

# Official Journal

## of the European Union

L 111



English edition

Legislation

Volume 62

25 April 2019

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## I

*(Legislative acts)*

## REGULATIONS

**REGULATION (EU, Euratom) 2019/629 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 17 April 2019****amending Protocol No 3 on the Statute of the Court of Justice of the European Union**

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 256(1) and the second paragraph of Article 281 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Having regard to the request of the Court of Justice,

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

Having regard to the opinions of the European Commission <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) In accordance with Article 3(2) of Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council <sup>(3)</sup>, the Court of Justice undertook, together with the General Court, an overall review of the jurisdiction exercised by them and considered whether, given the reform of the structure of the courts of the Union that took place pursuant to that Regulation, certain changes should be made to the distribution of jurisdiction between the Court of Justice and the General Court or to the manner in which appeals are dealt with by the Court of Justice.
- (2) As is stated in the report that it submitted to the European Parliament, to the Council and to the Commission on 14 December 2017, the Court of Justice considers that there is no need, at this stage, to propose changes with respect to the manner of dealing with questions that are referred to it for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union (TFEU). References for a preliminary ruling constitute the keystone of the judicial system of the Union and are dealt with expeditiously, and consequently a transfer to the General Court of jurisdiction to hear and determine questions referred for a preliminary ruling, in specific areas laid down by the Statute of the Court of Justice of the European Union, is at present not necessary.
- (3) The review undertaken by the Court of Justice and the General Court nonetheless brought to light the fact that, when adjudicating on an action for annulment brought by a Member State against an act of the Commission relating to a failure to comply with a judgment delivered by the Court of Justice under Article 260(2) or (3) TFEU, the General Court can encounter serious difficulties where the Commission and the Member State concerned disagree on the adequacy of the measures adopted by that Member State to comply with the judgment of the Court of Justice. On those grounds, it appears necessary to reserve exclusively to the Court of Justice litigation concerning a lump sum or a penalty payment imposed on a Member State pursuant to Article 260(2) or (3) TFEU.

<sup>(1)</sup> Opinion of 11 July 2018 (not yet published in the Official Journal) and Opinion of 23 October 2018 (not yet published in the Official Journal).

<sup>(2)</sup> Position of the European Parliament of 13 March 2019 (not yet published in the Official Journal) and decision of the Council of 9 April 2019.

<sup>(3)</sup> Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (OJ L 341, 24.12.2015, p. 14).

- (4) It is, moreover, clear from the review undertaken by the Court of Justice and the General Court that many appeals are brought in cases which have already been considered twice, initially by an independent board of appeal, then by the General Court, and that many of those appeals are dismissed by the Court of Justice because they are patently unfounded or on the ground that they are manifestly inadmissible. In order to enable the Court of Justice to concentrate on the cases that require its full attention, it is necessary, in the interests of the proper administration of justice, to introduce, for appeals relating to such cases, a procedure whereby the Court of Justice allows an appeal to proceed, wholly or in part, only where it raises an issue that is significant with respect to the unity, consistency or development of Union law.
- (5) In the light of the constant increase in the number of cases brought before the Court of Justice, and in accordance with the letter from the President of the Court of Justice of the European Union of 13 July 2018, it is necessary, at this stage, to prioritise the establishment of the procedure mentioned above whereby the Court of Justice decides whether an appeal should be allowed to proceed. The component of the request made by the Court of Justice on 26 March 2018 that relates to the partial transfer to the General Court of infringement proceedings should be examined at a later stage, after the report on the functioning of the General Court provided for in Article 3(1) of Regulation (EU, Euratom) 2015/2422 has been drawn up, in December 2020. It is recalled that this report should focus in particular on the efficiency of the General Court and the necessity and effectiveness of the increase of the number of judges to 56, taking into account also the objective of ensuring gender balance within the General Court as mentioned in the preamble to Regulation (EU, Euratom) 2015/2422.
- (6) Consequently, it is necessary to amend Protocol No 3 on the Statute of the Court of Justice of the European Union whilst ensuring, at the same time, that the terminology of the provisions of that Protocol and that of the corresponding provisions of the TFEU are fully aligned, and to establish appropriate transitional provisions with respect to the outcome of cases that are pending on the date when this Regulation enters into force,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Protocol No 3 is amended as follows:

