management of the system.
- (3) To enable eu-LISA to design the physical architecture of ECRIS-TCN, determine the technical specifications of the system and develop the ECRIS-TCN, the necessary technical specifications should be laid down for the processing of the alphanumeric and fingerprint data, data quality, entering the data, accessing and querying ECRIS-TCN, keeping and accessing logs, providing statistics as well as performance and availability requirements of ECRIS-TCN. Detailed technical specifications should be elaborated by eu-LISA after the conclusion of the tests referred to in Article 11(1) of Regulation (EU) 2019/816.

⁽¹⁾ OJ L 135, 22.5.2019, p. 85.

⁽²⁾ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23), as amended by Directive (EU) 2019/884 of the European Parliament and of the Council of 17 April 2019 amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA (OJ L 151, 7.6.2019, p. 143).

⁽³⁾ Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

- (4) The ECRIS-TCN architecture should conform to the European Interoperability framework as set out in Regulations (EU) 2019/817 ⁽⁴⁾ and (EU) 2019/818 ⁽⁵⁾ of the European Parliament and of the Council. With a view to the delivery of public services at European level in an interoperable manner, the ECRIS-TCN software and hardware should conform to defined standards that promote interoperability for data, applications and technology.
- (5) As regards the implementation of interoperability between the ECRIS-TCN system, on the one hand, and the Visa Information System (VIS) and the European Travel Information and Authorisation System (ETIAS), on the other hand, the necessary consequential amendments were adopted in Regulations (EU) 2021/1133 ⁽⁶⁾ and (EU) 2021/1151 ⁽⁷⁾ of the European Parliament and of the Council respectively.
- (6) In order to support the VIS and ETIAS objective of contributing to a high level of security by providing for a thorough security risk assessment of applicants crossing the external borders of the Union, both the VIS and ETIAS systems should be able to verify whether any correspondence exists between data in VIS and ETIAS application files and the data stored in ECRIS-TCN, as regards which Member States hold information on third-country nationals who have been convicted in the previous 25 years of a terrorist offence or in the previous 15 years of any other criminal offence listed in the Annex to Regulation (EU) 2018/1240 of the European Parliament and of the Council ⁽⁸⁾ if it is punishable by a custodial sentence or a detention order for a maximum period of at least three years under national law.
- (7) For this purpose, when creating a data record in ECRIS-TCN, the central authority of the convicting Member State should add a flag indicating, for the purpose of Regulations (EC) No 767/2008 of the European Parliament and of the Council ⁽⁹⁾ and (EU) 2018/1240, that the third-country national concerned has been convicted in the previous 25 years of a terrorist offence or in the previous 15 years of any other criminal offence listed in the Annex to Regulation (EU) 2018/1240 if it is punishable by a custodial sentence or a detention order for a maximum period of at least three years under national law, together with the code of the convicting Member State.
- (8) The European Search Portal, established by Regulations (EU) 2019/817 and (EU) 2019/818, should enable querying the data stored in ECRIS-TCN. Where relevant in the context of interoperability, the European Search Portal should also enable querying the ECRIS-TCN data in parallel with the data stored in the other EU information systems concerned.
- (9) The shared biometric matching service, established by Regulations (EU) 2019/817 and (EU) 2019/818, is to store fingerprint templates and should enable querying the fingerprint data stored in ECRIS-TCN.

⁽⁴⁾ Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).

⁽⁵⁾ Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).

⁽⁶⁾ Regulation (EU) 2021/1133 of the European Parliament and of the Council of 7 July 2021 amending Regulations (EU) No 603/2013, (EU) 2016/794, (EU) 2018/1862, (EU) 2019/816 and (EU) 2019/818 as regards the establishment of the conditions for accessing other EU information systems for the purposes of the Visa Information System (OJ L 248, 13.7.2021, p. 1).

⁽⁷⁾ Regulation (EU) 2021/1151 of the European Parliament and of the Council of 7 July 2021 amending Regulations (EU) 2019/816 and (EU) 2019/818 as regards the establishment of the conditions for accessing other EU information systems for the purposes of the European Travel Information and Authorisation System (OJ L 249, 14.7.2021, p. 7).

⁽⁸⁾ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

⁽⁹⁾ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

- (10) As fingerprint identification may not always be feasible, ECRIS-TCN should be able to identify a person by alphanumeric data only. For third-country nationals, the main technical challenge is that the alphanumeric data is not always accurate. Examples of such inaccuracies include ambiguity on which is the first name and surname, spelling and transliteration variations of names, or birth date inaccuracy. It is therefore important that ECRIS-TCN is able to match alphanumeric data also when not all elements of identification are identical, referred to as inexact searches. The identification of a third-country national should be addressed by a combination of data quality checks and inexact searches or any other means provided by the underlying search engine appropriate for the purpose of the system. Controls on the number of records returned as a result of a query should therefore be established in line with the applicable data protection rules. A failure to do so would compromise the rights of individuals and the performance and availability of the system.
- (11) The engine performing the inexact search should be able to limit the results by specifying a matching score threshold and by setting a maximum size for the list of returned records. The level at which a search result is to be considered a match, as well as the list of data fields that can be used for the inexact search should be established following tests carried out during the implementation phase.
- (12) Each data processing operations log of ECRIS-TCN should ensure a clear audit trail, i.e. provide documentary evidence and allow tracing all operations carried-out in ECRIS-TCN.
- (13) ECRIS-TCN statistics should enable monitoring the recording, storage and exchange of information extracted from criminal records through ECRIS-TCN and the ECRIS reference implementation. Those statistics should originate from the following sources: the Central Repository for Reporting and Statistics established and implemented by eu-LISA in accordance with Article 39(2) of Regulation (EU) 2019/818, the ECRIS reference implementation or national ECRIS implementation software, and the Member States' criminal records registers as regards the number of convicted third-country nationals and the number of their convictions.
- (14) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark did not take part in the adoption of Regulation (EU) 2019/816 and is not bound by it or subject to its application. Denmark is therefore not bound to implement this Decision.
- (15) In accordance with Article 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect to area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland did not take part in the adoption of Regulation (EU) 2019/816 and is not bound by it or subject to its application. Ireland is therefore not bound to implement this Decision.
- (16) The measures provided for in this Decision are in accordance with the opinion of the European Criminal Records Information System Committee,

HAS ADOPTED THIS DECISION:

Article 1

Entering data into ECRIS-TCN

When entering data into ECRIS-TCN in accordance with Article 5 of Regulation (EU) 2019/816, the central authority of the convicting Member State shall use the data model set out in Section I of the Annex to this Decision.

The technical specifications for the data elements included in the data model shall be consistent with the data model for the ECRIS reference implementation referred to in Article 4(3) of that Regulation.

*Article 2***Processing of data**

1. Where both alphanumeric data and fingerprint data of a person are included in a data record created in ECRIS-TCN in accordance with Article 5 of Regulation (EU) 2019/816, the alphanumeric data shall be linked to their corresponding fingerprint data.
2. The fingerprint images compression algorithm to be used shall follow the recommendations of National Institute of Standards and Technology ("NIST").

Fingerprint data with a resolution of 500 ppi shall be compressed using the WSQ algorithm (ISO/IEC 19794-5:2005).

Fingerprint data with a resolution of 1 000 ppi shall be compressed using the JPEG 2000 image compression standard (ISO/IEC 15444-1) and coding system.

The target compression ratio shall be 15:1.

3. Replacement or update in ECRIS-TCN of the fingerprint data referred to in Article 4(7) shall be preceded by successful verification of the identity by the central authority of the convicting Member State. The technical specifications for that replacement or update shall be set in accordance with the principles contained in the design of the physical architecture of ECRIS-TCN referred to Article 11(3) of Regulation (EU) 2019/816.

*Article 3***Alphanumeric data quality**

1. When entering or modifying alphanumeric data in ECRIS-TCN the central authority of the convicting Member State shall use the data quality verification mechanism integrated into the ECRIS reference implementation.
2. The Member States that use their national ECRIS implementation software, as provided for in Article 4(4) to (7) of Regulation (EU) 2019/816, shall ensure that their national ECRIS implementation software allows for the same alphanumeric data quality verification as the mechanism referred to in paragraph 1.
3. The data quality verification process shall apply to entering or modifying all alphanumeric data, and ensure that as a minimum the following conditions are met:
 - (a) all mandatory fields are filled in or hold the value 'unknown';
 - (b) when a first name contains the value 'unknown', the surname shall not hold the value 'unknown', and vice versa, unless a pseudonym, first name or surname of alias, or fingerprints for the same person are available;
 - (c) the data element 'nationality or nationalities' in the incoming message of the convicting Member State shall be verified against a predefined list of countries, but may contain one of the values 'unknown' or 'stateless'.
4. A new data record shall not be created where a record containing identical alphanumeric data has already been created in ECRIS-TCN by the same Member State, in particular where the same Member State Reference Code from the same Member State already exists.

When comparing the identicalness of the data records, only the alphanumeric data elements marked as relevant for such comparison in the data model set out in Section I of the Annex, shall be taken into account.

Empty alphanumeric data elements in any of the data records compared shall not be taken into account for the purpose of this comparison.

5. Where a record contains any alphanumeric data which does not comply with the standards set out in paragraphs 3 and 4, that record shall be rejected by ECRIS-TCN in its entirety and shall not be stored nor processed.

*Article 4***Fingerprint data quality**

1. When entering or modifying fingerprint data in ECRIS-TCN the central authority of the convicting Member State shall use a data quality verification mechanism integrated into the ECRIS reference implementation or offered by eu-LISA as a software application. In accordance with the responsibilities of eu-LISA pursuant to Article 11(2) of Regulation (EU) 2019/816, eu-LISA shall also be responsible for the development, maintenance and updating of this data quality verification mechanism.
2. The same data quality verification mechanism as the mechanism referred to in paragraph 1 shall be established, maintained and updated in the ECRIS-TCN central system.
3. The Member States that use their national ECRIS implementation software, as provided for in Article 4(4) to (7) of Regulation (EU) 2019/816, shall ensure, in case they do not make use of the data quality mechanism referred to in paragraph 1 of this Article, that their national ECRIS implementation software guarantees the same fingerprint data quality verification standards and metrics as the mechanism referred to in paragraph 1.
4. For the purpose of the quality verification referred to in this Article, as a minimum version 2.0 of the Fingerprint Image Quality (NFIQ) metric, defined by NIST shall be used.
5. The data quality verification process shall apply to all fingerprint data entered into or modified in ECRIS-TCN, and shall ensure that at least the following conditions are met:
 - (a) the fingerprint data consists of up to ten individual fingerprints: rolled, flat or both;
 - (b) all fingerprints are labelled;
 - (c) the fingerprint data is captured by live scans or inked on paper, provided that the fingerprints inked on paper have been scanned in the required resolution and with the same quality;
 - (d) the fingerprint data shall be provided in one file containing fingerprint digital images (the NIST file) and shall be submitted in accordance with the ANSI/NIST-ITL 1-2011 Update 2015 standard (or newer version);
 - (e) the NIST file shall allow for the inclusion of complementary information such as the conditions of fingerprint registration, the method used for acquiring individual fingerprint images and the quality value computed by the Member States during the data quality verification process;
 - (f) the fingerprint data has a nominal resolution of either 500 or 1000 ppi (with an acceptable deviation of ± 10 ppi) with 256 grey levels;
 - (g) the fingerprint data meets the quality thresholds that shall be determined after carrying out the relevant tests referred to in Article 11(1) of Regulation (EU) 2019/816 during the implementation phase.
6. When querying ECRIS-TCN with fingerprint data to identify the Member States holding criminal records information on a third-country national in accordance with Article 7 of Regulation (EU) 2019/816, the competent authorities shall use fingerprint data meeting the conditions referred to in paragraph 5, points (d) and (f) of this Article whenever possible.
7. Fingerprint data, except fingerprint data referred to in paragraph 8, entered into or modified in ECRIS-TCN, which does not comply with the conditions set out in paragraph 5, shall be rejected by ECRIS-TCN in its entirety and shall not be stored nor processed.
8. For the data records referred to in Article 5(5) of Regulation (EU) 2019/816, any fingerprint data which does not comply with the conditions set out in paragraph 5 of this Article shall be stored in ECRIS-TCN, but may be used only by the competent authorities to confirm the identity of a third-country national who has been identified as a result of an alphanumeric search. When entering such data records in ECRIS-TCN, the central authority of the convicting Member State shall ensure that these data records are clearly distinguishable from the other data records.

