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(1) Text with EEA relevance.



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

Ι

(Legislative acts)

#### REGULATIONS

## REGULATION (EU) 2021/782 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2021

on rail passengers' rights and obligations (recast)

(Text with EEA relevance)

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

(1) A number of amendments are to be made to Regulation (EC) No 1371/2007 of the European Parliament and of the Council (3) in order to enhance protection for passengers and to encourage an increase in rail travel, whilst having due regard in particular to Articles 11, 12 and 14 of the Treaty on the Functioning of the European Union (TFEU). In view of those amendments and in the interests of clarity, Regulation (EC) No 1371/2007 should therefore be recast.

<sup>(1)</sup> OJ C 197, 8.6.2018, p. 66.

<sup>(2)</sup> Position of the European Parliament of 15 November 2018 (OJ C 363, 28.10.2020, p. 296) and position of the Council at first reading of 25 January 2021 (OJ C 68, 26.2.2021, p. 1). Position of the European Parliament of 29 April 2021 (not yet published in the Official Journal).

<sup>(3)</sup> Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

- (2) In the framework of the common transport policy, it is important to safeguard users' rights for rail passengers and to improve the quality and effectiveness of rail passenger services in order to help increase the share of rail transport in relation to other modes of transport.
- (3) Despite considerable progress having been made in protecting consumers in the Union, further improvements to the protection of rail passengers' rights still need to be made.
- (4) In particular, since the rail passenger is the weaker party to the transport contract, rail passengers' rights should be safeguarded.
- (5) Granting the same rights to rail passengers taking international and domestic journeys seeks to raise the level of consumer protection in the Union, to ensure a level playing field for railway undertakings and to guarantee a uniform level of passengers' rights. Passengers should receive as precise information as possible on their rights. As certain modern formats of tickets do not physically allow information to be printed on them, it should be possible to provide the information required by this Regulation by other means.
- (6) Rail services offered strictly for historic or touristic use do not usually serve normal transport needs. Such services are usually isolated from the rest of the Union rail system and use technology that may limit their accessibility. With the exception of certain provisions which should apply to all rail passenger services throughout the Union, Member States should be able to grant exemptions from the application of the provisions of this Regulation to rail services offered strictly for historic or touristic use.
- Urban, suburban and regional rail passenger services are different in character from long-distance rail passenger services. Member States should therefore be allowed to exempt such services from certain provisions of this Regulation on passengers' rights. Such exemptions should however not apply to essential rules, in particular not to those provisions relating to non-discriminatory conditions of transport contracts, to the right to purchase rail tickets without undue difficulty, to the railway undertakings' liability in respect of passengers and their luggage, to the requirement that railway undertakings be adequately insured and to the requirement that adequate measures be taken to ensure passengers' personal security in railway stations and on trains. Regional services are more integrated in the rest of the Union rail system and the journeys concerned are longer. For regional rail passenger services, possible exemptions should therefore be restricted even further. As regards regional rail passenger services, exemptions to the provisions of this Regulation that facilitate the use of rail services by persons with disabilities or persons with reduced mobility should be completely phased out, and exemptions should not apply as regards provisions of this Regulation promoting the use of bicycles. In addition, the possibility to exempt regional services from certain obligations as regards the provision of through-tickets and re-routing should be limited in time.
- (8) It is an aim of this Regulation to improve rail passenger services within the Union. Therefore, Member States should be able to grant exemptions for services in regions where a significant part of the service is operated outside the Union.
- (9) Furthermore, to allow a smooth transition from the framework established pursuant to Regulation (EC) No 1371/2007 to the one under this Regulation, earlier national exemptions should be phased out gradually to ensure the necessary legal certainty and continuity. Member States which currently have in place exemptions pursuant to Article 2(4) of Regulation (EC) No 1371/2007 should be allowed to exempt domestic rail passenger services only from the provisions of this Regulation that require significant adaptation and, in any event, only for a limited period in time. Member States should also be allowed, for a transitional period, to grant an exemption

from the obligation to distribute traffic and travel information among operators, but only where it is not technically feasible for the infrastructure manager to provide real-time data to any railway undertaking, ticket vendor, tour operator or station manager. An assessment of what is technically feasible should be made at least every two years.

- (10) Member States should inform the Commission when they exempt rail passenger services from the application of certain provisions of this Regulation. When providing this information, Member States should explain the reasons for granting such exemptions and the measures taken or envisaged to comply with the obligations under this Regulation when the exemptions concerned expire.
- (11) Where there are several station managers responsible for one station, Member States should have the possibility to designate the body tasked with the responsibilities referred to in this Regulation.
- (12) Access to real-time travel information, including that on tariffs, makes rail travel more accessible to new customers and provides them with a wider range of journey possibilities and tariffs to choose from. Railway undertakings should provide other railway undertakings, ticket vendors and tour operators that sell their services with access to such travel information and give them the possibility to make and cancel reservations in order to facilitate rail travel. Infrastructure managers should distribute real-time data relating to the arrival and the departure of trains to railway undertaking and station managers, as well as to ticket vendors and tour operators in order to facilitate rail travel.
- (13) More detailed requirements regarding the provision of travel information are set out in the technical specifications for interoperability referred to in Commission Regulation (EU) No 454/2011 (4).
- (14) Strengthening of the rights of rail passengers should build on the existing international law contained in Appendix A–Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV)–to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention concerning International Carriage by Rail of 3 June 1999 (1999 Protocol). However, it is desirable to extend the scope of this Regulation and protect not only international passengers but domestic passengers too. On 23 February 2013, the Union acceded to the COTIF.
- (15) Member States should prohibit discrimination on the basis of the nationality of the passenger or the place of establishment within the Union of the railway undertaking, ticket vendor or tour operator. However, social tariffs and the encouragement of wider use of public transport should not be prohibited, provided that such measures are proportionate and independent of the nationality of the passenger concerned. Railway undertakings, ticket vendors and tour operators are free to determine their commercial practices, including the use of special offers and the promotion of certain sales channels. In light of the development of online platforms selling passenger transport tickets, Member States should pay special attention to ensuring that no discrimination occurs during the process of accessing online interfaces or purchasing tickets. Furthermore, regardless of how a certain type of a ticket is purchased, the level of protection of the passenger should be the same.
- (16) The increasing popularity of cycling across the Union has implications for overall mobility and tourism. An increase in the use of both railways and cycling in the modal split reduces the environmental impact of transport. Therefore, railway undertakings should facilitate the combination of cycling and train journeys as much as possible. In particular, when acquiring new rolling stock or making a major upgrade to existing rolling stock, they should provide an adequate number of places for bicycles unless the acquisition or upgrade concerns restaurant cars, sleeping cars or couchette cars. In order to avoid a negative impact on the safety performance of the existing rolling stock, that obligation should only apply in cases of a major upgrade requiring a new vehicle authorisation for placement on the market.

<sup>(4)</sup> Commission Regulation (EU) No 454/2011 of 5 May 2011 on the technical specification for interoperability relating to the subsystem 'telematics applications for passenger services' of the trans-European rail system (OJ L 123, 12.5.2011, p. 11).

- (17) The adequate number of bicycle places for a train composition should be determined taking into consideration the size of train composition, the type of service and the demand for transport of bicycles. Railway undertakings should have the possibility to establish plans with concrete numbers of bicycle places for their services, after consulting the public. Where railway undertakings choose not to establish plans, a statutory number should apply. That statutory number should also serve as guidance by railway undertakings when establishing their plans. A number which is below the statutory number should be considered adequate only where it is justified by special circumstances such as operation of rail services in winter time where there is clearly no or low demand for the transport of bicycles. Furthermore, in some Member States demand for the transport of bicycles is particularly high as regards certain types of services. Therefore, Member States should have the possibility to determine the minimum adequate numbers of bicycle places for certain types of services. These numbers should prevail over the concrete numbers as mentioned in any plans of the railway undertakings. This should not impede the free movement of railway rolling stock within the Union. Passengers should be informed of the space available for bicycles.
- (18) The rights and obligations regarding carriage of bicycles on trains should apply to bicycles that can be readily ridden prior to and after the rail journey. Carriage of bicycles in packages and bags, as applicable, is covered by the provisions of this Regulation relating to luggage.
- (19) Rail passengers' rights to rail services include the receipt of information regarding the service both before and during the journey. Railway undertakings, ticket vendors and tour operators should provide general information on the rail service in advance of travel. That information should be provided in accessible formats for persons with disabilities or persons with reduced mobility. Railway undertakings and, where possible, ticket vendors and tour operators should provide the passenger during the journey with further information required by this Regulation. Where a station manager has such information, he or she should also provide the information to the passengers.
- (20) The size of ticket vendors varies substantially from micro to large enterprises and some ticket vendors offer their services only offline or only online. The obligation to provide travel information to passengers should therefore be proportional to the different sizes, and therefore the different capacities, of the ticket vendors.
- (21) This Regulation should not prevent railway undertakings, tour operators or ticket vendors from offering to passengers more favourable conditions than those laid down in this Regulation. However, this Regulation should not lead to a railway undertaking being bound by more favourable contractual conditions offered by a tour operator or ticket vendor, unless an arrangement between the railway undertaking and the tour operator or the ticket vendor provides otherwise.
- (22) Through-tickets allow seamless journeys for passengers and therefore all reasonable efforts should be made to offer such tickets for long-distance, urban, suburban and regional rail passenger services, whether international or domestic, including rail passenger services exempted under this Regulation. It should be possible, for the purpose of determining the total delay for which compensation is available, to exclude periods of delay that occurred during the parts of the journey relating to rail services exempted under this Regulation.
- Regarding services operated by the same railway undertaking, the transfer of rail passengers from one service to another should be facilitated by the introduction of an obligation to provide through-tickets, since no commercial agreements between railway undertakings are needed. The requirement to provide through-tickets should also apply to services operated by railway undertakings belonging to the same owner or which are wholly-owned subsidiaries of one of the railway undertakings providing rail services comprised in the journey. The railway undertaking should have the possibility to specify on the through-ticket the time of departure of each rail service, including regional services, for which the through-ticket is valid.

- (24) Passengers should be clearly informed whether tickets sold by a railway undertaking in a single commercial transaction constitute a through-ticket. Where passengers are not correctly informed, the railway undertaking should be liable as if those tickets were a through-ticket.
- (25) The offer of through-tickets should be promoted. However, correct information concerning the rail service is essential also when passengers buy tickets from a ticket vendor or a tour operator. Where the ticket vendors or the tour operators sell separate tickets as a bundle, they should clearly inform the passenger that those tickets do not offer the same level of protection as through-tickets and that those tickets have not been issued as through-tickets by the railway undertaking or railway undertakings providing the service. Where ticket vendors or tour operators fail to comply with this requirement, their liability should go beyond the reimbursement of the tickets.
- (26) When offering through-tickets, it is important that the railway undertakings take into account realistic and applicable minimum connection times when originally booked, as well as any relevant factors such as the size and location of the respective stations and platforms.
- (27) In light of the United Nations Convention on the Rights of Persons with Disabilities and in order to give persons with disabilities and persons with reduced mobility opportunities for rail travel comparable to those of other citizens, rules for non-discrimination and assistance during their journey should be established. Persons with disabilities and persons with reduced mobility have the same rights as all other citizens to free movement and to non-discrimination. Inter alia, special attention should be given to the provision of information to persons with disabilities and persons with reduced mobility concerning the accessibility of rail services, access conditions of rolling stock and the facilities on board. In order to provide passengers with sensory impairment with the best information on delays, visual and audible systems should be used, as appropriate. Persons with disabilities should be enabled to buy tickets on board a train without extra charges where there is no accessible means to buy a ticket prior to boarding the train. However, there should be a possibility to limit this right in circumstances relating to security or compulsory train reservation. Staff should be adequately trained to respond to the needs of persons with disabilities and persons with reduced mobility, in particular when providing assistance. To ensure equal travel conditions, assistance should be provided to such persons at stations and on board or, in the absence of trained accompanying staff on board the train and at the station, all reasonable efforts should be taken to allow access to travel by rail.
- (28) Railway undertakings and station managers should actively cooperate with organisations representing people with disabilities in order to improve the quality of accessibility of transport services.
- (29) In order to facilitate access to rail passenger services for persons with disabilities and persons with reduced mobility, Member States should have the possibility to require railway undertakings and station managers to set up national Single Points of Contact to coordinate information and assistance.
- (30) In order to ensure that assistance to persons with disabilities and persons with reduced mobility is provided, for practical reasons it is necessary to notify the railway undertaking, the station manager, the ticket vendor or the tour operator in advance of the need for assistance. While this Regulation establishes a common maximum time period for such pre-notifications, voluntary arrangements providing for shorter periods are valuable where they improve the mobility of persons with disabilities and persons with reduced mobility. To guarantee the widest possible distribution of information concerning such reduced time periods, it is important that the Commission includes in its report on the implementation and results of this Regulation information on the development of reduced pre-notification arrangements and related dissemination of information.

- (31) Railway undertakings and station managers should take into account the needs of persons with disabilities and persons with reduced mobility, through compliance with Directive (EU) 2019/882 of the European Parliament and of the Council (5) and Commission Regulation (EU) No 1300/2014 (6). Where this Regulation refers to provisions of Directive (EU) 2019/882, those provisions should be applied by the Member States from 28 June 2025 and in accordance with the transitional measures laid down in Article 32 of that Directive. With regard to rail passenger services, the scope of those provisions is set out in point (c) of Article 2(2) of that Directive.
- (32) Certain animals are trained to assist persons with disabilities to enable them to be independently mobile. For such mobility it is essential that those animals can be taken on board trains. This Regulation establishes common rights and obligations as regards assistance dogs. However, Member States should have the possibility to conduct trials using other mobility assistance animals and to allow them on board trains in their domestic rail services. It is important that the Commission monitors the development regarding this matter in view of future work on mobility assistance animals.
- (33) It is desirable that this Regulation creates a system of compensation for passengers in the case of delay, including in cases where the delay is caused by a cancellation of a service or a missed connection. In the event of a delay of a rail passenger service, railway undertakings should provide passengers with compensation based on a percentage of the ticket price.
- (34) Railway undertakings should be obliged to be insured, or to have adequate guarantees, for their liability to rail passengers in the event of accident.
- (35) Strengthened rights of compensation and assistance in the event of delay, missed connection or cancellation of a service should lead to greater incentives for the rail passenger market, to the benefit of passengers.
- (36) In the event of delay, passengers should be provided with continued or re-routed transport options under comparable transport conditions. The needs of persons with disabilities and persons with reduced mobility should be taken into account in such an event.
- However, a railway undertaking should not be obliged to pay compensation if it can prove that the delay was caused by extraordinary circumstances such as extreme weather conditions or major natural disasters endangering the safe operation of the service. Any such event should have the character of an exceptional natural catastrophe, as distinct from normal seasonal weather conditions such as autumnal storms or regularly-occurring urban flooding caused by tides or snowmelt. In addition, a railway undertaking should not be obliged to pay compensation if it can prove that the delay was caused by a major public health crisis, such as a pandemic. Furthermore, where the delay is caused by the passenger or by certain acts of third parties, the railway undertaking should not be obliged to provide compensation for the delay. Railway undertakings should prove that they could neither foresee nor avoid such events, nor could they prevent the delay, even if all reasonable measures had been taken, including appropriate preventive maintenance of their rolling stock. Strikes by the personnel of the railway undertaking, and actions or omissions by other railway operators using the same infrastructure, infrastructure manager

<sup>(5)</sup> Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

<sup>(6)</sup> Commission Regulation (EU) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility (OJ L 356, 12.12.2014, p. 110).

or station manager, should not affect the liability for delays. The circumstances in which railway undertakings are not obliged to pay compensation should be objectively justified. Where a communication or a document of the railway infrastructure manager, a public authority or other body independent from the railway undertakings, indicating the circumstances on which the railway undertaking relies in order to be exempt from the obligation to pay compensation, is available to railway undertakings, they should bring such communications or documents to the attention of passengers and, where relevant, to that of the authorities concerned.

- (38) Railway undertakings should be encouraged to simplify the procedure for passengers to apply for compensation or reimbursement. In particular, Member States should have the possibility to require that railway undertakings accept applications by certain means of communication, such as on websites or by using mobile applications, provided that such requirements are not discriminatory.
- (39) In order to make it easier for passengers to request reimbursement or compensation in accordance with this Regulation, forms that are valid throughout the Union should be established for such requests. Passengers should have the possibility to submit their requests by using such a form.
- (40) In cooperation with infrastructure managers and station managers, railway undertakings should prepare contingency plans to minimise the impact of major disruptions by providing stranded passengers with adequate information and care.
- (41) It is also desirable to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.
- (42) It is in the interests of rail passengers that adequate measures be taken, in agreement with public authorities, to ensure their personal security at stations as well as on board trains.
- (43) Rail passengers should be able to submit a complaint to any railway undertaking involved, to the station managers of certain stations or, where appropriate, to ticket vendors and tour operators regarding their respective fields of responsibilities on the rights and obligations conferred by this Regulation. Rail passengers should be entitled to receive a response within a reasonable period of time.
- (44) In the interest of efficient handling of complaints, railway undertakings and station managers should have the right to establish joint customer services and complaint-handling mechanisms. Information on the complaint-handling procedures should be publicly available and easily accessible to all passengers.
- (45) This Regulation should not affect the rights of passengers to file a complaint with a national body or to seek legal redress through national procedures.
- (46) Railway undertakings and station managers should define, manage and monitor service quality standards for rail passenger services. Railway undertakings should also make information on their service quality performance publicly available.

- (47) In order to maintain a high level of consumer protection in rail transport, Member States should be required to designate national enforcement bodies to monitor closely the application of this Regulation and to enforce it at national level. Those bodies should be able to take a variety of enforcement measures. Passengers should be able to complain to those bodies about alleged infringements of the Regulation. To ensure the satisfactory handling of such complaints, the bodies should also cooperate with the national enforcement bodies of other Member States.
- (48) Member States which have no railway system, and no immediate prospect of having one, would bear a disproportionate and pointless burden if they were subject to the enforcement obligations as regards station managers and infrastructure managers provided for by this Regulation. The same applies to enforcement obligations as regards railway undertakings for as long as a Member State has not licensed any railway undertaking. Therefore, such Member States should be exempted from those obligations.
- (49) Processing of personal data should be carried out in accordance with Union law on the protection of personal data, in particular with Regulation (EU) 2016/679 of the European Parliament and of the Council (7).
- (50) Member States should lay down penalties applicable to infringements of this Regulation and ensure that these penalties are applied. The penalties, which might include the payment of compensation to the person in question, should be effective, proportionate and dissuasive.
- (51) Since the objectives of this Regulation, namely the development of the Union's railways and the strengthening of rail passengers' rights, cannot be sufficiently achieved by the Member States, and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (52) In order to ensure a high level of passenger protection, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to amend Annex I in respect of the CIV Uniform Rules and to adjust the minimum amount of the advance payment in the event of death of a passenger in view of changes in the EU-wide Harmonised Index of Consumer Prices. 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 (8). 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.
- (53) 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 (9).

(8) OJ L 123, 12.5.2016, p. 1.

<sup>(7)</sup> 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).

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

(54) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 21, 26, 38 and 47 concerning, respectively, the prohibition of any form of discrimination, the integration of persons with disabilities, the ensuring of a high level of consumer protection, and the right to an effective remedy and to a fair trial. The Member States' courts must apply this Regulation in a manner consistent with these rights and principles,

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

#### **GENERAL PROVISIONS**

#### Article 1

#### Subject matter and objectives

In order to provide for effective protection of passengers and encourage rail travel, this Regulation establishes rules applicable to rail transport as regards the following:

- (a) non-discrimination between passengers with regard to transport conditions and the provision of tickets;
- (b) the liability of railway undertakings and their insurance obligations for passengers and their luggage;
- (c) passengers' rights in the event of an accident arising from the use of railway services and resulting in death, personal injury or loss of, or damage to, their luggage;
- (d) passengers' rights in the event of disruption, such as cancellation or delay, including their right to compensation;
- (e) minimum and accurate information, including on the issuing of tickets, to be provided in an accessible format and in a timely manner to passengers;
- (f) non-discrimination against, and assistance for, persons with disabilities and persons with reduced mobility;
- (g) the definition and monitoring of service quality standards and the management of risks to the personal security of passengers;
- (h) the handling of complaints;
- (i) general rules on enforcement.

#### Article 2

#### Scope

- 1. This Regulation shall apply to international and domestic rail journeys and services throughout the Union provided by one or more railway undertakings licensed in accordance with Directive 2012/34/EU of the European Parliament and of the Council (10).
- 2. Member States may exempt from the application of this Regulation services which are operated strictly for historical or touristic use. That exemption does not apply in relation to Articles 13 and 14.

<sup>(10)</sup> Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).

- 3. Exemptions granted in accordance with Article 2(4) and (6) of Regulation (EC) No 1371/2007 before 6 June 2021 shall remain valid until the date that those exemptions expire. Exemptions granted in accordance with Article 2(5) of Regulation (EC) No 1371/2007 before 6 June 2021 shall remain valid until 7 June 2023.
- 4. Before the expiry of an exemption to the domestic rail passenger services granted pursuant to Article 2(4) of Regulation (EC) No 1371/2007, Member States may exempt such domestic rail passenger services from the application of Articles 15, 17 and 19, points (a) and (b) of Article 20(2) and Article 30(2) of this Regulation for an additional period of no more than five years.
- 5. Until 7 June 2030 Member States may provide that Article 10 shall not apply where it is not technically feasible for an infrastructure manager to distribute real-time data within the meaning of Article 10(1) to any railway undertaking, ticket vendor, tour operator or station manager. At least every two years, the Member States shall reassess the extent to which it is technically feasible to distribute such data.
- 6. Subject to paragraph 8, Member States may exempt the following services from the application of this Regulation:
- (a) urban, suburban and regional rail passenger services;
- (b) international rail passenger services of which a significant part, including at least one scheduled station stop, is operated outside the Union.
- 7. Member States shall inform the Commission of exemptions granted pursuant to paragraphs 2, 4, 5 and 6 and shall present the reasons for those exemptions.
- 8. Exemptions granted in accordance with point (a) of paragraph 6 shall not apply in relation to Articles 5, 11, 13, 14, 21, 22, 27 and 28.

Where those exemptions concern regional rail passenger services, they shall also not apply in relation to Articles 6 and 12, Article 18(3) and Chapter V.

Notwithstanding the second subparagraph of this paragraph, exemptions concerning regional rail passenger services to the application of Articles 12(1) and 18(3) may apply until 7 June 2028.

#### Article 3

#### **Definitions**

For the purposes of this Regulation the following definitions apply:

- (1) 'railway undertaking' means a railway undertaking as defined in point (1) of Article 3 of Directive 2012/34/EU;
- (2) 'infrastructure manager' means an infrastructure manager as defined in point (2) of Article 3 of Directive 2012/34/EU;
- (3) 'station manager' means an organisational entity in a Member State, which has been made responsible for the management of one or more railway stations and which may be the infrastructure manager;

- (4) 'tour operator' means an organiser or retailer as defined in points (8) and (9) respectively of Article 3 of Directive (EU) 2015/2302 of the European Parliament and of the Council (11) other than a railway undertaking;
- (5) 'ticket vendor' means any retailer of rail transport services selling tickets, including through-tickets, on the basis of a contract or other arrangement between the retailer and one or more railway undertakings;
- (6) 'transport contract' means a contract of rail carriage for reward or free of charge between a railway undertaking and a passenger for the provision of one or more transport services;
- (7) 'ticket' means valid evidence, regardless of its form, of the conclusion of a transport contract;
- (8) 'reservation' means an authorisation, on paper or in electronic form, giving entitlement to transportation subject to previously confirmed personalised transport arrangements;
- (9) 'through-ticket' means a through-ticket as defined in point (35) of Article 3 of Directive 2012/34/EU;
- (10) 'service' means a passenger rail transport service that operates between rail stations according to a timetable, including transport services offered for re-routing;
- (11) 'journey' means the carriage of a passenger between a station of departure and a station of arrival;
- (12) 'domestic rail passenger service' means a rail passenger service which does not cross a border of a Member State;
- (13) 'urban and suburban rail passenger service' means a rail passenger service within the meaning of point (6) of Article 3 of Directive 2012/34/EU;
- (14) 'regional rail passenger service' means a rail passenger service within the meaning of point (7) of Article 3 of Directive 2012/34/EU;
- (15) 'long-distance rail passenger service' means a rail passenger service which is not an urban, a suburban or a regional rail passenger service;
- (16) 'international rail passenger service' means a rail passenger service crossing at least one border of a Member State the principal purpose of which is to carry passengers between stations located in different Member States or in a Member State and a third country;
- (17) 'delay' means the time difference between the time the passenger was scheduled to arrive in accordance with the published timetable and the time of his or her actual or expected arrival at the station of final destination;
- (18) 'arrival' means the moment when the doors of the train are opened on the destination platform and disembarkation is allowed;

<sup>(11)</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).

- (19) 'travel pass' or 'season ticket' means a ticket for an unlimited number of journeys which provides the authorised holder with rail travel on a particular route or network during a specified period;
- (20) 'missed connection' means a situation where a passenger misses one or more services in the course of a rail journey, sold in the form of a through-ticket, as a result of the delay or cancellation of one or more previous services, or of the departure of a service before the scheduled departure time;
- (21) 'person with disabilities' and 'person with reduced mobility' mean any person who has a permanent or temporary physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder his or her full and effective use of transport on an equal basis with other passengers or whose mobility when using transport is reduced due to age;
- (22) 'station' means a location on a railway where a rail passenger service can start, stop or end.

#### CHAPTER II

#### TRANSPORT CONTRACT, INFORMATION AND TICKETS

#### Article 4

#### Transport contract

Subject to the provisions of this Chapter, the conclusion and performance of a transport contract and the provision of information and tickets shall be governed by the provisions of Title II and Title III of Annex I.

#### Article 5

#### Non-discriminatory contract conditions and tariffs

Without prejudice to social tariffs, railway undertakings, ticket vendors or tour operators shall offer contract conditions and tariffs to the general public without direct or indirect discrimination on the basis of the passenger's nationality or of the place of establishment within the Union of the railway undertaking, ticket vendor or tour operator.

The first paragraph of this Article also applies to railway undertakings and ticket vendors when accepting reservations from passengers in accordance with Article 11.

#### Article 6

#### **Bicycles**

1. Subject to the limitations set out in paragraph 3, and where appropriate for a reasonable fee, passengers shall be entitled to take bicycles on board the train.

On trains for which a reservation is required, it shall be possible to make a reservation for the carriage of a bicycle.

Where a passenger has made a reservation for a bicycle and the carriage of that bicycle is refused without a duly justified reason, the passenger shall be entitled to re-routing or reimbursement in accordance with Article 18, compensation in accordance with Article 19 and assistance in accordance with Article 20(2).

- 2. Where designated places for bicycles are available on board the train, passengers shall stow their bicycles in such places. Where such places are not available, passengers shall keep their bicycles under supervision, and shall make all reasonable efforts to ensure that their bicycles cause no harm or damage to other passengers, mobility equipment, luggage or rail operations.
- 3. Railway undertakings may restrict the right of passengers to take bicycles on board the train for safety or operational reasons, in particular as a result of capacity limits applicable during peak hours, or where rolling stock does not permit it. Railway undertakings may also restrict the carriage of bicycles based on the weights and dimensions of the bicycles concerned. They shall publish their conditions for the transport of bicycles, including up-to-date information on the availability of capacity, by using the telematics applications referred to in Regulation (EU) No 454/2011 on their official websites.
- 4. When initiating procurement procedures for new rolling stock, or when performing a major upgrade of existing rolling stock resulting in the need for a new vehicle authorisation for placing on the market pursuant to Article 21(12) of Directive (EU) 2016/797 of the European Parliament and of the Council (12), railway undertakings shall ensure that train compositions, in which that rolling stock is used, are equipped with an adequate number of places for bicycles. This subparagraph shall not apply in relation to restaurant cars, sleeping cars or couchette cars.

Railway undertakings shall determine an adequate number of places for bicycles taking into consideration the size of train composition, the type of service and the demand for transport of bicycles. The adequate number of places for bicycles shall be defined in plans referred to in paragraph 5. Where there are no such plans or the plans do not determine such a number, each train composition shall have at least four places for bicycles.

Member States may set a number higher than four as the minimum adequate number for certain types of services, in which case that number shall apply instead of the number identified in accordance with the second subparagraph.

5. Railway undertakings may establish, and keep up-to-date, plans on how to increase and improve the transport of bicycles, and on other solutions encouraging combined use of railways and bicycles.

The competent authorities, as defined in point (b) of Article 2 of Regulation (EC) No 1370/2007 of the European Parliament and of the Council (13), may establish such plans for services provided under public service contracts. Member States may require that such plans are established by those competent authorities or by railway undertakings operating on their territory.

6. The plans referred to in paragraph 5 shall be established following consultation of the public and relevant representative organisations. Those plans shall be published on the website of the railway undertaking or the competent authority, as appropriate.

<sup>(12)</sup> Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (OJ L 138, 26.5.2016, p. 44).

<sup>(13)</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

#### Exclusion of waiver and stipulation of limits

- 1. Obligations towards passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the transport contract. Any contractual conditions which purport directly or indirectly to waive, derogate from or restrict the rights resulting from this Regulation shall not be binding on the passenger.
- 2. Railway undertakings, tour operators or ticket vendors may offer contractual conditions which are more favourable for the passenger than the conditions laid down in this Regulation.

#### Article 8

#### Obligation to provide information concerning discontinuation of services

Railway undertakings or, where appropriate, competent authorities responsible for a public service railway contract shall make public by appropriate means, including in accessible formats in accordance with the provisions of Directive (EU) 2019/882 and Regulations (EU) No 454/2011 and (EU) No 1300/2014, and before their implementation, decisions to discontinue services either permanently or temporarily.

#### Article 9

#### Travel information

- 1. Railway undertakings, tour operators and ticket vendors offering transport contracts on behalf of one or more railway undertakings shall provide the passenger, upon request, with at least the information set out in Annex II, Part I in relation to the journeys for which a transport contract is offered by the railway undertaking concerned.
- 2. Railway undertakings and, where possible, ticket vendors and tour operators shall provide the passenger during the journey with at least the information set out in Annex II, Part II. Where a station manager has such information, he or she shall also provide the information to the passenger.
- 3. The information referred to in paragraphs 1 and 2 shall be provided in the most appropriate format, where possible based on real-time travel information, including by using appropriate communication technologies. Particular attention shall be paid to ensuring that this information is accessible in accordance with the provisions of Directive (EU) 2019/882 and Regulations (EU) No 454/2011 and (EU) No 1300/2014.

#### Article 10

#### Access to traffic and travel information

- 1. Infrastructure managers shall distribute real-time data relating to the arrival and the departure of trains to railway undertakings, ticket vendors, tour operators and station managers.
- 2. Railway undertakings shall provide other railway undertakings, ticket vendors and tour operators that sell their services with access to minimum travel information set out in Annex II, Parts I and II, and to the operations on reservation systems referred to in Annex II, Part III.

3. Information shall be distributed and access shall be granted in a non-discriminatory manner and without undue delay. A one-off request shall be sufficient to have continuous access to information. The infrastructure manager and the railway undertaking obliged to make available information in accordance with paragraphs 1 and 2 may request the conclusion of a contract or other arrangement on whose basis information is distributed or access is granted.

The terms and conditions of any contract or arrangement for the use of the information shall not unnecessarily restrict possibilities for its reuse or be used to restrict competition.