- (1) Article 51 is replaced by the following:

##### *'Article 51*

By way of derogation from the rule laid down in Article 256(1) of the Treaty on the Functioning of the European Union, jurisdiction shall be reserved to the Court of Justice:

- (a) in actions referred to in Articles 263 and 265 of the Treaty on the Functioning of the European Union which are brought by a Member State against:
  - (i) a legislative act, an act of the European Parliament, of the European Council or of the Council, or against a failure to act by one or more of those institutions, except for:
    - decisions taken by the Council under the third subparagraph of Article 108(2) of the Treaty on the Functioning of the European Union,
    - acts of the Council adopted pursuant to a Council regulation concerning measures to protect trade within the meaning of Article 207 of the Treaty on the Functioning of the European Union,
    - acts of the Council by which the Council exercises implementing powers in accordance with Article 291(2) of the Treaty on the Functioning of the European Union;
  - (ii) an act of, or a failure to act by, the Commission under Article 331(1) of the Treaty on the Functioning of the European Union;
- (b) in actions referred to in Articles 263 and 265 of the Treaty on the Functioning of the European Union which are brought by an institution of the Union against a legislative act, an act of the European Parliament, of the European Council, of the Council, of the Commission or of the European Central Bank, or against a failure to act by one or more of those institutions;
- (c) in actions referred to in Article 263 of the Treaty on the Functioning of the European Union which are brought by a Member State against an act of the Commission relating to a failure to comply with a judgment delivered by the Court under the second subparagraph of Article 260(2), or the second subparagraph of Article 260(3), of the Treaty on the Functioning of the European Union.;

(2) the following Article is inserted:

*'Article 58a*

An appeal brought against a decision of the General Court concerning a decision of an independent board of appeal of one of the following offices and agencies of the Union shall not proceed unless the Court of Justice first decides that it should be allowed to do so:

- (a) the European Union Intellectual Property Office;
- (b) the Community Plant Variety Office;
- (c) the European Chemicals Agency;
- (d) the European Union Aviation Safety Agency.

The procedure referred to in the first paragraph shall also apply to appeals brought against decisions of the General Court concerning a decision of an independent board of appeal, set up after 1 May 2019 within any other office or agency of the Union, which has to be seised before an action can be brought before the General Court.

An appeal shall be allowed to proceed, wholly or in part, in accordance with the detailed rules set out in the Rules of Procedure, where it raises an issue that is significant with respect to the unity, consistency or development of Union law.

The decision as to whether the appeal should be allowed to proceed or not shall be reasoned, and it shall be published.'

*Article 2*

Cases which fall within the jurisdiction of the Court of Justice under Protocol No 3 as amended by this Regulation, of which the General Court is seised on 1 May 2019 but in respect of which the written part of the procedure has yet to be closed on that date, shall be assigned to the Court of Justice.

*Article 3*

The procedure referred to in Article 58a of Protocol No 3 shall not be applicable to appeals of which the Court of Justice is seised on 1 May 2019.

*Article 4*

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

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

Done at Strasbourg, 17 April 2019.

*For the European Parliament*

*The President*

A. TAJANI

*For the Council*

*The President*

G. CIAMBA

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**REGULATION (EU) 2019/630 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 17 April 2019**  
**amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing**  
**exposures**