*Article 5***Accessing and querying ECRIS-TCN**

1. When querying ECRIS-TCN to identify the Member States holding criminal records information on a third-country national in accordance with Article 7 of Regulation (EU) 2019/816, the competent authorities shall use the data model set out in Section II of the Annex to this Decision.
2. When performing a query referred to in paragraph 1, the competent authorities shall fill in as many data elements identifying the third-country national concerned as available. Unless the query contains the fingerprint digital images (the NIST file), a minimum three such data elements shall be chosen among the ones marked for this purpose in the data model set out in Section II of the Annex.
3. Following the tests referred to in Article 11(1) of Regulation (EU) 2019/816 carried out during the implementation phase, the following technical specifications shall be established:
 - (a) the list of data fields in respect of data that can be used for an inexact search;
 - (b) conditions when a search result is to be considered a match, taking into account the performance requirements of the ECRIS-TCN central system set out in Section III of the Annex and the acceptable level of false positives and false negatives.
4. The number of records returned as a result of a query shall not exceed ten per Member State. Additional restrictions on the number of records returned may be imposed, where appropriate.
5. Except where otherwise provided for in Regulation (EU) 2019/816, the central authorities shall at all times have access to all the data entered by them into ECRIS-TCN, including access to multiple data records at the same time.
6. The lists of profiles of staff authorised to access ECRIS-TCN, established by the competent authorities in accordance with Articles 12(1)(d) and 15 of Regulation (EU) 2019/816, as well as their updates shall be provided to eu-LISA.

*Article 6***Keeping and accessing logs**

1. eu-LISA and the competent authorities shall be responsible for providing the necessary infrastructure and tools for logging data processing operations in ECRIS-TCN in accordance with Article 31 of Regulation (EU) 2019/816, and in particular the tools for aggregating and searching logs.

eu-LISA, in consultation with the ECRIS-TCN Advisory Group referred to in Article 39 of Regulation (EU) 2019/816 ('ECRIS-TCN Advisory Group'), and the competent authorities, shall also be responsible for specifying their respective logging standards, practices and procedures, including the specific format of the logging records and the procedure for sharing log records.

2. eu-LISA and the competent authorities shall be responsible for implementing their respective standards and procedures referred to in paragraph 1. That implementation shall include:
 - (a) inspecting the logs in reaction to incidents and where possible in a proactive manner,
 - (b) the logs management tasks such as archiving, safe storage, high availability and protection against unauthorised access in accordance with Article 19 of Regulation (EU) 2019/816.
3. eu-LISA shall be responsible for making the logs available to the competent authorities, on request, in accordance with the procedure specified in accordance with paragraph 1, second subparagraph.

4. The competent authorities shall be responsible for keeping their respective logs referred to in Article 31 of Regulation (EU) 2019/816, managing them and providing them to eu-LISA, on request, in accordance with the procedure specified in accordance with paragraph 1, second subparagraph.
5. Each data processing operations log of ECRIS-TCN shall, as a minimum, contain a chronological record that provides documentary evidence of the sequence of activities that have affected at any time a specific operation, procedure, or event.
6. eu-LISA and the competent authorities shall each define the list of staff authorised to access the data processing operations logs of ECRIS-TCN and their profiles in accordance with Article 31 of Regulation (EU) 2019/816.

Article 7

Statistics

1. The Central Repository for Reporting and Statistics, established and implemented by eu-LISA in accordance with Article 39(2) of Regulation (EU) 2019/818, and the ECRIS reference implementation shall produce statistics relating to the recording, storage and exchange of information extracted from criminal records through ECRIS-TCN and the ECRIS reference implementation, referred to in Article 32 of Regulation (EU) 2019/816.
2. The statistics referred to in paragraph 1 shall include in particular the following business statistics:
 - (a) as concerns system usage indicators:
 - (i) number of data records created for TCN and for dual (TCN/EU) nationals;
 - (ii) number of data records modified for TCN and for dual (TCN/EU) nationals;
 - (iii) number of data records erased for TCN and for dual (TCN/EU) nationals;
 - (iv) number of viewings by central authorities of their own data records in accordance with Article 5(5);
 - (v) number of queries with respect to TCN and with respect to dual (TCN/EU) nationals;
 - (b) as concerns data indicators:
 - (i) number of records in the database;
 - (ii) number of records containing fingerprints;
 - (iii) number of records containing flags established in accordance with Article 5(1), point (c), of Regulation (EU) 2019/816, separately for the convictions of a terrorist offence or of any other criminal offence listed in the Annex to Regulation (EU) 2018/1240;
 - (iv) report on presence of alphanumeric data;
 - (v) report on accuracy of birth date;
 - (vi) number of records not accepted for inclusion;
 - (vii) number of fingerprint data not accepted for inclusion pursuant to Article 4(7) of this Decision;
 - (c) as concerns matching efficiency indicators:
 - (i) number of records returned when performing an exact search for convicting Member States;
 - (ii) number of records returned when performing an inexact search for convicting Member States;
 - (iii) number of exact searches performed using alphanumeric data or fingerprints, or both;
 - (iv) number of inexact searches performed using alphanumeric data or fingerprints, or both;

- (v) number of exact search hits, based on the subsequent ECRIS requests;
- (vi) number of inexact search hits, based on the subsequent ECRIS requests;
- (d) other indicators:
 - (i) which competent authority performed the search;
 - (ii) purpose of the searches in accordance with Article 7 of Regulation (EU) 2019/816, specified per competent authority that performed the search.
- 3. Where relevant, the statistics referred to in paragraph 2 shall be produced separately for each competent authority.
- 4. The statistics referred to in paragraph 1 shall include in particular the following technical statistics, as concerns quality of service indicators:
 - (a) success/failure ratio of requests;
 - (b) system availability;
 - (c) response time statistics for every use case supported by the system.
- 5. The statistics referred to in paragraphs 1 to 4 shall be produced daily.
- 6. The Member States that use their national ECRIS implementation software, as provided for in Article 4(4) to (7) of Regulation (EU) 2019/816, shall ensure that their national ECRIS implementation software allows for producing the same statistics as the ECRIS reference implementation.

Article 8

Performance requirements of ECRIS-TCN

1. Performance requirements of the ECRIS-TCN central system for creating, modifying, erasing and viewing data records as well as for searching a convicting Member State are set out in Section III of the Annex.
2. eu-LISA shall monitor fingerprint data accuracy performance in ECRIS-TCN centrally on the data entered by the Member States in ECRIS-TCN, based on a representative sample of cases.
3. The monitoring referred to in paragraph 2 shall be carried out on a regular basis, and at least once per month. eu-LISA shall disseminate reports of that monitoring to the Member States.
4. The process to measure fingerprint data accuracy performance shall be automated to the highest possible extent and shall not allow for individual identification. That process shall be determined after carrying out the relevant tests referred to in Article 11(1) of Regulation (EU) 2019/816 during the implementation phase.
5. The accuracy indicator 'Failure To Enrol Rate', concerning the proportion of registrations with insufficient quality, shall be applied in the process of fingerprints data accuracy monitoring.

The accuracy target for that indicator shall be determined after carrying out the relevant tests referred to in Article 11(1) of Regulation (EU) 2019/816 during the implementation phase.

Article 9

Availability and recoverability requirements of ECRIS-TCN

1. The ECRIS-TCN central system shall have an availability ratio of at least 97,6 %, calculated over a year. The planned maintenance shall take place outside the office hours of eu-LISA and the central authorities.

2. ECRIS-TCN operations shall be maintained in case of any potential disturbing event or adverse situation in accordance with the Recovery Time Objective values approved by eu-LISA and the Member States following a Business Impact Analysis process run on an annual basis.
3. eu-LISA shall ensure that data included in ECRIS-TCN can be restored in case of any potential disturbing event or adverse situation, in accordance with the Recovery Point Objective values approved by eu-LISA and the Member States as specified in a Business Impact Analysis process run on an annual basis).

Article 10

Communication infrastructure for ECRIS-TCN

1. The communication infrastructure referred to in Article 4(1)(d) shall be the Trans European Services for Telematics between Administrations (TESTA) EuroDomain Network, composed of the TESTA EuroDomain Access Point (TAP) and the TESTA European backbone. Any further developments thereof or any alternative secure network shall ensure that the communication infrastructure in place continues to fulfil the necessary security requirements set in accordance with the principles contained in the design of the physical architecture of ECRIS-TCN referred to in Article 11(3) of Regulation (EU) 2019/816, as well as in the ECRIS-TCN Regulation itself.
2. In accordance with paragraph 1 of this Article and Articles 3(15) and 4(1)(d) of the ECRIS-TCN Regulation, as long as the communication infrastructure for ECRIS-TCN is the TESTA EuroDomain Network, the national central access point for ECRIS-TCN shall be understood as the TESTA EuroDomain Access Point (TAP).

Article 11

Interface software

The technical specifications of the interface software shall be set in accordance with the principles contained in the design of the physical architecture of ECRIS-TCN referred to in Article 11(3) of Regulation (EU) 2019/816.

Article 12

Development of the technical specifications

eu-LISA, in consultation with the ECRIS-TCN Advisory Group, shall be responsible for the development of detailed technical specifications of ECRIS-TCN referred to in Articles 1, 2(3), 4(5)(g), 5(3), 5(4), 8(4), 8(5) and 11 in accordance with the requirements set out in this Decision.

Article 13

Entry into force

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

Done at Brussels, 14 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

I. Entering data into ECRIS-TCN data model for the ‘Send data’ message

The central authority of the convicting Member State shall use the data model set out in the table below when entering or modifying the data in ECRIS-TCN in accordance with Regulation (EU) 2019/816. Additional technical elements may be included as well as required.