Railway undertakings may require from other railway undertakings, tour operators and ticket vendors a fair, reasonable and proportionate financial compensation for the costs incurred in providing the access, and infrastructure managers may require compensation in accordance with the applicable rules.

- 4. Information shall be distributed and access shall be provided by appropriate technical means, such as application programming interfaces.
- 5. To the extent that the information covered by paragraphs 1 or 2 is provided in accordance with other Union legal acts, in particular Commission Delegated Regulation (EU) 2017/1926 ( $^{14}$ ), the corresponding obligations under this Article shall be deemed to have been complied with.

#### Article 11

#### Availability of tickets and reservations

- 1. Railway undertakings, ticket vendors and tour operators shall offer tickets and, where available, through-tickets and reservations.
- 2. Without prejudice to paragraphs 3 and 4, railway undertakings shall sell, either directly or through ticket vendors or tour operators, tickets to passengers via at least one of the following means of sale:
- (a) ticket offices, other points of sale or ticketing machines;
- (b) telephone, the internet or any other widely available information technology;
- (c) on board trains.

The competent authorities, as defined in point (b) of Article 2 of Regulation (EC) No 1370/2007, may require railway undertakings to offer tickets for services provided under public service contracts via more than one means of sale.

- 3. Where there is no ticket office or ticketing machine in the station of departure, passengers shall be informed at the station of:
- (a) the possibility of purchasing tickets via telephone or the Internet or on board the train, and of the procedure for such purchase;
- (b) the nearest railway station or place at which ticket offices or ticketing machines are available.

<sup>(14)</sup> Commission Delegated Regulation (EU) 2017/1926 of 31 May 2017 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the provision of EU-wide multimodal travel information services (OJ L 272, 21.10.2017, p. 1).

4. Where there is no ticket office or no accessible ticketing machine in the station of departure and no other accessible means to purchase a ticket in advance, persons with disabilities shall be permitted to buy tickets on board the train at no extra cost. Railway undertakings may limit or deny this right on justifiable grounds related to security or compulsory train reservation.

Where there is no staff on board the train, the railway undertaking shall advise the persons with disabilities whether to and inform them on how to purchase the ticket.

Member States may allow railway undertakings to require that persons with disabilities are recognised as such in accordance with the relevant national law and practices of the country of their residence.

Member States may extend the right referred to in the first subparagraph to all passengers. Where Member States apply this option, they shall inform the Commission accordingly. The European Union Agency for Railways shall publish the information on its website relating to the implementation of Regulations (EU) No 454/2011 and (EU) No 1300/2014.

#### Article 12

#### Through-tickets

1. Where long-distance or regional rail passenger services are operated by a sole railway undertaking, that undertaking shall offer a through-ticket for those services. For other rail passenger services, railway undertakings shall make all reasonable efforts to offer through-tickets and shall cooperate to that end among themselves.

For the purpose of the first subparagraph the term 'sole railway undertaking' shall also include all railway undertakings which are either wholly owned by the same owner or which are wholly-owned subsidiary undertakings of one of the railway undertakings involved.

- 2. For journeys including one or more connections, the passenger shall be informed prior to purchasing a ticket or tickets whether that ticket or those tickets constitute a through-ticket.
- 3. For journeys including one or more connections, a ticket or tickets, purchased in a single commercial transaction from a railway undertaking, shall constitute a through-ticket and the railway undertaking shall be liable in accordance with Articles 18, 19 and 20 if the passenger misses one or more connections.
- 4. Where a ticket or tickets are purchased in a single commercial transaction and the ticket vendor or tour operator has combined the tickets on its own initiative, the ticket vendor or tour operator that sold the ticket or tickets shall be liable to reimburse the total amount paid for that transaction for the ticket or tickets and, moreover, to pay compensation equivalent to 75 % of that amount in the event that the passenger misses one or more connections.

The right to reimbursement or to compensation referred to in the first subparagraph is without prejudice to applicable national law granting passengers further compensation for damage.

- 5. The liabilities set out in paragraphs 3 and 4 shall not apply if it is mentioned on the tickets, or on another document or electronically in such a manner that allows the passenger to reproduce the information for future reference, that the tickets represent separate transport contracts, and the passenger was informed of this prior to the purchase.
- 6. The burden of proof that the passenger was provided with the information referred to in this Article shall lie with the railway undertaking, tour operator or ticket vendor that sold the ticket or tickets.
- 7. The ticket vendors or the tour operators shall be responsible for handling requests and possible complaints of the passenger under paragraph 4. The reimbursement and the compensation referred to in paragraph 4 shall be paid within 30 days after the receipt of the request.

#### CHAPTER III

#### LIABILITY OF RAILWAY UNDERTAKINGS FOR PASSENGERS AND THEIR LUGGAGE

#### Article 13

#### Liability for passengers and luggage

Subject to the provisions of this Chapter, and without prejudice to applicable national law granting passengers further compensation for damages, the liability of railway undertakings in respect of passengers and their luggage shall be governed by Chapters I, III and IV of Title IV, Title VI and Title VII of Annex I.

#### Article 14

#### Insurance and coverage of liability

A railway undertaking shall be adequately insured or have adequate guarantees under market conditions to cover its liabilities, in accordance with Article 22 of Directive 2012/34/EU.

#### Article 15

#### Advance payments

- 1. If a passenger is killed or injured, the railway undertaking as referred to in Article 26(5) of Annex I shall without delay, and in any event not later than 15 days after the establishment of the identity of the natural person entitled to compensation, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the damage suffered.
- 2. Without prejudice to paragraph 1, an advance payment shall not be less than EUR 21 000 per passenger in the event of death.
- 3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation but is not returnable, except where damage was caused by the negligence or fault of the passenger or where the person who received the advance payment was not the person entitled to compensation.

#### Article 16

#### Contestation of liability

Even if the railway undertaking contests its responsibility for physical injury to a passenger whom it conveys, it shall make every reasonable effort to assist the passenger with his or her claim for compensation for damage from third parties.

#### CHAPTER IV

#### DELAYS, MISSED CONNECTIONS AND CANCELLATIONS

#### Article 17

#### Liability for delays, missed connections and cancellations

Subject to the provisions of this Chapter, the liability of railway undertakings in respect of delays, missed connections and cancellations shall be governed by Chapter II of Title IV of Annex I.

#### Article 18

#### Reimbursement and re-routing

- 1. Where it is reasonably to be expected, either at departure or in the event of a missed connection or a cancellation, that arrival at the final destination under the transport contract will be subject to a delay of 60 minutes or more, the railway undertaking operating the delayed or cancelled service shall immediately offer the passenger the choice between one of the following options, and shall make the necessary arrangements:
- (a) reimbursement of the full cost of the ticket, under the conditions by which it was paid, for the part or parts of his or her journey not made and for the part or parts already made if the journey is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return service to the first point of departure at the earliest opportunity;
- (b) continuation or re-routing, under comparable transport conditions, to the final destination at the earliest opportunity;
- (c) continuation or re-routing, under comparable transport conditions, to the final destination at a later date at the passenger's convenience.
- 2. Where, for the purposes of points (b) and (c) of paragraph 1, comparable re-routing is operated by the same railway undertaking or another undertaking is commissioned to perform the re-routing, this shall not generate additional costs to the passenger. This requirement also applies where the re-routing involves the use of transport of a higher service class and alternative modes of transport. Railway undertakings shall make reasonable efforts to avoid additional connections and to ensure that delay in the total travel time is as short as possible. Passengers shall not be downgraded to transport facilities of a lower class unless such facilities are the only re-routing means available.
- 3. Without prejudice to paragraph 2, the railway undertaking may allow the passenger, at his or her request, to conclude contracts with other providers of transport services which enable the passenger to reach the final destination under comparable conditions, in which case the railway undertaking shall reimburse the passenger for the costs that he or she incurs.

Where the available re-routing options are not communicated to the passenger within 100 minutes from the scheduled departure time of the delayed or cancelled service or the missed connection, the passenger shall be entitled to conclude such a contract with other providers of public transport services by rail, coach or bus. The railway undertaking shall reimburse the passenger for the necessary, appropriate and reasonable costs that he or she incurs.

This paragraph shall not affect national laws, regulations or administrative provisions which grant more favourable rerouting conditions to passengers.

- 4. Re-routing transport service providers shall provide persons with disabilities and persons with reduced mobility with a comparable level of assistance and accessibility when offering an alternative service. Re-routing transport service providers may provide persons with disabilities and persons with reduced mobility with alternative services which are appropriate to their needs and which differ from those offered to other passengers.
- 5. The reimbursements referred to in point (a) of paragraph 1 and in paragraph 3 shall be paid within 30 days after the receipt of the request. Member States may require railway undertakings to accept such requests by particular means of communication, provided that the request does not create discriminatory effects. The reimbursement may take the form of vouchers and/or the provision of other services provided that the terms of those vouchers and/or services are sufficiently flexible, in particular regarding the validity period and destination, and that the passenger agrees to accept those vouchers and/or services. The reimbursement of the ticket price shall not be reduced by financial transaction costs such as fees, telephone costs or stamps.
- 6. The Commission shall adopt an implementing act establishing a common form for reimbursement requests under this Regulation by 7 June 2023. That common form shall be established in a format which is accessible to persons with disabilities and persons with reduced mobility. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).
- 7. Passengers shall have the right to submit their requests using the common form referred to in paragraph 6. Railway undertakings shall not reject a request for reimbursement solely on the grounds that the passenger has not used that form. If a request is not sufficiently precise, the railway undertaking shall ask the passenger to clarify the request and shall assist the passenger to do so.

#### Compensation

- 1. Without losing the right of transport, a passenger is entitled to compensation for delays from the railway undertaking if he or she is facing a delay between the places of departure and final destination stated in the ticket or throughticket for which the cost has not been reimbursed in accordance with Article 18. The minimum compensation for delays shall be as follows:
- (a) 25 % of the ticket price for a delay of 60 to 119 minutes;
- (b) 50 % of the ticket price for a delay of 120 minutes or more.
- 2. Paragraph 1 shall also apply to passengers who hold a travel pass or season ticket. If those passengers encounter recurrent delays or cancellations during the period of validity of the travel pass or season ticket, they shall be entitled to adequate compensation in accordance with the railway undertaking's compensation arrangements. These arrangements shall state the criteria for determining delay and for the calculation of the compensation. Where delays of less than 60 minutes occur repeatedly during the period of validity of the travel pass or season ticket, the delays may be counted cumulatively and passengers may be compensated in accordance with the railway undertaking's compensation arrangements.
- 3. Without prejudice to paragraph 2, compensation for delay shall be calculated in relation to the full price which the passenger actually paid for the delayed service. Where the transport contract is for a return journey, compensation for delay on either the outward or the return leg shall be calculated in relation to the price indicated for that leg of the journey on the ticket. Where there is no such indication of the price of the individual legs of the journey, the compensation shall be calculated in relation to half of the price paid for the ticket. In the same way, the price for a delayed service provided under any other form of transport contract entitling the passenger to travel for two or more subsequent legs shall be calculated in proportion to the full price.

- 4. The calculation of the period of delay shall not take into account any delay that the railway undertaking can demonstrate as having occurred outside the Union.
- 5. The Commission shall adopt an implementing act establishing a common form for compensation requests under this Regulation by 7 June 2023. That common form shall be established in a format which is accessible to persons with disabilities and persons with reduced mobility. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).
- 6. Member States may require railway undertakings to accept requests for compensation by particular means of communication, provided that the request does not create discriminatory effects. Passengers shall have the right to submit their requests using the common form referred to in paragraph 5. Railway undertakings shall not reject a request for compensation solely on the grounds that the passenger has not used that form. If a request is not sufficiently precise, the railway undertaking shall ask the passenger to clarify the request and shall assist the passenger to do so.
- 7. The compensation of the ticket price shall be paid within one month after the submission of the request for compensation. The compensation may be paid in vouchers and/or other services if the terms are flexible, in particular regarding the validity period and destination. The compensation shall be paid in money at the request of the passenger.
- 8. The compensation of the ticket price shall not be reduced by financial transaction costs such as fees, telephone costs or stamps. Railway undertakings may introduce a minimum threshold under which payments for compensation will not be paid. This threshold shall not exceed EUR 4 per ticket.
- 9. Passengers shall not have any right to compensation if they are informed of a delay before buying a ticket, or if a delay due to continuation on a different service or re-routing remains below 60 minutes.
- 10. A railway undertaking shall not be obliged to pay compensation if it can prove that the delay, missed connection or cancellation was caused directly by, or was inherently linked with:
- (a) extraordinary circumstances not connected with the operation of the railway, such as extreme weather conditions, major natural disasters or major public health crises, which the railway undertaking, in spite of having taken the care required in the particular circumstances of the case, was unable to avoid and the consequences of which it was unable to prevent;
- (b) fault on the part of the passenger; or
- (c) the behaviour of a third party which the railway undertaking, in spite of having taken the care required in the particular circumstances of the case, was unable to avoid and the consequences of which it was unable to prevent, such as persons on the track, cable theft, on-board emergencies, law enforcement activities, sabotage or terrorism.

Strikes by the personnel of the railway undertaking, acts or omissions by another undertaking using the same railway infrastructure and acts or omissions of the infrastructure and station managers are not covered by the exemption referred to in point (c) of the first subparagraph.

#### Assistance

- 1. In the case of a delay in arrival or departure, or cancellation of a service, passengers shall be kept informed of the situation and of the estimated departure time and estimated arrival time of the service or the replacement service by the railway undertaking or by the station manager as soon as such information is available. Where ticket vendors and tour operators have such information, they shall also provide it to the passenger.
- 2. Where the delay referred to in paragraph 1 amounts to 60 minutes or more, or the service is cancelled, the railway undertaking operating the delayed or cancelled service shall offer the passengers the following, free of charge:
- (a) meals and refreshments in reasonable relation to the waiting time, if they are available on the train or in the station, or can reasonably be supplied, taking into account criteria such as the distance from the supplier, the time required for delivery and the cost;
- (b) hotel or other accommodation, and transport between the railway station and place of accommodation, in cases where a stay of one or more nights becomes necessary or an additional stay becomes necessary, where and when physically possible. In cases where such a stay becomes necessary due to the circumstances referred to in Article 19(10), the railway undertaking may limit the duration of accommodation to a maximum of three nights. The access requirements of persons with disabilities and persons with reduced mobility and the needs of assistance dogs shall be taken into account, whenever possible;
- (c) if the train is blocked on the track, transport from the train to the railway station, to the alternative departure point or to the final destination of the service, where and when physically possible.
- 3. If the railway service is interrupted and cannot be continued anymore or cannot be continued within a reasonable period, railway undertakings shall provide passengers as soon as possible with alternative transport services and make the necessary arrangements.
- 4. Railway undertakings shall inform affected passengers how to request certification that the rail service has suffered a delay, led to a missed connection or that it has been cancelled. This certification shall also apply in connection with the provisions laid down in Article 19.
- 5. In applying paragraphs 1 to 4, the operating railway undertaking shall pay particular attention to the needs of persons with disabilities and persons with reduced mobility, as well as to those of any accompanying persons and assistance dogs.
- 6. Where contingency plans are established pursuant to Article 13a(3) of Directive 2012/34/EU, the railway undertakings shall coordinate with the station manager and infrastructure manager in order to prepare them for the possibility of major disruption and long delays leading to a considerable number of passengers being stranded in the station. Such contingency plans shall include requirements for the accessibility of alert and information systems.

#### CHAPTER V

#### PERSONS WITH DISABILITIES AND PERSONS WITH REDUCED MOBILITY

#### Article 21

#### Right to transport

- 1. Railway undertakings and station managers shall, with the active involvement of representative organisations and, where relevant, representatives of persons with disabilities and persons with reduced mobility, establish or have in place non-discriminatory access rules for the transport of persons with disabilities, including their personal assistants recognised as such in accordance with national practices, and persons with reduced mobility. Those rules shall take into account the agreements referred to in point 4.4.3 of the Annex to Regulation (EU) No 1300/2014, in particular with regard to the entity responsible for providing assistance to persons with disabilities and persons with reduced mobility.
- 2. Reservations and tickets shall be offered to persons with disabilities and persons with reduced mobility at no additional cost. A railway undertaking, ticket vendor or tour operator may not refuse to accept a reservation from, or to issue a ticket to, a person with disabilities or a person with reduced mobility, or require that such person be accompanied by another person, unless this is strictly necessary in order to comply with the access rules referred to in paragraph 1.

#### Article 22

#### Information to persons with disabilities and persons with reduced mobility

- 1. Upon request, a station manager, a railway undertaking, a ticket vendor or a tour operator shall provide persons with disabilities and persons with reduced mobility with information, including in accessible formats in accordance with the provisions of Regulations (EU) No 454/2011 and (EU) No 1300/2014 and Directive (EU) 2019/882, on the accessibility of the station and associated facilities, and of rail services and on the access conditions of rolling stock in accordance with the access rules referred to in Article 21(1) and shall inform persons with disabilities and persons with reduced mobility about facilities on board.
- 2. When a railway undertaking, ticket vendor or tour operator makes use of the derogation provided for in Article 21(2), it shall upon request inform in writing the person with disabilities or person with reduced mobility concerned of its reasons for doing so within five working days of the refusal to accept the reservation or to issue the ticket or of the imposition of the condition of being accompanied. The railway undertaking, ticket vendor or tour operator shall make reasonable efforts to propose acceptable alternative transport to the person in question taking into account his or her accessibility needs.
- 3. In unstaffed stations, railway undertakings and station managers shall ensure that easily available information, including in accessible formats in accordance with the provisions of Regulations (EU) No 454/2011 and (EU) No 1300/2014 and Directive (EU) 2019/882, is displayed in accordance with the access rules referred to in Article 21(1) regarding the nearest staffed stations and regarding directly available assistance for persons with disabilities and persons with reduced mobility.

#### Article 23

#### Assistance at railway stations and on board

- 1. Persons with disabilities or persons with reduced mobility shall be assisted as follows:
- (a) the personal assistant, recognised as such in accordance with national practices, may travel with a special tariff and, if applicable, free of charge and be seated, where practicable, next to the person with disabilities;
- (b) where a railway undertaking requires that a passenger needs to be accompanied on board the train in accordance with Article 21(2), the accompanying person shall be entitled to travel free of charge and to be seated, where practicable, next to the person with disabilities or to the person with reduced mobility;

- (c) an assistance dog shall be permitted to accompany them in accordance with any relevant national law;
- (d) for unstaffed trains, station managers or railway undertakings shall provide assistance free of charge, in conformity with the access rules referred to in Article 21(1), during boarding and alighting from a train when there is trained staff on duty at the station;
- (e) on departure from, transit through or arrival at a staffed railway station, the station manager or the railway undertaking shall provide assistance free of charge in such a way that that person is able to board the train, to transfer to a connecting rail service for which he or she has a ticket, or to alight from the train, provided there is trained staff on duty. Where the need for assistance has been notified in advance in accordance with point (a) of Article 24, the station manager or the railway undertaking shall ensure that assistance is provided as requested;
- (f) at unstaffed stations, railway undertakings shall provide assistance free of charge on board a train and during boarding and alighting from a train if the train is accompanied by trained staff;
- (g) in the absence of trained accompanying staff on board a train and at a station, station managers or railway undertakings shall make all reasonable efforts to enable persons with disabilities or persons with reduced mobility to have access to travel by rail;
- (h) railway undertakings shall make all reasonable efforts to provide persons with disabilities or persons with reduced mobility with access to the same on-board services as other passengers, where these persons cannot have access to those services independently and safely.
- 2. The rules referred to in Article 21(1) shall establish the arrangements for the exercise of the rights referred to in paragraph 1 of this Article.

#### Conditions under which assistance is provided

Railway undertakings, station managers, ticket vendors and tour operators shall cooperate in order to provide assistance free of charge to persons with disabilities and persons with reduced mobility, as specified in Articles 21 and 23, offering a single notification mechanism, in accordance with the following points:

(a) assistance shall be provided on condition that the railway undertaking, the station manager, the ticket vendor or the tour operator with which the ticket was purchased, or the Single Point of Contact referred to in point (f), where applicable, is notified of the passenger's need for such assistance at least 24 hours before the assistance is needed. A single notification per journey shall be sufficient. Such notifications shall be forwarded to all railway undertakings and station managers involved in the journey.

Such notifications shall be accepted without additional costs, irrespective of the means of communication being used.

Where a ticket or season ticket permits multiple journeys, one notification shall be sufficient provided that adequate information on the timing of subsequent journeys is provided, and in any case at least 24 hours before the first time the assistance is needed. The passenger or his/her representative shall make all reasonable efforts to inform of any annulation of such subsequent journeys at least 12 hours in advance.

Member States may allow the 24-hour period for notifications referred to in the first, second and third subparagraphs to be extended up to 36 hours, but not beyond 30 June 2026. In such cases, Member States shall notify the Commission of that permission and provide information on the measures taken or envisaged to reduce the period;

- (b) railway undertakings, station managers, ticket vendors and tour operators shall take all measures necessary for the reception of notifications. Where ticket vendors are unable to process such notifications, they shall indicate alternative points of purchase or alternative means to make the notification;
- (c) if no notification is made in accordance with point (a), the railway undertaking and the station manager shall make all reasonable efforts to provide assistance in such a way that the person with disabilities or person with reduced mobility may travel;
- (d) without prejudice to point (f) of this Article, the station manager or any other authorised person shall designate points at which persons with disabilities and persons with reduced mobility can make their arrival at the railway station known and request assistance. The responsibilities regarding the designation of such points and the provision of information about them shall be established in the access rules referred to in Article 21(1);
- (e) assistance shall be provided on condition that the person with disabilities or person with reduced mobility presents him or herself at the designated point at a time stipulated by the railway undertaking or station manager providing such assistance. Any time stipulated shall not be more than 60 minutes before the published departure time or the time at which all passengers are asked to check in. If no time is stipulated by which the person with disabilities or person with reduced mobility is required to present him or herself, the person shall present him or herself at the designated point at least 30 minutes before the published departure time or before the time at which all passengers are asked to check in:
- (f) Member States may require that station managers and railway undertakings on their territory cooperate to establish and to operate Single Points of Contact for persons with disabilities and persons with reduced mobility. The terms for the operation of the Single Points of Contact shall be established in the access rules referred to in Article 21(1). Those Single Points of Contact have the responsibility to:
  - (i) accept requests for assistance at stations;
  - (ii) communicate individual requests for assistance to station managers and railway undertakings; and
  - (iii) provide information on accessibility.

#### Article 25

#### Compensation in respect of mobility equipment, assistive devices and assistance dogs

- 1. Where railway undertakings and station managers cause the loss of, or damage to, mobility equipment, including wheelchairs, and assistive devices, or the loss of, or injury to, assistance dogs used by persons with disabilities and persons with reduced mobility, they shall be liable for that loss, damage or injury, and provide compensation without undue delay. That compensation shall comprise:
- (a) the cost of replacement or repair of the mobility equipment or assistive devices lost or damaged;
- (b) the cost of replacement or the treatment of the injury of an assistance dog that was lost or injured; and

- (c) reasonable costs of temporary replacement for mobility equipment, assistive devices or assistance dogs where such replacement is not provided by the railway undertaking or the station manager in accordance with paragraph 2.
- 2. Where paragraph 1 applies, railway undertakings and station managers shall rapidly make all reasonable efforts to provide immediately needed temporary replacements for mobility equipment or assistive devices. The person with disabilities or the person with reduced mobility shall be permitted to keep that temporary replacement equipment or device until the compensation referred to in paragraph 1 has been paid.

#### Staff training

1. Railway undertakings and station managers shall ensure that all staff, including those newly recruited, providing, in their regular duties, direct assistance to persons with disabilities and persons with reduced mobility, receive disability-related training in order to know how to meet the needs of persons with disabilities and of persons with reduced mobility.

They shall also provide all staff, working at the station or on board trains, who deal directly with the travelling public with training and regular refresher training courses to raise awareness of the needs of persons with disabilities and persons with reduced mobility.

2. Railway undertakings and station managers may accept the participation, in the training referred to in paragraph 1, of employees with disabilities, and may consider the participation of passengers with disabilities and passengers with reduced mobility, and/or organisations representing them.

#### CHAPTER VI

#### SECURITY, COMPLAINTS AND QUALITY OF SERVICE

#### Article 27

#### Personal security of passengers

In agreement with public authorities, railway undertakings, infrastructure managers and station managers shall take adequate measures in their respective fields of responsibility and adapt them to the level of security defined by the public authorities to ensure passengers' personal security in railway stations and on trains and to manage risks. They shall cooperate and exchange information on best practices concerning the prevention of acts which are likely to deteriorate the level of security.

#### Article 28

#### **Complaints**

- 1. Each railway undertaking and station manager of a station handling on average more than 10 000 passengers per day over a year shall set up a complaint-handling mechanism for the rights and obligations covered by this Regulation in their respective fields of responsibility. They shall make their contact details and working language, or languages, widely known to passengers. This mechanism shall not apply for the purposes of Chapter III.
- 2. Passengers may submit a complaint to any railway undertaking or station manager regarding their respective fields of responsibility via the mechanisms referred to in paragraph 1. Such a complaint shall be submitted within three months of the incident that it concerns. Within one month of receiving the complaint, the addressee shall either give a reasoned reply or, in justified cases, inform the passenger that he or she will receive a reply within a period of less than three

months from the date of receipt of the complaint. Railway undertakings and station managers shall keep the data necessary to assess the complaint for the duration of the entire complaint-handling procedure, including the complaint-handling procedures referred to in Articles 33 and 34, and shall make that data available to national enforcement bodies upon request.

- 3. Details of the complaint-handling procedure shall be accessible to the public, including to persons with disabilities and to persons with reduced mobility. This information shall be available upon request at least in the official language or languages of the Member State in which the railway undertaking is operating.
- 4. The railway undertaking shall publish in the report referred to in Article 29(2) the number and categories of received complaints and of processed complaints, the response time and the possible improvement actions undertaken.

#### Article 29

#### Service quality standards

- 1. Railway undertakings shall establish service quality standards and implement a quality management system to maintain service quality. The service quality standards shall at least cover the items listed in Annex III.
- 2. Railway undertakings shall monitor their own performance as reflected in the service quality standards. By 30 June 2023, and every two years thereafter, they shall publish a report on their service quality performance on their website. Such reports shall also be made available on the website of the European Union Agency for Railways.
- 3. Station managers shall establish service quality standards based on the relevant items listed in Annex III. They shall monitor their performance pursuant to those standards and provide access to the information on their performance to the national public authorities on request.

#### CHAPTER VII

#### INFORMATION AND ENFORCEMENT

#### Article 30

#### Information to passengers about their rights

- 1. When selling tickets for journeys by rail, railway undertakings, station managers, ticket vendors and tour operators shall inform passengers of their rights and obligations under this Regulation. In order to comply with this information requirement, they may use a summary of the provisions of this Regulation prepared by the Commission in all official languages of the Union and made available to them. They shall provide that information, in either paper or electronic format, or by any other means, including in accessible formats in accordance with the provisions of Directive (EU) 2019/882 and Regulation (EU) No 1300/2014. They shall specify where, in the event of cancellation, missed connection or long delay, such information can be obtained.
- 2. Railway undertakings and station managers shall inform passengers in an appropriate manner, including in accessible formats in accordance with the provisions of Directive (EU) 2019/882 and Regulation (EU) No 1300/2014, at the station, on the train and on their website, of their rights and obligations under this Regulation, and of the contact details of the body or bodies designated by Member States pursuant to Article 31.

#### Designation of national enforcement bodies

- 1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation. Each body shall take the measures necessary to ensure that the rights of passengers are respected.
- 2. Each body shall be independent in its organisation, funding decisions, legal structure and decision-making of any infrastructure manager, charging body, allocation body or railway undertaking.
- 3. Member States shall inform the Commission of the body or bodies designated in accordance with this Article and of its or their respective responsibilities. The Commission and the bodies designated shall publish that information on their websites.
- 4. The enforcement obligations as regards station managers and infrastructure managers provided for in this Chapter shall not apply to Cyprus or Malta for as long as no railway system is established within their respective territories and as regards railway undertakings for as long as no railway undertaking has been licensed by a licensing authority designated by Cyprus or Malta in accordance with Article 2(1).

#### Article 32

#### **Enforcement tasks**

- 1. The national enforcement bodies shall closely monitor compliance with this Regulation, including with Regulations (EU) No 454/2011 and (EU) No 1300/2014 as far as those Regulations are referred to in this Regulation, and shall take the measures necessary to ensure that the rights of passengers are upheld.
- 2. For the purpose of paragraph 1, railway undertakings, station managers, infrastructure managers, ticket vendors and tour operators shall provide the national enforcement bodies with relevant documents and information at their request without undue delay and, in any event, within one month from the receipt of the request. In complex cases, the national enforcement body may extend this period to a maximum of three months from the receipt of the request. In carrying out their functions, the national enforcement bodies shall take account of the information submitted to them by the body designated under Article 33 to handle complaints, if this is a different body. They may also decide on enforcement actions based on individual complaints transmitted by such a body.
- 3. Every two years, the national enforcement bodies shall publish reports with statistics on their activity, including on penalties applied by 30 June of the following calendar year. Those reports shall be made available on the website of the European Union Agency for Railways.
- 4. Railway undertakings shall give their contact details to the national enforcement body or bodies of the Member States in which they operate.

#### Article 33

#### Complaint handling by national enforcement bodies and other bodies

1. Without prejudice to the rights of consumers to seek alternative redress pursuant to Directive 2013/11/EU of the European Parliament and of the Council (15), after having complained unsuccessfully to the railway undertaking or station manager pursuant to Article 28 the passenger may complain to the national enforcement body or any other body designated under paragraph 2 of this Article within three months from receiving information on the rejection of the original complaint. Where no reply is received within three months from making the original complaint, the passenger shall have the right to complain to the national enforcement body or any other body designated under paragraph 2. Where necessary, that body shall inform the complainant about his or her right to complain to alternative dispute resolution bodies to seek individual redress.

<sup>(15)</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 63).

- 2. Any passenger may complain about an alleged infringement of this Regulation either to the national enforcement body, or to any other body designated by a Member State for that purpose.
- 3. The national enforcement body or any other body designated under paragraph 2 shall acknowledge receipt of the complaint within two weeks of receiving it. The complaint-handling procedure shall take a maximum of three months from the date of the establishment of the complaint file. For complex cases, that body may extend that period to six months. In such a case, it shall inform the passenger of the reasons for the extension and of the expected time needed to conclude the procedure. Only those cases that involve legal proceedings may take longer than six months. Where that body is also an alternative dispute resolution body within the meaning of Directive 2013/11/EU, the time limits laid down in that Directive shall prevail.

The complaint-handling procedure shall be made accessible to persons with disabilities and to persons with reduced mobility.

- 4. Passenger complaints about an incident involving a railway undertaking shall be handled by the national enforcement body or any other body designated under paragraph 2 of the Member State that granted that undertaking's licence.
- 5. Where a complaint relates to alleged infringements by station or infrastructure managers, the complaint shall be handled by the national enforcement body or any other body designated under paragraph 2 of the Member State on whose territory the incident occurred.
- 6. In the framework of cooperation pursuant to Article 34, the national enforcement bodies may derogate from paragraphs 4 or 5 of this Article, or both of them, where for justified reasons, in particular those related to language or place of residence, this is in the passenger's interest.