(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 Central Bank <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) The establishment of a comprehensive strategy to address non-performing exposures (NPEs) is an important goal for the Union in its attempt to make the financial system more resilient. While addressing NPEs is primarily the responsibility of banks and Member States, there is also a clear Union dimension to reducing the current high stock of NPEs, to preventing any excessive build-up of NPEs in the future and to preventing the emergence of systemic risks in the non-banking sector. Given the interconnectedness of the banking and financial systems across the Union, where banks operate in multiple jurisdictions and Member States, there is significant potential for spill-over effects for Member States and for the Union as a whole, both in terms of economic growth and financial stability.
- (2) The financial crisis led to the build-up of NPEs in the banking sector. Consumers were significantly affected by the subsequent recession and the drop in housing prices. Safeguarding consumers' rights in line with relevant Union law such as Directives 2008/48/EC <sup>(4)</sup> and 2014/17/EU <sup>(5)</sup> of the European Parliament and of the Council is essential when tackling the issue of NPEs. Directive 2011/7/EU of the European Parliament and of the Council <sup>(6)</sup> encourages prompt payment by both enterprises and public authorities and helps prevent the kind of build-up of NPEs that occurred during the years of the financial crisis.
- (3) An integrated financial system will enhance the resilience of the Economic and Monetary Union to adverse shocks by facilitating cross-border private risk-sharing, while at the same time reducing the need for public risk-sharing. In order to achieve those objectives, the Union should complete the banking union and further develop a capital markets union. Addressing possible future NPE accumulation is essential to strengthening the banking union as it is essential for ensuring competition in the banking sector, preserving financial stability and encouraging lending, so as to create jobs and growth within the Union.
- (4) In its 'Action plan to tackle non-performing loans in Europe' of 11 July 2017, the Council called upon various institutions to take appropriate measures to further address the high number of NPEs in the Union and to prevent their build-up in the future. The action plan sets out a comprehensive approach that focuses on a mix of

<sup>(1)</sup> OJ C 79, 4.3.2019, p. 1.

<sup>(2)</sup> OJ C 367, 10.10.2018, p. 43.

<sup>(3)</sup> Position of the European Parliament of 14 March 2019 (not yet published in the Official Journal) and decision of the Council of 9 April 2019.

<sup>(4)</sup> Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

<sup>(5)</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

<sup>(6)</sup> Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ L 48, 23.2.2011, p. 1).

complementary policy actions in four areas: (i) supervision; (ii) structural reforms of insolvency and debt recovery frameworks; (iii) development of secondary markets for distressed assets; (iv) fostering restructuring of the banking system. Actions in those areas are to be taken at Union and at national level, where appropriate. The Commission announced a similar intention in its 'Communication on completing the Banking Union' of 11 October 2017, which called for a comprehensive package on tackling non-performing loans (NPLs) within the Union.

- (5) Regulation (EU) No 575/2013 of the European Parliament and of the Council <sup>(7)</sup> forms, together with Directive 2013/36/EU of the European Parliament and of the Council <sup>(8)</sup>, the legal framework governing the prudential rules for credit institutions and investment firms (referred to collectively as 'institutions'). Regulation (EU) No 575/2013 contains, inter alia, provisions directly applicable to institutions for determining their own funds. It is therefore necessary to complement the existing prudential rules in Regulation (EU) No 575/2013 relating to own funds with provisions requiring a deduction from own funds where NPEs are not sufficiently covered by provisions or other adjustments. Such requirement would effectively amount to creating a prudential backstop for NPEs that would apply uniformly to all institutions in the Union, and would also cover institutions which are active on the secondary market.
- (6) The prudential backstop should not prevent competent authorities from exercising their supervisory powers in accordance with Directive 2013/36/EU. Where competent authorities ascertain on a case-by-case basis that, despite the application of the prudential backstop for NPEs established by this Regulation, the NPEs of a specific institution are not sufficiently covered, it should be possible for them to make use of the supervisory powers provided for in Directive 2013/36/EU, including the power to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements. Therefore, it is possible, on a case-by-case basis, for the competent authorities to go beyond the requirements laid down in this Regulation for the purpose of ensuring sufficient coverage for NPEs.
- (7) For the purposes of applying the prudential backstop, it is appropriate to introduce in Regulation (EU) No 575/2013 a clear set of conditions for the classification of NPEs. As Commission Implementing Regulation (EU) No 680/2014 <sup>(9)</sup> already lays down criteria concerning NPEs for the purposes of supervisory reporting, it is appropriate that the classification of NPEs build on that existing framework. Implementing Regulation (EU) No 680/2014 refers to defaulted exposures as defined for the purpose of calculating own funds requirements for credit risk and impaired exposures pursuant to the applicable accounting framework. As forbearance measures might influence whether an exposure is classified as non-performing, the classification criteria are complemented by clear criteria on the impact of forbearance measures. Forbearance measures should aim to return the borrower to a sustainable performing repayment status and should comply with Union consumer protection law and in particular with Directives 2008/48/EC and 2014/17/EU, but might have different justifications and consequences. It is therefore appropriate to provide that a forbearance measure granted to a non-performing exposure should not discontinue the classification of that exposure as non-performing unless certain strict discontinuation criteria are fulfilled.
- (8) The longer an exposure has been non-performing, the lower the probability for the recovery of its value. Therefore, the portion of the exposure that should be covered by provisions, other adjustments or deductions should increase with time, following a pre-defined calendar. NPEs purchased by an institution should therefore be subject to a calendar that starts to run from the date on which the NPE was originally classified as non-performing, and not from the date of its purchase. For that purpose, the seller should inform the buyer of the date of the classification of the exposure as non-performing.
- (9) Partial write-offs should be taken into account when calculating the specific credit risk adjustments. In order to avoid any double counting of the write-off, it is necessary to use the original exposure value prior to the partial write-off. The inclusion of partial write-offs in the list of items that can be used to meet the requirements of the backstop should encourage institutions to recognise write-offs in a timely manner. For NPEs purchased by an institution at a price lower than the amount owed by the debtor, the purchaser should treat the difference between the purchase price and the amount owed by the debtor in the same way as a partial write-off for the purpose of the prudential backstop.