Data element	Type of data	'Unknown' value possible
[Convicting Member State]: Member State	Mandatory	N/A ⁽¹⁾
[Convicting Member State]: Member States Central Authorities	Mandatory	N/A
[Contact person]: First name(s)	Optional	N/A
[Contact person]: Surname	Optional	N/A
[Contact person]: Second surname	Optional	N/A
[Contact person]: Phone	Optional	N/A
[Contact person]: Fax	Optional	N/A
[Contact person]: Email	Mandatory	N/A
Username of official	Mandatory	N/A
Member State Reference Code (*)	Mandatory	No
Unique Identifier ⁽²⁾	Mandatory	No
Timestamp of sending the data record from ECRIS RI or national implementation software to the ECRIS-TCN central system	Mandatory	N/A
Surname(s) (*)	Mandatory	Yes
First name(s) (*)	Mandatory	Yes
Full name (*)	Optional	No
Birth date (*)	Mandatory	Yes
Birth place: [Place]: Country (*)	Mandatory	Yes
Birth place: [Place]: Town name (*)	Mandatory	Yes
Birth place: [Place]: Country subdivision (*)	Optional	No
Birth place: [Place]: Town code (*)	Optional	No
Nationality or nationalities (*)	Mandatory	Yes
Gender (*)	Mandatory	Yes
Previous surname(s) (*)	Mandatory if applicable ⁽³⁾	Yes
Previous first name(s) (*)	Mandatory if applicable ⁽⁴⁾	Yes
Mother's surname(s) (*)	Optional	No

Mother's first name(s) (*)	Optional	No
Father's surname(s) (*)	Optional	No
Father's first name(s) (*)	Optional	No
Identity number (*)	Optional	No
[Identification document]: Identification category (*)	Optional	No
[Identification document]: Identification document number (*)	Optional	No
[Identification document]: Identification document type (*)	Optional	No
[Identification document]: Name of the issuing authority of the identification document	Optional	No
[Identification document]: Where relevant, 3-letter code of the issuing country (*)	Optional	No
[Travel document] (?): Travel document number (*)	Optional	No
[Travel document]: Travel document type (*)	Optional	No
[Travel document]: Name of the issuing authority of the travel document (*)	Optional	No
[Travel document]: Where relevant, 3-letter code of the issuing country (*)	Optional	No
Pseudonym	Optional	No
[Alias]: Alias first name(s)	Optional	No
[Alias]: Alias surname(s)	Optional	No
[Alias]: Alias full name	Optional	No
[Alias]: Alias gender	Optional	No
[Alias]: Alias Birth place: [Place]: Country	Optional	No
[Alias]: Alias Birth place: [Place]: Town name	Optional	No
[Alias]: Alias Birth place: [Place]: Country subdivision	Optional	No
[Alias]: Alias Birth place: [Place]: Town code	Optional	No
[Alias]: Birth date	Optional	No
[Alias]: Alias nationality or nationalities	Optional	No
[Alias]: Alias Mother first name(s)	Optional	No
[Alias]: Alias Mother surname(s)	Optional	No

[Alias]: Alias Father first name(s)	Optional	No
[Alias]: Alias Father surname(s)	Optional	No
[Alias]: Alias [Identification document]: Number of the identification document	Optional	No
[Alias]: Alias [Identification document]: Type of identification document	Optional	No
[Alias]: Alias [Identification document]: Name of the issuing authority of the identification document	Optional	No
[Alias]: Alias [Identification document]: Where relevant, 3-letter code of the issuing country	Optional	No
[Alias]: Alias [Travel document]: Travel document number	Optional	No
[Alias]: Alias [Travel document]: Travel document type	Optional	No
[Alias]: Alias [Travel document]: Name of the issuing authority of the travel document	Optional	No
[Alias]: Alias [Travel document]: Where relevant, 3-letter code of the issuing country	Optional	No
Fingerprint digital images (the NIST file)	Optional	No
Reference number of fingerprint digital image	Mandatory if the fingerprint digital images are provided	No
Parameter indicating a data record created in accordance with Article 5(5) of Regulation (EU) 2019/816 (legacy data parameter)	Mandatory if the fingerprint digital images are provided	No
Flag established in accordance with Article 5(1), point (c), of Regulation (EU) 2019/816	Optional	No

(¹) N/A means 'not applicable'.

(²) The combination of the Member State Reference Code and ISO code of the convicting Member State

(³) Concerns only cases when a person has previous name(s) or surname(s), e.g. maiden name.

(⁴) Idem

(⁵) Travel document means a passport or other equivalent document entitling the holder to cross the external borders and to which a visa may be affixed, as listed in Decision 1105/2011/EU of the European Parliament and of the Council of 25 October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list (OJ L 287, 4.11.2011, p. 9).

(*) alphanumeric data element of an existing data record, which shall be compared with a respective data element of the data record to be created in accordance with Article 3(4).

II. Accessing and querying ECRIS-TCN – data model for the ‘Search a convicting Member State’ message

The competent authorities shall use the data model set out in the table below when using ECRIS-TCN to identify the Member States holding criminal records information on a third-country national in accordance with Article 7 of Regulation (EU) 2019/816.

Data element	Type of data
Requesting competent authority	Mandatory
Username of official	Mandatory
Purpose of the search message	Mandatory
Member State Reference Code	Optional
Timestamp of sending the search data from ECRIS RI or national implementation software to the ECRIS-TCN central system	Mandatory
Exact search/Inexact search	Mandatory
Surname(s) (*)	Optional
First name(s) (*)	Optional
Full name	Optional
Birth date (*)	Optional
Birth place: [Place]: country (*)	Optional
Birth place: [Place]: town name	Optional
Birth place: [Place]: Country subdivision	Optional
Birth place: [Place]: Town code	Optional
Nationality or nationalities (*)	Optional
Gender	Optional
Previous surname(s) (*)	Optional
Previous first name(s) (*)	Optional
Mother's surname(s)	Optional
Mother's first name(s)	Optional
Father's surname(s)	Optional
Father's first name(s)	Optional
Identity number (*)	Optional
[Identification document]: Identification category	Optional
[Identification document]: Identification document number	Optional
[Identification document]: Identification document type	Optional
[Identification document]: Name of the issuing authority of the identification document	Optional
[Identification document]: Where relevant, 3-letter code of the issuing country	Optional

[Travel document]: Travel document number	Optional
[Travel document]: Travel document type	Optional
[Travel document]: Name of the issuing authority of the travel document	Optional
[Travel document]: Where relevant, 3-letter code of the issuing country	Optional
Pseudonym	Optional
[Alias]: Alias first name(s) (*)	Optional
[Alias]: Alias surname(s) (*)	Optional
[Alias]: Alias full name	Optional
[Alias]: Alias gender	Optional
[Alias]: Alias Birth place: [Place]: country	Optional
[Alias]: Alias Birth place: [Place]: town name	Optional
[Alias]: Alias [Birth place: [Place]: country subdivision	Optional
[Alias]: Alias Birth place: [Place]: Town code	Optional
[Alias]: Birth date	Optional
[Alias]: Alias nationality or nationalities	Optional
[Alias]: Alias Mother first name(s)	Optional
[Alias]: Alias Mother surname(s)	Optional
[Alias]: Alias Father first name(s)	Optional
[Alias]: Alias Father surname(s)	Optional
[Alias]: Alias [Identification document]: Number of the identification document	Optional
[Alias]: Alias [Identification document]: Type of identification document	Optional
[Alias]: Alias [Identification document]: Name of the issuing authority of the identification document	Optional
[Alias]: Alias [Identification document]: Where relevant, 3-letter code of the issuing country	Optional
[Alias]: Alias [Travel document]: Travel document number	Optional
[Alias]: Alias [Travel document]: Travel document type	Optional
[Alias]: Alias [Travel document]: Name of the issuing authority of the travel document	Optional
[Alias]: Alias [Travel document]: Where relevant, 3-letter code of the issuing country	Optional
Fingerprint digital images (the NIST file)	Optional

(*) data element that might be chosen in accordance with Article 5(2) as one of the three minimum data elements for querying ECRIS-TCN system.

III. Performance requirements for ECRIS-TCN

The performance requirements for ECRIS-TCN should be better than or equal to the values listed in the table below.

Use Case	Response time based on atomic operations for 95 % of the requests	Maximum response time based on atomic operations
Create/Modify TCN data record (without fingerprints)	30 sec	60 sec
Create/Modify TCN data record (with fingerprints)	Acknowledgement: 30 sec Completion: 5 min	Acknowledgement: 60 sec Completion: 10 min
Erase TCN data record (with or without fingerprints)	30 sec	60 sec
View data record created by the same Member State (with or without fingerprints)	15 sec	30 sec
Search convicting Member State (exact search; without fingerprints)	15 sec	30 sec
Search convicting Member State (with fingerprints)	30 sec	60 sec
Search convicting Member State (inexact search; with or without fingerprints)	30 sec	60 sec
Verify the fingerprint data quality	10 sec	20 sec

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2022 OF THE JOINT EUROPEAN UNION/SWITZERLAND AIR TRANSPORT COMMITTEE SET UP UNDER THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION ON AIR TRANSPORT

of 24 November 2022

**replacing the Annex to the Agreement between the European Community and the Swiss
Confederation on Air Transport [2022/2471]**

THE EUROPEAN UNION/SWITZERLAND AIR TRANSPORT COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on Air Transport (the 'Agreement'), and in particular Article 23(4) thereof,

HAS DECIDED AS FOLLOWS:

Sole Article

The Annex to this Decision replaces the Annex to the Agreement, as from 1 January 2023.

Done at Bern and Brussels, on 24 November 2022.

For the Joint Committee

The Head of the European Union Delegation
Filip CORNELIS

The Head of the Swiss Delegation
Christian HEGNER

ANNEX

For the purposes of this Agreement:

- By virtue of the Treaty of Lisbon, entered into force on 1 December 2009, the European Union shall replace and succeed the European Community;
- Wherever acts specified in this Annex contain references to Member States of the European Community, as replaced by the European Union, or a requirement for a link with the latter, the references shall, for the purpose of the Agreement, be understood to apply equally to Switzerland or to the requirement of a link with Switzerland;
- The references to Council Regulations (EEC) No 2407/92 and No 2408/92 made in the Articles 4, 15, 18, 27 and 35 of the Agreement, shall be understood as references to Regulation (EC) No 1008/2008 of the European Parliament and of the Council;
- Without prejudice to Article 15 of this Agreement, the term "Community air carrier" referred to in the following Community directives and regulations shall include an air carrier which is licensed and has its principal place of business and, if any, its registered office in Switzerland in accordance with the provisions of Regulation (EC) No 1008/2008. Any reference to Council Regulation (EEC) No 2407/92 shall be understood as reference to Regulation (EC) N° 1008/2008;
- Any reference in the following texts to Articles 81 and 82 of the Treaty or to Articles 101 and 102 of the Treaty on the Functioning of the European Union shall be understood to mean Articles 8 and 9 of this Agreement.

1. Aviation liberalisation and other civil aviation rules

Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast), OJ L 293, 31.10.2008, p. 3, as amended by:

- Regulation (EU) 2018/1139, OJ L 212, 22.8.2018, p. 1,
- Regulation (EU) 2020/696, OJ L 165, 27.5.2020, p. 1,
- Commission Delegated Regulation (EU) 2020/2114, OJ L 426, 17.12.2020, p. 1; Regulation (EU) 2020/2114 is applicable in Switzerland in its entirety since 18.12.2020,
- Commission Delegated Regulation (EU) 2020/2115, OJ L 426, 17.12.2020, p. 4; Regulation (EU) 2020/2115 is applicable in Switzerland in its entirety since 18.12.2020.

Council Directive 2000/79 of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) (text with EEA relevance), OJ L 302, 1.12.2000, p. 57.