#### Article 34

#### Exchange of information and cross-border cooperation between national enforcement bodies

- 1. Where different bodies are designated under Articles 31 and 33, reporting mechanisms shall be set up to ensure the exchange of information between them, in accordance with Regulation (EU) 2016/679, in order to help the national enforcement body to carry out its tasks of supervision and enforcement, and so that the complaint-handling body designated under Article 33 can collect the information necessary to examine individual complaints.
- 2. National enforcement bodies shall exchange information on their work and decision-making principles and practices for the purpose of coordination. The Commission shall support them in that task.
- 3. In complex cases such as those involving multiple complaints or a number of operators, cross-border travel or accidents on the territory of a Member State other than that which granted the undertaking's licence, and in particular where it is unclear which national enforcement body is competent, or where it would facilitate or accelerate the resolution of the complaint, national enforcement bodies shall cooperate to identify a lead body, which shall serve as a single point of contact for passengers. All national enforcement bodies involved shall cooperate to facilitate the resolution of the complaint, including by sharing information, assisting with the translation of documents and providing information on the circumstances of incidents. Passengers shall be informed which body is acting as lead body.

#### CHAPTER VIII

#### FINAL PROVISIONS

#### Article 35

#### **Penalties**

- 1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those rules and measures and shall notify it without delay of any subsequent amendment affecting them.
- 2. In the framework of cooperation referred to in Article 34 the national enforcement body which is competent for the purposes of Article 33(4) or (5) shall, at the request of the national enforcement body handling the complaint, investigate the infringement of this Regulation identified by that body and, if necessary, impose penalties.

#### Article 36

#### Delegated acts

The Commission is empowered to adopt delegated acts in accordance with Article 37 amending this Regulation in order to:

- (a) adjust the financial amount stated in Article 15(2) to take account of changes in the EU-wide Harmonised Index of Consumer Prices excluding energy and unprocessed food, as published by the Commission (Eurostat);
- (b) modify Annex I in order to take account of amendments to the Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV), as set out in Appendix A to the Convention concerning International Carriage by Rail (COTIF).

#### Article 37

#### Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
- 2. The power to adopt delegated acts referred to in Article 36 shall be conferred on the Commission for a period of five years from 6 June 2021. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
- 3. The delegation of power referred to in Article 36 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following that of its publication in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
- 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
- 5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
- 6. A delegated act adopted pursuant to Article 36 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months from 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.

#### 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 39

#### Report

By 7 June 2026, the Commission shall report to the European Parliament and the Council on the implementation and the results of this Regulation.

The report shall be based on information to be provided pursuant to this Regulation. The report shall, where necessary, be accompanied by appropriate proposals.

#### Article 40

#### Repeal

Regulation (EC) No 1371/2007 is repealed with effect from 7 June 2023.

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

#### Article 41

#### Entry into force

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

It shall apply from 7 June 2023.

However, Article 6(4) shall apply 7 June 2025.

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

Done at Brussels, 29 April 2021.

For the European Parliament
The President
The President
D.M. SASSOLI
A.P. ZACARIAS

#### ANNEX I

### EXTRACT FROM THE UNIFORM RULES CONCERNING THE CONTRACT FOR INTERNATIONAL CARRIAGE OF PASSENGERS AND LUGGAGE BY RAIL (CIV)

Appendix A to the Convention Concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention Concerning International Carriage by Rail of 3 June 1999

#### TITLE I

#### **GENERAL PROVISIONS**

#### Article 3

#### **Definitions**

For purposes of these Uniform Rules, the term:

- (a) 'carrier' means the contractual carrier with whom the passenger has concluded the contract of carriage pursuant to these Uniform Rules, or a successive carrier who is liable on the basis of this contract;
- (b) 'substitute carrier' means a carrier, who has not concluded the contract of carriage with the passenger, but to whom the carrier referred to in letter (a) has entrusted, in whole or in part, the performance of the carriage by rail;
- (c) 'General Conditions of Carriage' means the conditions of the carrier in the form of general conditions or tariffs legally in force in each Member State and which have become, by the conclusion of the contract of carriage, an integral part of it;
- (d) 'vehicle' means a motor vehicle or a trailer carried on the occasion of the carriage of passengers.

#### TITLE II

#### CONCLUSION AND PERFORMANCE OF THE CONTRACT OF CARRIAGE

#### Article 6

#### Contract of carriage

- 1. By the contract of carriage the carrier shall undertake to carry the passenger as well as, where appropriate, luggage and vehicles to the place of destination and to deliver the luggage and vehicles at the place of destination.
- 2. The contract of carriage must be confirmed by one or more tickets issued to the passenger. However, subject to Article 9 the absence, irregularity or loss of the ticket shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules.
- 3. The ticket shall be prima facie evidence of the conclusion and the contents of the contract of carriage.

#### Article 7

#### **Ticket**

- 1. The General Conditions of Carriage shall determine the form and content of tickets as well as the language and characters in which they are to be printed and made out.
- 2. The following, at least, must be entered on the ticket:
- (a) the carrier or carriers;
- (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
- (c) any other statement necessary to prove the conclusion and contents of the contract of carriage and enabling the passenger to assert the rights resulting from this contract.
- 3. The passenger must ensure, on receipt of the ticket, that it has been made out in accordance with his instructions.

- 4. The ticket shall be transferable if it has not been made out in the passenger's name and if the journey has not begun.
- 5. The ticket may be established in the form of electronic data registration, which can be transformed into legible written symbols. The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the ticket represented by those data.

#### Payment and refund of the carriage charge

- 1. Subject to a contrary agreement between the passenger and the carrier, the carriage charge shall be payable in advance.
- 2. The General Conditions of Carriage shall determine under what conditions a refund of the carriage charge shall be made.

#### Article 9

#### Right to be carried. Exclusion from carriage

- 1. The passenger must, from the start of his journey, be in possession of a valid ticket and produce it on the inspection of tickets. The General Conditions of Carriage may provide:
- (a) that a passenger who does not produce a valid ticket must pay, in addition to the carriage charge, a surcharge;
- (b) that a passenger who refuses to pay the carriage charge or the surcharge upon demand may be required to discontinue his journey;
- (c) if and under what conditions a refund of the surcharge shall be made.
- 2. The General Conditions of Carriage may provide that passengers who:
- (a) present a danger for safety and the good functioning of the operations or for the safety of other passengers;
- (b) inconvenience other passengers in an intolerable manner,

shall be excluded from carriage or may be required to discontinue their journey and that such persons shall not be entitled to a refund of their carriage charge or of any charge for the carriage of registered luggage they may have paid.

#### Article 10

#### Completion of administrative formalities

The passenger must comply with the formalities required by customs or other administrative authorities.

#### Article 11

#### Cancellation and late running of trains. Missed connections

The carrier must, where necessary, certify on the ticket that the train has been cancelled or the connection missed.

TITLE III

#### CARRIAGE OF HAND LUGGAGE, ANIMALS, REGISTERED LUGGAGE AND VEHICLES

CHAPTER I

#### Common provisions

Article 12

#### Acceptable articles and animals

- 1. The passenger may take with him articles which can be handled easily (hand luggage) and also live animals in accordance with the General Conditions of Carriage. Moreover, the passenger may take with him cumbersome articles in accordance with the special provisions, contained in the General Conditions of Carriage. Articles and animals likely to annoy or inconvenience passengers or cause damage shall not be allowed as hand luggage.
- 2. The passenger may consign articles and animals as registered luggage in accordance with the General Conditions of Carriage.

- 3. The carrier may allow the carriage of vehicles on the occasion of the carriage of passengers in accordance with special provisions, contained in the General Conditions of Carriage.
- 4. The carriage of dangerous goods as hand luggage, registered luggage as well as in or on vehicles which, in accordance with this Title are carried by rail, must comply with the Regulation concerning the Carriage of Dangerous Goods by Rail (RID).

#### **Examination**

- 1. When there is good reason to suspect a failure to observe the conditions of carriage, the carrier shall have the right to examine whether the articles (hand luggage, registered luggage, vehicles including their loading) and animals carried comply with the conditions of carriage, unless the laws and prescriptions of the State in which the examination would take place prohibit such examination. The passenger must be invited to attend the examination. If he does not appear or cannot be reached, the carrier must require the presence of two independent witnesses.
- 2. If it is established that the conditions of carriage have not been respected, the carrier can require the passenger to pay the costs arising from the examination.

#### Article 14

#### Completion of administrative formalities

The passenger must comply with the formalities required by customs or other administrative authorities when, on being carried, he has articles (hand luggage, registered luggage, vehicles including their loading) or animals carried. He shall be present at the inspection of these articles save where otherwise provided by the laws and prescriptions of each State.

#### CHAPTER II

#### Hand luggage and animals

Article 15

#### **Supervision**

It shall be the passenger's responsibility to supervise the hand luggage and animals that he takes with him.

#### CHAPTER III

#### Registered luggage

#### Article 16

#### Consignment of registered luggage

- 1. The contractual obligations relating to the forwarding of registered luggage must be established by a luggage registration voucher issued to the passenger.
- 2. Subject to Article 22 the absence, irregularity or loss of the luggage registration voucher shall not affect the existence or the validity of the agreements concerning the forwarding of the registered luggage, which shall remain subject to these Uniform Rules.
- 3. The luggage registration voucher shall be prima facie evidence of the registration of the luggage and the conditions of its carriage.
- 4. Subject to evidence to the contrary, it shall be presumed that when the carrier took over the registered luggage it was apparently in a good condition, and that the number and the mass of the items of luggage corresponded to the entries on the luggage registration voucher.

#### Article 17

#### Luggage registration voucher

1. The General Conditions of Carriage shall determine the form and content of the luggage registration voucher as well as the language and characters in which it is to be printed and made out. Article 7(5) shall apply mutatis mutandis.

- 2. The following, at least, must be entered on the luggage registration voucher:
- (a) the carrier or carriers;
- (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
- (c) any other statement necessary to prove the contractual obligations relating to the forwarding of the registered luggage and enabling the passenger to assert the rights resulting from the contract of carriage.
- 3. The passenger must ensure, on receipt of the luggage registration voucher, that it has been made out in accordance with his instructions.

#### Registration and carriage

- 1. Save where the General Conditions of Carriage otherwise provide, luggage shall be registered only on production of a ticket valid at least as far as the destination of the luggage. In other respects the registration of luggage shall be carried out in accordance with the prescriptions in force at the place of consignment.
- 2. When the General Conditions of Carriage provide that luggage may be accepted for carriage without production of a ticket, the provisions of these Uniform Rules determining the rights and obligations of the passenger in respect of his registered luggage shall apply *mutatis mutandis* to the consignor of registered luggage.
- 3. The carrier can forward the registered luggage by another train or by another mode of transport and by a different route from that taken by the passenger.

#### Article 19

#### Payment of charges for the carriage of registered luggage

Subject to a contrary agreement between the passenger and the carrier, the charge for the carriage of registered luggage shall be payable on registration.

#### Article 20

#### Marking of registered luggage

The passenger must indicate on each item of registered luggage in a clearly visible place, in a sufficiently durable and legible manner:

- (a) his name and address;
- (b) the place of destination.

#### Article 21

#### Right to dispose of registered luggage

- 1. If circumstances permit and if customs requirements or the requirements of other administrative authorities are not thereby contravened, the passenger can request luggage to be handed back at the place of consignment on surrender of the luggage registration voucher and, if the General Conditions of Carriage so require, on production of the ticket.
- 2. The General Conditions of Carriage may contain other provisions concerning the right to dispose of registered luggage, in particular modifications of the place of destination and the possible financial consequences to be borne by the passenger.

#### Article 22

#### **Delivery**

1. Registered luggage shall be delivered on surrender of the luggage registration voucher and, where appropriate, on payment of the amounts chargeable against the consignment.

The carrier shall be entitled, but not obliged, to examine whether the holder of the voucher is entitled to take delivery.

- 2. It shall be equivalent to delivery to the holder of the luggage registration voucher if, in accordance with the prescriptions in force at the place of destination:
- (a) the luggage has been handed over to the customs or octroi authorities at their premises or warehouses, when these are not subject to the carrier's supervision;
- (b) live animals have been handed over to third parties.
- 3. The holder of the luggage registration voucher may require delivery of the luggage at the place of destination as soon as the agreed time and, where appropriate, the time necessary for the operations carried out by customs or other administrative authorities, has elapsed.
- 4. Failing surrender of the luggage registration voucher, the carrier shall only be obliged to deliver the luggage to the person proving his right thereto; if the proof offered appears insufficient, the carrier may require security to be given.
- 5. Luggage shall be delivered at the place of destination for which it has been registered.
- 6. The holder of a luggage registration voucher whose luggage has not been delivered may require the day and time to be endorsed on the voucher when he requested delivery in accordance with paragraph 3.
- 7. The person entitled may refuse to accept the luggage if the carrier does not comply with his request to carry out an examination of the registered luggage in order to establish alleged damage.
- 8. In all other respects delivery of luggage shall be carried out in accordance with the prescriptions in force at the place of destination.

CHAPTER IV

#### Vehicles

Article 23

## Conditions of carriage

The special provisions governing the carriage of vehicles, contained in the General Conditions of Carriage, shall specify in particular the conditions governing acceptance for carriage, registration, loading and carriage, unloading and delivery as well as the obligations of the passenger.

#### Article 24

# Carriage voucher

- 1. The contractual obligations relating to the carriage of vehicles must be established by a carriage voucher issued to the passenger. The carriage voucher may be integrated into the passenger's ticket.
- 2. The special provisions governing the carriage of vehicles, contained in the General Conditions of Carriage, shall determine the form and content of the carriage voucher as well as the language and the characters in which it is to be printed and made out. Article 7(5) shall apply *mutatis mutandis*.
- 3. The following, at least, must be entered on the carriage voucher:
- (a) the carrier or carriers;
- (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
- (c) any other statement necessary to prove the contractual obligations relating to the carriage of vehicles and enabling the passenger to assert the rights resulting from the contract of carriage.
- 4. The passenger must ensure, on receipt of the carriage voucher, that it has been made out in accordance with his instructions.

## Applicable law

Subject to the provisions of this Chapter, the provisions of Chapter III relating to the carriage of luggage shall apply to vehicles.

#### TITLE IV

## LIABILITY OF THE CARRIER

#### CHAPTER I

### Liability in case of death of, or personal injury to, passengers

#### Article 26

#### Basis of liability

- 1. The carrier shall be liable for the loss or damage resulting from the death of, personal injuries to, or any other physical or mental harm to, a passenger, caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from railway vehicles whatever the railway infrastructure used.
- 2. The carrier shall be relieved of this liability:
- (a) if the accident has been caused by circumstances not connected with the operation of the railway and which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
- (b) to the extent that the accident is due to the fault of the passenger;
- (c) if the accident is due to the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.
- 3. If the accident is due to the behaviour of a third party and if, in spite of that, the carrier is not entirely relieved of his liability in accordance with paragraph 2, letter (c), he shall be liable in full up to the limits laid down in these Uniform Rules but without prejudice to any right of recourse which the carrier may have against the third party.
- 4. These Uniform Rules shall not affect any liability which may be incurred by the carrier in cases not provided for in paragraph 1.
- 5. If carriage governed by a single contract of carriage is performed by successive carriers, the carrier bound pursuant to the contract of carriage to provide the service of carriage in the course of which the accident happened shall be liable in case of death of, and personal injuries to, passengers. When this service has not been provided by the carrier, but by a substitute carrier, the two carriers shall be jointly and severally liable in accordance with these Uniform Rules.

## Article 27

### Damages in case of death

- 1. In case of death of the passenger the damages shall comprise:
- (a) any necessary costs following the death, in particular those of transport of the body and the funeral expenses;
- (b) if death does not occur at once, the damages provided for in Article 28.
- 2. If, through the death of the passenger, persons whom he had, or would have had, a legal duty to maintain are deprived of their support, such persons shall also be compensated for that loss. Rights of action for damages of persons whom the passenger was maintaining without being legally bound to do so, shall be governed by national law.

## Damages in case of personal injury

In case of personal injury or any other physical or mental harm to the passenger the damages shall comprise:

- (a) any necessary costs, in particular those of treatment and of transport;
- (b) compensation for financial loss, due to total or partial incapacity to work, or to increased needs.

#### Article 29

## Compensation for other bodily harm

National law shall determine whether and to what extent the carrier must pay damages for bodily harm other than that for which there is provision in Articles 27 and 28.

#### Article 30

## Form and amount of damages in case of death and personal injury

- 1. The damages under Article 27(2) and Article 28(b) must be awarded in the form of a lump sum. However, if national law permits payment of an annuity, the damages shall be awarded in that form if so requested by the injured passenger or by the persons entitled referred to in Article 27(2).
- 2. The amount of damages to be awarded pursuant to paragraph 1 shall be determined in accordance with national law. However, for the purposes of these Uniform Rules, the upper limit per passenger shall be set at 175 000 units of account as a lump sum or as an annual annuity corresponding to that sum, where national law provides for an upper limit of less than that amount.

#### Article 31

## Other modes of transport

- 1. Subject to paragraph 2, the provisions relating to the liability of the carrier in case of death of, or personal injury to, passengers shall not apply to loss or damage arising in the course of carriage which, in accordance with the contract of carriage, was not carriage by rail.
- 2. However, where railway vehicles are carried by ferry, the provisions relating to liability in case of death of, or personal injury to, passengers shall apply to loss or damage referred to in Article 26(1) and Article 33(1), caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from the said vehicles.
- 3. When, because of exceptional circumstances, the operation of the railway is temporarily suspended and the passengers are carried by another mode of transport, the carrier shall be liable pursuant to these Uniform Rules.

#### CHAPTER II

## Liability in case of failure to keep to the timetable

## Article 32

## Liability in case of cancellation, late running of trains or missed connections

- 1. The carrier shall be liable to the passenger for loss or damage resulting from the fact that, by reason of cancellation, the late running of a train or a missed connection, his journey cannot be continued the same day, or that a continuation of the journey the same day could not reasonably be required because of given circumstances. The damages shall comprise the reasonable costs of accommodation as well as the reasonable costs occasioned by having to notify persons expecting the passenger.
- 2. The carrier shall be relieved of this liability, when the cancellation, late running or missed connection is attributable to one of the following causes:
- (a) circumstances not connected with the operation of the railway which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;

- (b) fault on the part of the passenger; or
- (c) the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.
- 3. National law shall determine whether and to what extent the carrier must pay damages for harm other than that provided for in paragraph 1. This provision shall be without prejudice to Article 44.

#### CHAPTER III

## Liability in respect of hand luggage, animals, registered luggage and vehicles

#### Section 1

## Hand luggage and animals

Article 33

#### Liability

- 1. In case of death of, or personal injury to, passengers the carrier shall also be liable for the loss or damage resulting from the total or partial loss of, or damage to, articles which the passenger had on him or with him as hand luggage; this shall apply also to animals which the passenger had brought with him. Article 26 shall apply mutatis mutandis.
- 2. In other respects, the carrier shall not be liable for the total or partial loss of, or damage to, articles, hand luggage or animals the supervision of which is the responsibility of the passenger in accordance with Article 15, unless this loss or damage is caused by the fault of the carrier. The other Articles of Title IV, with exception of Article 51, and Title VI shall not apply in this case.

#### Article 34

## Limit of damages in case of loss of or damage to articles

When the carrier is liable under Article 33(1), he must pay compensation up to a limit of 1 400 units of account per passenger.

#### Article 35

## **Exclusion of liability**

The carrier shall not be liable to the passenger for loss or damage arising from the fact that the passenger does not conform to the formalities required by customs or other administrative authorities.

#### Section 2

# Registered luggage

# Article 36

## Basis of liability

- 1. The carrier shall be liable for loss or damage resulting from the total or partial loss of, or damage to, registered luggage between the time of taking over by the carrier and the time of delivery as well as from delay in delivery.
- 2. The carrier shall be relieved of this liability to the extent that the loss, damage or delay in delivery was caused by a fault of the passenger, by an order given by the passenger other than as a result of the fault of the carrier, by an inherent defect in the registered luggage or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.
- 3. The carrier shall be relieved of this liability to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances:
- (a) the absence or inadequacy of packing;
- (b) the special nature of the luggage;
- (c) the consignment as luggage of articles not acceptable for carriage.

## Burden of proof

- 1. The burden of proving that the loss, damage or delay in delivery was due to one of the causes specified in Article 36(2) shall lie on the carrier.
- 2. When the carrier establishes that, having regard to the circumstances of a particular case, the loss or damage could have arisen from one or more of the special risks referred to in Article 36(3), it shall be presumed that it did so arise. The person entitled shall, however, have the right to prove that the loss or damage was not attributable either wholly or in part to one of those risks.

#### Article 38

#### Successive carriers

If carriage governed by a single contract is performed by several successive carriers, each carrier, by the very act of taking over the luggage with the luggage registration voucher or the vehicle with the carriage voucher, shall become a party to the contract of carriage in respect of the forwarding of luggage or the carriage of vehicles, in accordance with the terms of the luggage registration voucher or of the carriage voucher and shall assume the obligations arising therefrom. In such a case each carrier shall be responsible for the carriage over the entire route up to delivery.

#### Article 39

## Substitute carrier

- 1. Where the carrier has entrusted the performance of the carriage, in whole or in part, to a substitute carrier, whether or not in pursuance of a right under the contract of carriage to do so, the carrier shall nevertheless remain liable in respect of the entire carriage.
- 2. All the provisions of these Uniform Rules governing the liability of the carrier shall apply also to the liability of the substitute carrier for the carriage performed by him. Articles 48 and 52 shall apply if an action is brought against the servants or any other persons whose services the substitute carrier makes use of for the performance of the carriage.
- 3. Any special agreement under which the carrier assumes obligations not imposed by these Uniform Rules or waives rights conferred by these Uniform Rules shall be of no effect in respect of the substitute carrier who has not accepted it expressly and in writing. Whether or not the substitute carrier has accepted it, the carrier shall nevertheless remain bound by the obligations or waivers resulting from such special agreement.
- 4. Where and to the extent that both the carrier and the substitute carrier are liable, their liability shall be joint and several.
- 5. The aggregate amount of compensation payable by the carrier, the substitute carrier and their servants and other persons whose services they make use of for the performance of the carriage shall not exceed the limits provided for in these Uniform Rules.
- 6. This Article shall not prejudice rights of recourse which may exist between the carrier and the substitute carrier.

### Article 40

# Presumption of loss

- 1. The person entitled may, without being required to furnish further proof, consider an item of luggage as lost when it has not been delivered or placed at his disposal within 14 days after a request for delivery has been made in accordance with Article 22(3).
- 2. If an item of luggage deemed to have been lost is recovered within one year after the request for delivery, the carrier must notify the person entitled if his address is known or can be ascertained.

- 3. Within thirty days after receipt of a notification referred to in paragraph 2, the person entitled may require the item of luggage to be delivered to him. In that case he must pay the charges in respect of carriage of the item from the place of consignment to the place where delivery is effected and refund the compensation received less, where appropriate, any costs included therein. Nevertheless he shall retain his rights to claim compensation for delay in delivery provided for in Article 43
- 4. If the item of luggage recovered has not been claimed within the period stated in paragraph 3 or if it is recovered more than one year after the request for delivery, the carrier shall dispose of it in accordance with the laws and prescriptions in force at the place where the item of luggage is situated.

#### Compensation for loss

- 1. In case of total or partial loss of registered luggage, the carrier must pay, to the exclusion of all other damages:
- (a) if the amount of the loss or damage suffered is proved, compensation equal to that amount but not exceeding 80 units of account per kilogram of gross mass short or 1 200 units of account per item of luggage;
- (b) if the amount of the loss or damage suffered is not established, liquidated damages of 20 units of account per kilogram of gross mass short or 300 units of account per item of luggage.

The method of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.

2. The carrier must in addition refund the charge for the carriage of luggage and the other sums paid in relation to the carriage of the lost item as well as the customs duties and excise duties already paid.

#### Article 42

## Compensation for damage

- 1. In case of damage to registered luggage, the carrier must pay compensation equivalent to the loss in value of the luggage, to the exclusion of all other damages.
- 2. The compensation shall not exceed:
- (a) if all the luggage has lost value through damage, the amount which would have been payable in case of total loss;
- (b) if only part of the luggage has lost value through damage, the amount which would have been payable had that part been lost.

#### Article 43

# Compensation for delay in delivery

- 1. In case of delay in delivery of registered luggage, the carrier must pay in respect of each whole period of 24 hours after delivery has been requested, but subject to a maximum of 14 days:
- (a) if the person entitled proves that loss or damage has been suffered thereby, compensation equal to the amount of the loss or damage, up to a maximum of 0,80 units of account per kilogram of gross mass of the luggage or 14 units of account per item of luggage, delivered late;
- (b) if the person entitled does not prove that loss or damage has been suffered thereby, liquidated damages of 0,14 units of account per kilogram of gross mass of the luggage or 2,80 units of account per item of luggage, delivered late.

The methods of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.

2. In case of total loss of luggage, the compensation provided for in paragraph 1 shall not be payable in addition to that provided for in Article 41.

- 3. In case of partial loss of luggage, the compensation provided for in paragraph 1 shall be payable in respect of that part of the luggage which has not been lost.
- 4. In case of damage to luggage not resulting from delay in delivery the compensation provided for in paragraph 1 shall, where appropriate, be payable in addition to that provided for in Article 42.
- 5. In no case shall the total of compensation provided for in paragraph 1 together with that payable under Articles 41 and 42 exceed the compensation which would be payable in case of total loss of the luggage.

#### Section 3

## Vehicles

# Article 44

#### Compensation for delay

- 1. In case of delay in loading for a reason attributable to the carrier or delay in delivery of a vehicle, the carrier must, if the person entitled proves that loss or damage has been suffered thereby, pay compensation not exceeding the amount of the carriage charge.
- 2. If, in case of delay in loading for a reason attributable to the carrier, the person entitled elects not to proceed with the contract of carriage, the carriage charge shall be refunded to him. In addition the person entitled may, if he proves that loss or damage has been suffered as a result of the delay, claim compensation not exceeding the carriage charge.

#### Article 45

### Compensation for loss

In case of total or partial loss of a vehicle the compensation payable to the person entitled for the loss or damage proved shall be calculated on the basis of the usual value of the vehicle. It shall not exceed 8 000 units of account. A loaded or unloaded trailer shall be considered as a separate vehicle.

#### Article 46

## Liability in respect of other articles

- 1. In respect of articles left inside the vehicle or situated in boxes (e.g. luggage or ski boxes) fixed to the vehicle, the carrier shall be liable only for loss or damage caused by his fault. The total compensation payable shall not exceed 1 400 units of account.
- 2. So far as concerns articles stowed on the outside of the vehicle, including the boxes referred to in paragraph 1, the carrier shall be liable in respect of articles placed on the outside of the vehicle only if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such a loss or damage or recklessly and with knowledge that such loss or damage would probably result.

# Article 47

## Applicable law

Subject to the provisions of this Section, the provisions of Section 2 relating to liability for luggage shall apply to vehicles.

### CHAPTER IV

## Common provisions

## Article 48

## Loss of right to invoke the limits of liability

The limits of liability provided for in these Uniform Rules as well as the provisions of national law, which limit the compensation to a fixed amount, shall not apply if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

## Conversion and interest

- 1. Where the calculation of compensation requires the conversion of sums expressed in foreign currency, conversion shall be at the exchange rate applicable on the day and at the place of payment of the compensation.
- 2. The person entitled may claim interest on compensation, calculated at five per cent per annum, from the day of the claim provided for in Article 55 or, if no such claim has been made, from the day on which legal proceedings were instituted.
- 3. However, in the case of compensation payable pursuant to Articles 27 and 28, interest shall accrue only from the day on which the events relevant to the assessment of the amount of compensation occurred, if that day is later than that of the claim or the day when legal proceedings were instituted.
- 4. In the case of luggage, interest shall only be payable if the compensation exceeds 16 units of account per luggage registration voucher.
- 5. In the case of luggage, if the person entitled does not submit to the carrier, within a reasonable time allotted to him, the supporting documents required for the amount of the claim to be finally settled, no interest shall accrue between the expiry of the time allotted and the actual submission of such documents.

### Article 50

## Liability in case of nuclear incidents

The carrier shall be relieved of liability pursuant to these Uniform Rules for loss or damage caused by a nuclear incident when the operator of a nuclear installation or another person who is substituted for him is liable for the loss or damage pursuant to the laws and prescriptions of a State governing liability in the field of nuclear energy.

#### Article 51

#### Persons for whom the carrier is liable

The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the scope of their functions. The managers of the railway infrastructure on which the carriage is performed shall be considered as persons whose services the carrier makes use of for the performance of the carriage.

#### Article 52

## Other actions

- 1. In all cases where these Uniform Rules shall apply, any action in respect of liability, on whatever grounds, may be brought against the carrier only subject to the conditions and limitations laid down in these Uniform Rules.
- 2. The same shall apply to any action brought against the servants and other persons for whom the carrier is liable pursuant to Article 51.

## TITLE V

# LIABILITY OF THE PASSENGER

Article 53

## Special principles of liability

The passenger shall be liable to the carrier for any loss or damage:

- (a) resulting from failure to fulfil his obligations pursuant to:
  - 1. Articles 10, 14 and 20;

- 2. the special provisions for the carriage of vehicles, contained in the General Conditions of Carriage; or
- 3. the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID); or
- (b) caused by articles and animals that he brings with him,

unless he proves that the loss or damage was caused by circumstances that he could not avoid and the consequences of which he was unable to prevent, despite the fact that he exercised the diligence required of a conscientious passenger. This provision shall not affect the liability of the carrier pursuant to Articles 26 and 33(1).

#### TITLE VI

#### ASSERTION OF RIGHTS

#### Article 54

### Ascertainment of partial loss or damage

- 1. When partial loss of, or damage to, an article carried in the charge of the carrier (luggage, vehicles) is discovered or presumed by the carrier or alleged by the person entitled, the carrier must without delay, and if possible in the presence of the person entitled, draw up a report stating, according to the nature of the loss or damage, the condition of the article and, as far as possible, the extent of the loss or damage, its cause and the time of its occurrence.
- 2. A copy of the report must be supplied free of charge to the person entitled.
- 3. Should the person entitled not accept the findings in the report, he may request that the condition of the luggage or vehicle and the cause and amount of the loss or damage be ascertained by an expert appointed either by the parties to the contract of carriage or by a court or tribunal. The procedure to be followed shall be governed by the laws and prescriptions of the State in which such ascertainment takes place.

#### Article 55

## Claims

- 1. Claims relating to the liability of the carrier in case of death of, or personal injury to, passengers must be addressed in writing to the carrier against whom an action may be brought. In the case of a carriage governed by a single contract and performed by successive carriers the claims may also be addressed to the first or the last carrier as well as to the carrier having his principal place of business or the branch or agency which concluded the contract of carriage in the State where the passenger is domiciled or habitually resident.
- 2. Other claims relating to the contract of carriage must be addressed in writing to the carrier specified in Article 56(2) and (3).
- 3. Documents which the person entitled thinks fit to submit with the claim shall be produced either in the original or as copies, where appropriate, the copies duly certified if the carrier so requires. On settlement of the claim, the carrier may require the surrender of the ticket, the luggage registration voucher and the carriage voucher.

### Article 56

## Carriers against whom an action may be brought

- 1. An action based on the liability of the carrier in case of death of, or personal injury to, passengers may only be brought against the carrier who is liable pursuant to Article 26(5).
- 2. Subject to paragraph 4 other actions brought by passengers based on the contract of carriage may be brought only against the first carrier, the last carrier or the carrier having performed the part of carriage on which the event giving rise to the proceedings occurred.
- 3. When, in the case of carriage performed by successive carriers, the carrier who must deliver the luggage or the vehicle is entered with his consent on the luggage registration voucher or the carriage voucher, an action may be brought against him in accordance with paragraph 2 even if he has not received the luggage or the vehicle.
- 4. An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected.