<sup>(7)</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>(8)</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>(9)</sup> Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

- (10) Secured NPEs are generally expected to result in a less significant loss than unsecured NPEs, as the credit protection securing the NPE gives the institution a specific claim on an asset or against a third party in addition to the institution's general claim against the defaulted borrower. In the case of an unsecured NPE, only the general claim against the defaulted borrower would be available. Given the higher loss expected on unsecured NPEs, a stricter calendar should be applied.
- (11) An exposure which is only partly covered by eligible credit protection should be considered as secured for the covered part, and as unsecured for the part which is not covered by eligible credit protection. In order to determine which parts of NPEs are to be treated as secured or unsecured, the eligibility criteria for credit protection and for fully and completely securing mortgages used for the purposes of the calculation of own funds requirements should be applied in accordance with the relevant approach under Regulation (EU) No 575/2013, including applicable value adjustment.
- (12) The same calendar should be applied irrespective of the reason for which the exposure is non-performing. The prudential backstop should be applied at an exposure-by-exposure level. A calendar of three years should apply for unsecured NPEs. In order to allow institutions and Member States to improve the efficiency of restructuring or of enforcement proceedings, as well as to recognise that NPEs secured by immovable collateral and residential loans guaranteed by an eligible protection provider as defined in Regulation (EU) No 575/2013 will have a remaining value for a longer period of time after the loan has been classified as non-performing, it is appropriate to provide for a calendar of nine years. For other secured NPEs a calendar of seven years should apply in order to build up full coverage.
- (13) It should be possible to take forbearance measures into account for the purpose of applying the relevant coverage factor. More precisely, the exposure should continue to be classified as non-performing but the coverage requirement should remain stable for one additional year. Therefore, the factor that would be applicable during the year in which the forbearance measure has been granted should be applicable for two years. Where, upon the expiry of the additional year, the exposure is still non-performing, the applicable factor should be determined as if no forbearance measure had been granted, taking into account the date on which the exposure was originally classified as non-performing. Given that granting forbearance measures should not lead to any arbitrage, that additional year should only be permitted in respect of the first forbearance measure that has been granted since the classification of the exposure as non-performing. In addition, the one-year period during which the coverage factor remains unchanged should not lead to the extension of the provisioning calendar. As a result, any forbearance measure granted in the third year after the classification as NPE for unsecured exposures, or in the seventh year after the classification as NPE for secured exposures, should not delay the full coverage of the NPE.
- (14) In order to ensure that the credit protection valuation of institutions' NPEs follows a prudent approach, the European Supervisory Authority (European Banking Authority) (EBA) should consider the need for, and if necessary develop, a common methodology, in particular regarding assumptions pertaining to recoverability and enforceability, and possibly including minimum requirements for re-valuation of the credit protection in terms of timing.
- (15) In order to facilitate a smooth transition towards the new prudential backstop, the new rules should not be applied in relation to exposures originated prior to 26 April 2019.
- (16) In order to ensure that the amendments to Regulation (EU) No 575/2013 introduced by this Regulation apply in a timely manner, this Regulation should enter into force on the date following that of its publication in the *Official Journal of the European Union*.
- (17) Regulation (EU) No 575/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### Article 1