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

Regulation (EC) No 437/2003 of the European Parliament and of the Council of 27 February 2003 on statistical returns in respect of the carriage of passengers, freight and mail by air, OJ L 66, 11.3.2003, p. 1, amended by:

- Commission Regulation (EC) No 1358/2003, OJ L 49, 17.2.2007, p. 9.

Commission Regulation (EC) No 1358/2003 of 31 July 2003 implementing Regulation (EC) No 437/2003 of the European Parliament and of the Council on statistical returns in respect of the carriage of passengers, freight and mail by air and amending Annexes I and II thereto, OJ L 194, 1.8.2003, p. 9, as amended by:

- Commission Regulation (EC) No 158/2007, OJ L 49, 17.2.2007, p. 9.

Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators OJ L 138, 30.4.2004, p. 1, as amended by:

- Commission Regulation (EU) No 285/2010, OJ L 87, 7.4.2010, p. 19,
- Commission Delegated Regulation (EU) 2020/1118, OJ L 243, 29.7.2020, p. 1.

Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, OJ L 14, 22.1.1993, p. 1 (Articles 1-12), as amended by:

- Regulation (EC) No 793/2004, OJ L 138, 30.4.2004, p. 50,
- Regulation (EU) 2020/459, OJ L 99, 31.3.2020, p. 1,
- Commission Delegated Regulation (EU) 2020/1477, OJ L 338, 15.10.2020, p. 4,
- Regulation (EU) 2021/250, OJ L 58, 19.2.2021, p. 1; paragraphs 1 and 4 of Article 10a of Regulation (EEC) No 95/93, as amended by paragraph (6) of Article 1 of Regulation (EU) 2021/250, are applicable in Switzerland since 20.2.2021,
- Commission Delegated Regulation (EU) 2021/1889, OJ L 384, 29.10.2021, p. 20,
- Commission Delegated Regulation (EU) 2022/255, OJ L 42, 23.2.2022, p. 1.

Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (Text with EEA relevance), OJ L 70, 14.3.2009, p. 11.

Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, OJ L 272, 25.10.1996, p. 36, (Articles 1-9, 11-23, and 25).

Regulation (EC) No 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89 (text with EEA relevance), OJ L 35, 4.2.2009, p. 47.

2. Competition rules

Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4.1.2003, p. 1 (Articles 1-13, 15-45)

(To the extent that this Regulation is relevant for the application of this Agreement. The insertion of this Regulation does not affect the division of tasks according to this Agreement.)

Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Text with EEA relevance), OJ L 123, 27.4.2004, p. 18, as amended by:

- Commission Regulation (EC) No 622/2008, OJ L 171, 1.7.2008, p. 3.

Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (text with EEA relevance), OJ L 24, 29.1.2004, p. 1. (Article 1-18, 19(1)-(2), and 20-23)

With respect to Article 4 (5) of the Merger Regulation the following shall apply between the European Community and Switzerland:

- (1) With regard to a concentration as defined in Article 3 of Regulation (EC) No 139/2004 which does not have a Community dimension within the meaning of Article 1 of that Regulation and which is capable of being reviewed under the national competition laws of at least three EC Member States and the Swiss Confederation, the persons or undertakings referred to in Article 4(2) of that Regulation may, before any notification to the competent authorities, inform the EC Commission by means of a reasoned submission that the concentration should be examined by the Commission.

- (2) The European Commission shall transmit all submissions pursuant to Article 4(5) of Regulation (EC) No 139/2004 and the previous paragraph to the Swiss Confederation without delay.
- (3) Where the Swiss Confederation has expressed its disagreement as regards the request to refer the case, the competent Swiss competition authority shall retain its competence, and the case shall not be referred from the Swiss Confederation pursuant to this paragraph.

With respect to time limits referred to in Articles 4(4) and (5), Articles 9(2) and (6), and Articles 22(2) of the Merger Regulation:

- (1) The European Commission shall transmit all the relevant documents pursuant to Articles 4(4) and (5), Articles 9(2) and (6) and Article 22(2) to the competent Swiss competition authority without delay.
- (2) The calculation of the time limits referred to in Articles 4(4) and (5), Articles 9(2) and (6), and Article 22(2) of Regulation (EC) No 139/2004 shall start, for the Swiss Confederation, upon receipt of the relevant documents by the competent Swiss competition authority.

Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (text with EEA relevance), OJ L 133, 30.4.2004, p. 1 (Articles 1-24), as amended by:

- Commission Regulation (EC) No 1792/2006, OJ L 362, 20.12.2006, p. 1,
- Commission Regulation (EC) No 1033/2008, OJ L 279, 22.10.2008, p. 3,
- Commission Implementing Regulation (EU) No 1269/2013, OJ L 336, 14.12.2013, p. 1.

Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (Codified version) (text with EEA relevance), OJ L 318, 17.11.2006, p. 17.

Council Regulation (EC) No 487/2009 of 25 May 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector (codified version) (text with EEA relevance), OJ L 148, 11.6.2009, p. 1.

3. Aviation safety

Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91, OJ L 212, 22.8.2018, p. 1, as amended by:

- Commission Delegated Regulation (EU) 2021/1087, OJ L 236, 5.7.2021, p. 1.

The Agency shall enjoy also in Switzerland the powers granted to it under the provisions of the Regulation.

The Commission shall enjoy also in Switzerland the powers granted to it for decisions pursuant to Article 2(6),(7), Article 41(6), Article 62(5), Article 67(2),(3), Article 70(4), Article 71(2), Article 76(4), Article 84(1), Article 85(9), Article 104(3)(i), Article 105(1) and Article 106(1),(6).

Notwithstanding the horizontal adaptation provided for in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the “Member States” made in the provisions of Regulation (EU) No 182/2011 mentioned in Article 127 of Regulation (EU) 2018/1139 shall not be understood to apply to Switzerland.

Nothing in this Regulation shall be construed so as to transfer to the EASA authority to act on behalf of Switzerland under international agreements for other purposes than to assist in the performance of its obligations pursuant to such agreements.

The text of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) Article 68 is amended as follows:

- (i) in paragraph 1(a), the words "or Switzerland" shall be inserted after the words "the Union";
- (ii) the following paragraph is added:

"4. Whenever the Union negotiates with a third country in order to conclude an agreement providing that a Member State or the Agency may issue certificates on the basis of certificates issued by the aeronautical authorities of that third country, it shall endeavour to obtain for Switzerland an offer of a similar agreement with the third country in question. Switzerland shall, in turn, endeavour to conclude with third countries agreements corresponding to those of the Union".

(b) In Article 95, the following paragraph shall be added:

"3. By way of derogation from Article 12(2)(a) of the Conditions of Employment of Other Servants of the European Union, Swiss nationals enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency."

(c) In Article 96, the following paragraph is added:

"Switzerland shall apply to the Agency the Protocol on the Privileges and Immunities of the European Union, which is set out as Annex A to the present Annex, in accordance with the Appendix to Annex A."

(d) In Article 102, the following paragraph is added:

"5. Switzerland shall participate fully in the Management Board and shall within it have the same rights and obligations as European Union Member States, except for the right to vote".

(e) In Article 120, the following paragraph shall be added:

"13. Switzerland shall participate in the financial contribution referred to in paragraph 1(b), according to the following formula:

$$S (0.2/100) + S [1 - (a+b) 0.2/100] c/C$$

where:

- S = the part of the budget of the Agency not covered by the fees and charges mentioned in paragraph 1 (c) and (d)
- a = the number of Associated States
- b = the number of EU Member States
- c = the contribution of Switzerland to the ICAO budget,
- C = the total contribution of the EU Member States and of the Associated States to the ICAO budget."

(f) In Article 122, the following paragraph is added:

"6. The provisions relating to financial control by the Union in Switzerland concerning the participants in the activities of the Agency are set out in Annex B to the present Annex."

- (g) Annex I to the Regulation shall be extended to include the following aircraft as products covered by Article 3(1)(a) of Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations ⁽¹⁾:

A/c - [HB-JES] – type Gulfstream G-V

A/c - [HB-ZDF] – type MD900.

- (h) In Article 132(1), the reference to Regulation (EU) 2016/679 shall be understood, regarding Switzerland, as a reference to relevant national legislation.

- (i) Article 140(6) does not apply to Switzerland.

Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 311, 25.11.2011, p. 1, as amended by:

- Commission Regulation (EU) No 290/2012, OJ L 100, 5.4.2012, p. 1,
- Commission Regulation (EU) No 70/2014, OJ L 23, 28.1.2014, p. 25,
- Commission Regulation (EU) No 245/2014, OJ L 74, 14.3.2014, p. 33,
- Commission Regulation (EU) 2015/445, OJ L 74, 18.3.2015, p. 1,
- Commission Regulation (EU) 2016/539, OJ L 91, 7.4.2016, p. 1,
- Commission Regulation (EU) 2018/1065, OJ L 192, 30.7.2018, p. 21,
- Commission Regulation (EU) 2018/1119, OJ L 204, 13.8.2018, p. 13,
- Commission Regulation (EU) 2018/1974, OJ L 326, 20.12.2018, p. 1,
- Commission Regulation (EU) 2019/27, OJ L 8, 10.1.2019, p. 1,
- Commission Implementing Regulation (EU) 2019/430, OJ L 75, 19.3.2019, p. 66,
- Commission Implementing Regulation (EU) 2019/1747, OJ L 268, 22.10.2019, p. 23,
- Commission Implementing Regulation (EU) 2020/359, OJ L 67, 5.3.2020, p. 82,
- Commission Delegated Regulation (EU) 2020/723, OJ L 170, 2.6.2020, p. 1,
- Commission Implementing Regulation (EU) 2020/2193, OJ L 434, 23.12.2020, p. 13,
- Commission Implementing Regulation (EU) 2021/1310, OJ L 284, 9.8.2021, p. 15,
- Commission Implementing Regulation (EU) 2021/2227, OJ L 448, 15.12.2021, p. 39,
- Commission Implementing Regulation (EU) 2022/844, OJ L 148, 31.5.2022, p. 24.

Commission Delegated Regulation (EU) 2020/723 of 4 March 2020 laying down detailed rules with regard to the acceptance of third-country certification of pilots and amending Regulation (EU) No 1178/2011, OJ L 170, 2.6.2020, p. 1.

Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation, OJ L 373, 31.12.1991, p. 4 (Articles 1-3, 4(2), (5-11, and 13), as amended by:

- Regulation (EC) No 1899/2006, OJ L 377, 27.12.2006, p. 1,
- Regulation (EC) No 1900/2006, OJ L 377, 27.12.2006, p. 176,
- Commission Regulation (EC) No 8/2008, OJ L 10, 12.1.2008, p. 1,
- Commission Regulation (EC) No 859/2008, OJ L 254, 20.9.2008, p. 1.

⁽¹⁾ OJ L 224, 21.8.2012, p. 1.

In Accordance with Article 139 of Regulation (EU) 2018/1139, Regulation (EEC) No 3922/91 is repealed from the date of application of the detailed rules adopted pursuant to point (a) of Article 32(1) of Regulation (EU) 2018/1139 on flight and duty time limitations and rest requirements with regard to air taxi, emergency medical service and single pilot commercial air transport operations by aeroplanes.

Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (text with EEA relevance), OJ L 295, 12.11.2010, p. 35, as amended by:

— Regulation (EU) No 376/2014, OJ L 122, 24.4.2014, p. 18,

— Regulation (EU) 2018/1139, OJ L 212, 22.8.2018, p. 1.