- 5. An action may be brought against a carrier other than those specified in paragraphs 2 and 4 when instituted by way of counter-claim or by way of exception in proceedings relating to a principal claim based on the same contract of carriage.
- 6. To the extent that these Uniform Rules apply to the substitute carrier, an action may also be brought against him.
- 7. If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against one of them; this shall also apply if the plaintiff has a choice between one or more carriers and a substitute carrier.

## Extinction of right of action in case of death or personal injury

- 1. Any right of action by the person entitled based on the liability of the carrier in case of death of, or personal injury to, passengers shall be extinguished if notice of the accident to the passenger is not given by the person entitled, within 12 months of his becoming aware of the loss or damage, to one of the carriers to whom a claim may be addressed in accordance with Article 55(1). Where the person entitled gives oral notice of the accident to the carrier, the carrier shall furnish him with an acknowledgement of such oral notice.
- 2. Nevertheless, the right of action shall not be extinguished if:
- (a) within the period provided for in paragraph 1 the person entitled has addressed a claim to one of the carriers designated in Article 55(1);
- (b) within the period provided for in paragraph 1 the carrier who is liable has learned of the accident to the passenger in some other way;
- (c) notice of the accident has not been given, or has been given late, as a result of circumstances not attributable to the person entitled;
- (d) the person entitled proves that the accident was caused by fault on the part of the carrier.

#### Article 59

# Extinction of right of action arising from carriage of luggage

- 1. Acceptance of the luggage by the person entitled shall extinguish all rights of action against the carrier arising from the contract of carriage in case of partial loss, damage or delay in delivery.
- 2. Nevertheless, the right of action shall not be extinguished:
- (a) in case of partial loss or damage, if:
  - 1. the loss or damage was ascertained in accordance with Article 54 before the acceptance of the luggage by the person entitled;
  - 2. the ascertainment which should have been carried out in accordance with Article 54 was omitted solely through the fault of the carrier;
- (b) in case of loss or damage which is not apparent whose existence is ascertained after acceptance of the luggage by the person entitled, if he:
  - 1. asks for ascertainment in accordance with Article 54 immediately after discovery of the loss or damage and not later than three days after the acceptance of the luggage; and
  - 2. in addition, proves that the loss or damage occurred between the time of taking over by the carrier and the time of delivery;
- (c) in case of delay in delivery, if the person entitled has, within twenty-one days, asserted his rights against one of the carriers specified in Article 56(3);
- (d) if the person entitled proves that the loss or damage was caused by fault on the part of the carrier.

#### Article 60

#### Limitation of actions

- 1. The period of limitation of actions for damages based on the liability of the carrier in case of death of, or personal injury to, passengers shall be:
- (a) in the case of a passenger, three years from the day after the accident;

- (b) in the case of other persons entitled, three years from the day after the death of the passenger, subject to a maximum of five years from the day after the accident.
- 2. The period of limitation for other actions arising from the contract of carriage shall be one year. Nevertheless, the period of limitation shall be two years in the case of an action for loss or damage resulting from an act or omission committed either with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.
- 3. The period of limitation provided for in paragraph 2 shall run for actions:
- (a) for compensation for total loss, from the fourteenth day after the expiry of the period of time provided for in Article 22(3);
- (b) for compensation for partial loss, damage or delay in delivery, from the day when delivery took place;
- (c) in all other cases involving the carriage of passengers, from the day of expiry of validity of the ticket.

The day indicated for the commencement of the period of limitation shall not be included in the period.

4. Otherwise, the suspension and interruption of periods of limitation shall be governed by national law.

#### TITLE VII

#### **RELATIONS BETWEEN CARRIERS**

### Article 61

## Apportionment of the carriage charge

- 1. Any carrier who has collected or ought to have collected a carriage charge must pay to the carriers concerned their respective shares of such a charge. The methods of payment shall be fixed by agreement between the carriers.
- 2. Article 6(3), Article 16(3) and Article 25 shall also apply to the relations between successive carriers.

## Article 62

## Right of recourse

- 1. A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:
- (a) the carrier who has caused the loss or damage shall be solely liable for it;
- (b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter (c);
- (c) if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.
- 2. In the case of insolvency of any one of these carriers, the unpaid share due from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.

## Article 63

#### Procedure for recourse

- 1. The validity of the payment made by the carrier exercising a right of recourse pursuant to Article 62 may not be disputed by the carrier against whom the right to recourse is exercised, when compensation has been determined by a court or tribunal and when the latter carrier, duly served with notice of the proceedings, has been afforded an opportunity to intervene in the proceedings. The court or tribunal seized of the principal action shall determine what time shall be allowed for such notification of the proceedings and for intervention in the proceedings.
- 2. A carrier exercising his right of recourse must present his claim in one and the same proceedings against all the carriers with whom he has not reached a settlement, failing which he shall lose his right of recourse in the case of those against whom he has not taken proceedings.

- 3. The court or tribunal shall give its decision in one and the same judgment on all recourse claims brought before it.
- 4. The carrier wishing to enforce his right of recourse may bring his action in the courts or tribunals of the State on the territory of which one of the carriers participating in the carriage has his principal place of business, or the branch or agency which concluded the contract of carriage.
- 5. When the action must be brought against several carriers, the plaintiff carrier shall be entitled to choose the court or tribunal in which he will bring the proceedings from among those having competence pursuant to paragraph 4.
- 6. Recourse proceedings may not be joined with proceedings for compensation taken by the person entitled under the contract of carriage.

## Agreements concerning recourse

The carriers may conclude agreements which derogate from Articles 61 and 62.

#### ANNEX II

### MINIMUM INFORMATION TO BE PROVIDED BY RAILWAY UNDERTAKINGS AND TICKET VENDORS

Part I: Pre-journey information

General conditions applicable to the contract

Time schedules and conditions for the fastest trip

Time schedules and conditions for all available fares, highlighting the lowest fares

Accessibility, access conditions and availability on board of facilities for persons with disabilities and persons with reduced mobility in accordance with Directive (EU) 2019/882 and Regulations (EU) No 454/2011 and (EU) No 1300/2014

Availability of capacity and access conditions for bicycles

Availability of seats in first and second class as well as couchette cars and sleeping carriages

Disruptions and delays (planned and in real time)

Availability of on-board facilities, including Wi-Fi and toilets, and of on-board services, including the assistance passengers are provided with by staff

Information prior to purchase on whether the ticket or the tickets constitute a through-ticket

Procedures for reclaiming lost luggage

Procedures for the submission of complaints

Part II: Information during the journey

On-board services and facilities, including Wi-Fi

Next station

Disruptions and delays (planned and in real time)

Main connecting services

Security and safety issues

Part III: Operations regarding reservation systems

Requests for availability of rail transport services, including applicable tariffs

Requests for reservation of rail transport services

Requests for partial or full cancellation of a reservation

#### ANNEX III

# MINIMUM SERVICE QUALITY STANDARDS

Information and tickets

Punctuality of services, and general principles to cope with disruptions to services

## Delays

- (i) overall average delay of services as a percentage per category of service (long-distance, regional and urban/suburban);
- (ii) percentage of delays caused by circumstances referred to in Article 19(10);
- (iii) percentage of services delayed at departure;
- (iv) percentage of services delayed at arrival:
  - percentage of delays of less than 60 minutes;
  - percentage of delays of 60-119 minutes;
  - percentage of delays of 120 minutes or more;

#### Cancellations of services

- (i) cancellation of services as a percentage per category of service (international, domestic long-distance, regional and urban/suburban);
- (ii) cancellation of services as a percentage per category of service (international, domestic long-distance, regional and urban/suburban) caused by circumstances referred to in Article 19(10).

Cleanliness of rolling stock and station facilities (air quality and temperature control in carriages, hygiene of sanitary facilities, etc.)

Customer satisfaction survey

Complaint handling, refunds and compensation for non-compliance with service quality standards

Assistance provided to persons with disabilities and persons with reduced mobility, and discussions concerning this assistance with representative organisations and, where relevant, representatives of persons with disabilities and persons with reduced mobility

# ANNEX IV

# CORRELATION TABLE

Regulation (EC) No 1371/2007	This Regulation
Article 1	Article 1
Article 1(a)	Article 1(a)
Article 1(b)	Article 1(b)
_	Article 1(c)
Article 1(c)	Article 1(d)
_	Article 1(e)
Article 1(d)	Article 1(f)
Article 1(e)	Article 1(g)
_	Article 1(h)
Article 1(f)	Article 1(i)
Article 2	Article 2
Article 2(1)	Article 2(1)
Article 2(2)	_
Article 2(3)	_
Article 2(4)	_
Article 2(5)	Article 2(6)(a), (8)
Article 2(6)	Article 2(6)(b)
Article 2(7)	Article 2(7)
_	Article 2(2)
_	Article 2(3)
_	Article 2(4)
_	Article 2(5)
Article 3	Article 3
Article 3(1)	Article 3(1)
Article 3(2), (3)	_
Article 3(4)	Article 3(2)



Regulation (EC) No 1371/2007	This Regulation
Article 3(5)	Article 3(3)
Article 3(6)	Article 3(4)
Article 3(7)	Article 3(5)
Article 3(8)	Article 3(6)
_	Article 3(7)
Article 3(9)	Article 3(8)
Article 3(10)	Article 3(9)
_	Article 3(10)
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	Article 19(5), (6)
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Article 17(3)	Article 19(8)
Article 17(4)	Article 19(9)
_	Article 19(10)
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_	Article 26
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_	Article 28(3)
Article 27(3)	Article 28(4)



Regulation (EC) No 1371/2007	This Regulation
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_	Annex IV

# 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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

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

#### Whereas:

- Environmental, climate and relevant energy legislation and policy of the Union have delivered substantial improvements to the state of the environment. However, major environmental and climate challenges remain, which, if left unaddressed, will have significant negative consequences for the Union and the well-being of its citizens.
- The Programme for the Environment and Climate Action (LIFE), established by Regulation (EU) No 1293/2013 of (2)the European Parliament and of the Council (4), for the period 2014 to 2020, is the latest in a series of Union programmes since 1992 which support the implementation of environmental and climate legislation and policy priorities. LIFE was assessed positively in a recent mid-term evaluation as being on track to be effective, efficient and relevant. The 2014-2020 LIFE Programme should, therefore, be continued with certain modifications identified in the mid-term evaluation and subsequent assessments. Accordingly, the Programme for the Environment and Climate Action (LIFE) (the 'LIFE Programme') should be established for a period of seven years to align its duration with that of the multiannual financial framework laid down in Council Regulation (EU, Euratom) 2020/2093 (5).
- In pursuing the achievement of the objectives and targets set by environmental, climate and relevant energy legislation, policy and plans, in particular the objectives set out in the communication of the Commission of 11 December 2019 on the European Green Deal (the 'European Green Deal'), and international commitments of the Union, the LIFE Programme should contribute to a just transition towards a sustainable, circular, energyefficient, renewable energy-based, climate-neutral and -resilient economy, to the protection, restoration and improvement of the quality of the environment, including the air, water and soil, and of health, and to halting and reversing biodiversity loss, including by supporting the implementation and management of the Natura 2000

<sup>(1)</sup> OJ C 62, 15.2.2019, p. 226. (2) OJ C 461, 21.12.2018, p. 156.

<sup>(7)</sup> Position of the European Parliament of 17 April 2019 (not yet published in the Official Journal) and position of the Council at first reading of 16 March 2021 (not yet published in the Official Journal). Position of the European Parliament of 26 April 2021 (not yet published in the Official Journal).

<sup>(4)</sup> Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007 (OJ L 347, 20.12.2013, p. 185).

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).

network and tackling the degradation of ecosystems, either through direct interventions or by supporting the integration of those objectives in other policies. The LIFE Programme should also support the implementation of the general action programmes adopted in accordance with Article 192(3) Treaty on the Functioning of the European Union (TFEU), such as the 7th Environment Action Programme (6) and any subsequent Union environment action programme.

- (4) The Union is committed to developing a comprehensive response to the Sustainable Development Goals of the United Nations 2030 Agenda for Sustainable Development, which highlight the intrinsic connection between the management of natural resources to ensure their long-term availability and ecosystem services, and the link of both to human health and sustainable and socially inclusive economic growth. In this spirit, the LIFE Programme should reflect the principles of solidarity, while making a material contribution to both economic development and social cohesion.
- (5) With a view to promoting sustainable development, environmental and climate protection requirements should be integrated into the definition and implementation of all Union policies and activities. Synergies and complementarity with other Union funding programmes should, therefore, be promoted, including by facilitating the funding of activities that complement strategic integrated projects and strategic nature projects and support the uptake and replication of solutions developed under the LIFE Programme. Coordination is required to prevent double funding. The Commission and Member States should take steps to prevent administrative overlap and an administrative burden on project beneficiaries, arising from reporting obligations from different financial instruments.
- (6) The LIFE Programme should contribute to sustainable development and to the achievement of the objectives and targets of the environmental, climate and relevant energy legislation, strategies, plans and international commitments of the Union, in particular as regards the United Nations 2030 Agenda for Sustainable Development, the Convention on Biological Diversity (7) and the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (8) (the 'Paris Agreement on Climate Change'), and, inter alia, the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, public participation in decision-making and access to justice in environmental matters (9) (the 'Aarhus Convention'), the UNECE Convention on Long-Range Transboundary Air Pollution, the UN Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the UN Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, and the UN Stockholm Convention on Persistent Organic Pollutants.
- (7) The Union attaches great importance to the long-term sustainability of the results of projects funded by the LIFE Programme, and to the capacity to secure and maintain those results after project implementation, inter alia by project continuation or by replication or transfer of results.
- (8) Complying with the Union's commitments under the Paris Agreement on Climate Change requires the transformation of the Union into a sustainable, circular, energy-efficient, renewable energy-based, climate-neutral and -resilient society. Such transformation in turn requires action, with a special focus on sectors that contribute most to the current levels of greenhouse gas emissions and pollution, promoting energy efficiency and renewable energy, as well as contributing to the implementation of the 2030 energy and climate policy framework and the Member States' Integrated National Energy and Climate Plans and to the implementation of the Union's long-term climate and energy strategy, in line with the long-term objectives of the Paris Agreement on Climate Change. The LIFE Programme should also include measures that contribute to the implementation of the Union's climate adaptation policy for decreasing vulnerability to the adverse effects of climate change.

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

<sup>(7)</sup> Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity (OJ L 309, 13.12.1993, p. 1).

<sup>(8)</sup> OJ L 282, 19.10.2016, p. 4.

<sup>(9)</sup> OJ L 124, 17.5.2005, p. 4.

- (9) Projects under the new 'Clean Energy Transition' subprogramme of the LIFE Programme should focus on the creation of capacity building and diffusion of knowledge, skills, innovative techniques, methods and solutions for reaching the objectives of Union legislation and policy on the transition to renewable energy and to increased energy efficiency. Such capacity building and diffusion are typically coordination and support actions of high added-value at Union level that are aimed at breaking market barriers that hamper the socio-economic transition to sustainable energy, and mainly involve small and medium-sized entities as well as multiple actors, including local and regional public authorities and non-profit organisations. Such actions bring multiple co-benefits, such as tackling energy poverty, improved indoor air quality, reducing local pollutants thanks to energy efficiency improvements and increased distributed renewable energies, and contributing to positive local economic effects and more socially inclusive growth.
- (10) In order to contribute to the mitigation of climate change and to the Union's international commitments as regards decarbonisation, the transformation of the energy sector needs to be accelerated. Actions for capacity-building that support energy efficiency and renewable energy, funded until 2020 under Horizon 2020 (10), should be integrated into the new 'Clean Energy Transition' subprogramme of the LIFE Programme, since their objective is not to fund excellence and generate innovation, but to facilitate the uptake of already available technology for renewable energy and energy efficiency, which will contribute to climate mitigation. The LIFE Programme should involve all stakeholders and sectors involved in clean energy transition. The inclusion of such capacity-building actions in the LIFE Programme offers potential for synergies between the subprogrammes and increases the overall coherence of Union funding. Data should, therefore, be collected and disseminated on the uptake of existing research and innovation solutions in the projects of the LIFE Programme, including from the Horizon Europe programme established under Regulation (EU) 2021/695 of the European Parliament and of the Council (11) ('Horizon Europe') and its predecessors.
- (11) The impact assessment accompanying the Commission proposal for Directive (EU) 2018/2002 of the European Parliament and of the Council (12), which amended Directive 2012/27/EU of the European Parliament and of the Council (13), estimates that meeting the Union's 2030 energy targets will require additional investment of EUR 177 billion annually in the period 2021to 2030. The biggest gaps relate to investment in the decarbonisation of buildings to increase energy efficiency and the use of small-scale renewable energy sources, where capital needs to be channelled towards projects of a highly distributed nature. One of the objectives of the 'Clean Energy Transition' subprogramme, which covers energy efficiency and rapid deployment of renewable energy, is to build capacity for the development and aggregation of such projects, thereby also helping to absorb funds from the European Structural and Investment Funds and act as a catalyst for investments in renewable energy and energy efficiency, also using the financial instruments provided under Regulation (EU) 2021/523 of the European Parliament and of the Council (14).
- (12) The LIFE programme is the only programme dedicated specifically to the environment and climate action, and therefore plays a crucial role in supporting the implementation of Union legislation and policies in those areas.
- (13) Synergies with Horizon Europe should facilitate identifying and establishing research and innovation needs as regards tackling environmental, climate and energy challenges within the Union during Horizon Europe's strategic research and innovation planning process. The LIFE Programme should continue to act as a catalyst for

<sup>(10)</sup> Council Decision 2013/743/EU of 3 December 2013 establishing the specific programme implementing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decisions 2006/971/EC, 2006/972/EC, 2006/973/EC, 2006/974/EC and 2006/975/EC (OJ L 347, 20.12.2013, p. 965).

<sup>(11)</sup> Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p. 1).

<sup>(12)</sup> Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency (OI L 328, 21.12.2018, p. 210).

energy efficiency (OJ L 328, 21.12.2018, p. 210).

(13) Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1)

<sup>(14)</sup> Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30).

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implementing environmental, climate and relevant energy legislation and policy of the Union, including by taking up and applying research and innovation results from Horizon Europe and helping to deploy them on a larger scale if this can help address environmental, climate or energy transition issues. Horizon Europe's European Innovation Council can provide support to scale up and commercialise new breakthrough ideas that could result from the implementation of LIFE projects. Similarly, synergies with the Innovation Fund under the Emission Trading System, established under Directive 2003/87/EC of the European Parliament and of the Council (15), should also be taken into account.

- (14) An action that has received a contribution from the LIFE Programme should also be able to receive a contribution from other Union programmes, provided that such contributions do not cover the same costs. Actions that receive cumulative financing from different Union programmes should be audited only once and in a manner that covers all Union programmes involved and their respective applicable rules.
- (15) The communication of the Commission of 3 February 2017 on the EU Environmental Implementation Review: Common challenges and how to combine efforts to deliver better results (EIR) indicates that significant progress is required to accelerate the implementation of the Union environment acquis and to enhance the integration and mainstreaming of environmental and climate objectives into other policies. The LIFE Programme should, therefore, act as a catalyst for the tackling of horizontal, systemic challenges, as well as the root causes of implementation deficiencies identified in the EIR, and for achieving the requisite progress by developing, testing and replicating new approaches; supporting policy development, monitoring and review; improving governance on environmental, climate change and related energy transition matters, including by enhancing stakeholder involvement at all levels, capacity-building, communication and awareness; mobilising investments from Union investment programmes or other financial sources, and by supporting actions to overcome the various obstacles to the effective implementation of key plans required by environmental legislation.
- Halting and reversing biodiversity loss and the degradation of ecosystems, including in marine ecosystems, requires support for the development, implementation, enforcement and assessment of relevant Union legislation and policy, including communication of the Commission of 20 May 2020 on the EU Biodiversity Strategy for 2030 Bringing nature back into our lives, Council Directive 92/43/EEC (16), Directive 2009/147/EC of the European Parliament and of the Council (17) and Regulation (EU) No 1143/2014 of the European Parliament and of the Council (18), in particular by developing the knowledge base for policy development and implementation and by developing, testing, demonstrating and applying best practice and solutions, such as effective management, on a small scale or tailored to specific local, regional or national contexts, including integrated approaches for the implementation of the prioritized action frameworks adopted pursuant to Directive 92/43/EEC. This Regulation should contribute to mainstreaming biodiversity action in the Union's policies and to the achievement of the overall ambition of providing 7,5 % of annual spending under the multiannual financial framework to biodiversity objectives in 2024 and 10 % of annual spending under the multiannual financial framework to biodiversity objectives in 2026 and in 2027, while considering the existing overlaps between climate and biodiversity goals.

The Union and Member States should track their biodiversity-related expenditure to fulfil their reporting obligations under the Convention on Biological Diversity. Requirements for tracking provided for in other relevant Union legislation should also be met. Biodiversity-related Union expenditure should be tracked in accordance with an effective, transparent and comprehensive methodology to be set out by the Commission, in cooperation with the European Parliament and the Council, as referred to in the Interinstitutional Agreement of

<sup>(15)</sup> 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).

<sup>(16)</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

<sup>(17)</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).

<sup>(18)</sup> Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (OJ L 317, 4.11.2014, p. 35).

16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources (19)

Recent evaluations and assessments, including the mid-term review of the EU Biodiversity Strategy to 2020 and the Fitness Check of Nature legislation, indicate that one of the main underlying causes for insufficient implementation of Union legislation on nature and of the biodiversity strategy is the lack of adequate financing.

The main Union funding instruments, including the European Regional Development Fund established under Regulation (EU) No 1301/2013 of the European Parliament and of the Council (20) (the 'European Regional Development Fund') and the Cohesion Fund established under Regulation (EU) No 1300/2013 of the European Parliament and of the Council (21) (the 'Cohesion Fund'), the European Agricultural Fund for Rural Development established under Regulation (EU) No 1305/2013 of the European Parliament and of the Council (22) (the 'European Agricultural Fund for Rural Development') and the European Maritime, Fisheries and Aquaculture Fund established under a Regulation of the European Parliament and of the Council on the European Maritime, Fisheries and Aquaculture Fund and repealing Regulation (EU) No 508/2014 (the 'European Maritime, Fisheries and Aquaculture Fund'), could make a significant contribution towards meeting those needs, on a complementary basis. The LIFE Programme could further improve the efficiency of such mainstreaming through strategic nature projects dedicated to acting as a catalyst for the implementation of Union nature and biodiversity legislation and policy, including the actions set out in the prioritized action frameworks adopted pursuant to Directive 92/43/EEC. The strategic nature projects should support programmes of actions in Member States aimed at the mainstreaming of relevant nature and biodiversity objectives into other policies and funding programmes, thus ensuring that appropriate funds are mobilised for implementing those policies.

Member States should be allowed to decide, within their Strategic Plan for the Common Agricultural Policy, to use a certain share of the European Agricultural Fund for Rural Development allocation in order to leverage support for actions that complement strategic nature projects as defined under this Regulation.

- Promoting the circular economy and resource efficiency requires a shift in the manner materials and products, including plastics, are designed, produced, consumed, repaired, reused, recycled and disposed of and a focus on the whole lifecycle of products. The LIFE Programme should contribute to the transition to a circular economy model through financial support that targets a variety of actors such as businesses, public authorities and consumers, in particular by applying, developing, and replicating best technology, practice and solutions tailored to specific local, regional or national contexts, including through integrated approaches for the application of the waste hierarchy and the implementation of waste management and prevention plans. By supporting the implementation of the communication of the Commission of 16 January 2018 on a European Strategy for Plastics in a Circular Economy, action could be taken to address the problem of marine litter in particular.
- A high level of environmental protection is of fundamental importance for the health and well-being of Union citizens. The LIFE Programme should support the Union's objectives as regards producing and using chemicals in ways that lead to the minimisation of significant adverse effects on human health and the environment, with a

<sup>(19)</sup> OJ L 433I, 22.12.2020, p. 28.

<sup>(20)</sup> Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (OJ L 347, 20.12.2013, p. 289).

<sup>(21)</sup> Regulation (EU) No 1300/2013 of the European Parliament and of the Council of 17 December 2013 on the Cohesion Fund and

repealing Council Regulation (EC) No 1084/2006 (OJ L 347, 20.12.2013, p. 281).

(22) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

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view to reaching the objective of a non-toxic environment in the Union. The LIFE Programme should also support activities to facilitate the implementation of Directive 2002/49/EC of the Parliament and of the Council (23) in order to achieve noise levels that do not give rise to significant negative impacts on and risks to human health.

- The Union's long-term objective as regards air policy is to achieve levels of air quality that do not cause significant negative impacts on and risks to human health and the environment, while reinforcing the synergies between air quality improvements and greenhouse gas emissions reduction. Public awareness about air pollution is high and citizens expect authorities to act, in particular in areas where the population and ecosystems are exposed to high levels of air pollutants. Directive (EU) 2016/2284 of the European Parliament and of the Council (24) stresses the role Union funding can play in achieving clean air objectives. The LIFE Programme should, therefore, support projects, including strategic integrated projects, which have the potential to leverage public and private funds, to showcase best practice, and to act as a catalyst for the implementation of air quality plans and legislation at local, regional, multi-regional, national and trans-national level.
- Directive 2000/60/EC of the European Parliament and of the Council (25) established a framework for the protection of the Union's surface waters, coastal waters, transitional waters and groundwater. The objectives of that Directive would be supported by better implementation and integration of water policy objectives into other policy areas. The LIFE Programme should, therefore, support projects that contribute to the effective implementation of Directive 2000/60/EC and of other relevant Union water legislation that contributes to the achievement of good status of the Union's water bodies by applying, developing and replicating best practice, as well as by mobilising complementary actions under other Union programmes or financial sources.
- The protection and restoration of the marine environment is one of the overall aims of the Union's environment policy. The LIFE Programme should support the following: the management, conservation, restoration and monitoring of biodiversity and marine ecosystems, in particular in Natura 2000 marine sites, and the protection of species in accordance with the prioritized action frameworks adopted pursuant to Directive 92/43/EEC; the achievement of Good Environmental Status in line with Directive 2008/56/EC of the European Parliament and of the Council (26); the promotion of clean and healthy seas; the implementation of the communication of the Commission of 16 January 2018 on a European Strategy for Plastics in a Circular Economy, addressing in particular the problem of lost fishing gear and marine litter; and the promotion of the Union's involvement in international ocean governance, which is essential for achieving the goals of the United Nations 2030 Agenda for Sustainable Development and to guarantee healthy oceans for future generations. The LIFE Programme's strategic integrated projects and strategic nature projects should include relevant actions aimed at the protection of the marine environment.
- The improvement of governance on environmental, climate change and related energy transition matters requires the involvement of civil society by raising public awareness, including through a communication strategy that takes into account new media and social networks, consumer engagement, and the broadening of stakeholder involvement, including non-governmental organisations (NGOs), in consultations on and implementation of related policies at all levels. It is, therefore, appropriate that the LIFE Programme support a broad range of NGOs as well as networks of non-profit-making entities that pursue an aim which is of general Union interest, and that are primarily active in the area of the environment or climate action, by awarding, in a competitive and transparent manner, operating grants, in order to help such NGOs, networks and entities, to make effective contributions to Union policy, and to build and strengthen their capacity to become more efficient partners.

<sup>(23)</sup> Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management

of environmental noise (OJ L 189, 18.7.2002, p. 12).

(24) Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC (OJ L 344,

<sup>17.12.2016,</sup> p. 1).

(25) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

<sup>(26)</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

- (24) Whilst improving governance at all levels should be a cross-cutting objective for all subprogrammes of the LIFE Programme, the LIFE Programme should support the development, implementation and enforcement of, and compliance with, the environment and climate acquis, in particular the horizontal legislation on environmental governance, including the legislation implementing the Aarhus Convention.
- (25) The LIFE Programme should prepare market players for, and support them in, the shift towards a sustainable, circular, energy-efficient, renewable energy-based, climate-neutral and -resilient economy by testing new business opportunities, upgrading professional skills, facilitating consumers' access to sustainable products and services, engaging and empowering influencers, and testing novel methods of adapting existing processes and the business landscape. To support a broader market uptake of sustainable solutions, general public acceptance and consumer engagement should be promoted.
- (26) The LIFE Programme is designed to support the demonstration of techniques, approaches and best practices that can be replicated and upscaled. Innovative solutions would contribute to the improvement of environmental performance and sustainability, in particular for the development of sustainable farming practices in the areas active in the fields of climate, water, soil, biodiversity and waste. Synergies with other programmes and policies, such as the European Innovation Partnership for Agricultural Productivity and Sustainability and the EU Eco-Management and Audit Scheme, should be emphasised in this regard.
- (27) At Union level, large investments in environment and climate actions are primarily funded by major Union funding programmes. It is therefore imperative to step up mainstreaming efforts to ensure sustainability, biodiversity proofing and climate proofing of activities under other Union funding programmes and the integration of sustainability safeguards in all Union instruments. In the context of their role as a catalyst, strategic integrated projects and strategic nature projects to be developed under the LIFE Programme should leverage financing opportunities under those funding programmes and other sources of funding, such as national funds, and create synergies.
- (28) The success of strategic nature projects and strategic integrated projects depends on close cooperation between national, regional and local authorities and the non-State actors affected by the objectives of the LIFE Programme. The principles of transparency and disclosure regarding decisions on the development, implementation, assessment and monitoring of projects should, therefore, be applied, in particular in the case of mainstreaming or when multiple funding sources are involved.
- Reflecting the importance of tackling climate change in a coordinated and ambitious manner, in line with the Union's commitments to implement the Paris Agreement on Climate Change and the United Nations Sustainable Development Goals, the LIFE Programme will contribute to mainstreaming climate actions and to the achievement of an overall target of at least 30 % of the EU budget expenditure supporting climate objectives. Actions under the LIFE Programme are expected to contribute 61 % of the overall financial envelope of the LIFE Programme to climate objectives. Relevant actions will be identified during the LIFE Programme's preparation and implementation, and reassessed in the context of the relevant evaluations and review processes. In line with the European Green Deal, actions under the LIFE programme should respect the 'do no harm' principle.
- (30) In the implementation of the LIFE Programme, due consideration should be given to the strategy for outermost regions, contained in the communication of the Commission of 24 October 2017 on a stronger and renewed strategic partnership with the EU's outermost regions, in view of Article 349 TFEU and the specific needs and vulnerabilities of those regions. Union policies other than environmental, climate and relevant energy policies should also be taken into account.
- (31) In support of the implementation of the LIFE Programme, the Commission should collaborate with the LIFE Programme's National Contact Points network to stimulate cooperation aimed at improving and making National Contact Point services across the Union more effective, in order to increase the overall quality of submitted proposals, organise seminars and workshops, publish lists of projects funded under the LIFE Programme or

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undertake other activities, such as media campaigns, so as to better disseminate project results and to facilitate exchange of experience, knowledge and best practice and the replication of project results across the Union, thus promoting cooperation and communication. Such activities should in particular target Member States in which there is a low uptake of funds and should facilitate communication and cooperation between beneficiaries, applicants and stakeholders of completed or ongoing projects in the same field. It is essential that such communication and cooperation activities be addressed to regional and local authorities and to stakeholders.