Regulation (EU) No 575/2013 is amended as follows:

- (1) in Article 36(1), the following point is added:

‘(m) the applicable amount of insufficient coverage for non-performing exposures.’;



(2) the following Articles are inserted:

*'Article 47a*

**Non-performing exposures**

1. For the purposes of point (m) of Article 36(1), exposure shall include any of the following items, provided they are not included in the trading book of the institution:

- (a) a debt instrument, including a debt security, a loan, an advance and a demand deposit;
- (b) a loan commitment given, a financial guarantee given or any other commitment given, irrespective of whether it is revocable or irrevocable, with the exception of undrawn credit facilities that may be cancelled unconditionally at any time and without notice, or that effectively provide for automatic cancellation due to deterioration in the borrower's creditworthiness.

2. For the purposes of point (m) of Article 36(1), the exposure value of a debt instrument shall be its accounting value measured without taking into account any specific credit risk adjustments, additional value adjustments in accordance with Articles 34 and 105, amounts deducted in accordance with point (m) of Article 36(1), other own funds reductions related to the exposure or partial write-offs made by the institution since the last time the exposure was classified as non-performing.

For the purposes of point (m) of Article 36(1), the exposure value of a debt instrument that was purchased at a price lower than the amount owed by the debtor shall include the difference between the purchase price and the amount owed by the debtor.

For the purposes of point (m) of Article 36(1), the exposure value of a loan commitment given, a financial guarantee given or any other commitment given as referred to in point (b) of paragraph 1 of this Article shall be its nominal value, which shall represent the institution's maximum exposure to credit risk without taking account of any funded or unfunded credit protection. The nominal value of a loan commitment given shall be the undrawn amount that the institution has committed to lend and the nominal value of a financial guarantee given shall be the maximum amount the entity could have to pay if the guarantee is called on.

The nominal value referred to in the third subparagraph of this paragraph shall not take into account any specific credit risk adjustment, additional value adjustments in accordance with Articles 34 and 105, amounts deducted in accordance with point (m) of Article 36(1) or other own funds reductions related to the exposure.

3. For the purposes of point (m) of Article 36(1), the following exposures shall be classified as non-performing:

- (a) an exposure in respect of which a default is considered to have occurred in accordance with Article 178;
- (b) an exposure which is considered to be impaired in accordance with the applicable accounting framework;
- (c) an exposure under probation pursuant to paragraph 7, where additional forbearance measures are granted or where the exposure becomes more than 30 days past due;
- (d) an exposure in the form of a commitment that, were it drawn down or otherwise used, would likely not be paid back in full without realisation of collateral;
- (e) an exposure in form of a financial guarantee that is likely to be called by the guaranteed party, including where the underlying guaranteed exposure meets the criteria to be considered as non-performing.

For the purposes of point (a), where an institution has on-balance-sheet exposures to an obligor that are past due by more than 90 days and that represent more than 20 % of all on-balance-sheet exposures to that obligor, all on- and off-balance-sheet exposures to that obligor shall be considered to be non-performing.

4. Exposures that have not been subject to a forbearance measure shall cease to be classified as non-performing for the purposes of point (m) of Article 36(1) where all the following conditions are met:

- (a) the exposure meets the exit criteria applied by the institution for the discontinuation of the classification as impaired in accordance with the applicable accounting framework and of the classification as defaulted in accordance with Article 178;
- (b) the situation of the obligor has improved to the extent that the institution is satisfied that full and timely repayment is likely to be made;
- (c) the obligor does not have any amount past due by more than 90 days.