Commission Regulation (EC) No 104/2004 of 22 January 2004 laying down rules on the organisation and composition of the Board of Appeal of the European Aviation Safety Agency, OJ L 16, 23.1.2004, p. 20.

Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of directive 2004/36/EC (text with EEA relevance), OJ L 344, 27.12.2005, p. 15, as amended by:

— Regulation (EU) 2018/1139, OJ L 212, 22.8.2018, p. 1.

Commission Regulation (EC) No 473/2006 of 22 March 2006 laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (text with EEA relevance), OJ L 84, 23.3.2006, p. 8.

Commission Regulation (EC) No 474/2006 of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council, OJ L 84, 23.3.2006, p. 14, as last amended by:

— Commission Implementing Regulation (EU) 2022/862, OJ L 151, 2.6.2022, p. 45.

Commission Regulation (EU) No 1332/2011 of 16 December 2011 laying down common airspace usage requirements and operating procedures for airborne collision avoidance (text with EEA relevance), OJ L 336, 20.12.2011, p. 20, as amended by:

— Commission Regulation (EU) 2016/583, OJ L 101, 16.4.2016, p. 7.

Commission Implementing Regulation (EU) No 646/2012 of 16 July 2012 laying down detailed rules on fines and periodic penalty payments pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (text with EEA relevance), OJ L 187, 17.7.2012, p. 29.

Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, OJ L 224, 21.8.2012, p. 1, as amended by:

— Commission Regulation (EU) No 7/2013, OJ L 4, 9.1.2013, p. 36,

— Commission Regulation (EU) No 69/2014, OJ L 23, 28.1.2014, p. 12,

— Commission Regulation (EU) 2015/1039, OJ L 167, 1.7.2015, p. 1,

— Commission Regulation (EU) 2016/5, OJ L 3, 6.1.2016, p. 3,

— Commission Delegated Regulation (EU) 2019/897, OJ L 144, 3.6.2019, p. 1,

— Commission Delegated Regulation (EU) 2020/570, OJ L 132, 27.4.2020, p. 1,

— Commission Delegated Regulation (EU) 2021/699, OJ L 145, 28.4.2021, p. 1,

- Commission Delegated Regulation (EU) 2021/1088, OJ L 236, 5.7.2021, p. 3,
- Commission Delegated Regulation (EU) 2022/201, OJ L 33, 15.2.2022, p. 7,
- Commission Implementing Regulation (EU) 2022/203, OJ L 33, 15.2.2022, p. 46.

Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 296, 25.10.2012, p. 1, as amended by:

- Commission Regulation (EU) No 800/2013, OJ L 227, 24.8.2013, p. 1,
- Commission Regulation (EU) No 71/2014, OJ L 23, 28.1.2014, p. 27,
- Commission Regulation (EU) No 83/2014, OJ L 28, 31.1.2014, p. 17,
- Commission Regulation (EU) No 379/2014, OJ L 123, 24.4.2014, p. 1,
- Commission Regulation (EU) 2015/140, OJ L 24, 30.1.2015, p. 5,
- Commission Regulation (EU) 2015/1329, OJ L 206, 1.8.2015, p. 21,
- Commission Regulation (EU) 2015/640, OJ L 106, 24.4.2015, p. 18,
- Commission Regulation (EU) 2015/2338, OJ L 330, 16.12.2015, p. 1,
- Commission Regulation (EU) 2016/1199, OJ L 198, 23.7.2016, p. 13,
- Commission Regulation (EU) 2017/363, OJ L 55, 2.3.2017, p. 1,
- Commission Regulation (EU) 2018/394, OJ L 71, 14.3.2018, p. 1,
- Commission Regulation (EU) 2018/1042, OJ L 188, 25.7.2018, p. 3, as amended by:
 - Commission Implementing Regulation (EU) 2020/745, OJ L 176, 5.6.2020, p. 11,
- Commission Implementing Regulation (EU) 2018/1975, OJ L 326, 20.12.2018, p. 53,
- Commission Implementing Regulation (EU) 2019/1387, OJ L 229, 5.9.2019, p. 1, as amended by:
 - Commission Implementing Regulation (EU) 2020/1176, OJ L 259, 10.8.2020, p. 10,
- Commission Implementing Regulation (EU) 2019/1384, OJ L 228, 4.9.2019, p. 106,
- Commission Implementing Regulation (EU) 2020/2036, OJ L 416, 11.12.2020, p. 24; paragraphs 4 to 6 of the Annex to Regulation (EU) 2020/2036 are applicable in Switzerland since 31.12.2020,
- Commission Implementing Regulation (EU) 2021/1062, OJ L 229, 29.6.2021, p. 3,
- Commission Implementing Regulation (EU) 2021/1296, OJ L 282, 5.8.2021, p. 5,
- Commission Implementing Regulation (EU) 2021/2237, OJ L 450, 16.12.2021, p. 21,
- Commission Implementing Regulation (EU) 2022/414, OJ L 85, 14.3.2022, p. 4,
- Commission Implementing Regulation (EU) 2022/790, OJ L 141, 20.5.2022, p. 13.

Commission Implementing Regulation (EU) No 628/2013 of 28 June 2013 on working methods of the European Aviation Safety Agency for conducting standardisation inspections and for monitoring the application of the rules of Regulation (EC) No 216/2008 of the European Parliament and of the Council and repealing Commission Regulation (EC) No 736/2006 (text with EEA relevance), OJ L 179, 29.6.2013, p. 46.

Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (text with EEA relevance), OJ L 44, 14.2.2014, p. 1, as amended by:

- Commission Regulation (EU) 2017/161, OJ L 27, 1.2.2017, p. 99,
- Commission Regulation (EU) 2018/401, OJ L 72, 15.3.2018, p. 17,

- Commission Implementing Regulation (EU) 2020/469, OJ L 104, 3.4.2020, p. 1, as amended by:
 - Commission Implementing Regulation (EU) 2020/1177, OJ L 259, 10.8.2020, p. 12,
- Commission Delegated Regulation (EU) 2020/1234, OJ L 282, 31.8.2020, p. 1,
- Commission Delegated Regulation (EU) 2020/2148, OJ L 428, 18.12.2020, p. 10,
- Commission Delegated Regulation (EU) 2022/208, OJ L 35, 17.2.2022, p. 1,
- Commission Delegated Regulation (EU) 2022/697, OJ L 130, 4.5.2022, p. 1.

Commission Implementing Regulation (EU) 2019/2153 of 16 December 2019 on the fees and charges levied by the European Union Aviation Safety Agency, and repealing Regulation (EU) No 319/2014, OJ L 327, 17.12.2019, p. 36.

Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007 (text with EEA relevance), OJ L 122, 24.4.2014, p. 18, as amended by:

- Regulation (EU) 2018/1139, OJ L 212, 22.8.2018, p. 1.

Commission Implementing Regulation (EU) 2021/2082 of 26 November 2021 laying down the arrangements for the implementation of Regulation (EU) No 376/2014 of the European Parliament and of the Council as regards the common European risk classification scheme, OJ L 426, 29.11.2021, p. 32.

Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (text with EEA relevance), OJ L 133, 6.5.2014, p. 12, as amended by:

- Commission Regulation (EU) 2016/1158, OJ L 192, 16.7.2016, p. 21.

Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (text with EEA relevance), OJ L 362, 17.12.2014, p. 1, as amended by:

- Commission Regulation (EU) 2015/1088, OJ L 176, 7.7.2015, p. 4,
- Commission Regulation (EU) 2015/1536, OJ L 241, 17.9.2015, p. 16,
- Commission Regulation (EU) 2017/334, OJ L 50, 28.2.2017, p. 13,
- Commission Regulation (EU) 2018/750, OJ L 126, 23.5.2018, p. 1,
- Commission Regulation (EU) 2018/1142, OJ L 207, 16.8.2018, p. 2,
- Commission Implementing Regulation (EU) 2019/1383, OJ L 228, 4.9.2019, p. 1,
- Commission Implementing Regulation (EU) 2019/1384, OJ L 228, 4.9.2019, p. 106,
- Commission Implementing Regulation (EU) 2020/270, OJ L 56, 27.2.2020, p. 20,
- Commission Implementing Regulation (EU) 2020/1159, OJ L 257, 6.8.2020, p. 14,
- Commission Implementing Regulation (EU) 2021/685, OJ L 143, 27.4.2021, p. 6,
- Commission Implementing Regulation (EU) 2021/700, OJ L 145, 28.4.2021, p. 20; point (1) of Article 1 and points (5), (6) and (8) of Annex I of Regulation (EU) 2021/700 are applicable in Switzerland since 18.05.2021,
- Commission Implementing Regulation (EU) 2021/1963, OJ L 400, 12.11.2021, p. 18,
- Commission Implementing Regulation (EU) 2022/410, OJ L 84, 11.3.2022, p. 20.

Commission Regulation (EU) 2015/340 of 20 February 2015 laying down technical requirements and administrative procedures relating to air traffic controllers' licences and certificates pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, amending Commission Implementing Regulation (EU) No 923/2012 and repealing Commission Regulation (EU) No 805/2011 (text with EEA relevance), OJ L 63, 6.3.2015, p. 1.

Commission Regulation (EU) 2015/640 of 23 April 2015 on additional airworthiness specifications for a given type of operations and amending Regulation (EU) No 965/2012, OJ L 106, 24.4.2015, p. 18, as amended by:

- Commission Implementing Regulation (EU) 2019/133, OJ L 25, 29.1.2019, p. 14,
- Commission Implementing Regulation (EU) 2020/1159, OJ L 257, 6.8.2020, p. 14,
- Commission Implementing Regulation (EU) 2021/97, OJ L 31, 29.1.2021, p. 208; article 1 of Regulation (EU) 2021/97 is applicable in Switzerland since 26.02.2021, except for point (1) of Annex I, which is applicable in Switzerland since 16.02.2021.

Commission Implementing Regulation (EU) 2015/1018 of 29 June 2015 laying down a list classifying occurrences in civil aviation to be mandatorily reported according to Regulation (EU) No 376/2014 of the European Parliament and of the Council (text with EEA relevance), OJ L 163, 30.6.2015, p. 1, as amended by:

- Commission Implementing Regulation (EU) 2022/3, OJ L 1, 5.1.2022, p. 3.

Commission Decision (EU) 2016/2357 of 19 December 2016 regarding the lack of effective compliance with Regulation (EC) No 216/2008 of the European Parliament and of the Council and its implementing rules in respect of certificates issued by the Hellenic Aviation Training Academy (HATA), and Part-66 licenses issued on the basis thereof (notified under document C(2016) 8645), OJ L 348, 21.12.2016, p. 72.

Commission Regulation (EU) 2018/395 of 13 March 2018 laying down detailed rules for the operation of balloons as well as for the flight crew licensing for balloons pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council, OJ L 71, 14.3.2018, p. 10, as amended by:

- Commission Implementing Regulation (EU) 2020/357, OJ L 67, 5.3.2020, p. 34,
- Commission Implementing Regulation (EU) 2021/1874, OJ L 378, 26.10.2021, p. 4.

Commission Implementing Regulation (EU) 2018/1976 of 14 December 2018 laying down detailed rules for the operation of sailplanes as well as for the flight crew licensing for sailplanes pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council, OJ L 326, 20.12.2018, p. 64, as amended by:

- Commission Implementing Regulation (EU) 2020/358, OJ L 67, 5.3.2020, p. 57,
- Commission Implementing Regulation (EU) 2021/1874, OJ L 378, 26.10.2021, p. 4.