- (32) Quality should be the criterion governing the project evaluation and award process in the LIFE Programme. In order to facilitate the implementation of the objectives of the LIFE Programme across the Union and to promote high quality in project proposals, funding for technical assistance projects that are aimed at effective participation in the LIFE Programme should be made available. The Commission should pursue effective, quality-based geographical coverage across the Union, including by supporting Member States to increase the quality of projects through capacity building. Low effective participation, eligible activities and award criteria of the LIFE Programme should be specified in the Multiannual Work Programme guided by the participation and success rate of applicants from the relevant Member States, taking into account, inter alia, population and population density, the total area of Natura 2000 sites for each Member State expressed as a proportion of the total area of Natura 2000, and the proportion of a Member State's territory covered by Natura 2000 sites. Eligible activities should be of a nature such that they are aimed at improving the quality of project applications.
- In accordance with the communication of the Commission of 18 January 2018 on EU actions to improve environmental compliance and governance, the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), the European Network of Prosecutors for the Environment (ENPE), and the European Union Forum of Judges for the Environment (EUFJE) have been created to facilitate collaboration between Member States and to play a unique role in the enforcement of Union environmental legislation. They provide a substantial contribution to reinforcing consistency in the implementation and enforcement of Union environmental legislation across the Union, to avoiding distortions of competition and to improving the quality of the environmental inspection and the law enforcement mechanisms through a networking system at both, Union and Member State level, and provide for the exchange of information and experience at different administrative levels, through training and in-depth discussions on environmental issues and enforcement aspects, including monitoring and permitting processes. In view of their contribution to the objectives of the LIFE Programme, it is appropriate to authorise the award of grants to IMPEL, ENPE and EUFJE without a call for proposals so as to continue to provide support to the activities of those bodies. In addition, in other cases, a call might not be required pursuant to the general requirements of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (27) (the 'Financial Regulation'), for example for bodies designated by Member States and operating under their responsibility, where those Member States are identified as beneficiaries of a grant by a legislative act of the Union.
- (34) It is appropriate to lay down a financial envelope for the LIFE Programme which is to constitute the prime reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, for the European Parliament and the Council during the annual budgetary procedure.
- (35) The maximum co-financing rates of grants financed under the LIFE Programme should be set at levels such as are necessary to maintain the effective level of support provided by the LIFE Programme. In order to take into account the necessary adaptability that is needed to respond to the existing range of actions and entities, specific co-financing rates should facilitate certainty, while maintaining a degree of flexibility commensurate to specific needs or requirements. The specific co-financing rates should always be subject to the established relevant maximum co-financing rates.

<sup>(27)</sup> 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 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).

- (36) The Financial Regulation adopted by the European Parliament and the Council on the basis of Article 322 TFEU applies to this Regulation. The Financial Regulation lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect management, financial instruments, budgetary guarantees, financial assistance and the reimbursement of external experts, and provides for checks on the responsibility of financial actors. Rules adopted on the basis of Article 322 TFEU also include a general regime of conditionality for the protection of the Union budget.
- In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council (28), Council Regulations (EC, Euratom) No 2988/95 (29), (Euratom, EC) No 2185/96 (30) and (EU) 2017/1939 (31), the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, the imposition of administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union.

The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute offences against the Union's financial interests as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council (32). In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the Court of Auditors, and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (38) The types of financing and the methods of implementation of the budget of the LIFE Programme should be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. For grants, the use of lump sums, flat rates and scales of unit costs should be considered. The Commission should ensure that implementation is easy to understand, and should promote genuine simplification for project developers.
- Where appropriate, the policy objectives of the LIFE Programme should be addressed through financial instruments and budgetary guarantees under Regulation (EU) 2021/523, including through the allocated amount from the LIFE Programme, as specified in the multiannual work programmes under that Programme.
- (40) Pursuant to Article 94 of Council Decision 2013/755/EU (<sup>33</sup>), entities established in overseas countries and territories are eligible for funding subject to the rules and objectives of the LIFE Programme and to possible arrangements applicable to the Member State to which the relevant overseas country or territory is linked. The participation of such entities in the LIFE Programme should focus primarily on projects that fall under the subprogramme 'Nature and Biodiversity'.

(29) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

(30) 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 (OJ L 292, 15.11.1996, p. 2).

(31) Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OLL 283, 31.10.2017, p. 1).

Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

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

(33) Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ('Overseas Association Decision') (OJ L 344, 19.12.2013, p. 1).

<sup>(28)</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

- (41) The voluntary scheme for Biodiversity and Ecosystem Services in Territories of European Overseas (BEST) promotes the conservation of biodiversity, including marine biodiversity, and sustainable use of ecosystem services, including ecosystem-based approaches to climate change adaptation and mitigation, in the Union's Outermost Regions and Overseas Countries and Territories. Through the BEST preparatory action adopted in 2011 and the subsequent BEST 2.0 Programme and BEST RUP project, BEST has helped to raise awareness of the ecological importance of the Outermost Regions and Overseas Countries and Territories and their key role in conserving global biodiversity. The Commission estimates that the need for financial support for projects on the ground in those territories is EUR 8 million per year. In their Ministerial Declarations in 2017 and 2018, Overseas Countries and Territories expressed their appreciation for this small-grant scheme for biodiversity. It is therefore appropriate for the LIFE Programme to finance small grants for biodiversity, including capacity building and actions that have a catalytic effect, in both the Outermost Regions and the Overseas Countries and Territories.
- (42) The LIFE Programme should be open to third countries in accordance with the agreements between the Union and those countries establishing the specific conditions for their participation.
- (43) Third countries which are members of the European Economic Area (EEA) may participate in Union programmes in the framework of the cooperation established under Agreement on the European Economic Area (34), which provides for the implementation of the programmes on the basis of a decision adopted under that Agreement. Third countries may also participate on the basis of other legal instruments. A specific provision should be introduced in this Regulation requiring third countries to grant the necessary rights for and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences.
- Pursuant to paragraphs 22 and 23 of the Inter-institutional agreement of 13 April 2016 on Better Law-Making (35), the LIFE Programme should be evaluated on the basis of information collected through specific monitoring requirements, while avoiding an administrative burden, in particular on Member States, and overregulation. Those requirements, where appropriate, should include measurable indicators as a basis for evaluating the effects of the LIFE Programme on the ground. The full impact of the LIFE Programme accrues through indirect, long-term and difficult-to-measure contributions towards achieving the full range of Union environment and climate objectives. For monitoring of the LIFE Programme, direct output indicators and tracking requirements set out in this Regulation should be complemented by aggregation of specific project level indicators to be described in multiannual work programmes or calls for proposals, inter alia regarding Natura 2000 and emissions of certain atmospheric pollutants.
- (45) In order to ensure uniform conditions for the implementation of this Regulation relating to the adoption of the multiannual work programmes, 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 (36).
- (46) In order to ensure that support from and implementation of the LIFE Programme is consistent with the policies and priorities of the Union, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission, in order to amend this Regulation by reviewing or complementing the indicators or to supplement this Regulation by defining specific indicators for each subprogramme and type of project and by establishing a monitoring and evaluation framework. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

<sup>(&</sup>lt;sup>34</sup>) OJ L 1, 3.1.1994, p. 3.

<sup>(35)</sup> OJ L 123, 12.5.2016, p. 1.

<sup>(36)</sup> 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).

- (47) Since the objectives of this Regulation, namely to contribute to a high level of environmental protection and ambitious climate action, to sustainable development and to the achievement of the objectives and targets of environmental, biodiversity, climate, circular economy, relevant renewable energy and energy efficiency legislation, strategies, plans and international commitments of the Union, through good governance and a multi-stakeholder approach, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (48) Regulation (EU) No 1293/2013 should therefore be repealed.
- (49) It is appropriate to ensure a smooth transition without interruption between the previous Programme for the Environment and Climate Action (LIFE) and the LIFE Programme, and to align the start of the LIFE Programme with that of the multiannual financial framework as laid down in Regulation (EU, Euratom) 2020/2093. Therefore, this Regulation should enter into force as a matter of urgency and should apply with retroactive effect from 1 January 2021,

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

## General provisions

#### Article 1

#### Subject matter

This Regulation establishes a Programme for the Environment and Climate Action (LIFE) (the 'LIFE Programme') for the period of the multiannual financial framework 2021 to 2027. The duration of the LIFE Programme is aligned with the duration of the multiannual financial framework.

This Regulation also lays down the objectives of the LIFE Programme, its budget for the period 2021-2027, the forms of Union funding and the rules for providing such funding.

## Article 2

## **Definitions**

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

- (1) 'strategic nature projects' means projects that support the achievement of Union nature and biodiversity objectives by implementing coherent programmes of action in Member States in order to mainstream those objectives and priorities into other policies and financing instruments, including through coordinated implementation of the prioritized action frameworks adopted pursuant to Directive 92/43/EEC;
- (2) 'strategic integrated projects' means projects that implement, on a regional, multi-regional, national or transnational scale, environmental or climate strategies or action plans developed by Member States' authorities and required by specific environmental, climate or relevant energy legislation or policy of the Union, while ensuring that stakeholders are involved and promoting coordination with and mobilisation of at least one other Union, national or private funding source;
- (3) 'technical assistance projects' means projects that support the development of capacity for participation in standard action projects, the preparation of strategic nature projects and strategic integrated projects, the preparation for accessing other Union financial instruments, or other measures necessary for preparing the upscaling or replication of results from other projects funded by the LIFE Programme, its predecessor programmes or other Union programmes, with a view to pursuing the LIFE Programme objectives set out in Article 3; such projects can also include capacity building related to the activities of Member States' authorities for effective participation in the LIFE Programme;

- (4) 'standard action projects' means projects, other than strategic integrated projects, strategic nature projects or technical assistance projects, that pursue the specific objectives of the LIFE Programme;
- (5) 'blending operations' means actions supported by the Union budget, including within blending facilities pursuant to point (6) of Article 2 of the Financial Regulation, that combine non-repayable forms of support, financial instruments, or both, from the Union budget with repayable forms of support from development or other public finance institutions, as well as from commercial finance institutions and investors;
- (6) 'legal entity' means any natural person or any legal person created and recognised as such under national law, Union law or international law, which has legal personality and the capacity to act in its own name, exercise rights and be subject to obligations, or any entity without a legal personality in accordance with point (c) of Article 197(2) of the Financial Regulation.

## **Objectives**

- 1. The general objective of the LIFE Programme shall be to contribute to the shift towards a sustainable, circular, energy-efficient, renewable energy-based, climate-neutral and resilient economy, in order to protect, restore and improve the quality of the environment, including the air, water and soil, and to halt and reverse biodiversity loss and to tackle the degradation of ecosystems, including by supporting the implementation and management of the Natura 2000 network, thereby contributing to sustainable development. The LIFE Programme shall also support the implementation of general action programmes adopted in accordance with Article 192(3) TFEU.
- 2. The LIFE Programme shall have the following specific objectives:
- (a) to develop, demonstrate and promote innovative techniques, methods and approaches for reaching the objectives of Union legislation and policy on the environment, including nature and biodiversity, and on climate action, including the transition to renewable energy and increased energy efficiency, and to contribute to the knowledge base and to the application of best practice, in particular in relation to nature and biodiversity, including through the support of the Natura 2000 network;
- (b) to support the development, implementation, monitoring and enforcement of relevant Union legislation and policy on the environment, including nature and biodiversity, and on climate action and the transition to renewable energy or increased energy efficiency, including by improving governance at all levels, in particular by enhancing the capacities of public and private actors and the involvement of civil society;
- (c) to act as a catalyst for the large-scale deployment of successful technical and policy-related solutions for implementing relevant Union legislation and policy on the environment, including nature and biodiversity, and on climate action and the transition to renewable energy or increased energy efficiency, by replicating results, by integrating related objectives into other policies and into public and private sector practices, by mobilising investment and by improving access to finance.

## Article 4

## Structure

The LIFE Programme shall be structured as follows:

- (1) the field 'Environment', which includes:
  - (a) the subprogramme 'Nature and Biodiversity';
  - (b) the subprogramme 'Circular Economy and Quality of Life';

- (2) the field 'Climate Action', which includes:
  - (a) the subprogramme 'Climate Change Mitigation and Adaptation';
  - (b) the subprogramme 'Clean Energy Transition'.

## **Budget**

- 1. The financial envelope for the implementation of the LIFE Programme for the period from 1 January 2021 to 31 December 2027 shall be EUR 5 432 000 000 in current prices.
- 2. The indicative distribution of the amount referred to in paragraph 1 shall be:
- (a) EUR 3 488 000 000 for the field 'Environment', of which
  - (i) EUR 2 143 000 000 for the subprogramme 'Nature and Biodiversity', and
  - (ii) EUR 1 345 000 000 for the subprogramme 'Circular Economy and Quality of Life';
- (b) EUR 1 944 000 000 for the field 'Climate Action', of which
  - (i) EUR 947 000 000 for the subprogramme 'Climate Change Mitigation and Adaptation', and
  - (ii) EUR 997 000 000 for the subprogramme 'Clean Energy Transition'.
- 3. The amounts referred to in paragraphs 1 and 2 shall be without prejudice to provisions on flexibility set out in Regulation (EU, Euratom) 2020/2093 and in the Financial Regulation.
- 4. Notwithstanding paragraph 2, at least 60 % of the budgetary resources allocated to projects supported by way of action grants under the field 'Environment' referred to in point (a) of paragraph 2 shall be dedicated to grants for projects supporting the subprogramme 'Nature and Biodiversity' referred to in point (a)(i) of paragraph 2.
- 5. The LIFE Programme may finance technical and administrative assistance activities by the Commission for its implementation, such as preparatory, monitoring, control, audit and evaluation activities, including on corporate information technology systems, and network activities supporting the LIFE Programme's National Contact Points, including training, mutual learning activities and events to share experience.
- 6. The LIFE Programme may finance activities implemented by the Commission in support of the preparation, implementation and mainstreaming of environmental, climate or relevant energy legislation and policies of the Union for the purpose of achieving the objectives set out in Article 3. Such activities may include:
- (a) information and communication, including awareness-raising campaigns, and corporate communication regarding the political priorities of the Union, as well as regarding the implementation and transposition status of environmental, climate or relevant energy legislation of the Union;
- (b) studies, surveys, modelling and scenario building;
- (c) preparation, implementation, monitoring, checking and evaluation of legislation, policies and programmes, as well as assessment and analysis of projects not funded by the LIFE Programme, if they serve the objectives set out in Article 3;

- (d) workshops, conferences and meetings;
- (e) networking, and best-practice platforms;
- (f) other activities, such as awarding prizes.

## Third countries associated to the LIFE Programme

- 1. The LIFE Programme shall be open to the participation of the following third countries:
- (a) members of the European Free Trade Association which are members of the European Economic Area (EEA), in accordance with the conditions laid down in the Agreement on the European Economic Area;
- (b) acceding countries, candidate countries and potential candidates, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements and Association Council decisions or in similar agreements and in accordance with the specific conditions laid down in agreements between the Union and those countries;
- (c) European Neighbourhood Policy countries, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements and Association Council decisions or in similar agreements and in accordance with the specific conditions laid down in agreements between the Union and those countries;
- (d) other third countries, in accordance with the conditions laid down in a specific agreement covering the participation of the third country in any Union programme, provided that the agreement:
  - (i) ensures a fair balance as regards the contributions and benefits of the third country participating in the Union programmes;
  - (ii) lays down the conditions of participation in the programmes, including the calculation of financial contributions to individual programmes, and their administrative costs;
  - (iii) does not confer on the third country a decision-making power in respect of the Union programme;
  - (iv) guarantees the rights of the Union to ensure sound financial management and to protect its financial interests.

The contributions referred to in point (d)(ii) of the first subparagraph shall constitute assigned revenues in accordance with Article 21(5) of the Financial Regulation.

2. Where a third country participates in the LIFE Programme by means of a decision adopted pursuant to an international agreement or on the basis of any other legal instrument, the third country shall grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including onthe-spot checks and inspections, provided for in Regulation (EU, Euratom) No 883/2013.

### Article 7

# International cooperation

In the course of implementing the LIFE Programme, cooperation with relevant international organisations, and with their institutions and bodies, shall be possible where needed for the purpose of achieving the objectives set out in Article 3.

## Synergies with other Union programmes

The Commission shall facilitate the consistent implementation of the LIFE Programme. The Commission and Member States shall facilitate coordination and the attainment of coherence with the European Regional Development Fund, the European Social Fund+ established under a Regulation of the European Parliament and of the Council on the European Social Fund Plus (ESF+) ('European Social Fund+'), the Cohesion Fund, the European Agricultural Fund for Rural Development, and the European Maritime, Fisheries and Aquaculture Fund, Horizon Europe, the Connecting Europe Facility established under Regulation (EU) No 1316/2013 of the European Parliament and of the Council (<sup>37</sup>) and the InvestEU Programme established under Regulation (EU) 2021/523, in order to create synergies, particularly as regards strategic nature projects and strategic integrated projects, and to support the uptake and replication of solutions developed under the LIFE Programme. The Commission and Member States shall pursue complementarity at all levels.

### Article 9

## Implementation and forms of Union funding

- 1. The Commission shall implement the LIFE Programme in direct management, or in indirect management with bodies referred to in point (c) of Article 62(1) of the Financial Regulation.
- 2. The LIFE Programme may provide funding in any of the forms laid down in the Financial Regulation, in particular grants, prizes and procurement. It may also provide financing in the form of financial instruments within blending operations.
- 3. At least 85 % of the budget for the LIFE Programme shall be allocated:
- (a) to grants as referred to in Article 11(2) and (6);
- (b) to projects financed through other forms of funding to the extent specified in the multiannual work programme referred to in Article 18; or
- (c) where appropriate and to the extent specified in the multiannual work programme referred to in Article 18, to financing in the form of financial instruments within blending operations as referred to in paragraph 2 of this Article.

The Commission shall ensure that the projects financed by other forms of funding are fully in line with the objectives set out in Article 3.

The maximum amount allocated to grants as referred to in Article 11(4) shall be EUR 15 million.

4. The maximum co-financing rates for the eligible actions referred to in points (a) to (d) of Article 11(2) of this Regulation shall be up to 60 % of eligible costs and up to 75 % in the case of projects funded under the subprogramme 'Nature and Biodiversity', in particular those that concern priority habitats or species, as part of the implementation of Directive 92/43/EEC, or that concern the species of birds considered as a priority for funding by the Committee for Adaptation to Technical and Scientific Progress set up pursuant to Article 16 of Directive 2009/147/EC when necessary to achieve the conservation objective. For the actions referred to in Article 11(6) of this Regulation, the maximum cofinancing rate shall be 70 % of the eligible costs. Without prejudice to the relevant and pre-determined maximum cofinancing rates, specific rates shall be further specified in the multiannual work programme referred to in Article 18 of this Regulation. The specific rates may be adapted in accordance with the requirements of each subprogramme, project type or type of grant.

<sup>(37)</sup> Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).

For the projects referred to in Article 11(4), the maximum co-financing rates shall not exceed 95 % of eligible costs during the period of the first multiannual work programme; for the second multiannual work programme and subject to confirmation in that work programme, the co-financing rate shall be 75 % of eligible costs.

5. Quality shall be the criterion governing the project evaluation and award process in the LIFE Programme. The Commission shall pursue effective, quality-based geographical coverage across the Union, including by supporting Member States to increase the quality of the projects through capacity building.

CHAPTER II

## Eligibility

Article 10

#### Grants

Grants under the LIFE Programme shall be awarded and managed in accordance with Title VIII of the Financial Regulation.

#### Article 11

## Eligible actions

- 1. Only actions implementing the objectives set out in Article 3 shall be eligible for funding.
- 2. Grants may finance the following types of action:
- (a) strategic nature projects under the subprogramme referred to in point (1)(a) of Article 4;
- (b) strategic integrated projects under the subprogrammes referred to in points (1)(b), (2)(a) and 2(b) of Article 4;
- (c) technical assistance projects;
- (d) standard action projects;
- (e) other actions needed for the purpose of achieving the general objective set out in Article 3(1), including coordination and support actions aimed at capacity building, at dissemination of information and of knowledge, and at awareness-raising to support the transition to renewable energy and increased energy efficiency.
- 3. Projects under the subprogramme 'Nature and Biodiversity' that concern the management, restoration and monitoring of Natura 2000 sites in accordance with Directives 92/43/EEC and 2009/147/EC shall take account of priorities set out in national and regional plans, strategies and policies on nature and biodiversity conservation, including in prioritised action frameworks adopted pursuant to Directive 92/43/EEC.
- 4. Technical assistance projects for capacity building related to the activities of Member States' authorities to improve the effective participation in the LIFE programme shall support activities of those Member States with low effective participation, with a view to improving the National Contact Points' services across the Union and to increasing the overall quality of submitted proposals.
- 5. Grants may finance activities outside a Member State or an overseas country or territory linked to it, provided that the project pursues Union environmental and climate objectives and those activities are necessary to ensure the effectiveness of interventions carried out in a Member State or in an overseas country or territory linked to it, or to support international agreements to which the Union is party by providing a contribution to the organisation of multilateral conferences. The maximum contribution provided to international agreements for the organisation of multilateral conferences shall be EUR 3,5 million for the duration of the LIFE programme indicated in Article 1, and such grants shall not count towards meeting the threshold referred to in the first subparagraph of Article 9(3).

6. Operating grants shall support the functioning of non-profit making entities which are involved in the development, implementation and enforcement of Union legislation and policy, and which are primarily active in the area of the environment or climate action, including energy transition, in line with the objectives of the LIFE Programme set out in Article 3.

#### Article 12

## Eligible entities

- 1. The eligibility criteria set out in paragraphs 2 and 3 of this Article shall apply to entities, in addition to the criteria set out in Article 197 of the Financial Regulation.
- 2. The following entities shall be eligible:
- (a) legal entities established in any of the following countries or territories:
  - (i) a Member State or an overseas country or territory linked to it;
  - (ii) a third country associated to the LIFE Programme;
  - (iii) other third countries listed in the multiannual work programme referred to in Article 18, under the conditions specified in paragraphs 4 and 5 of this Article;
- (b) any legal entity created under Union law or any international organisation.
- 3. Natural persons shall not be eligible.
- 4. Legal entities established in a third country which is not associated to the LIFE Programme shall be exceptionally eligible to participate where this is necessary for the achievement of the objectives of a given action to ensure the effectiveness of interventions carried out in the Union.
- 5. Legal entities established in a third country which is not associated to the LIFE Programme shall in principle bear the cost of their participation.

#### Article 13

# Direct award

Without prejudice to Article 188 of the Financial Regulation, grants may be awarded, without a call for proposals, to the bodies listed in Annex I to this Regulation.

## Article 14

### Specification of award criteria

The Commission shall set out award criteria in the multiannual work programme referred to in Article 18 and calls for proposals, taking into account the following principles:

- (a) projects financed by the LIFE Programme are to be of Union interest by making a significant contribution to the achievement of the general and specific objectives of the LIFE Programme set out in Article 3, are not to undermine those objectives and, whenever possible, are to promote the use of green public procurement;
- (b) projects are to ensure a cost-effective approach, and be technically and financially coherent;
- (c) projects with the highest potential for contributing to the achievement of the objectives set out in Article 3 are to be given priority;

- (d) projects that provide co-benefits and promote synergies between the subprogrammes referred to in Article 4 are to benefit from a bonus in their evaluation;
- (e) projects with the highest potential for being replicated and taken-up by the public or private sector or for mobilising the largest investments or financial resources (potential to act as a catalyst) are to benefit from a bonus in their evaluation:
- (f) the replicability of standard action project results is to be ensured;
- (g) projects that build on or upscale the results of other projects funded by the LIFE Programme, its predecessor programmes or by other Union funds, are to benefit from a bonus in their evaluation;
- (h) where appropriate, special attention is to be given to projects in geographical areas with specific needs or vulnerabilities, such as areas with specific environmental challenges or natural constraints, trans-border areas, areas of high natural value and outermost regions.

## Eligible costs related to purchase of land

In addition to the criteria set out in Article 186 of the Financial Regulation, costs relating to the purchase of land shall be considered eligible, provided that the following conditions are fulfilled:

- (a) the purchase contributes to improving, maintaining and restoring the integrity of the Natura 2000 network set up pursuant to Article 3 of Directive 92/43/EEC, including by improving connectivity through the creation of corridors, stepping stones, or other elements of green infrastructure;
- (b) land purchase is the only or most cost-effective way of achieving the conservation outcome sought;
- (c) the land purchased is reserved on a long-term basis for uses consistent with the specific objectives of the LIFE Programme; and
- (d) the Member State concerned ensures, by way of transfer or otherwise, the long-term assignment of such land to nature conservation purposes.

#### Article 16

# Cumulative and alternative financing

- 1. An action that has received a contribution from another Union programme may also receive a contribution under the LIFE Programme, provided that the contributions do not cover the same costs and that the action pursues the environmental or climate objectives set out in Article 3, and does not undermine any of them. The rules of the relevant Union programme shall apply to the corresponding contribution to the action. The cumulative financing shall not exceed the total eligible costs of the action. The support from the different Union programmes may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.
- 2. Support from the European Regional Development Fund, the European Social Fund+ or the European Agricultural Fund for Rural Development, in accordance with the relevant provisions of a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy and the relevant provisions of a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural

Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council, may be granted to actions awarded a 'Seal of Excellence' certification under the LIFE Programme by complying with the following cumulative conditions:

- (a) they have been assessed in a call for proposals under the LIFE Programme;
- (b) they comply with the minimum quality requirements of that call for proposals;
- (c) they cannot be financed under that call for proposals due to budgetary constraints.

#### CHAPTER III

## Blending operations

#### Article 17

## Blending operations

Blending operations under the LIFE Programme shall be implemented in accordance with Regulation (EU) 2021/523 and Title X of the Financial Regulation, with due regard being had to sustainability and transparency requirements.

#### CHAPTER IV

#### Programming, monitoring, reporting and evaluation

## Article 18

#### Multiannual work programme

- 1. The Commission shall, by means of implementing acts, adopt multiannual work programmes for the LIFE Programme. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22(2).
- 2. Each multiannual work programme shall specify, in line with the objectives set out in Article 3, the following:
- (a) the amounts to be allocated between needs under each subprogramme and between different types of funding, as well as the maximum total amount to be allocated to grants as referred to in points (a) and (b) of Article 11(2);
- (b) the maximum total amount for financing in the form of financial instruments within blending operations under the LIFE Programme, where applicable;
- (c) the maximum total amount for grants to be awarded to the bodies listed in Annex I in accordance with Article 13;
- (d) the project topics or specific needs for which there is pre-allocation of funding for the projects referred to in points (c) and (d) of Article 11(2);
- (e) the strategies and plans targeted by strategic integrated projects for which funding may be requested for projects as referred to in point (b) of Article 11(2);
- (f) the maximum eligibility period for the implementation of the projects;
- (g) indicative timetables for the calls for proposals for the period covered by the multiannual work programme;

- (h) the technical methodology for the project submission and selection procedure, and the award criteria in accordance with the elements referred to in Article 14;
- (i) the co-financing rates referred to in Article 9(4);
- (j) the maximum co-financing rates for the eligible actions referred to in point (e) of Article 11(2);
- (k) where relevant, detailed rules concerning the application of cumulative and alternative financing;
- (l) low effective participation and eligible activities and award criteria for technical assistance projects for the capacity building related to the activities of Member States' authorities for effective participation in the LIFE programme.
- 3. The duration of the first multiannual work programme shall be four years and the duration of the second multiannual work programme shall be three years.
- 4. In the framework of the multiannual work programmes, the Commission shall publish calls for proposals for the period covered. The Commission shall ensure that unused funds in a given call for proposals are reallocated between the different types of actions referred to in Article 11(2) within the same field.
- 5. The Commission shall ensure that stakeholders are consulted in the development of the multiannual work programmes.

## Monitoring and reporting

- 1. The Commission shall report on progress of the LIFE Programme towards the achievement of the objectives set out in Article 3, based on the indicators set out in Annex II.
- 2. To ensure the effective assessment of the LIFE Programme's progress towards the achievement of its objectives, the Commission is empowered to adopt delegated acts, in accordance with Article 23, to amend Annex II to review or complement the indicators where considered necessary, including with a view to their alignment with indicators set out for other Union programmes, and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.
- 3. The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to supplement this Regulation by defining, on the basis of Annex II, specific indicators for each subprogramme and type of project.
- 4. The Commission shall ensure that data for monitoring programme implementation and results are collected efficiently, effectively, and in a timely manner. To that end, and in accordance with relevant methodologies, proportionate reporting requirements shall be imposed on recipients of Union funds to enable the collection of aggregable project-level output and impact indicators for all relevant specific environment and climate policy objectives, including in relation to Natura 2000 and the emissions of certain atmospheric air pollutants, including CO<sub>2</sub>.
- 5. The Commission shall regularly monitor and report on mainstreaming of climate and biodiversity objectives, including the amount of expenditure. While taking into account the demand-driven nature of the LIFE programme, 61% of the overall amount of the LIFE Programme as defined in Article 5 is expected to contribute to the budget-wide target of at least 30% of expenditure contributing to climate objectives. This contribution shall be tracked through the Union climate marker system. This Regulation shall contribute to mainstreaming biodiversity action in the Union's policies and to the achievement of the overall ambition of providing 7,5% of annual spending under the multiannual financial framework to biodiversity objectives in 2024 and 10% of annual spending under the multiannual framework to biodiversity objectives in 2026 and in 2027, while considering the existing overlaps between climate and biodiversity goals.

Biodiversity-related spending shall be tracked using an effective, transparent and comprehensive methodology to be set out by the Commission, in cooperation with the European Parliament and with the Council, as referred to in the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources. Those tracking methods shall be used to quantify the commitment appropriations expected to contribute respectively to climate and to biodiversity objectives over the multiannual financial framework for 2021-2027 at the appropriate level of disaggregation. The spending shall be presented annually in the Programme Statement. The contribution of the LIFE Programme to Union climate and biodiversity objectives shall be reported regularly in the context of evaluations and the annual report.

6. The Commission shall assess synergies between the LIFE Programme and other complementary Union programmes and those between its subprogrammes.

#### Article 20

#### **Evaluation**

- 1. The Commission shall carry out evaluations provided for under this Regulation in a timely manner to feed into the decision-making process with due regard for coherence, synergies, Union added value and long-term sustainability, taking account of the Union's climate and environment priorities.
- 2. The Commission shall perform the mid-term evaluation of the LIFE Programme once there is sufficient information available about its implementation, but no later than 42 months after the start of the implementation of the LIFE Programme, making use of the indicators as set out in accordance with Annex II.

The evaluation shall cover at least the following:

- (a) qualitative and quantitative aspects of the implementation of the LIFE Programme;
- (b) efficiency of the use of resources;
- (c) the degree to which the objectives of all the measures have been achieved, specifying where possible, results and impacts;
- (d) the actual or expected success of projects in leveraging other Union funds, taking into account, in particular, the benefits of increased coherence with other Union financial instruments;
- (e) the extent to which synergies between the objectives have been reached and the complementarity of the LIFE Programme with other relevant Union programmes;
- (f) the Union added value and long-term impact of the LIFE Programme, with a view to taking a decision on the renewal, modification or suspension of measures;
- (g) the extent to which stakeholders have been involved;
- (h) a quantitative and qualitative analysis of the contribution of the LIFE Programme to the conservation status of habitats and species listed in Directives 92/43/EEC and 2009/147/EC;
- (i) an analysis of the geographical coverage across the Union, as referred to in Article 9(5), and, if no such coverage is reached, an analysis of the underlying reasons for such lack of coverage.