Regulation (EU) 2019/494 of the European Parliament and of the Council of 25 March 2019 on certain aspects of aviation safety with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union (text with EEA relevance), OJ L 85 I, 27.3.2019, p. 11.

Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems, OJ L 152, 11.6.2019, p. 1, as amended by:

- Commission Delegated Regulation (EU) 2020/1058 of 27 April 2020, OJ L 232, 20.7.2020, p. 1,
- Commission Delegated Regulation (EU) 2022/851 of 22 March 2022, OJ L 150, 1.6.2022, p. 21.

Insofar as products listed in Article 2(1) of Regulation (EU) 2019/945 are concerned, Switzerland shall apply the acts referred to in that Regulation as they are included in this Annex, including as set out below, it moreover being understood that the second indent of the Annex shall apply also to these acts:

- Regulation (EC) No 765/2008 ⁽²⁾, as referred to in Articles 3 point (9), 15, 19(2), 39(1)(a) of Regulation (EU) 2019/945,
- Regulation (EU) No 1025/2012 ⁽³⁾, as referred to in Articles 3 point (20) and 37(3) of Regulation (EU) 2019/945,
- Directive 2009/48/EC ⁽⁴⁾, as referred to in Articles 4(2) and 13(2)(c) as well as point (10) of Part 1 of the Annex to Regulation (EU) 2019/945,
- Directive 2006/42/EC ⁽⁵⁾, as referred to in Article 4(2) of Regulation (EU) 2019/945, including:
 - Directive 73/23/EEC ⁽⁶⁾, as referred to in Article 1(2)(k) of Directive 2006/42/EC and paragraph 1.5.1 of Annex I thereto, bearing in mind that Directive 73/23/EEC has been repealed and the references thereto are to be construed as references to the relevant provisions of Directive 2014/35/EU ⁽⁷⁾,
- Regulation (EU) 2019/1020 ⁽⁸⁾, including the references thereto in Article 5(3) of Regulation (EU) 2019/945 and in Articles 35 and 36(1) thereof, bearing in mind that references to the deleted provisions of Regulation (EC) No 765/2008 are to be construed as references to the relevant provisions of Regulation (EU) 2019/1020 ⁽⁹⁾, and including as well:
 - Regulation (EU) 2019/515 ⁽¹⁰⁾, as referred to in Article 8(2) of Regulation (EU) 2019/1020, insofar as product contact points are concerned,
 - Regulation (EC) No 765/2008, as referred to in Article 11(5) of Regulation (EU) 2019/1020,
 - Directive 2001/95/EC ⁽¹¹⁾, as referred to in Articles 20(4) and 34(4) of Regulation (EU) 2019/1020.

⁽²⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, OJ L 218, 13.8.2008, p. 30, as amended by Regulation (EU) 2019/1020, OJ L 169, 25.6.2019, p. 1.

⁽³⁾ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council, OJ L 316, 14.11.2012, p. 12, as last amended by Directive (EU) 2015/1535, OJ L 241, 17.9.2015, p. 1.

⁽⁴⁾ Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys, OJ L 170, 30.6.2009, p. 1, as last amended by Commission Directive (EU) 2021/903, OJ L 197, 4.6.2021, p. 110.

⁽⁵⁾ Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (recast), OJ L 157, 9.6.2006, p. 24, as last amended by Regulation (EU) 2019/1243, OJ L 198, 25.7.2019, p. 241.

⁽⁶⁾ Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits, OJ L 77, 26.3.1973, p. 29, as repealed by

— Directive 2006/95/EC of the European Parliament and of the Council of 12 December 2006, OJ L 374, 27.12.2006, p. 10, as repealed by

— Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014, OJ L 96, 29.3.2014, p. 357.

⁽⁷⁾ Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits, OJ L 96, 29.3.2014, p. 357.

⁽⁸⁾ Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011, OJ L 169, 25.6.2019, p. 1.

⁽⁹⁾ See Article 39 of Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011.

⁽¹⁰⁾ Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008, OJ L 91, 29.3.2019, p. 1.

⁽¹¹⁾ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, OJ L 11, 15.1.2002, p. 4, as last amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council, OJ L 188, 18.7.2009, p. 14.

References made to the "Union" in Articles 1(1) (last part of the sentence), 3 point (1), 3 point (2), 3 point (9), 3 point (12) (first part of the sentence), 3 point (21), 4(1) (last part of the sentence), 4(2)(a), 4(2)(b), 4(2)(d), 5(2), 6, 21(1) (last part of the sentence), 29(2), 31(2)(p) of Regulation (EU) 2019/1020 shall be understood to equally apply to Switzerland.

References to Union law in Articles 14(2) and 17 of Regulation (EU) 2019/1020 shall be understood, regarding Switzerland, as referring to its relevant national legislation.

References made to the "Union" in Articles 1(2), 2(3), 3 point (14), 3 point (15), 3 point (18), 3 point (19), 6(1), 7(2)(a), 8(1), 8(2), 9(1), 35(1), 36(3), 38(2), 41(3) and in the first reference in the title of Section 5 of Regulation (EU) 2019/945 shall be understood to equally apply to Switzerland.

Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 on the rules and procedures for the operation of unmanned aircraft, OJ L 152, 11.6.2019, p. 45, as amended by:

- Commission Implementing Regulation (EU) 2020/639 of 12 May 2020, OJ L 150, 13.5.2020, p. 1,
- Commission Implementing Regulation (EU) 2020/746 of 4 June 2020, OJ L 176, 5.6.2020, p. 13,
- Commission Implementing Regulation (EU) 2021/1166 of 15 July 2021, OJ L 253, 16.7.2021, p. 49,
- Commission Implementing Regulation (EU) 2022/425 of 14 March 2022, OJ L 87, 15.3.2022, p. 20,
- Commission Implementing Regulation (EU) 2022/525 of 1 April 2022, OJ L 105, 4.4.2022, p. 3.

Insofar as unmanned aircraft systems are concerned, Switzerland shall apply the acts referred to in Regulation (EU) 2019/947 as they are included in this Annex, including as set out below, it moreover being understood that the second indent of the Annex shall apply also to these acts:

- Directive 2009/48/EC ⁽¹²⁾, as referred to in Articles 9(2)(a) and 14(5)(a)(ii) of Regulation (EU) 2019/947.

The reference made to Regulation (EU) 2016/679 ⁽¹³⁾ in UAS.SPEC.050 point (1)(a)(iv) of Part B of the Annex to Regulation (EU) 2019/947 shall be understood, regarding Switzerland, as referring to its relevant national legislation.

Commission Implementing Decision (EU) 2019/1128 of 1 July 2019 on access rights to safety recommendations and responses stored in the European Central Repository and repealing Decision 2012/780/EU (Text with EEA relevance), OJ L 177, 2.7.2019, p. 112.

Commission Delegated Regulation (EU) 2020/2034 of 6 October 2020 supplementing Regulation (EU) No 376/2014 of the European Parliament and of the Council as regards the common European risk classification scheme (Text with EEA relevance), OJ L 416, 11.12.2020, p. 1.

Commission implementing Regulation (EU) 2021/664 of 22 April 2021 on a regulatory framework for the U-space, OJ L 139, 23.4.2021, p. 161.

4. Aviation Security

Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (text with EEA relevance), OJ L 97, 9.4.2008, p. 72, as amended by:

- Commission Regulation (EU) No 18/2010, OJ L 7, 12.1.2010, p. 3.

⁽¹²⁾ Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys, OJ L 170, 30.6.2009, p. 1, as last amended by Commission Directive (EU) 2021/903, OJ L 197, 4.6.2021, p. 110.

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

Commission Regulation (EC) No 272/2009 of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council, OJ L 91, 3.4.2009, p. 7, as amended by:

- Commission Regulation (EU) No 297/2010, OJ L 90, 10.4.2010, p. 1,
- Commission Regulation (EU) No 720/2011, OJ L 193, 23.7.2011, p. 19,
- Commission Regulation (EU) No 1141/2011, OJ L 293, 11.11.2011, p. 22,
- Commission Regulation (EU) No 245/2013, OJ L 77, 20.3.2013, p. 5.

Commission Regulation (EU) No 1254/2009 of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures (text with EEA relevance), OJ L 338, 19.12.2009, p. 17, as amended by:

- Commission Regulation (EU) 2016/2096, OJ L 326, 1.12.2016, p. 7.

Commission Regulation (EU) No 72/2010 of 26 January 2010 laying down procedures for conducting Commission inspections in the field of aviation security (text with EEA relevance), OJ L 23, 27.1.2010, p. 1, as amended by:

- Commission Implementing Regulation (EU) 2016/472, OJ L 85, 1.4.2016, p. 28.

Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security (text with EEA relevance), OJ L 299, 14.11.2015, p. 1, as amended by:

- Commission Implementing Regulation (EU) 2015/2426, OJ L 334, 22.12.2015, p. 5,
- Commission Implementing Regulation (EU) 2017/815, OJ L 122, 13.5.2017, p. 1,
- Commission Implementing Regulation (EU) 2018/55, OJ L 10, 13.1.2018, p. 5,
- Commission Implementing Regulation (EU) 2019/103, OJ L 21, 24.1.2019, p. 13, as amended by:
 - Commission Implementing Regulation (EU) 2020/910, OJ L 208, 1.7.2020, p. 43,
- Commission Implementing Regulation (EU) 2019/413, OJ L 73, 15.3.2019, p. 98,
- Commission Implementing Regulation (EU) 2019/1583, OJ L 246, 26.9.2019, p. 15, as amended by:
 - Commission Implementing Regulation (EU) 2020/910, OJ L 208, 1.7.2020, p. 43.
- Commission Implementing Regulation (EU) 2020/111, OJ L 21, 27.1.2020, p. 1,
- Commission Implementing Regulation (EU) 2020/910, OJ L 208, 1.7.2020, p. 43,
- Commission Implementing Regulation (EU) 2021/255, OJ L 58, 19.2.2021, p. 23; points 15, 18 to 19 and 32 of the Annex to Regulation (EU) 2021/255 are applicable in Switzerland since 11.03.2021,
- Commission Implementing Regulation (EU) 2022/421, OJ L 87, 15.3.2022, p. 1,
- Commission Implementing Regulation (EU) 2022/463, OJ L 94, 23.3.2022, p. 3,
- Commission Implementing Regulation (EU) 2022/1174, OJ L 183, 8.7.2022, p. 35 with the exception of the new point 11.1.1 (b) of the Annex of Regulation (EU) 2015/1998, as provided for in Number 35 of the Annex of Regulation (EU) 2022/1174.

Commission Implementing Decision C(2015) 8005 of 16 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security containing information, as referred to in point (a) of Article 18 of Regulation (EC) No 300/2008 (not published in the OJ) as amended by:

- Commission Implementing Decision C(2017) 3030,
- Commission Implementing Decision C(2018) 4857,

— Commission Implementing Decision C(2019) 132, as amended by:

— Commission Implementing Decision C(2020) 4241,

— Commission Implementing Decision C(2021) 0996,

— Commission Implementing Decision C(2022) 4638.

Commission Decision (EU) 2021/2147 of 3 December 2021 on the approval of civil aviation security equipment with 'EU Stamp' marking, OJ L 433, 6.12.2021, p. 25.

5. Air traffic management

Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the Single European Sky (the Framework Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 1, as amended by:

— Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 6, 8, 10, 11 and 12.