- 3. At the end of the implementation of the LIFE Programme, but no later than four years after the end of the period specified in the second paragraph of Article 1, the Commission shall carry out a final evaluation of the LIFE Programme.
- 4. The Commission shall communicate the conclusions of the evaluations accompanied by its observations to the European Parliament, to the Council, to the European Economic and Social Committee and to the Committee of the Regions. The Commission shall make the results of the evaluations publicly available.

#### CHAPTER V

## Transitional and final provisions

#### Article 21

## Information, communication and publicity

- 1. The recipients of Union funding shall acknowledge the origin of those funds and ensure the visibility of the Union funding, in particular when promoting the projects and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public. For this purpose, the recipients shall use the LIFE Programme logo, which is depicted in Annex III. All durable goods acquired in the framework of the LIFE Programme shall bear the LIFE Programme logo except in cases specified by the Commission. Where the use of the LIFE Programme logo is not feasible, the LIFE Programme shall be mentioned in all communication activities, including on notice boards at strategic places visible to the public.
- 2. The Commission shall implement information and communication actions relating to the LIFE Programme, to actions taken pursuant to the LIFE Programme and to the results obtained. Financial resources allocated to the LIFE Programme shall also contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 3.

#### Article 22

## Committee procedure

- 1. The Commission shall be assisted by the Committee for the LIFE Programme. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
- 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
- 3. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.
- 4. The Commission shall report annually to the Committee on the overall progress of the implementation of the LIFE Programme's subprogrammes and on particular actions under the LIFE Programme, inter alia on blending operations implemented through budgetary resources allocated from the LIFE Programme.

## Article 23

## Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
- 2. The power to adopt delegated acts referred to in Article 19(2) and (3) shall be conferred on the Commission until 31 December 2028.
- 3. The delegation of power referred to in Article 19(2) and (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.
- 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

- 5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
- 6. A delegated act adopted pursuant to Article 19(2) and (3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

## Repeal

Regulation (EU) No 1293/2013 is hereby repealed with effect from 1 January 2021.

#### Article 25

#### Transitional provisions

- 1. This Regulation shall not affect the continuation or modification of the actions initiated pursuant to Regulation (EC) No 614/2007 of the European Parliament and of the Council (38) and to Regulation (EU) No 1293/2013, which shall continue to apply to the projects concerned until their closure.
- 2. The financial envelope for the LIFE Programme may also cover technical and administrative assistance expenses necessary to ensure the transition between the LIFE Programme and the measures adopted under Regulations (EC) No 614/2007 and (EU) No 1293/2013.
- 3. If necessary, appropriations may be entered in the Union budget beyond 2027 to cover the expenses provided for in Article 5(5), to enable the management of projects not completed by 31 December 2027.
- 4. Reflows from financial instruments established under Regulation (EU) No 1293/2013 may be invested in the financial instruments established under Regulation (EU) 2021/523.
- 5. The appropriations corresponding to assigned revenue arising from the repayment of amounts wrongly paid pursuant to Regulation (EC) No 614/2007 or (EU) No 1293/2013 shall be used, in accordance with Article 21 of the Financial Regulation, to finance the LIFE Programme.

#### Article 26

## Entry into force and application

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

This Regulation shall apply from 1 January 2021.

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

Done at Brussels, 29 April 2021.

For the European Parliament
The President
D.M. SASSOLI
The President
The President
A.P. ZACARIAS

<sup>(38)</sup> Regulation (EC) No 614/2007 of the European Parliament and of the Council of 23 May 2007 concerning the Financial Instrument for the Environment (LIFE+) (OJ L 149, 9.6.2007, p. 1).

# ANNEX I

# BODIES TO WHICH GRANTS MAY BE AWARDED WITHOUT A CALL FOR PROPOSALS

- 1. The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL);
- 2. The European Network of Prosecutors for the Environment (ENPE);
- 3. The European Union Forum of Judges for the Environment (EUFJE).

#### ANNEX II

## **INDICATORS**

1. Outbut mulcator	1.	Output	indicators
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- 1.1. Number of projects developing, demonstrating and promoting innovative techniques and approaches;
- 1.2. Number of projects applying best practice in relation to nature and biodiversity;
- 1.3. Number of projects for the development, implementation, monitoring or enforcement of relevant Union legislation and policy;
- 1.4. Number of projects improving governance by enhancing the capacities of public and private actors and the involvement of civil society;
- 1.5. Number of projects, including strategic integrated and strategic nature projects, implementing:
  - key plans or strategies;
  - programmes of action for mainstreaming 'Nature and Biodiversity'.

## 2. Result indicators

- 2.1. Net change to the environment and climate, based on the aggregation of project level indicators to be specified in the calls for proposals under the subprogrammes:
  - 'Nature and Biodiversity';
  - 'Circular Economy and Quality of Life' covering at least the following:
    - air quality
    - soil
    - water
    - waste
    - chemicals
    - noise
    - resource use and efficiency;
  - 'Climate Change Mitigation and Adaptation';
  - 'Clean Energy Transition';
- 2.2. Cumulative investments triggered by the projects or finance accessed (million EUR);
- 2.3. Number of organisations involved in projects or receiving operating grants;
- 2.4. Share of projects having had the effect of a catalyst after the end date of the project.

# ANNEX III

# LIFE PROGRAMME LOGO



# REGULATION (EU) 2021/784 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2021

# on addressing the dissemination of terrorist content online (Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Whereas:

- (1) This Regulation aims to ensure the smooth functioning of the digital single market in an open and democratic society, by addressing the misuse of hosting services for terrorist purposes and contributing to public security across the Union. The functioning of the digital single market should be improved by reinforcing legal certainty for hosting service providers and users' trust in the online environment, as well as by strengthening safeguards to the freedom of expression, including the freedom to receive and impart information and ideas in an open and democratic society and the freedom and pluralism of the media.
- (2) Regulatory measures to address the dissemination of terrorist content online should be complemented by Member State strategies to address terrorism, including the strengthening of media literacy and critical thinking, the development of alternative and counter narratives, and other initiatives to reduce the impact of and vulnerability to terrorist content online, as well as investment in social work, deradicalisation initiatives and engagement with affected communities, in order to achieve the sustained prevention of radicalisation in society.
- (3) Addressing terrorist content online, which is part of a broader problem of illegal content online, requires a combination of legislative, non-legislative and voluntary measures based on collaboration between authorities and hosting service providers, in a manner that fully respects fundamental rights.
- (4) Hosting service providers active on the internet play an essential role in the digital economy by connecting business and citizens and by facilitating public debate and the distribution and receipt of information, opinions and ideas, contributing significantly to innovation, economic growth and job creation in the Union. However, the services of hosting service providers are in certain cases abused by third parties for the purpose of carrying out illegal activities online. Of particular concern is the misuse of those services by terrorist groups and their supporters to disseminate terrorist content online in order to spread their message, to radicalise and recruit followers, and to facilitate and direct terrorist activity.

<sup>(1)</sup> OJ C 110, 22.3.2019, p. 67.

<sup>(2)</sup> Position of the European Parliament of 17 April 2019 (not yet published in the Official Journal) and position of the Council at first reading of 16 March 2021 (OJ C 135, 16.4.2021, p. 1). Position of the European Parliament of 28 April 2021 (not yet published in the Official Journal).

- (5) While not the only factor, the presence of terrorist content online has proven to be a catalyst for the radicalisation of individuals which can lead to terrorist acts, and therefore has serious negative consequences for users, citizens and society at large as well as for the online service providers hosting such content, since it undermines the trust of their users and damages their business models. In light of their central role and the technological means and capabilities associated with the services they provide, hosting service providers have particular societal responsibilities to protect their services from misuse by terrorists and to help address terrorist content disseminated through their services online, while taking into account the fundamental importance of the freedom of expression, including the freedom to receive and impart information and ideas in an open and democratic society.
- (6) Efforts at Union level to counter terrorist content online commenced in 2015 through a framework of voluntary cooperation between Member States and hosting service providers. Those efforts need to be complemented by a clear legislative framework in order to further reduce the accessibility of terrorist content online and adequately address a rapidly evolving problem. The legislative framework seeks to build on voluntary efforts, which were reinforced by Commission Recommendation (EU) 2018/334 (³), and responds to calls made by the European Parliament to strengthen measures to address illegal and harmful content online in line with the horizontal framework established by Directive 2000/31/EC of the European Parliament and of the Council (⁴), as well as by the European Council to improve the detection and removal of content online that incites terrorist acts.
- (7) This Regulation should not affect the application of Directive 2000/31/EC. In particular, any measures taken by a hosting service provider in compliance with this Regulation, including any specific measures, should not in themselves lead to that hosting service provider losing the benefit of the liability exemption provided for in that Directive. Moreover, this Regulation does not affect the powers of national authorities and courts to establish the liability of hosting service providers where the conditions set out in that Directive for liability exemption are not met.
- (8) In the event of a conflict between this Regulation and Directive 2010/13/EU of the European Parliament and of the Council (5) in relation to provisions governing audiovisual media services as defined in point (a) of Article 1(1) of that Directive, Directive 2010/13/EU should prevail. This should leave the obligations under this Regulation, in particular with regard to video-sharing platform providers, unaffected.
- (9) This Regulation should set out rules to address the misuse of hosting services for the dissemination of terrorist content online in order to guarantee the smooth functioning of the internal market. Those rules should fully respect the fundamental rights protected in the Union and, in particular, those guaranteed by the Charter of Fundamental Rights of the European Union (the 'Charter').
- This Regulation seeks to contribute to the protection of public security while establishing appropriate and robust safeguards to ensure the protection of fundamental rights, including the right to respect for private life, to the protection of personal data, to freedom of expression, including the freedom to receive and impart information, the freedom to conduct a business, and to an effective remedy. Moreover, any discrimination is prohibited. Competent authorities and hosting service providers should only adopt measures which are necessary, appropriate and proportionate within a democratic society, taking into account the particular importance accorded to the freedom of expression and information and the freedom and pluralism of the media, which constitute the essential foundations of a pluralist and democratic society and are values on which the Union is founded. Measures affecting the freedom of expression and information should be strictly targeted to address the dissemination of terrorist content online, while respecting the right to lawfully receive and impart information, taking into account the central role of hosting service providers in facilitating public debate and the distribution and receipt of facts, opinions and ideas, in accordance with the law. Effective online measures to address terrorist content online and the protection of freedom of expression and information are not conflicting but complementary and mutually reinforcing goals.

<sup>(3)</sup> Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online (OJ L 63, 63, 2018, p. 50)

<sup>(4)</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

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

- In order to provide clarity about the actions that both hosting service providers and competent authorities are to take to address the dissemination of terrorist content online, this Regulation should establish a definition of 'terrorist content' for preventative purposes, consistent with the definitions of relevant offences under Directive (EU) 2017/541 of the European Parliament and of the Council (6). Given the need to address the most harmful terrorist propaganda online, that definition should cover material that incites or solicits someone to commit, or to contribute to the commission of, terrorist offences, solicits someone to participate in activities of a terrorist group, or glorifies terrorist activities including by disseminating material depicting a terrorist attack. The definition should also include material that provides instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, as well as chemical, biological, radiological and nuclear (CBRN) substances, or on other specific methods or techniques, including the selection of targets, for the purpose of committing or contributing to the commission of terrorist offences. Such material includes text, images, sound recordings and videos, as well as live transmissions of terrorist offences, that cause a danger of further such offences being committed. When assessing whether material constitutes terrorist content within the meaning of this Regulation, competent authorities and hosting service providers should take into account factors such as the nature and wording of statements, the context in which the statements were made and their potential to lead to harmful consequences in respect of the security and safety of persons. The fact that the material was produced by, is attributable to or is disseminated on behalf of a person, group or entity included in the Union list of persons, groups and entities involved in terrorist acts and subject to restrictive measures should constitute an important factor in the assessment.
- (12) Material disseminated for educational, journalistic, artistic or research purposes or for awareness-raising purposes against terrorist activity should not be considered to be terrorist content. When determining whether the material provided by a content provider constitutes 'terrorist content' as defined in this Regulation, account should be taken, in particular, of the right to freedom of expression and information, including the freedom and pluralism of the media, and the freedom of the arts and sciences. Especially in cases where the content provider holds editorial responsibility, any decision as to the removal of the disseminated material should take into account the journalistic standards established by press or media regulation in accordance with Union law, including the Charter. Furthermore, the expression of radical, polemic or controversial views in the public debate on sensitive political questions should not be considered to be terrorist content.
- (13) In order to effectively address the dissemination of terrorist content online, while ensuring respect for the private life of individuals, this Regulation should apply to providers of information society services which store and disseminate to the public information and material provided by a user of the service on request, irrespective of whether the storing and dissemination to the public of such information and material is of a mere technical, automatic and passive nature. The concept of 'storage' should be understood as holding data in the memory of a physical or virtual server. Providers of 'mere conduit' or 'caching' services, as well as of other services provided in other layers of the internet infrastructure, which do not involve storage, such as registries and registrars, as well as providers of domain name systems (DNS), payment or distributed denial of service (DdoS) protection services, should therefore fall outside the scope of this Regulation.
- (14) The concept of 'dissemination to the public' should entail the making available of information to a potentially unlimited number of persons, namely making the information easily accessible to users in general, without requiring further action by the content provider, irrespective of whether those persons actually access the information in question. Accordingly, where access to information requires registration or admittance to a group of users, that information should be considered to be disseminated to the public only where users seeking to access the information are automatically registered or admitted without a human decision or selection of whom to grant access. Interpersonal communication services, as defined in point (5) of Article 2 of Directive (EU) 2018/1972 of the European Parliament and of the Council (7), such as emails or private messaging services, should fall outside the scope of this Regulation. Information should be considered to be stored

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

<sup>(7)</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

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and disseminated to the public within the meaning of this Regulation only where such activities are performed upon direct request of the content provider. Consequently, providers of services, such as cloud infrastructure, which are provided at the request of parties other than the content providers and only indirectly benefit the latter, should not be covered by this Regulation. This Regulation should cover, for example, providers of social media, video, image and audio-sharing services, as well as file-sharing services and other cloud services, insofar as those services are used to make the stored information available to the public at the direct request of the content provider. Where a hosting service provider offers several services, this Regulation should apply only to the services that fall within its scope.

- (15) Terrorist content is often disseminated to the public through services provided by hosting service providers established in third countries. In order to protect users in the Union and to ensure that all hosting service providers operating in the digital single market are subject to the same requirements, this Regulation should apply to all providers of relevant services offered in the Union, irrespective of the country of their main establishment. A hosting service provider should be considered offering services in the Union if it enables natural or legal persons in one or more Member States to use its services and has a substantial connection to that Member State or those Member States.
- A substantial connection to the Union should exist where the hosting service provider has an establishment in the Union, its services are used by a significant number of users in one or more Member States, or its activities are targeted towards one or more Member States. The targeting of activities towards one or more Member States should be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in the Member State concerned, or the possibility of ordering goods or services from such Member State. Such targeting could also be derived from the availability of an application in the relevant national application store, from providing local advertising or advertising in a language generally used in the Member State concerned, or from the handling of customer relations such as by providing customer service in a language generally used in that Member State. A substantial connection should also be assumed where a hosting service provider directs its activities towards one or more Member States as set out in point (c) of Article 17(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council (8). The mere accessibility of a hosting service provider's website, of an email address or of other contact details in one or more Member States, taken in isolation, should not be sufficient to constitute a substantial connection. Moreover, the provision of a service with a view to mere compliance with the prohibition of discrimination laid down in Regulation (EU) 2018/302 of the European Parliament and of the Council (9) should not, on that ground alone, be considered to constitute a substantial connection to the Union.
- The procedure and obligations resulting from removal orders requiring hosting service providers to remove or disable access to terrorist content, following an assessment by the competent authorities, should be harmonised. Given the speed at which terrorist content is disseminated across online services, an obligation should be imposed on hosting service providers to ensure that the terrorist content identified in the removal order is removed or access to it is disabled in all Member States within one hour of receipt of the removal order. Except for in duly justified cases of emergency, the competent authority should provide the hosting service provider with information on procedures and applicable deadlines at least 12 hours in advance of issuing for the first time a removal order to that hosting service provider. Duly justified cases of emergency occur where the removal of or disabling of access to the terrorist content later than one hour after receipt of the removal order would result in serious harm, such as in situations of an imminent threat to the life or physical integrity of a person, or when such content depicts ongoing events resulting in harm to the life or physical integrity of a person. The competent authority should determine whether cases constitute emergency cases and duly justify its decision in the removal order. Where the hosting service provider cannot comply with the removal order within one hour of its receipt, on grounds of force majeure or de facto impossibility, including for objectively justifiable technical or operational reasons, it should inform the issuing competent authority as soon as possible and comply with the removal order as soon as the situation is resolved.

(8) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

<sup>(9)</sup> Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geoblocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 60 I, 2.3.2018, p. 1).

- (18) The removal order should contain a statement of reasons qualifying the material to be removed or access to which is to be disabled as terrorist content and provide sufficient information for the location of that content, by indicating the exact URL and, where necessary, any other additional information, such as a screenshot of the content in question. That statement of reasons should allow the hosting service provider and, ultimately, the content provider to effectively exercise their right to judicial redress. The reasons provided should not imply the disclosure of sensitive information which could jeopardise ongoing investigations.
- (19) The competent authority should submit the removal order directly to the contact point designated or established by the hosting service provider for the purposes of this Regulation by any electronic means capable of producing a written record under conditions that allow the hosting service provider to establish the authenticity of the order, including the accuracy of the date and the time of sending and receipt thereof, such as by secured email or platforms or other secured channels, including those made available by the hosting service provider, in accordance with Union law on the protection of personal data. It should be possible for that requirement to be met through the use of, inter alia, qualified electronic registered delivery services as provided for by Regulation (EU) No 910/2014 of the European Parliament and of the Council (10). Where the hosting service provider's main establishment is or its legal representative resides or is established in a Member State other than that of the issuing competent authority, a copy of the removal order should be submitted simultaneously to the competent authority of that Member State.
- (20) It should be possible for the competent authority of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established to scrutinise the removal order issued by competent authorities of another Member State to determine whether it seriously or manifestly infringes this Regulation or the fundamental rights enshrined in the Charter. Both the content provider and the hosting service provider should have the right to request such scrutiny by the competent authority in the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established. Where such a request is made, that competent authority should adopt a decision on whether the removal order comprises such an infringement. Where that decision finds such an infringement, the removal order should cease to have legal effects. The scrutiny should be carried out swiftly so as to ensure that erroneously removed or disabled content is reinstated as soon as possible.
- (21) Hosting service providers that are exposed to terrorist content should, where they have terms and conditions, include therein provisions to address the misuse of their services for the dissemination to the public of terrorist content. They should apply those provisions in a diligent, transparent, proportionate and non-discriminatory manner.
- Given the scale of the problem and the speed necessary to effectively identify and remove terrorist content, effective and proportionate specific measures are an essential element in addressing terrorist content online. With a view to reducing the accessibility of terrorist content on their services, hosting service providers exposed to terrorist content should put in place specific measures taking into account the risks and level of exposure to terrorist content as well as the effects on the rights of third parties and the public interest to information. Hosting service providers should determine what appropriate, effective and proportionate specific measure should be put in place to identify and remove terrorist content. Specific measures could include appropriate technical or operational measures or capacities such as staffing or technical means to identify and expeditiously remove or disable access to terrorist content, mechanisms for users to report or flag alleged terrorist content, or any other measures the hosting service provider considers appropriate and effective to address the availability of terrorist content on its services.
- (23) When putting in place specific measures, hosting service providers should ensure that users' right to freedom of expression and information as well as the freedom and pluralism of the media as protected under the Charter are preserved. In addition to any requirement laid down in the law, including legislation on the protection of personal data, hosting service providers should act with due diligence and implement safeguards, where appropriate, including human oversight and verifications, to avoid any unintended or erroneous decision leading to the removal of or disabling of access to content that is not terrorist content.

<sup>(10)</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

- (24) The hosting service provider should report to the competent authority on the specific measures in place in order to allow that authority to determine whether the measures are effective and proportionate and whether, if automated means are used, the hosting service provider has the necessary capacity for human oversight and verification. In assessing the effectiveness and proportionality of the measures, competent authorities should take into account relevant parameters, including the number of removal orders issued to the hosting service provider, the size and economic capacity of the hosting service provider and the impact of its services in disseminating terrorist content, for example on the basis of the number of users in the Union, as well as the safeguards put in place to address the misuse of its services for the dissemination of terrorist content online.
- (25) Where the competent authority considers that the specific measures put in place are insufficient to address the risks, it should be able to require the adoption of additional appropriate, effective and proportionate specific measures. The requirement to implement such additional specific measures should not lead to a general obligation to monitor or to engage in active fact-finding within the meaning of Article 15(1) of Directive 2000/31/EC or to an obligation to use automated tools. However, it should be possible for hosting service providers to use automated tools if they consider this to be appropriate and necessary to effectively address the misuse of their services for the dissemination of terrorist content.
- (26) The obligation on hosting service providers to preserve removed content and related data should be laid down for specific purposes and limited to the period necessary. There is a need to extend the preservation requirement to related data to the extent that any such data would otherwise be lost as a consequence of the removal of the terrorist content in question. Related data can include data such as subscriber data, in particular data pertaining to the identity of the content provider, as well as access data, including data about the date and time of use by the content provider and the log-in to and log-off from the service, together with the IP address allocated by the internet access service provider to the content provider.
- The obligation to preserve the content for administrative or judicial review proceedings is necessary and justified in view of the need to ensure that effective remedies are in place for content providers whose content has been removed or access to which has been disabled, as well as to ensure the reinstatement of that content, depending on the outcome of those proceedings. The obligation to preserve material for investigative or prosecutorial purposes is justified and necessary in view of the value the material could have for the purpose of disrupting or preventing terrorist activity. Therefore, the preservation of removed terrorist content for the purposes of prevention, detection, investigation and prosecution of terrorist offences should also be considered to be justified. The terrorist content and the related data should be stored only for the period necessary to allow the law enforcement authorities to check that terrorist content and decide whether it would be needed for those purposes. For the purposes of the prevention, detection, investigation and prosecution of terrorist offences, the required preservation of data should be limited to data that are likely to have a link with terrorist offences, and could therefore contribute to prosecuting terrorist offences or to preventing serious risks to public security. Where hosting service providers remove or disable access to material, in particular through their own specific measures, they should inform the competent authorities promptly of content that contains information involving an imminent threat to life or a suspected terrorist offence.
- (28) To ensure proportionality, the period of preservation should be limited to six months to allow content providers sufficient time to initiate administrative or judicial review proceedings and to enable access by law enforcement authorities to relevant data for the investigation and prosecution of terrorist offences. However, upon the request of the competent authority or court, it should be possible to extend that period for as long as necessary in cases where those proceedings are initiated but not finalised within that six-month period. The duration of the period of preservation should be sufficient to allow law enforcement authorities to preserve the necessary material in relation to investigations and prosecutions, while ensuring the balance with the fundamental rights.
- (29) This Regulation should not affect the procedural guarantees or procedural investigation measures related to access to content and related data preserved for the purposes of the investigation and prosecution of terrorist offences, as regulated under Union or national law.

- (30) The transparency of hosting service providers' policies in relation to terrorist content is essential to enhance their accountability towards their users and to reinforce trust of citizens in the digital single market. Hosting service providers that have taken action or were required to take action pursuant to this Regulation in a given calendar year should make publicly available annual transparency reports containing information about action taken in relation to the identification and removal of terrorist content.
- (31) The competent authorities should publish annual transparency reports containing information on the number of removal orders, the number of cases where an order was not executed, the number of decisions concerning specific measures, the number of cases subject to administrative or judicial review proceedings and the number of decisions imposing penalties.
- (32) The right to an effective remedy is enshrined in Article 19 of the Treaty on European Union (TEU) and in Article 47 of the Charter. Each natural or legal person has the right to an effective remedy before the competent national court against any of the measures taken pursuant to this Regulation which can adversely affect the rights of that person. That right should include, in particular, the possibility for hosting service providers and content providers to effectively challenge the removal orders or any decisions resulting from the scrutiny of removal orders under this Regulation before a court of the Member State whose competent authority issued the removal order or took the decision, as well as for hosting service providers to effectively challenge a decision relating to specific measures or penalties before a court of the Member State whose competent authority took that decision.
- (33) Complaint procedures constitute a necessary safeguard against the erroneous removal of or disabling of access to content online where such content is protected under the freedom of expression and information. Hosting service providers should therefore establish user-friendly complaint mechanisms and ensure that complaints are dealt with expeditiously and in full transparency towards the content provider. The requirement for the hosting service provider to reinstate content that has been removed or access to which has been disabled in error should not affect the possibility for the hosting service provider to enforce its own terms and conditions.
- Effective legal protection in accordance with Article 19 TEU and Article 47 of the Charter requires that content providers are able to ascertain the reasons upon which the content they provide has been removed or access to which has been disabled. For that purpose, the hosting service provider should make available to the content provider information for challenging the removal or the disabling. Depending on the circumstances, hosting service providers could replace content which has been removed or access to which has been disabled with a message indicating that the content has been removed or access to it has been disabled in accordance with this Regulation. Further information about the reasons for the removal or disabling as well as the remedies for the removal or disabling should be provided upon request of the content provider. Where the competent authorities decide that for reasons of public security, including in the context of an investigation, it is inappropriate or counterproductive to directly notify the content provider of the removal or disabling, they should inform the hosting service provider accordingly.
- (35) For the purposes of this Regulation, Member States should designate competent authorities. This should not necessarily imply the establishment of a new authority and it should be possible to entrust an existing body with the functions provided for in this Regulation. This Regulation should require the designation of authorities competent for issuing removal orders, scrutinising removal orders, overseeing specific measures and imposing penalties, while it should be possible for each Member State to decide on the number of competent authorities to be designated and whether they are administrative, law enforcement or judicial. Member States should ensure that the competent authorities fulfil their tasks in an objective and non-discriminatory manner and do not seek or take instructions from any other body in relation to the exercise of the tasks under this Regulation. This should not prevent supervision in accordance with national constitutional law. Member States should communicate the competent authorities designated under this Regulation to the Commission, which should publish online a register listing the competent authorities. That online register should be easily accessible to facilitate the swift verification of the authenticity of removal orders by the hosting service providers.

- In order to avoid duplication of effort and possible interferences with investigations and to minimise the burden to the hosting service providers affected, the competent authorities should exchange information, coordinate and cooperate with each other and, where appropriate, with Europol, before issuing removal orders. When deciding whether to issue a removal order, the competent authority should give due consideration to any notification of an interference with an investigative interest (deconfliction). Where a competent authority is informed by a competent authority of another Member State of an existing removal order, it should not issue a removal order concerning the same subject matter. In implementing the provisions of this Regulation, Europol could provide support in line with its current mandate and existing legal framework.
- (37) In order to ensure the effective and sufficiently coherent implementation of specific measures taken by hosting service providers, competent authorities should coordinate and cooperate with each other with regard to the exchanges with hosting service providers as to removal orders and the identification, implementation and assessment of specific measures. Coordination and cooperation are also needed in relation to other measures to implement this Regulation, including with respect to the adoption of rules on penalties and the imposition of penalties. The Commission should facilitate such coordination and cooperation.
- (38) It is essential that the competent authority of the Member State responsible for imposing penalties is fully informed of the issuing of removal orders and of the subsequent exchanges between the hosting service provider and the competent authorities in other Member States. For that purpose, Member States should ensure appropriate and secure communication channels and mechanisms allowing the sharing of relevant information in a timely manner.
- (39) To facilitate the swift exchanges between competent authorities as well as with hosting service providers, and to avoid duplication of effort, Member States should be encouraged to make use of the dedicated tools developed by Europol, such as the current internet Referral Management application or its successors.
- (40) Referrals by Member States and Europol have proven to be an effective and swift means of increasing hosting service providers' awareness of specific content available through their services and enabling them to take swift action. Such referrals, which are a mechanism for alerting hosting service providers of information that could be considered to be terrorist content for the provider's voluntary consideration of the compatibility of that content with its own terms and conditions, should remain available in addition to removal orders. The final decision on whether to remove the content because it is incompatible with its terms and conditions remains with the hosting service provider. This Regulation should not affect the mandate of Europol as laid down in Regulation (EU) 2016/794 of the European Parliament and of the Council (11). Therefore, nothing in this Regulation should be understood as precluding the Member States and Europol from using referrals as an instrument to address terrorist content online.
- Given the particular serious consequences of certain terrorist content online, hosting service providers should promptly inform the relevant authorities in the Member State concerned or the competent authorities of the Member State where they are established or have a legal representative of terrorist content involving an imminent threat to life or a suspected terrorist offence. In order to ensure proportionality, that obligation should be limited to terrorist offences as defined in Article 3(1) of Directive (EU) 2017/541. That obligation to inform should not imply an obligation on hosting service providers to actively seek any evidence of such imminent threat to life or a suspected terrorist offence. The Member State concerned should be understood to be the Member State with jurisdiction over the investigation and prosecution of those terrorist offences based on the nationality of the offender or of the potential victim of the offence or the target location of the terrorist act. In the case of doubt, hosting service providers should submit the information to Europol, which should provide the relevant follow-up action in accordance with its mandate, including by forwarding that information to the relevant national authorities. The competent authorities of the Member States should be allowed to use such information to take investigatory measures available under Union or national law.

<sup>(11)</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

- (42) Hosting service providers should designate or establish contact points to facilitate the expeditious handling of removal orders. The contact point should serve only for operational purposes. The contact point should consist of any dedicated means, in-house or outsourced, allowing for the electronic submission of removal orders and of technical or personal means allowing for the expeditious processing thereof. It is not necessary that the contact point be located in the Union. The hosting service provider should be free to make use of an existing contact point for the purpose of this Regulation, provided that the contact point is able to fulfil the functions provided for in this Regulation. With a view to ensuring that terrorist content is removed or that access thereto is disabled within one hour of receipt of a removal order, the contact points of hosting service providers exposed to terrorist content should be accessible at any time. The information on the contact point should include information about the language in which it can be addressed. In order to facilitate the communication between the hosting service providers and the competent authorities, hosting service providers are encouraged to allow for communication in one of the official languages of the Union institutions in which their terms and conditions are available.
- (43) In the absence of a general requirement for hosting service providers to ensure a physical presence within the territory of the Union, there is a need to ensure clarity under which Member State's jurisdiction the hosting service provider offering services within the Union falls. As a general rule, the hosting service provider falls under the jurisdiction of the Member State in which it has its main establishment or in which its legal representative resides or is established. That should be without prejudice to the rules on competence established for the purpose of removal orders and decisions resulting from the scrutiny of removal orders under this Regulation. With regard to a hosting service provider which has no establishment in the Union and does not designate a legal representative, any Member State should, nevertheless, have jurisdiction and therefore be able to impose penalties, provided that the principle of *ne bis in idem* is respected.
- (44) Hosting service providers that are not established in the Union should designate in writing a legal representative in order to ensure compliance with and the enforcement of the obligations under this Regulation. It should be possible for hosting service providers to designate, for the purposes of this Regulation, a legal representative already designated for other purposes, provided that that legal representative is able to fulfil the functions provided for in this Regulation. The legal representative should be empowered to act on behalf of the hosting service provider.
- Penalties are necessary to ensure the effective implementation of this Regulation by hosting service providers. Member States should adopt rules on penalties, which can be of an administrative or criminal nature, as well as, where appropriate, fining guidelines. Non-compliance in individual cases could be subject to penalties while respecting the principles of ne bis in idem and of proportionality and ensuring that such penalties take account of systematic failure. Penalties could take different forms, including formal warnings in the case of minor infringements or financial penalties in relation to more severe or systematic infringements. Particularly severe penalties should be imposed in the event that the hosting service provider systematically or persistently fails to remove or disable access to terrorist content within one hour of receipt of a removal order. In order to ensure legal certainty, this Regulation should set out which infringements are subject to penalties and which circumstances are relevant for assessing the type and level of such penalties. When determining whether to impose financial penalties, due account should be taken of the financial resources of the hosting service provider. Moreover, the competent authority should take into account whether the hosting service provider is a start-up or a micro, small or mediumsized enterprise as defined in Commission Recommendation 2003/361/EC (12). Additional circumstances, such as whether the conduct of the hosting service provider was objectively imprudent or reprehensible or whether the infringement has been committed negligently or intentionally, should be taken into account. Member States should ensure that penalties imposed for the infringement of this Regulation do not encourage the removal of material which is not terrorist content.
- (46) The use of standardised templates facilitates cooperation and the exchange of information between competent authorities and hosting service providers, allowing them to communicate more quickly and effectively. It is particularly important to ensure expeditious action following the receipt of a removal order. Templates reduce translation costs and contribute to a higher standard of the process. Feedback templates allow for a standardised exchange of information and are particularly important where hosting service providers are unable to comply with removal orders. Authenticated submission channels can guarantee the authenticity of the removal order, including the accuracy of the date and the time of sending and receipt of the order.