Article 10 shall be amended as follows:

In paragraph 2, the words "at Community level" should be replaced by words "at Community level, involving Switzerland".

Notwithstanding the horizontal adjustment referred to in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the "Member States" made in Article 5 of Regulation (EC) No 549/2004 or in the provisions of Decision 1999/468/EC mentioned in that provision shall not be understood to apply to Switzerland.

Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky (the Service Provision Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 10, as amended by:

— Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy towards Switzerland the powers granted to it pursuant to Articles 9a, 9b, 15, 15a, 16 and 17.

The provisions of the Regulation shall, for the purposes of this Agreement, be amended as follows:

(a) Article 3 shall be amended as follows:

In paragraph 2, the words "and Switzerland" shall be inserted after the words "the Community".

(b) Article 7 is amended as follows:

In paragraph 1 and paragraph 6, the words "and Switzerland" shall be inserted after the words "the Community".

(c) Article 8 is amended as follows:

In paragraph 1, the words "and Switzerland" shall be inserted after the words "the Community".

(d) Article 10 is amended as follows:

In paragraph 1, the words "and Switzerland" shall be inserted after the words "the Community".

(e) Article 16(3) is replaced by the following:

"3. The Commission shall address its decision to the Member States and inform the service provider thereof, in so far as it is legally concerned."

Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the Single European Sky (the Airspace Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 20, as amended by:

— Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 3a, 6 and 10.

Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the Interoperability Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 26, as amended by:

— Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 4, 7 and 10(3).

The provisions of the Regulation shall, for the purposes of this Agreement, be amended as follows:

(a) Article 5 is amended as follows:

In paragraph 2, the words "or Switzerland" shall be inserted after the words "the Community".

(b) Article 7 is amended as follows:

In paragraph 4, the words "or Switzerland" shall be inserted after the words "the Community".

(c) Annex III shall be amended as follows:

In section 3, second and last indents, the words "or Switzerland" shall be inserted after the words "the Community".

In accordance with Article 139 of Regulation (EU) 2018/1139, Regulation (EC) No 552/2004 is repealed with effect from 11 September 2018. However, Articles 4, 5, 6, 6a and 7 of that Regulation and Annexes III and IV thereto shall continue to apply until the date of application of the delegated acts referred to in Article 47 of Regulation 2018/1139 and insofar as those acts cover the subject matter of the relevant provisions of Regulation (EC) No 552/2004, and in any case not later than 12 September 2023.

Commission Regulation (EC) No 2150/2005 of 23 December 2005 laying down common rules for the flexible use of airspace (text with EEA relevance), OJ L 342, 24.12.2005, p. 20.

Commission Regulation (EC) No 1033/2006 of 4 July 2006 laying down the requirements on procedures for flight plans in the pre-flight phase for the Single European Sky (text with EEA relevance), OJ L 186, 7.7.2006, p. 46, as amended by:

— Commission Implementing Regulation (EU) No 923/2012, OJ L 281, 13.10.2012, p. 1,

— Commission Implementing Regulation (EU) No 428/2013, OJ L 127, 9.5.2013, p. 23,

— Commission Implementing Regulation (EU) 2016/2120, OJ L 329, 3.12.2016, p. 70,

— Commission Implementing Regulation (EU) 2018/139, OJ L 25, 30.1.2018, p. 4.

Commission Regulation (EC) No 1032/2006 of 6 July 2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units (text with EEA relevance), OJ L 186, 7.7.2006, p. 27, as amended by:

— Commission Regulation (EC) No 30/2009, OJ L 13, 17.1.2009, p. 20.

Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR), OJ L 64, 2.3.2007, p. 1, as amended by:

— Council Regulation (EC) No 1361/2008, OJ L 352, 31.12.2008, p. 12,

— Council Regulation (EU) No 721/2014, OJ L 192, 1.7.2014, p. 1.

Commission Regulation (EC) No 633/2007 of 7 June 2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units (text with EEA relevance), OJ L 146, 8.6.2007, p. 7, as amended by:

— Commission Regulation (EU) No 283/2011, OJ L 77, 23.3.2011, p. 23.

Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (text with EEA relevance), OJ L 62, 8.3.2017, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2020/469, OJ L 104, 3.4.2020, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2020/1177, OJ L 259, 10.8.2020, p. 12,

— Commission Implementing Regulation (EU) 2021/665, OJ L 139, 23.4.2021, p. 184,

— Commission Implementing Regulation (EU) 2021/1338, OJ L 289, 12.8.2021, p. 12.

Commission Regulation (EC) No 29/2009 of 16 January 2009 laying down requirements on data link services for the Single European Sky (text with EEA relevance), OJ L 13, 17.1.2009, p. 3, as amended by:

— Commission Implementing Regulation (EU) 2015/310, OJ L 56, 27.2.2015, p. 30,

— Commission Implementing Regulation (EU) 2019/1170, OJ L 183, 9.7.2019, p. 6,

— Commission Implementing Regulation (EU) 2020/208, OJ L 43, 17.2.2020, p. 72.

The text of the Regulation shall, for the purposes of this Agreement, be read with the following adaptation:

"Switzerland UIR" is added in Annex I, part A.

Commission Regulation (EC) No 262/2009 of 30 March 2009 laying down requirements for the coordinated allocation and use of Mode S interrogator codes for the Single European Sky (text with EEA relevance), OJ L 84, 31.3.2009, p. 20, as amended by:

— Commission Implementing Regulation (EU) 2016/2345, OJ L 348, 21.12.2016, p. 11.

Commission Regulation (EU) No 255/2010 of 25 March 2010 laying down common rules on air traffic flow management (text with EEA relevance), OJ L 80, 26.3.2010, p. 10, as amended by:

— Commission Implementing Regulation (EU) No 923/2012, OJ L 281, 13.10.2012, p. 1,

— Commission Implementing Regulation (EU) 2016/1006, OJ L 165, 23.6.2016, p. 8,

— Commission Implementing Regulation (EU) 2017/2159, OJ L 304, 21.11.2017, p. 45.

Commission Decision No C(2010)5134 of 29 July 2010 on the designation of the Performance Review Body of the Single European Sky (not published in the OJ).

Commission Regulation (EU) No 176/2011 of 24 February 2011 on the information to be provided before the establishment and modification of a functional airspace block, OJ L 51, 25.2.2011, p. 2.

Commission Decision No C(2011) 4130 of 7 July 2011 on the nomination of the Network Manager for the air traffic management (ATM) network functions of the single European sky (text with EEA relevance) (not published in the OJ).

Commission Implementing Regulation (EU) No 1206/2011 of 22 November 2011 laying down requirements on aircraft identification for surveillance for the single European sky (text with EEA relevance), OJ L 305, 23.11.2011, p. 23, as amended by:

— Commission Implementing Regulation (EU) 2020/587, OJ L 138, 30.4.2020, p. 1.

The text of Implementing Regulation (EU) No 1206/2011 shall, for the purposes of this Agreement, be read with the following adaptation:

"Switzerland UIR" is added in Annex I.

Commission Implementing Regulation (EU) No 1207/2011 of 22 November 2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky (text with EEA relevance), OJ L 305, 23.11.2011, p. 35, as amended by:

- Commission Implementing Regulation (EU) No 1028/2014, OJ L 284, 30.9.2014, p. 7,
- Commission Implementing Regulation (EU) 2017/386, OJ L 59, 7.3.2017, p. 34,
- Commission Implementing Regulation (EU) 2020/587, OJ L 138, 30.4.2020, p. 1,
- Commission Implementing Regulation (EU) 2022/2, OJ L 1, 5.1.2022, p. 1.

Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 (text with EEA relevance), OJ L 281, 13.10.2012, p. 1, as amended by:

- Commission Regulation (EU) 2015/340, OJ L 63, 6.3.2015, p. 1,
- Commission Implementing Regulation (EU) 2016/1185, OJ L 196, 21.7.2016, p. 3,
- Commission Implementing Regulation (EU) 2017/835, OJ L 124, 17.5.2017, p. 35,
- Commission Implementing Regulation (EU) 2020/469, OJ L 104, 3.4.2020, p. 1, as amended by:
 - Commission Implementing Regulation (EU) 2020/1177, OJ L 259, 10.8.2020, p. 12,
- Commission Implementing Regulation (EU) 2020/886, OJ L 205, 29.6.2020, p. 14,
- Commission Implementing Regulation (EU) 2021/666, OJ L 139, 23.4.2021, p. 187.

Commission Implementing Regulation (EU) No 1079/2012 of 16 November 2012 laying down requirements for voice channels spacing for the single European sky (text with EEA relevance), OJ L 320, 17.11.2012, p. 14, as amended by:

- Commission Implementing Regulation (EU) No 657/2013, OJ L 190, 11.7.2013, p. 37,
- Commission Implementing regulation (EU) 2016/2345, OJ L 348 , 21.12.2016, p. 11,
- Commission Implementing Regulation (EU) 2017/2160, OJ L 304, 21.11.2017, p. 47.

Commission Implementing Regulation (EU) No 409/2013 of 3 May 2013 on the definition of common projects, the establishment of governance and the identification of incentives supporting the implementation of the European Air Traffic Management Master Plan (text with EEA relevance), OJ L 123, 4.5.2013, p. 1, as amended by:

- Commission Implementing Regulation (EU) 2021/116, OJ L 36, 2.2.2021, p. 10.

Commission Implementing Regulation (EU) 2021/116 of 1 February 2021 on the establishment of the Common Project One supporting the implementation of the European Air Traffic Management Master Plan provided for in Regulation (EC) No 550/2004 of the European Parliament and of the Council, amending Commission Implementing Regulation (EU) No 409/2013 and repealing Commission Implementing Regulation (EU) No 716/2014 (Text with EEA relevance), OJ L 36, 2.2.2021, p. 10.

For the purposes of this Agreement, the Annex to the Regulation shall be read with the following adaptations:

- (a) The following point is added after point 1.2.1.r): "s) Zürich Kloten"
- (b) The following point is added after point 2.2.1.r): "s) Zürich Kloten"

(c) The following point is added after point 2.2.2.r): “s) Zürich Kloten”

(d) The following points are added after point 2.2.3.bb): “cc) Geneva; dd) Zürich Kloten”.

Commission Implementing Regulation (EU) 2018/1048 of 18 July 2018 laying down airspace usage requirements and operating procedures concerning performance-based navigation, OJ L 189, 26.7.2018, p. 3.

Commission Implementing Regulation (EU) 2019/123 of 24 January 2019 laying down detailed rules for the implementation of air traffic management (ATM) network functions and repealing Commission Regulation (EU) No 677/2011 (text with EEA relevance), OJ L 28, 31.1.2019, p. 1.

Commission Implementing Regulation (EU) 2019/317 of 11 February 2019 laying down a performance and charging scheme in the single European sky and repealing Implementing Regulations (EU) No 390/2013 and (EU) No 391/2013 (text with EEA relevance), OJ L 56, 25.2.2019, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2021/1880, OJ L 380, 27.10.2021, p. 1.

Commission Implementing Decision (EU) 2019/709 of 6 May 2019 on the appointment of the network manager for air traffic management (ATM) network functions of the single European sky (notified under document C(2019) 3228), OJ L 120, 8.5.2019, p. 27.