<sup>(12)</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

- (47) In order to allow for a swift amendment, where necessary, of the content of the templates to be used for the purposes of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the annexes to this Regulation. In order to be able to take into account the development of technology and of the related legal framework, the Commission should also be empowered to adopt delegated acts to supplement this Regulation with technical requirements for the electronic means to be used by competent authorities for the transmission of removal orders. 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 (13). 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.
- (48) Member States should collect information on the implementation of this Regulation. It should be possible for Member States to make use of the hosting service providers' transparency reports and complement them, where necessary, with more detailed information, such as their own transparency reports pursuant to this Regulation. A detailed programme for monitoring the outputs, results and impacts of this Regulation should be established in order to inform an evaluation of the implementation of this Regulation.
- (49) Based on the findings and conclusions in the implementation report and the outcome of the monitoring exercise, the Commission should carry out an evaluation of this Regulation within three years of the date of its entry into force. The evaluation should be based on the criteria of efficiency, necessity, effectiveness, proportionality, relevance, coherence and Union added value. It should assess the functioning of the different operational and technical measures provided for by this Regulation, including the effectiveness of measures to enhance the detection, identification and removal of terrorist content online, the effectiveness of safeguard mechanisms as well as the impacts on potentially affected fundamental rights, such as the freedom of expression and information, including the freedom and pluralism of the media, the freedom to conduct a business, the right to private life and the protection of personal data. The Commission should also assess the impact on potentially affected interests of third parties.
- (50) Since the objective of this Regulation, namely ensuring the smooth functioning of the digital single market by addressing the dissemination of terrorist content online, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

## SECTION I

## **GENERAL PROVISIONS**

#### Article 1

## Subject matter and scope

- 1. This Regulation lays down uniform rules to address the misuse of hosting services for the dissemination to the public of terrorist content online, in particular on:
- (a) reasonable and proportionate duties of care to be applied by hosting service providers in order to address the dissemination to the public of terrorist content through their services and ensure, where necessary, the expeditious removal of or disabling of access to such content;

- (b) the measures to be put in place by Member States, in accordance with Union law and subject to suitable safeguards to protect fundamental rights, in particular the freedom of expression and information in an open and democratic society, in order to:
  - (i) identify and ensure the expeditious removal of terrorist content by hosting service providers; and
  - (ii) facilitate cooperation among the competent authorities of Member States, hosting service providers and, where appropriate, Europol.
- 2. This Regulation applies to hosting service providers offering services in the Union, irrespective of their place of main establishment, insofar as they disseminate information to the public.
- 3. Material disseminated to the public for educational, journalistic, artistic or research purposes or for the purposes of preventing or countering terrorism, including material which represents an expression of polemic or controversial views in the course of public debate, shall not be considered to be terrorist content. An assessment shall determine the true purpose of that dissemination and whether material is disseminated to the public for those purposes.
- 4. This Regulation shall not have the effect of modifying the obligation to respect the rights, freedoms and principles referred to in Article 6 TEU and shall apply without prejudice to fundamental principles relating to freedom of expression and information, including freedom and pluralism of the media.
- 5. This Regulation shall be without prejudice to Directives 2000/31/EC and 2010/13/EU. For audiovisual media services as defined in point (a) of Article 1(1) of Directive 2010/13/EU, Directive 2010/13/EU shall prevail.

## **Definitions**

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

- (1) 'hosting service provider' means a provider of services as defined in point (b) of Article 1 of Directive (EU) 2015/1535 of the European Parliament and of the Council (14), consisting of the storage of information provided by and at the request of a content provider;
- (2) 'content provider' means a user that has provided information that is, or that has been, stored and disseminated to the public by a hosting service provider;
- (3) 'dissemination to the public' means the making available of information, at the request of a content provider, to a potentially unlimited number of persons;
- (4) 'offering services in the Union' means enabling natural or legal persons in one or more Member States to use the services of a hosting service provider which has a substantial connection to that Member State or those Member States;
- (5) 'substantial connection' means the connection of a hosting service provider with one or more Member States resulting either from its establishment in the Union or from specific factual criteria, such as:
  - (a) having a significant number of users of its services in one or more Member States; or
  - (b) the targeting of its activities to one or more Member States;
- (6) 'terrorist offences' means offences as defined in Article 3 of Directive (EU) 2017/541;

<sup>(14)</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

- (7) 'terrorist content' means one or more of the following types of material, namely material that:
  - (a) incites the commission of one of the offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541, where such material, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed;
  - (b) solicits a person or a group of persons to commit or contribute to the commission of one of the offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541;
  - (c) solicits a person or a group of persons to participate in the activities of a terrorist group, within the meaning of point (b) of Article 4 of Directive (EU) 2017/541;
  - (d) provides instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques for the purpose of committing or contributing to the commission of one of the terrorist offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541;
  - (e) constitutes a threat to commit one of the offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541;
- (8) 'terms and conditions' means all terms, conditions and clauses, irrespective of their name or form, which govern the contractual relationship between a hosting service provider and its users;
- (9) 'main establishment' means the head office or registered office of the hosting service provider within which the principal financial functions and operational control are exercised.

#### SECTION II

#### MEASURES TO ADDRESS THE DISSEMINATION OF TERRORIST CONTENT ONLINE

## Article 3

## Removal orders

- 1. The competent authority of each Member State shall have the power to issue a removal order requiring hosting service providers to remove terrorist content or to disable access to terrorist content in all Member States.
- 2. Where a competent authority has not previously issued a removal order to a hosting service provider, it shall provide that hosting service provider with information on the applicable procedures and deadlines, at least 12 hours before issuing the removal order.

The first subparagraph shall not apply in duly justified cases of emergency.

- 3. Hosting service providers shall remove terrorist content or disable access to terrorist content in all Member States as soon as possible and in any event within one hour of receipt of the removal order.
- 4. Competent authorities shall issue removal orders using the template set out in Annex I. Removal orders shall contain the following elements:
- (a) identification details of the competent authority issuing the removal order and authentication of the removal order by that competent authority;
- (b) a sufficiently detailed statement of reasons explaining why the content is considered to be terrorist content, and a reference to the relevant type of material referred to in point (7) of Article 2;
- (c) an exact uniform resource locator (URL) and, where necessary, additional information for the identification of the terrorist content;
- (d) a reference to this Regulation as the legal basis for the removal order;
- (e) the date, time stamp and electronic signature of the competent authority issuing the removal order;

- (f) easily understandable information about the redress available to the hosting service provider and to the content provider, including information about redress to the competent authority, recourse to a court, as well as the deadlines for appeal;
- (g) where necessary and proportionate, the decision not to disclose information about the removal of or disabling of access to terrorist content in accordance with Article 11(3).
- 5. The competent authority shall address the removal order to the main establishment of the hosting service provider or to its legal representative designated in accordance with Article 17.

That competent authority shall transmit the removal order to the contact point referred to in Article 15(1) by electronic means capable of producing a written record under conditions that allow to establish the authentication of the sender, including the accuracy of the date and the time of sending and receipt of the order.

- 6. The hosting service provider shall, without undue delay, inform the competent authority, using the template set out in Annex II, of the removal of the terrorist content or the disabling of access to the terrorist content in all Member States, indicating, in particular, the time of that removal or disabling.
- 7. If the hosting service provider cannot comply with the removal order on grounds of *force majeure* or *de facto* impossibility not attributable to the hosting service provider, including for objectively justifiable technical or operational reasons, it shall, without undue delay, inform the competent authority that issued the removal order of those grounds, using the template set out in Annex III.

The deadline set out in paragraph 3 shall start to run as soon as the grounds referred to in the first subparagraph of this paragraph have ceased to exist.

8. If the hosting service provider cannot comply with the removal order because it contains manifest errors or does not contain sufficient information for its execution, it shall, without undue delay, inform the competent authority that issued the removal order and request the necessary clarification, using the template set out in Annex III.

The deadline set out in paragraph 3 shall start to run as soon as the hosting service provider has received the necessary clarification.

9. A removal order shall become final upon the expiry of the deadline for appeal where no appeal has been lodged in accordance with national law or upon confirmation following an appeal.

When the removal order becomes final, the competent authority that issued the removal order shall inform the competent authority referred to in point (c) of Article 12(1) of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established of that fact.

#### Article 4

## Procedure for cross-border removal orders

- 1. Subject to Article 3, where the hosting service provider does not have its main establishment or legal representative in the Member State of the competent authority that issued the removal order, that authority shall, simultaneously, submit a copy of the removal order to the competent authority of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established.
- 2. Where a hosting service provider receives a removal order as referred to in this Article, it shall take the measures provided for in Article 3 and take the necessary measures to be able to reinstate the content or access thereto, in accordance with paragraph 7 of this Article.
- 3. The competent authority of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established may, on its own initiative, within 72 hours of receiving the copy of the removal order in accordance with paragraph 1, scrutinise the removal order to determine whether it seriously or manifestly infringes this Regulation or the fundamental rights and freedoms guaranteed by the Charter.

Where it finds an infringement, it shall, within the same period, adopt a reasoned decision to that effect.

4. Hosting service providers and content providers shall have the right to submit, within 48 hours of receiving either a removal order or information pursuant to Article 11(2), a reasoned request to the competent authority of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established to scrutinise the removal order as referred to in the first subparagraph of paragraph 3 of this Article.

The competent authority shall, within 72 hours of receiving the request, adopt a reasoned decision following its scrutiny of the removal order, setting out its findings as to whether there is an infringement.

- 5. The competent authority shall, before adopting a decision pursuant to the second subparagraph of paragraph 3 or a decision finding an infringement pursuant to the second subparagraph of paragraph 4, inform the competent authority that issued the removal order of its intention to adopt the decision and of its reasons for doing so.
- 6. Where the competent authority of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established adopts a reasoned decision in accordance with paragraph 3 or 4 of this Article, it shall, without delay, communicate that decision to the competent authority that issued the removal order, the hosting service provider, the content provider who requested the scrutiny pursuant to paragraph 4 of this Article and, in accordance with Article 14, Europol. Where the decision finds an infringement pursuant to paragraph 3 or 4 of this Article, the removal order shall cease to have legal effects.
- 7. Upon receiving a decision finding an infringement communicated in accordance with paragraph 6, the hosting service provider concerned shall immediately reinstate the content or access thereto, without prejudice to the possibility to enforce its terms and conditions in accordance with Union and national law.

#### Article 5

## Specific measures

1. A hosting service provider exposed to terrorist content as referred to in paragraph 4 shall, where applicable, include in its terms and conditions and apply provisions to address the misuse of its services for the dissemination to the public of terrorist content.

It shall do so in a diligent, proportionate and non-discriminatory manner, with due regard, in all circumstances, to the fundamental rights of the users and taking into account, in particular, the fundamental importance of the freedom of expression and information in an open and democratic society, with a view to avoiding the removal of material which is not terrorist content.

2. A hosting service provider exposed to terrorist content as referred to in paragraph 4 shall take specific measures to protect its services against the dissemination to the public of terrorist content.

The decision as to the choice of specific measures shall remain with the hosting service provider. Such measures may include one or more of the following:

- (a) appropriate technical and operational measures or capacities, such as appropriate staffing or technical means to identify and expeditiously remove or disable access to terrorist content;
- (b) easily accessible and user-friendly mechanisms for users to report or flag to the hosting service provider alleged terrorist content;
- (c) any other mechanisms to increase the awareness of terrorist content on its services, such as mechanisms for user moderation;
- (d) any other measure that the hosting service provider considers to be appropriate to address the availability of terrorist content on its services.

- 3. Specific measures shall meet all of the following requirements:
- (a) they shall be effective in mitigating the level of exposure of the services of the hosting service provider to terrorist content;
- (b) they shall be targeted and proportionate, taking into account, in particular, the seriousness of the level of exposure of the services of the hosting service provider to terrorist content as well as the technical and operational capabilities, financial strength, the number of users of the services of the hosting service provider and the amount of content they provide;
- (c) they shall be applied in a manner that takes full account of the rights and legitimate interest of the users, in particular users' fundamental rights concerning freedom of expression and information, respect for private life and protection of personal data;
- (d) they shall be applied in a diligent and non-discriminatory manner.

Where specific measures involve the use of technical measures, appropriate and effective safeguards, in particular through human oversight and verification, shall be provided to ensure accuracy and to avoid the removal of material that is not terrorist content.

- 4. A hosting service provider is exposed to terrorist content where the competent authority of the Member State of its main establishment or where its legal representative resides or is established has:
- (a) taken a decision, on the basis of objective factors, such as the hosting service provider having received two or more final removal orders in the previous 12 months, finding that the hosting service provider is exposed to terrorist content; and
- (b) notified the decision referred to in point (a) to the hosting service provider.
- 5. After having received a decision as referred to in paragraph 4 or, where relevant, paragraph 6, a hosting service provider shall report to the competent authority on the specific measures that it has taken and that it intends to take in order to comply with paragraphs 2 and 3. It shall do so within three months of receipt of the decision and on an annual basis thereafter. That obligation shall cease once the competent authority has decided, upon request pursuant to paragraph 7, that the hosting service provider is no longer exposed to terrorist content.
- 6. Where, based on the reports referred to in paragraph 5 and, where relevant, any other objective factors, the competent authority considers that the specific measures taken do not comply with paragraphs 2 and 3, that competent authority shall address a decision to the hosting service provider requiring it to take the necessary measures so as to ensure that paragraphs 2 and 3 are complied with.

The hosting service provider may choose the type of specific measures to take.

7. A hosting service provider may, at any time, request the competent authority to review and, where appropriate, amend or revoke a decision as referred to in paragraph 4 or 6.

The competent authority shall, within three months of receipt of the request, adopt a reasoned decision on the request based on objective factors and notify the hosting service provider of that decision.

8. Any requirement to take specific measures shall be without prejudice to Article 15(1) of Directive 2000/31/EC and shall entail neither a general obligation for hosting services providers to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

Any requirement to take specific measures shall not include an obligation to use automated tools by the hosting service provider.

## Preservation of content and related data

- 1. Hosting service providers shall preserve terrorist content which has been removed or access to which has been disabled as a result of a removal order, or of specific measures pursuant to Article 3 or 5, as well as any related data removed as a consequence of the removal of such terrorist content, which are necessary for:
- (a) administrative or judicial review proceedings or complaint-handling under Article 10 against a decision to remove or disable access to terrorist content and related data; or
- (b) the prevention, detection, investigation and prosecution of terrorist offences.
- 2. The terrorist content and related data, as referred to in paragraph 1, shall be preserved for six months from the removal or disabling. The terrorist content shall, upon request from the competent authority or court, be preserved for a further specified period only if and for as long as necessary for ongoing administrative or judicial review proceedings, as referred to in point (a) of paragraph 1.
- 3. Hosting service providers shall ensure that the terrorist content and related data preserved pursuant to paragraph 1 are subject to appropriate technical and organisational safeguards.

Those technical and organisational safeguards shall ensure that the terrorist content and related data preserved are accessed and processed only for the purposes referred to in paragraph 1, and ensure a high level of security of the personal data concerned. Hosting service providers shall review and update those safeguards where necessary.

#### SECTION III

## SAFEGUARDS AND ACCOUNTABILITY

## Article 7

## Transparency obligations for hosting service providers

- 1. Hosting service providers shall set out clearly in their terms and conditions their policy for addressing the dissemination of terrorist content, including, where appropriate, a meaningful explanation of the functioning of specific measures, including, where applicable, the use of automated tools.
- 2. A hosting service provider that has taken action to address the dissemination of terrorist content or has been required to take action pursuant to this Regulation in a given calendar year, shall make publicly available a transparency report on those actions for that year. It shall publish that report before 1 March of the following year.
- 3. Transparency reports shall include at least the following information:
- (a) information about the hosting service provider's measures in relation to the identification and removal of or disabling of access to terrorist content;
- (b) information about the hosting service provider's measures to address the reappearance online of material which has previously been removed or to which access has been disabled because it was considered to be terrorist content, in particular where automated tools have been used;
- (c) the number of items of terrorist content removed or to which access has been disabled following removal orders or specific measures, and the number of removal orders where the content has not been removed or access to which has not been disabled pursuant to the first subparagraph of Article 3(7) and the first subparagraph of Article 3(8), together with the grounds therefor;
- (d) the number and the outcome of complaints handled by the hosting service provider in accordance with Article 10;
- (e) the number and the outcome of administrative or judicial review proceedings brought by the hosting service provider;

- (f) the number of cases in which the hosting service provider was required to reinstate content or access thereto as a result of administrative or judicial review proceedings;
- (g) the number of cases in which the hosting service provider reinstated content or access thereto following a complaint by the content provider.

#### Competent authorities' transparency reports

- 1. Competent authorities shall publish annual transparency reports on their activities under this Regulation. Those reports shall include at least the following information in relation to the given calendar year:
- (a) the number of removal orders issued under Article 3, specifying the number of removal orders subject to Article 4(1), the number of removal orders scrutinised under Article 4, and information on the implementation of those removal orders by the hosting service providers concerned, including the number of cases in which terrorist content was removed or access thereto was disabled and the number of cases in which terrorist content was not removed or access thereto was not disabled;
- (b) the number of decisions taken in accordance with Article 5(4), (6) or (7), and information on the implementation of those decisions by hosting service providers, including a description of the specific measures;
- (c) the number of cases in which removal orders and decisions taken in accordance with Article 5(4) and (6) were subject to administrative or judicial review proceedings and information on the outcome of the relevant proceedings;
- (d) the number of decisions imposing penalties pursuant to Article 18, and a description of the type of penalty imposed.
- 2. The annual transparency reports referred to in paragraph 1 shall not include information that may prejudice ongoing activities for the prevention, detection, investigation or prosecution of terrorist offences or interests of national security.

#### Article 9

## Remedies

- 1. Hosting service providers that have received a removal order issued pursuant to Article 3(1) or a decision pursuant to Article 4(4) or to Article 5(4), (6) or (7), shall have a right to an effective remedy. That right shall include the right to challenge such a removal order before the courts of the Member State of the competent authority that issued the removal order and the right to challenge the decision pursuant to Article 4(4) or to Article 5(4), (6) or (7), before the courts of the Member State of the competent authority that took the decision.
- 2. Content providers whose content has been removed or access to which has been disabled following a removal order shall have the right to an effective remedy. That right shall include the right to challenge a removal order issued pursuant to Article 3(1) before the courts of the Member State of the competent authority that issued the removal order and the right to challenge a decision pursuant to Article 4(4) before the courts of the Member State of the competent authority that took the decision.
- 3. Member States shall put in place effective procedures for exercising the rights referred to in this Article.

## Article 10

## Complaint mechanisms

1. Each hosting service provider shall establish an effective and accessible mechanism allowing content providers where their content has been removed or access thereto has been disabled as a result of specific measures pursuant to Article 5 to submit a complaint concerning that removal or disabling, requesting the reinstatement of the content or of access thereto.

2. Each hosting service provider shall expeditiously examine all complaints that it receives through the mechanism referred to in paragraph 1 and reinstate the content or access thereto, without undue delay, where its removal or disabling of access thereto was unjustified. It shall inform the complainant of the outcome of the complaint within two weeks of the receipt thereof.

Where the complaint is rejected, the hosting service provider shall provide the complainant with the reasons for its decision.

A reinstatement of content or of access thereto shall not preclude administrative or judicial review proceedings challenging the decision of the hosting service provider or of the competent authority.

#### Article 11

# Information to content providers

- 1. Where a hosting service provider removes or disables access to terrorist content, it shall make available to the content provider information on such removal or disabling.
- 2. Upon request of the content provider, the hosting service provider shall either inform the content provider of the reasons for the removal or disabling and its rights to challenge the removal order or provide the content provider with a copy of the removal order.
- 3. The obligation pursuant to paragraphs 1 and 2 shall not apply where the competent authority issuing the removal order decides that it is necessary and proportionate that there be no disclosure for reasons of public security, such as the prevention, investigation, detection and prosecution of terrorist offences, for as long as necessary, but not exceeding six weeks from that decision. In such a case, the hosting service provider shall not disclose any information on the removal or disabling of access to terrorist content.

That competent authority may extend that period by a further six weeks, where such non-disclosure continues to be justified.

#### SECTION IV

#### COMPETENT AUTHORITIES AND COOPERATION

## Article 12

#### Designation of competent authorities

- 1. Each Member State shall designate the authority or authorities competent to:
- (a) issue removal orders pursuant to Article 3;
- (b) scrutinise removal orders pursuant to Article 4;
- (c) oversee the implementation of specific measures pursuant to Article 5;
- (d) impose penalties pursuant to Article 18.
- 2. Each Member State shall ensure that a contact point is designated or established within the competent authority referred to in point (a) of paragraph 1 to handle requests for clarification and feedback in relation to removal orders issued by that competent authority.

Member States shall ensure that the information on the contact point is made publicly available.

- 3. By 7 June 2022, Member States shall notify the Commission of the competent authority or authorities referred to in paragraph 1 and any modification thereof. The Commission shall publish the notification and any modification thereto in the Official Journal of the European Union.
- 4. By 7 June 2022, the Commission shall set up an online register listing the competent authorities referred to in paragraph 1 and the contact point designated or established pursuant to paragraph 2 for each competent authority. The Commission shall publish any modification thereto regularly.

#### Competent authorities

- 1. Member States shall ensure that their competent authorities have the necessary powers and sufficient resources to achieve the aims of and fulfil their obligations under this Regulation.
- 2. Member States shall ensure that their competent authorities carry out their tasks under this Regulation in an objective and non-discriminatory manner while fully respecting fundamental rights. Competent authorities shall not seek or take instructions from any other body in relation to the carrying out of their tasks under Article 12(1).

The first subparagraph shall not prevent supervision in accordance with national constitutional law.

#### Article 14

## Cooperation between hosting service providers, competent authorities and Europol

- 1. Competent authorities shall exchange information, coordinate and cooperate with each other and, where appropriate, with Europol, with regard to removal orders, in particular to avoid duplication of effort, enhance coordination and avoid interference with investigations in different Member States.
- 2. Competent authorities of Member States shall exchange information, coordinate and cooperate with the competent authorities referred to in points (c) and (d) of Article 12(1) with regard to specific measures taken pursuant to Article 5 and penalties imposed pursuant to Article 18. Member States shall ensure that the competent authorities referred to in points (c) and (d) of Article 12(1) are in possession of all the relevant information.
- 3. For the purposes of paragraph 1, Member States shall provide for the appropriate and secure communication channels or mechanisms to ensure that the relevant information is exchanged in a timely manner.
- 4. For the effective implementation of this Regulation as well as to avoid duplication of effort, Member States and hosting service providers may make use of dedicated tools, including those established by Europol, to facilitate in particular:
- (a) the processing and feedback relating to removal orders pursuant to Article 3; and
- (b) cooperation with a view to identifying and implementing specific measures pursuant to Article 5.
- 5. Where hosting service providers become aware of terrorist content involving an imminent threat to life, they shall promptly inform authorities competent for the investigation and prosecution of criminal offences in the Member States concerned. Where it is impossible to identify the Member States concerned, the hosting service providers shall notify the contact point pursuant to Article 12(2) in the Member State where they have their main establishment or where their legal representative resides or is established, and transmit information concerning that terrorist content to Europol for appropriate follow-up.
- 6. The competent authorities are encouraged to send copies of the removal orders to Europol to allow it to provide an annual report that includes an analysis of the types of terrorist content subject to an order to remove it or to disable access thereto pursuant to this Regulation.

## Article 15

## Hosting service providers' contact points

1. Each hosting service provider shall designate or establish a contact point for the receipt of removal orders by electronic means and their expeditious processing pursuant to Articles 3 and 4. The hosting service provider shall ensure that information about the contact point is made publicly available.

2. The information referred to in paragraph 1 of this Article shall specify the official languages of the Union institutions referred to in Regulation 1/58 ( $^{15}$ ) in which the contact point can be addressed and in which further exchanges in relation to removal orders pursuant to Article 3 are to take place. Those languages shall include at least one of the official languages of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established.

#### SECTION V

# IMPLEMENTATION AND ENFORCEMENT

#### Article 16

## Jurisdiction

- 1. The Member State of the main establishment of the hosting service provider shall have jurisdiction for the purposes of Articles 5, 18 and 21. A hosting service provider which does not have its main establishment within the Union shall be deemed to be under the jurisdiction of the Member State where its legal representative resides or is established.
- 2. Where a hosting service provider which does not have its main establishment in the Union fails to designate a legal representative, all Member States shall have jurisdiction.
- 3. Where a competent authority of a Member State exercises jurisdiction pursuant to paragraph 2, it shall inform the competent authorities of all other Member States.

## Article 17

## Legal representative

- 1. A hosting service provider which does not have its main establishment in the Union shall designate, in writing, a natural or legal person as its legal representative in the Union for the purpose of the receipt of, compliance with and the enforcement of removal orders and decisions issued by the competent authorities.
- 2. The hosting service provider shall provide its legal representative with the necessary powers and resources to comply with those removal orders and decisions and to cooperate with the competent authorities.

The legal representative shall reside or be established in one of the Member States where the hosting service provider offers its services.

- 3. The legal representative may be held liable for infringements of this Regulation, without prejudice to any liability of or legal actions against the hosting service provider.
- 4. The hosting service provider shall notify the competent authority referred to in point (d) of Article 12(1) of the Member State where its legal representative resides or is established of the designation.

The hosting service provider shall make the information about the legal representative publicly available.

## SECTION VI

## FINAL PROVISIONS

## Article 18

## **Penalties**

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation by hosting service providers and shall take all measures necessary to ensure that they are implemented. Such penalties shall be limited to addressing infringements of Article 3(3) and (6), Article 4(2) and (7), Article 5(1), (2), (3), (5) and (6), Articles 6, 7, 10 and 11, Article 14(5), Article 15(1) and Article 17.

<sup>(15)</sup> Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

The penalties referred to in the first subparagraph shall be effective, proportionate and dissuasive. Member States shall, by 7 June 2022, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

- 2. Member States shall ensure that the competent authorities, when deciding whether to impose a penalty and when determining the type and level of penalty, take into account all relevant circumstances, including:
- (a) the nature, gravity and duration of the infringement;
- (b) whether the infringement was intentional or negligent;
- (c) previous infringements by the hosting service provider;
- (d) the financial strength of the hosting service provider;
- (e) the level of cooperation of the hosting service provider with the competent authorities;
- (f) the nature and size of the hosting service provider, in particular whether it is a micro, small or medium-sized enterprise;
- (g) the degree of fault of the hosting service provider, taking into account the technical and organisational measures taken by the hosting service provider to comply with this Regulation.
- 3. Member States shall ensure that a systematic or persistent failure to comply with obligations pursuant to Article 3(3) is subject to financial penalties of up to 4 % of the hosting service provider's global turnover of the preceding business year.

## Article 19

## Technical requirements and amendments to the annexes

- 1. The Commission shall be empowered to adopt delegated acts in accordance with Article 20 in order to supplement this Regulation with the necessary technical requirements for the electronic means to be used by competent authorities for the transmission of removal orders.
- 2. The Commission shall be empowered to adopt delegated acts in accordance with Article 20 to amend the annexes in order to effectively address a possible need for improvements regarding the content of templates for removal orders and to provide information on the impossibility to execute removal orders.

## Article 20

## Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
- 2. The power to adopt delegated acts referred to in Article 19 shall be conferred on the Commission for an indeterminate period of time from 7 June 2022.
- 3. The delegation of power referred to in Article 19 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 after the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
- 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

- 5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
- 6. A delegated act adopted pursuant to Article 19 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

## **Monitoring**

- 1. Member States shall collect from their competent authorities and the hosting service providers under their jurisdiction and send to the Commission by 31 March of every year information about the actions they have taken in accordance with this Regulation in the previous calendar year. That information shall include:
- (a) the number of removal orders issued and the number of items of terrorist content which have been removed or access to which has been disabled and the speed of the removal or disabling;
- (b) the specific measures taken pursuant to Article 5, including the number of items of terrorist content which have been removed or access to which has been disabled and the speed of the removal or disabling;
- (c) the number of access requests issued by competent authorities regarding content preserved by hosting service providers pursuant to Article 6;
- (d) the number of complaint procedures initiated and actions taken by the hosting service providers pursuant to
- (e) the number of administrative or judicial review proceedings initiated and decisions taken by the competent authority in accordance with national law.
- 2. By 7 June 2023, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation. The monitoring programme shall set out the indicators and the means by which and the intervals at which the data and other necessary evidence are to be collected. It shall specify the actions to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence to monitor the progress and evaluate this Regulation pursuant to Article 23.

#### Article 22

# Implementation report

By 7 June 2023, the Commission shall submit a report on the application of this Regulation to the European Parliament and to the Council. That report shall include information on monitoring under Article 21 and information resulting from the transparency obligations under Article 8. Member States shall provide the Commission with the information necessary for the drafting of the report.

## Article 23

## **Evaluation**

By 7 June 2024, the Commission shall carry out an evaluation of this Regulation and submit a report to the European Parliament and to the Council on its application including:

(a) the functioning and effectiveness of the safeguard mechanisms, in particular those provided for in Article 4(4), Article 6(3) and Articles 7 to 11;

- (b) the impact of the application of this Regulation on fundamental rights, in particular the freedom of expression and information, the respect for private life and the protection of personal data; and
- (c) the contribution of this Regulation to the protection of public security.

Where appropriate, the report shall be accompanied by legislative proposals.

Member States shall provide the Commission with the information necessary for the drafting of the report.

The Commission shall also assess the necessity and feasibility of establishing a European platform on terrorist content online for facilitating communication and cooperation under this Regulation.

## Article 24

# Entry into force and application

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

It shall apply from 7 June 2022.

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

Done at Brussels, 29 April 2021.

For the European Parliament
The President
D.M. SASSOLI
The President
The President
A.P. ZACARIAS

#### ANNEX I

## REMOVAL ORDER

(Article 3 of Regulation (EU) 2021/784 of the European Parliament and of the Council)

Pursuant to Article 3 of Regulation (EU) 2021/784 (the 'Regulation') the addressee of this removal order shall remove terrorist content or disable access to terrorist content in all Member States as soon as possible and in any event within one hour of receipt of the removal order.

Pursuant to Article 6 of the Regulation the addressee shall preserve content and related data, which has been removed or access to which as been disabled, for six months or longer upon request from the competent authorities or courts.