Commission Implementing Decision (EU) 2021/891 of 2 June 2021 setting revised Union-wide performance targets for the air traffic management network for the third reference period (2020-2024) and repealing Implementing Decision (EU) 2019/903 (Text with EEA relevance), OJ L 195, 3.6.2021, p. 3.

Commission Implementing Decision (EU) 2019/2167 of 17 December 2019 approving the Network Strategy Plan for the air traffic management network functions of the single European sky for the period 2020-2029, OJ L 328, 18.12.2019, p. 89.

Commission Implementing Decision (EU) 2019/2168 of 17 December 2019 on the appointment of the chairperson and the members and their alternates of the Network Management Board and of the members and their alternates of the European Aviation Crisis Coordination Cell for the air traffic management network functions for the third reference period 2020-2024, OJ L 328, 18.12.2019, p. 90.

Commission Implementing Decision (EU) 2019/2012 of 29 November 2019 on exemptions under Article 14 of Commission Regulation (EC) No 29/2009 laying down requirements on data link services for the single European sky (Text with EEA relevance), OJ L 312, 3.12.2019, p. 95.

Commission Implementing Regulation (EU) 2020/1627 of 3 November 2020 on exceptional measures for the third reference period (2020-2024) of the single European sky performance and charging scheme due to the COVID-19 pandemic, OJ L 366, 4.11.2020, p. 7.

6. Environment and noise

Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (text with EEA relevance) (Articles 1-12, and 14-18), OJ L 85, 28.3.2002, p. 40.

(The amendments to Annex I, arising from Annex II, Chapter 8 (Transport policy), Section G (Air transport), point 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, shall apply).

Council Directive 89/629/EEC of 4 December 1989 on the limitation of noise emissions from civil subsonic jet aeroplanes, OJ L 363, 13.12.1989, p. 27.

(Articles 1-8).

Directive 2006/93/EC of the European Parliament and of the Council of 12 December 2006 on the regulation of the operation of aeroplanes covered by Part II, Chapter 3, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988) (codified version) (text with EEA relevance), OJ L 374, 27.12.2006, p. 1.

7. Consumer protection

Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, OJ L 158, 23.6.1990, p. 59 (Articles 1-10).

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29 (Articles 1-11), as amended by:

— Directive 2011/83/EU, OJ L 304, 22.11.2011, p. 64.

Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air in the event of accidents, OJ L 285, 17.10.1997, p. 1 (Articles 1-8), as amended by:

— Regulation (EC) No 889/2002, OJ L 140, 30.5.2002, p. 2.

Regulation (EC) No 261/2004 of the Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (text with EEA relevance), OJ L 46, 17.2.2004, p. 1. (Articles 1-18).

Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the right of disabled persons and persons with reduced mobility when travelling by air (text with EEA relevance), OJ L 204, 26.7.2006, p. 1.

8. Miscellaneous

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (text with EEA relevance), OJ L 283, 31.10.2003, p. 51.

(Article 14(1)(b), and Article 14(2).

9. Annexes:

A: Protocol on the Privileges and Immunities of the European Union

B: Provisions on financial control by the European Union as regards Swiss participants in activities of the EASA

ANNEX A

PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

- (2) CONSIDERING that, in accordance with Article 343 of the Treaty on the Functioning of the European Union and Article 191 of the Treaty establishing the European Atomic Energy Community ('EAEC'), the European Union and the EAEC shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community:

CHAPTER I

PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN UNION*Article 1*

The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

Article 2

The archives of the Union shall be inviolable.

Article 3

The Union, its assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Union.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

Article 4

The Union shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use: articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

The Union shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.

CHAPTER II

COMMUNICATIONS AND LAISSEZ-PASSER

Article 5

For their official communications and the transmission of all their documents, the institutions of the Union shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the institutions of the Union shall not be subject to censorship.

Article 6

Laissez-passer in a form to be prescribed by the Council, acting by a simple majority, which shall be recognised as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Union by the Presidents of these institutions. These *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of officials and the Conditions of Employment of other servants of the Union.

The Commission may conclude agreements for these *laissez-passer* to be recognised as valid travel documents within the territory of third countries.

CHAPTER III

MEMBERS OF THE EUROPEAN PARLIAMENT

Article 7

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

- (a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;
- (b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

Article 8

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article 9

During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

CHAPTER IV

REPRESENTATIVES OF MEMBER STATES TAKING PART IN THE WORK OF THE INSTITUTIONS OF THE EUROPEAN UNION

Article 10

Representatives of Member States taking part in the work of the institutions of the Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Union.

CHAPTER V

OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN UNION

Article 11

In the territory of each Member State and whatever their nationality, officials and other servants of the Union shall:

- (a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;
- (b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;
- (c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;
- (d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of the country in which this right is exercised;
- (e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of the country concerned.

Article 12

Officials and other servants of the Union shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.

Article 13

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

Article 14

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Union.

Article 15

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, and after consulting the other institutions concerned, shall determine the categories of officials and other servants of the Union to whom the provisions of Article 11, the second paragraph of Article 12, and Article 13 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to the governments of the Member States.

CHAPTER VI

PRIVILEGES AND IMMUNITIES OF MISSIONS OF THIRD COUNTRIES ACCREDITED TO THE EUROPEAN UNION*Article 16*

The Member State in whose territory the Union has its seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Union.

CHAPTER VII

GENERAL PROVISIONS*Article 17*

Privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union.

Each institution of the Union shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Union.

Article 18

The institutions of the Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

Article 19

Articles 11 to 14 and Article 17 shall apply to Members of the Commission.

Article 20

Articles 11 to 14 and Article 17 shall apply to the Judges, the Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice of the European Union relating to immunity from legal proceedings of Judges and Advocates-General.

Article 21

This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, without prejudice to the provisions of the Protocol on the Statute of the Bank.

The European Investment Bank shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Bank and of its organs carried on in accordance with its Statute shall not be subject to any turnover tax.

Article 22

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

*Appendix to ANNEX A***PROCEDURES FOR THE APPLICATION IN SWITZERLAND OF THE PROTOCOL ON PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION****1. Extension of application to Switzerland**

Wherever the Protocol on the privileges and immunities of the European Union (hereinafter called "the Protocol") contains references to Member States, the references are to be understood to apply equally to Switzerland, unless the following provisions determine otherwise.

2. Exemption of the Agency from indirect taxation (including VAT)

Goods and services exported from Switzerland are not to be subject to Swiss value added tax (VAT). In the case of goods and services provided to the Agency in Switzerland for its official use, in accordance with the second paragraph of Article 3 of the Protocol, exemption from VAT is by way of refund. Exemption from VAT shall be granted if the actual purchase price of the goods and services mentioned in the invoice or equivalent document totals at least 100 Swiss francs (inclusive of tax).

The VAT refund is to be granted on presentation to the Federal Tax Administration's VAT Main Division of the Swiss forms provided for the purpose. As a rule, refund applications must be processed within the three months following the date on which they were lodged together with the necessary supporting documents.

3. Procedures for the application of the rules relating to the Agency's staff

As regards the second paragraph of Article 12 of the Protocol, Switzerland shall exempt, according to the principles of its national law, officials and other servants of the Agency within the meaning of Article 2 of Regulation (Euratom, ECSC, EEC) No 549/69 ⁽¹⁾ from federal, cantonal and communal taxes on salaries, wages and emoluments paid to them by the European Union and subject to an internal tax for its own benefit.

Switzerland shall not be considered as a Member State within the meaning of point 1 above for the application of Article 13 of the Protocol.

Officials and other servants of the Agency and members of their families who are members of the social insurance system applicable to officials and other servants of the European Union are not obliged to be members of the Swiss social security system.

The Court of Justice of the European Union shall have exclusive jurisdiction in any matters concerning relations between the Agency or the Commission and its staff with regard to the application of Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽²⁾ and the other provisions of the European Union law laying down working conditions.

⁽¹⁾ Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply (OJ L 74, 27.3.1969, p. 1). Regulation last amended by Commission Regulation (EC) No 1749/2002 (OJ L 264, 2.10.2002, p. 13.)

⁽²⁾ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (Conditions of Employment of Other Servants) (OJ L 56, 4.3.1968, p. 1). Regulation last amended by Commission Regulation (EC) No 2104/2005 (OJ L 337, 22.12.2005, p. 7.)

ANNEX B

FINANCIAL CONTROL AS REGARDS SWISS PARTICIPANTS IN ACTIVITIES OF THE EUROPEAN AVIATION AGREEMENT*Article 1***Direct communication**

The Agency and the Commission shall communicate directly with all persons or entities established in Switzerland and participating in activities of the Agency, as contractors, participants in Agency programmes, recipients of payments from the Agency or the Community budget, or subcontractors. Such persons may send directly to the Commission and to the Agency all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Decision and of contracts or agreements concluded and any decisions taken pursuant to them.

*Article 2***Checks**

1. In accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ and the Financial Regulation adopted by the Management Board of the Agency on 26 March 2003, with Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾ and with the other instruments referred to in this Decision, contracts or agreements concluded and decisions taken with beneficiaries established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Agency and Commission officials or by other persons mandated by the Agency and the Commission.
2. Agency and Commission officials and other persons mandated by the Agency and the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts or agreements concluded to implement the instruments referred to in this Decision.
3. The European Court of Auditors is to have the same rights as the Commission.
4. The audits may take place until five years after the expiry of this Decision or under the terms of the contracts or agreements concluded and the decisions taken.
5. The Swiss Federal Audit Office is to be informed in advance of audits conducted on Swiss territory. This information will not be a legal condition for carrying out such audits.

*Article 3***On-the-spot checks**

1. Under this Agreement, the Commission (OLAF) is authorised to carry out on-the-spot checks and inspections on Swiss territory, under the terms and conditions set out in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities. ⁽³⁾

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ L 357, 31.12.2002, p. 72.

⁽³⁾ OJ L 292, 15.11.1996, p. 2.

2. On-the-spot checks and inspections shall be prepared and conducted by the Commission in close cooperation with the Swiss Federal Audit Office or with other competent Swiss authorities appointed by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.
3. If the Swiss competent authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the Commission and the Swiss competent authorities.
4. Where the participants in the programme resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give the Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.
5. The Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission is required to inform the aforementioned authority of the result of such checks and inspections.

Article 4

Information and consultation

1. For the purposes of proper implementation of this Annex, the competent Swiss and Community authorities shall exchange information regularly and, at the request of one of the Parties, shall conduct consultations.
2. The competent Swiss authorities shall inform the Agency and the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts or agreements concluded in application of the instruments referred to in this Decision.

Article 5

Confidentiality

Information communicated or acquired in any form whatsoever pursuant to this Annex will be covered by professional confidentiality and protected in the same way as similar information is protected by the national legislation of Switzerland and by the corresponding provisions applicable to the Community institutions. Such information shall not be communicated to persons other than those within the Community institutions, in the Member States, or in Switzerland whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the financial interests of the Contracting Parties.

Article 6

Administrative measures and penalties

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Agency or the Commission in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 and Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. ⁽⁴⁾

⁽⁴⁾ OJ L 312, 23.12.1995, p. 1.

*Article 7***Recovery and enforcement**

Decisions taken by the Agency or the Commission within the scope of this Decision which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland.

The enforcement order must be issued, without any further control than verification of the authenticity of the act, by the authority designated by the Swiss government, which must inform the Agency or the Commission thereof. Enforcement must take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision is subject to control by the Court of Justice of the European Union.

Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause are enforceable on the same terms.

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