Pursuant to Article 15(2) of the Regulation, this removal order shall be sent in one of the languages designated by the addressee.

SECTION A:
Member State of the issuing competent authority:
NB: details of the issuing competent authority to be provided in Sections E and F
Addressee and, where relevant, legal representative:
Contact point:
Member State where the hosting service provider has its main establishment or where its legal representative resides or is established:
Time and date of issuing of the removal order:
Reference number of the removal order:

SECTION B: Terrorist content to be removed or access to which is to be disabled in all Member States as soon as possible and in any event within one hour of receipt of the removal order
URL and any additional information enabling the identification and exact location of the terrorist content:
Reasons for considering the material to be terrorist content, in accordance with point (7) of Article 2 of the Regulation.
The material (please tick the relevant box(es)):
incites others to commit terrorist offences, such as by glorifying terrorist acts, by advocating the commission of such offences (point (7)(a) of Article 2 of the Regulation)
solicits others to commit or to contribute to the commission of terrorist offences (point (7)(b) of Article 2 of the Regulation)
solicits others to participate in the activities of a terrorist group (point (7)(c) of Article 2 of the Regulation)
provides instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques for the purpose of committing or contributing to the commission of terrorist offences (point (7)(d) of Article 2 of the Regulation)
constitutes a threat to commit one of the terrorist offences (point (7)(e) of Article 2 of the Regulation)
Additional information for considering the material to be terrorist content:
SECTION C: Information to the content provider
Please note that (please tick the box, if applicable):
for reasons of public security, the addressee <b>must refrain from informing the content provider</b> of the removal of or disabling of access to the terrorist content
If the box is not applicable, please see Section G for details of possibilities to challenge the removal order in the Member State of the issuing competent authority under national law (a copy of the removal order must be sent to the content provider, if requested)

SECTION D: Information to the competent authority of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established
Please tick the relevant box(es):
☐ The Member State where the hosting service provider has its main establishment or where its legal representative resides or is established is other than the Member State of the issuing competent authority
☐ A copy of the removal order is sent to the competent authority of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established
SECTION E: Details of the issuing competent authority
Type (please tick the relevant box):
☐ judge, court or investigating judge
☐ law enforcement authority
$\square$ other competent authority $\rightarrow$ please complete also Section F
Details of the issuing competent authority or its representative certifying the removal order as accurate and correct:
Name of the issuing competent authority:
Name of its representative and post held (title and grade):
File No:
Address:
Tel. No (country code) (area/city code):
Fax No (country code) (area/city code):
Email address:
Date:
Official stamp (if available) and signature (1):

<sup>(1)</sup> A signature is not necessary if the removal order is sent through authenticated submission channels that can guarantee the authenticity of the removal order.

	SECTION F: Contact details for follow-up
	Contact details of the issuing competent authority for feedback on the time of removal or the disabling of access, or to provide further clarification:
	Contact details of the competent authority of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established:
·	
	SECTION G: Information about redress possibilities
	Information about competent body or court, deadlines and procedures for challenging the removal order:
	Competent body or court before which the removal order can be challenged:
	Deadline for challenging the removal order (days/months starting from):
	Link to provisions in national legislation:

# ANNEX II

# FEEDBACK FOLLOWING REMOVAL OF OR DISABLING OF ACCESS TO TERRORIST CONTENT

(Article 3(6) of Regulation (EU) 2021/784 of the European Parliament and of the Council)

SECTION A:
Addressee of the removal order:
Competent authority that issued the removal order:
File reference of the competent authority that issued the removal order:
File reference of the addressee:
Time and date of receipt of removal order:
SECTION B: Measures taken in compliance with the removal order
(Please tick the relevant box):
☐ the terrorist content has been removed
access to the terrorist content has been disabled in all Member States
Time and date of the measure taken:

SECTION C: Details of the addressee
Name of the hosting service provider:
OR
Name of the legal representative of the hosting service provider:
Markar Course Course and lither and of the landing and the second
Member State of main establishment of the hosting service provider:
OR
Member State of residence or establishment of the legal representative of the hosting service provider:
Name of the authorised person:
Email address of the contact point:
Date:

# ANNEX III

# INFORMATION ABOUT THE IMPOSSIBILITY TO EXECUTE THE REMOVAL ORDER

(Article 3(7) and (8) of Regulation (EU) 2021/784 of the European Parliament and of the Council)

SECTION A:
Addressee of the removal order:
Competent authority that issued the removal order:
File reference of the competent authority that issued the removal order:
File reference of the addressee:
Time and date of receipt of removal order:
SECTION B: Non-execution
(1) The removal order cannot be executed within the deadline for the following reasons (please tick the relevant box(es)):
force majeure or de facto impossibility not attributable to the hosting service provider, including for objectively justifiable technical or operational reasons
☐ the removal order contains manifest errors
the removal order does not contain sufficient information
(2) Please provide further information as to the reasons for non-execution:
(3) If the removal order contains manifest errors and/or does not contain sufficient information, please specify the errors and the further information or clarification necessary:

SECTION C: Details of the hosting service provider or its legal representative
Name of the hosting service provider:
OR
Name of the legal representative of the hosting service provider:
Name of the authorised person:
Contact details (email address):
Signature:
Time and date:

# REGULATION (EU) 2021/785 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2021

## establishing the Union Anti-Fraud Programme and repealing Regulation (EU) No 250/2014

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 33 and 325 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 Court of Auditors (1),

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

#### Whereas:

- (1) Article 325 of the Treaty on the Functioning of the European Union (TFEU) requires the Union and the Member States to counter fraud and any other illegal activities affecting the financial interests of the Union. The Union should support activities in those fields.
- (2) Support previously given for such activities through Decision No 804/2004/EC of the European Parliament and of the Council (3) (Hercule programme), amended and extended by Decision No 878/2007/EC of the European Parliament and of the Council (4) (Hercule II programme), repealed and replaced by Regulation (EU) No 250/2014 of the European Parliament and of the Council (5) (Hercule III programme), has made it possible to enhance the activities undertaken by the Union and the Member States in countering fraud, corruption and any other illegal activities affecting the financial interests of the Union.
- (3) Union legislation which sets out rules for the European Agricultural Guarantee Fund, the European Agricultural Fund for Rural Development, the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Maritime and Fisheries Fund, the Asylum, Migration and Integration Fund and the instrument for financial support for police cooperation, preventing and combating crime and crisis management, the Fund for European Aid to the Most Deprived, as well as for the pre-accession assistance regarding the programming period 2014-2020 and onwards, provides for an obligation on Member States, candidate countries and potential candidates to report irregularities and fraud affecting the financial interests of the Union. Irregularity Management System (IMS) is a secure electronic communications tool which facilitates the fulfilment of the obligation by Member States, as well as by candidate countries and potential candidates to report detected irregularities, and which also supports the management and analysis of irregularities.
- (4) While the importance of the work carried out by the Commission in the context of fraud prevention is indisputable, the importance, inter alia, of the implementation of the Anti-Fraud Information System (AFIS), as well as of anti-fraud strategies at the national level should also be fully recognised.

(2) Position of the European Parliament of 12 February 2019 (not yet published in the Official Journal) and position of the Council at first reading of 16 March 2021 (not yet published in the Official Journal). Position of the European Parliament of 29 April 2021 (not yet published in the Official Journal).

(3) Decision No 804/2004/EC of the European Parliament and of the Council of 21 April 2004 establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule programme) (OJ L 143, 30.4.2004, p. 9).
 (4) Decision No 878/2007/EC of the European Parliament and of the Council of 23 July 2007 amending and extending Decision

(\*) Decision No 878/2007/EC of the European Parliament and of the Council of 23 July 2007 amending and extending Decision No 804/2004/EC establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule II programme) (OJ L 193, 25.7.2007, p. 18).

(5) Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC (OJ L 84, 20.3.2014, p. 6).

<sup>(1)</sup> OJ C 10, 10.1.2019, p. 1.

- Council Regulation (EC) No 515/97 (6) and Council Decision 2009/917/JHA (7) provide that the Union is to support mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission, to ensure the correct application of the law on customs and agricultural matters.
- That support is provided to a number of operational activities. These include the AFIS, an information technology platform which consists of a set of applications operated under a common information system managed by the Commission. IMS is also operated under the AFIS platform. The common information system requires stable and predictable financing over the years in order to ensure its sustainability.
- (7) The AFIS platform comprises several information systems, including the Customs Information System. The Customs Information System is an automated information system which aims to assist Member States in preventing, investigating and prosecuting operations which are in breach of customs or agricultural legislation, by increasing, through more rapid dissemination of information, the effectiveness of the cooperation and control procedures of the customs administrations whose remit covers such operations. The single infrastructure of the Customs Information System covers both administrative cooperation and police cooperation based on the former Justice and Home Affairs Pillar of the Union. The police cooperation dimension of the Customs Information System cannot technically be dissociated from its administrative dimension as both are operated under a common information technology system. Considering that the Customs Information System itself is only one of several information systems run under AFIS platform and that the number of police cooperation cases is lower than the number of administrative cooperation cases in the Customs Information System, the police cooperation dimension of AFIS platform is regarded as ancillary to its administrative dimension.
- With a view to increasing synergies and budgetary flexibility, and to simplifying management, Union support in the fields of the protection of the financial interests of the Union, of irregularity reporting and of mutual administrative assistance and cooperation in customs and agricultural matters should be brought together and streamlined under a single programme, the Union Anti-Fraud Programme (the 'Programme'). The Programme should be established for a period of seven years to align its duration with that of the multiannual financial framework laid down in Council Regulation (EU, Euratom) 2020/2093 (8).
- The Programme should therefore comprise a component similar to the Hercule III programme, a second component ensuring the financing of IMS and a third component that finances the activities tasked to the Commission under Regulation (EC) No 515/97, including the AFIS platform.
- The Programme should facilitate cooperation among relevant authorities of the Member States and between the Member States, the Commission and other relevant Union bodies, including the European Public Prosecutor's Office (EPPO), where appropriate, in respect of those Member States participating in enhanced cooperation pursuant to Council Regulation (EU) 2017/1939 (9), in order to ensure effective protection of the financial interests of the Union, as well as the correct application of the law on customs and agricultural matters, without impinging on Member States' responsibilities, and in order to ensure a more effective use of resources than could be national level. Action at Union level is necessary and justified as it assists Member States in collectively protecting the financial interests of the Union and encourages the use of common Union structures in order to increase cooperation and information exchange between competent authorities, while supporting the reporting of data on irregularities and cases of fraud.
- In addition, supporting the protection of the financial interests of the Union should address all aspects of the Union budget, on both the revenue and expenditure sides. In this framework, due consideration should be given to the fact that the Programme is the only Union programme to protect the expenditure side of the Union budget.

<sup>(6)</sup> Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

(7) Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (OJ L 323,

<sup>10.12.2009,</sup> p. 20).

<sup>(8)</sup> 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).

Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO') (OJ L 283, 31.10.2017, p. 1).

- (12) This Regulation lays down a financial envelope for the Programme, which is to constitute the prime reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources (10), for the European Parliament and the Council during the annual budgetary procedure.
- (13) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (11) (the 'Financial Regulation') applies to this Programme. The Financial Regulation lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect management, financial instruments, budgetary guarantees, financial assistance and the reimbursement of external experts. Rules adopted on the basis of Article 322 TFEU also include a general regime of conditionality for the protection of the Union budget.
- (14) The types of financing and the methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden and the expected risk of non-compliance. In this regard, consideration should be given to the use of lump sums, flat rates and unit costs, as well as financing not linked to costs as referred to in Article 125(1) of the Financial Regulation.
- (15) This Regulation should provide an indicative list of the actions to be financed in order to ensure continuity in the financing of all the actions tasked to the Commission under Regulation (EC) No 515/97, including the AFIS platform.
- (16) Actions should be eligible on the basis of their ability to achieve the specific objectives of the Programme. The specific objectives of the Programme should include the provision of special technical assistance to the competent authorities of Member States, such as through providing specific knowledge, specialised and technically advanced equipment and effective IT tools; through ensuring the necessary support for, and the facilitating of, investigations, in particular by setting up joint investigation teams and cross-border operations; or through enhancing staff exchanges for specific projects. Moreover, eligible actions should also include the organisation of targeted specialised training and risk analysis workshops as well as, where appropriate, conferences and studies.
- (17) The purchase of equipment through the Union instrument for financial support for customs control equipment established by a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for customs control equipment would have a positive impact on the fight against fraud affecting the financial interests of the Union. Under that instrument there would be an obligation to avoid any duplication in Union support. The Programme should likewise ensure that any duplication in Union support is avoided and should, in principle, target its support towards the acquisition of types of equipment which do not fall under the scope of the Union instrument for financial support for customs control equipment or for equipment for which the beneficiaries are authorities other than the authorities targeted by the Union instrument for financial support for customs control equipment. Moreover, it should be ensured that the funded equipment is appropriate for the purposes of contributing to the protection of the financial interest of the Union.
- (18) The Programme should be open to participation by members of the European Free Trade Association which are members of the European Economic Area (EEA). It should also be open to participation by acceding countries, candidate countries and potential candidates, as well as European Neighbourhood Policy countries, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements and Association Council decisions, or in similar agreements. The Programme should also be open to other third countries provided that they enter into a specific agreement covering the specific conditions of their participation in Union programmes.
- (19) Taking into account past evaluations of the Hercule programmes and in order to strengthen the Programme, the participation of entities established in a third country which is not associated to the Programme should be possible on an exceptional basis.

<sup>(10)</sup> OJ L 433I, 22.12.2020, p. 28.

<sup>(11)</sup> 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).

- (20) In particular, the participation of entities established in third countries which have an association agreement in force with the Union should be encouraged, with a view to strengthening the protection of the financial interests of the Union through cooperation relating to customs and through the exchange of best practices, particularly as regards ways of combating fraud, corruption and other illegal activities affecting the financial interests of the Union and as regards facing challenges relating to new technological developments.
- (21) The Programme should be implemented taking into account the recommendations and measures listed in the Commission communication of 6 June 2013 entitled "Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products A comprehensive EU Strategy", as well as the progress report of 12 May 2017 on the implementation of that communication.
- (22) The Union ratified the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation Framework Convention on Tobacco Control (the 'Protocol') in 2016. The Protocol serves to protect the Union's financial interests insofar as it concerns the fight against cross-border illicit trade in tobacco products, which causes revenue losses. The Programme should support the Secretariat of the World Health Organisation Framework Convention on Tobacco Control in its functions related to the Protocol. It should also support other activities organised by the Secretariat in connection with the fight against illicit trade in tobacco products.
- In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council (12) and Council Regulations (Euratom, EC) No 2988/95 (13), (Euratom, EC) No 2185/96 (14) and (EU) 2017/1939, the financial interests of the Union are to be protected through proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The EPPO is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council (15). In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the Court of Auditors and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and ensure that any third parties involved in the implementation of Union funds grant equivalent rights.
- (24) Third countries which are members of the EEA may participate in Union programmes in the framework of the cooperation established under the Agreement on the European Economic Area (16), which provides for the implementation of the programmes on the basis of a decision adopted under that Agreement. Third countries may also participate on the basis of other legal instruments. A specific provision should be introduced in this Regulation requiring third countries to grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences.
- (25) Pursuant to Council Decision 2013/755/EU (<sup>17</sup>), persons and entities established in overseas countries and territories are eligible for funding subject to the rules and objectives of the Programme and possible arrangements applicable to the Member State to which the relevant overseas country or territory is linked.

<sup>(12)</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (EUratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>(13)</sup> Council Regulation (Euratom, EC) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

<sup>(14)</sup> 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 (OJ L 292, 15 11 1996, p. 2)

<sup>15.11.1996,</sup> p. 2).

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

<sup>(16)</sup> OJ L 1, 3.1.1994, p. 3.

<sup>(17)</sup> Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision) (OJ L 344, 19.12.2013, p. 1).

- (26) In order to ensure uniform conditions for the implementation of the Programme, implementing powers should be conferred on the Commission. The Commission should adopt work programmes setting out, inter alia, the priorities and the evaluation criteria for the grants for actions.
- (27) This Regulation should determine the maximum possible rate of co-financing for grants.
- (28) Pursuant to paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (<sup>18</sup>), this Programme should be evaluated on the basis of information collected in accordance with specific monitoring requirements, while avoiding an administrative burden, in particular on Member States, and overregulation. Those requirements, where appropriate, should include measurable indicators as a basis for evaluating the effects of the Programme on the ground. Evaluation should be carried out in a timely, independent and objective manner.
- (29) The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending the list of indicators to measure the achievement of the general and specific objectives where considered necessary, as well as supplementing this Regulation with provisions on the establishment of a monitoring and evaluation framework. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (30) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States due to the cross-border nature of the issues involved, but can rather, by reason of the Union added value, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (31) Article 42a(1) and (2) of Regulation (EC) No 515/97 is the legal basis for financing AFIS. This Regulation should replace that legal basis with a new one. Article 42a(1) and (2) of Regulation (EC) No 515/97 should therefore be deleted.
- (32) Regulation (EU) No 250/2014 establishing the Hercule III programme covered the period from 1 January 2014 to 31 December 2020. This Regulation should provide for a follow-up to the Hercule III programme, starting from 1 January 2021. Regulation (EU) No 250/2014 should therefore be repealed.
- (33) Reflecting the importance of tackling climate change in accordance with the Union's commitments to implement the Paris Agreement adopted under the United Nations Framework Convention on Climate Change, and to the United Nations Sustainable Development Goals, the Programme is intended to contribute to mainstreaming climate actions and the achievement of an overall target of 30 % of the Union budget supporting climate objectives.
- (34) In accordance with Article 193(2) of the Financial Regulation, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, the costs incurred prior to the date of submission of the grant application are not eligible, except in duly justified exceptional cases. In order to avoid any disruption in Union support which could be prejudicial to Union's interests, it should be possible to provide in the financing decision, during a limited period of time at the beginning of the multiannual financial framework 2021-2027, and only in duly justified cases, for eligibility of activities and costs from the beginning of the 2021 financial year, even if they were implemented and incurred before the grant application was submitted.

(35) In order to ensure continuity in providing support in the relevant policy area and to allow implementation of the Programme from the beginning of the multiannual financial framework 2021-2027, this Regulation should enter into force as a matter of urgency and should apply, with retroactive effect, from 1 January 2021,

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

#### **General Provisions**

#### Article 1

#### Subject matter

This Regulation establishes the Union Anti-Fraud Programme (the 'Programme') for the duration of the multiannual financial framework 2021-2027.

It lays down the objectives of the Programme, the budget for the period 2021-2027, the forms of Union funding and the rules for providing such funding.

#### Article 2

## Programme objectives

- 1. The general objectives of the Programme are to:
- (a) protect the financial interests of the Union;
- (b) support mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.
- 2. The specific objectives of the Programme are to:
- (a) prevent and combat fraud, corruption and any other illegal activities affecting the financial interests of the Union;
- (b) support the reporting of irregularities, including fraud, with regard to the shared management funds and pre-accession assistance funds of the Union budget;
- (c) provide tools for information exchange and support for operational activities in the field of mutual administrative assistance in customs and agricultural matters.

## Article 3

#### Budget

- 1. The financial envelope for the implementation of the Programme for the period 2021-2027 shall be EUR 181,207 million in current prices.
- 2. The indicative allocation of the amount referred to in paragraph 1 shall be as follows:
- (a) EUR 114,207 million for the objective referred to in Article 2(2), point (a);
- (b) EUR 7 million for the objective referred to in Article 2(2), point (b);
- (c) EUR 60 million for the objective referred to in Article 2(2), point (c).
- 3. Up to 2% of the amount referred to in paragraph 1 may be used for technical and administrative assistance in connection with the implementation of the Programme, such as preparatory, monitoring, control, audit and evaluation activities, including corporate information technology systems. Moreover, the indicative allocation in point (a) of paragraph 2 takes due account of the fact that the Programme is the only Union programme addressing the expenditure side of the protection of the financial interests of the Union.

## Article 4

# Third countries associated to the Programme

The Programme shall be open to the participation of the following third countries:

(a) members of the European Free Trade Association which are members of the European Economic Area, in accordance with the conditions laid down in the Agreement on the European Economic Area;

- (b) acceding countries, candidate countries and potential candidates, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements and Association Council decisions or similar agreements and in accordance with the specific conditions laid down in agreements between the Union and those countries;
- (c) European Neighbourhood Policy countries, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements and Association Council decisions or in similar agreements and in accordance with the specific conditions laid down in agreements between the Union and those countries;
- (d) other third countries, in accordance with the conditions laid down in a specific agreement covering the participation of the third country to any Union programme, provided that the agreement:
  - (i) ensures a fair balance as regards the contributions and benefits of the third country participating in the Union programmes;
  - (ii) lays down the conditions of participation in the programmes, including the calculation of financial contributions to individual programmes, and their administrative costs;
  - (iii) does not confer to the third country any decision-making power in respect of the Union programme;
  - (iv) guarantees the rights of the Union to ensure sound financial management and to protect its financial interests.

The contributions referred to in the first paragraph, point (d), (ii) shall constitute assigned revenues in accordance with Article 21(5) of the Financial Regulation.

#### Article 5

## Implementation and forms of Union funding

- 1. The Programme shall be implemented in direct management in accordance with the Financial Regulation or in indirect management with a body referred to in Article 62(1), first subparagraph, point (c) of the Financial Regulation.
- 2. The Programme may provide funding in any of the forms laid down in the Financial Regulation, in particular grants and procurement, as well as the reimbursement of travel and subsistence expenses as provided for in Article 238 of the Financial Regulation.
- 3. The Programme may provide funding for actions carried out in accordance with Regulation (EC) No 515/97, in particular to cover the types of costs referred to in the indicative list in Annex I to this Regulation.
- 4. Where the action supported involves the acquisition of equipment, the Commission shall, if appropriate, set up a coordination mechanism to ensure efficiency and interoperability between all the equipment purchased with the support of Union programmes.

#### Article 6

# Protection of the financial interests of the Union

Where a third country participates in the Programme by means of a decision adopted pursuant to an international agreement or on the basis of any other legal instrument, the third country shall grant the necessary rights and access required for the authorising officer responsible, OLAF and the Court of Auditors to comprehensively exercise their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, as provided for in Regulation (EU, Euratom) No 883/2013.

CHAPTER II

Grants

Article 7

Grants

Grants under the Programme shall be awarded and managed in accordance with Title VIII of the Financial Regulation.

#### Article 8

## Co-financing

The co-financing rate for grants awarded under the Programme shall not exceed 80 % of the eligible costs. Any funding in excess of that ceiling shall only be granted in exceptional and duly justified cases, which shall be defined in the work programmes referred to in Article 11, and such funding shall not exceed 90 % of the eligible costs.

#### Article 9

#### Eligible actions

- Only actions implementing the objectives referred to in Article 2 shall be eligible for funding.
- 2. Without prejudice to any other action provided by the work programmes under Article 11, the following actions may be considered eligible for funding:
- (a) providing technical knowledge, specialised and technically advanced equipment and effective IT tools enhancing transnational and multidisciplinary cooperation and cooperation with the Commission;
- (b) enhancing staff exchanges for specific projects, ensuring the necessary support and facilitating investigations, in particular the setting up of joint investigation teams and cross-border operations;
- (c) providing technical and operational support to national investigations, in particular to customs and law enforcement authorities to strengthen the fight against fraud and other illegal activities;
- (d) building IT capacity in the Member States and third countries, increasing data exchange and developing and providing IT tools for the investigation and monitoring of intelligence work;
- (e) organising specialised training, risk analysis workshops, conferences and studies aimed towards improving cooperation and coordination among services concerned with the protection of the financial interests of the Union;
- (f) any other action, provided by the work programmes under Article 11, which is necessary for achieving the general and specific objectives provided for in Article 2.
- 3. Where the action to be supported involves the acquisition of equipment, the Commission shall ensure that the funded equipment is appropriate for the purpose of contributing to the protection of the financial interest of the Union.

#### Article 10

## Eligible entities

- 1. The eligibility criteria set out in paragraph 2 of this Article shall apply in addition to the criteria set out in Article 197 of the Financial Regulation.
- 2. The following entities shall be eligible under the Programme:
- (a) public authorities which can contribute to achieving one of the objectives referred to in Article 2 and are established in:
  - (i) a Member State or an overseas country or territory linked to it;
  - (ii) a third country associated to the Programme; or
  - (iii) a third country listed in the work programme under the conditions specified in paragraph 3;

- (b) research and educational institutes and non-profit-making entities which can contribute to the achievement of the objectives referred to in Article 2, provided that they have been established and have been operating for at least one year in:
  - (i) a Member State;
  - (ii) a third country associated to the Programme; or
  - (iii) a third country listed in a work programme under the conditions specified in paragraph 3;
- (c) any legal entity created under Union law or any international organisation.
- 3. Entities referred to in paragraph 2 established in a third country which is not associated to the Programme shall be exceptionally eligible under the Programme where this is necessary for the achievement of the objectives of a given action. Such entities shall in principle bear the cost of their participation, except in cases which shall be duly justified in the work programme.

#### CHAPTER III

## Programming, Monitoring, and Evaluation

#### Article 11

## Work programme

In order to implement the Programme, the Commission shall adopt work programmes referred to in Article 110 of the Financial Regulation.

#### Article 12

#### Monitoring and reporting

- 1. Indicators to report on the progress of the Programme towards the achievement of the general and specific objectives laid down in Article 2 are set out in Annex II.
- 2. To ensure effective assessment of the Programme's progress towards the achievement of its objectives, the Commission is empowered to adopt delegated acts, in accordance with Article 14, to amend Annex II with regard to the indicators where considered necessary, as well as to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.
- 3. The Commission shall report annually on the performance of the Programme to the European Parliament and to the Council in the framework of its Annual Report on the protection of the Union's financial interests Fight against fraud

In the framework of discussions thereon, the European Parliament may make recommendations for the annual work programme. The Commission shall duly take those recommendations into account.

4. The performance reporting system shall ensure that data for monitoring the implementation and the results of the Programme are collected efficiently, effectively and in a timely manner. To that end, proportionate reporting requirements shall be imposed on recipients of Union funds and, where relevant, on the Member States.

#### Article 13

#### **Evaluation**

- 1. When conducting evaluations, the Commission shall ensure that they are conducted in an independent, objective and timely manner and that the evaluators are able to carry out their work free from any attempt to influence them.
- 2. The interim evaluation of the Programme shall be performed once there is sufficient information available about the implementation of the Programme, but no later than four years after the start of the implementation of the Programme.
- 3. At the end of the implementation of the Programme, but no later than four years after the end of the period specified in Article 1, the Commission shall carry out a final evaluation of the Programme.
- 4. The Commission shall communicate the conclusions of the evaluations, accompanied by its observations, to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the Court of Auditors, and shall publish them on the Commission's website.

## Article 14

# Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
- 2. The power to adopt delegated acts referred to in Article 12(2) shall be conferred on the Commission until 31 December 2028.

- 3. The delegation of power referred to in Article 12(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 power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
- 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
- 5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
- 6. A delegated act adopted pursuant to Article 12(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### CHAPTER IV

#### Transitional and Final Provisions

#### Article 15

#### Information, communication and visibility

- 1. Except where there is a risk of compromising the effective performance of anti-fraud and customs operational activities, the recipients of Union funding shall acknowledge the origin of those funds and ensure the visibility of the Union funding, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.
- 2. The Commission shall on a regular basis implement information and communication actions relating to the Programme, to actions taken pursuant to the Programme and to the results obtained. Financial resources allocated to the Programme shall also contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 2.

#### Article 16

## Amendment of Regulation (EC) No 515/97

In Article 42a of Regulation (EC) No 515/97, paragraphs 1 and 2 are deleted.

## Article 17

#### Repeal

Regulation (EU) No 250/2014 is repealed with effect from 1 January 2021.

## Article 18

## Transitional provisions

- 1. This Regulation shall not affect the continuation or modification of the actions initiated pursuant to Regulation (EU) No 250/2014 and Article 42a of Regulation (EC) No 515/97, which shall continue to apply to those actions until their closure.
- 2. The financial envelope for the Programme may also cover technical and administrative assistance expenses necessary to ensure the transition between the Programme and the measures adopted pursuant to Regulation (EU) No 250/2014 and Article 42a of Regulation (EC) No 515/97.
- 3. In accordance with Article 193(2), second subparagraph, point (a) of the Financial Regulation, in duly justified cases specified in the financing decision and for a limited period, actions supported under this Regulation and the underlying costs may be considered eligible as of 1 January 2021, even if those actions were implemented and those costs incurred before the grant application was submitted.

## Article 19

# Entry into force and application

This Regulation shall enter into force on the day of its publication in the Official Journal of the European Union. It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States. Done at Brussels, 29 April 2021.

For the European Parliament
The President
D.M. SASSOLI

For the Council The President A.P. ZACARIAS

#### ANNEX I

## INDICATIVE LIST OF COSTS REFERRED TO IN ARTICLE 5(3)

Indicative list of the types of costs that the Programme will fund for actions carried out in accordance with Regulation (EC) No 515/97:

- (a) costs of installing and maintaining the permanent technical infrastructure which provides Member States with the logistical, office automation and IT resources to coordinate joint customs operations and other operational activities;
- (b) the reimbursement of travel and subsistence expenses, as well as, where appropriate, any other allowances or payments, made in respect of representatives of the Member States and, where appropriate, representatives of third countries, taking part in Union missions, in joint customs operations organised by or jointly with the Commission and in training courses, ad hoc meetings and preparatory and evaluation meetings for administrative investigations or operational actions conducted by the Member States, where they are organised by or jointly with the Commission;
- (c) expenditure relating to the acquisition, study, development and maintenance of computer infrastructure (hardware), software and dedicated network connections, and to related production, support and training services for the purpose of carrying out the actions provided for in Regulation (EC) No 515/97, in particular actions relating to preventing and combating fraud;
- (d) expenditure relating to the provision of information and expenditure on related actions allowing access to information, data and data sources for the purpose of carrying out the actions provided for in Regulation (EC) No 515/97, in particular actions relating to preventing and combating fraud;
- (e) expenditure relating to use of the Customs Information System provided for in instruments adopted under Article 87 TFEU, and in particular in Decision 2009/917/JHA, in so far as those instruments provide that that expenditure shall be borne by the general budget of the Union.
- (f) expenditure relating to the acquisition, study, development and maintenance of the Union components of the common communication network used for the purposes of point (c).

#### ANNEX II

#### INDICATORS FOR THE MONITORING OF THE PROGRAMME

The Programme will be monitored closely on the basis of a set of indicators intended to measure the extent to which the general and specific objectives of the Programme have been achieved and with a view to minimising administrative burdens and costs. To that end, data will be collected in relation to the following set of key indicators:

Specific Objective 1: Preventing and combating fraud, corruption and any other illegal activities affecting the financial interests of the Union.

Indicator 1: Support in preventing and combatting fraud, corruption and any other illegal activities affecting the financial interests of the Union, as measured by:

- 1.1: satisfaction rate of activities organised and (co-)financed through the Programme;
- 1.2: percentage of Member States receiving support each year of the Programme.

Specific Objective 2: Supporting the reporting of irregularities, including fraud, with regard to the shared management funds and pre-accession assistance funds of the Union budget.

Indicator 2: User satisfaction rate for the use of IMS.

Specific Objective 3: Providing tools for information exchange and support for operational activities in the field of mutual administrative assistance in customs and agricultural matters.

Indicator 3: Number of instances in which mutual assistance information is made available and number of supported mutual assistance-related activities.