5. The classification of a non-performing exposure as non-current asset held for sale in accordance with the applicable accounting framework shall not discontinue its classification as non-performing exposure for the purposes of point (m) of Article 36(1).

6. Non-performing exposures subject to forbearance measures shall cease to be classified as non-performing for the purposes of point (m) of Article 36(1) where all the following conditions are met:

- (a) the exposures have ceased to be in a situation that would lead to their classification as non-performing under paragraph 3;
- (b) at least one year has passed since the date on which the forbearance measures were granted and the date on which the exposures were classified as non-performing, whichever is later;
- (c) there is no past-due amount following the forbearance measures and the institution, on the basis of the analysis of the obligor's financial situation, is satisfied about the likelihood of the full and timely repayment of the exposure.

Full and timely repayment shall not be considered likely unless the obligor has executed regular and timely payments of amounts equal to either of the following:

- (a) the amount that was past due before the forbearance measure was granted, where there were amounts past due;
- (b) the amount that has been written-off under the forbearance measures granted, where there were no amounts past due.

7. Where a non-performing exposure has ceased to be classified as non-performing pursuant to paragraph 6, such exposure shall be under probation until all the following conditions are met:

- (a) at least two years have passed since the date on which the exposure subject to forbearance measures was re-classified as performing;
- (b) regular and timely payments have been made during at least half of the period that the exposure would be under probation, leading to the payment of a substantial aggregate amount of principal or interest;
- (c) none of the exposures to the obligor is more than 30 days past due.

*Article 47b*

### **Forbearance measures**

1. Forbearance measure is a concession by an institution towards an obligor that is experiencing or is likely to experience difficulties in meeting its financial commitments. A concession may entail a loss for the lender and shall refer to either of the following actions:

- (a) a modification of the terms and conditions of a debt obligation, where such modification would not have been granted had the obligor not experienced difficulties in meeting its financial commitments;
- (b) a total or partial refinancing of a debt obligation, where such refinancing would not have been granted had the obligor not experienced difficulties in meeting its financial commitments.

2. At least the following situations shall be considered forbearance measures:

- (a) new contract terms are more favourable to the obligor than the previous contract terms, where the obligor is experiencing or is likely to experience difficulties in meeting its financial commitments;
- (b) new contract terms are more favourable to the obligor than contract terms offered by the same institution to obligors with a similar risk profile at that time, where the obligor is experiencing or is likely to experience difficulties in meeting its financial commitments;
- (c) the exposure under the initial contract terms was classified as non-performing before the modification to the contract terms or would have been classified as non-performing in the absence of modification to the contract terms;
- (d) the measure results in a total or partial cancellation of the debt obligation;
- (e) the institution approves the exercise of clauses that enable the obligor to modify the terms of the contract and the exposure was classified as non-performing before the exercise of those clauses, or would be classified as non-performing were those clauses not exercised;

- (f) at or close to the time of the granting of debt, the obligor made payments of principal or interest on another debt obligation with the same institution, which was classified as a non-performing exposure or would have been classified as non-performing in the absence of those payments;
  - (g) the modification to the contract terms involves repayments made by taking possession of collateral, where such modification constitutes a concession.
3. The following circumstances are indicators that forbearance measures may have been adopted:
- (a) the initial contract was past due by more than 30 days at least once during the three months prior to its modification or would be more than 30 days past due without modification;
  - (b) at or close to the time of concluding the credit agreement, the obligor made payments of principal or interest on another debt obligation with the same institution that was past due by 30 days at least once during the three months prior to the granting of new debt;
  - (c) the institution approves the exercise of clauses that enable the obligor to change the terms of the contract, and the exposure is 30 days past due or would be 30 days past due were those clauses not exercised.
4. For the purposes of this Article, the difficulties experienced by an obligor in meeting its financial commitments shall be assessed at obligor level, taking into account all the legal entities in the obligor's group which are included in the accounting consolidation of the group, and natural persons who control that group.

#### Article 47c

#### **Deduction for non-performing exposures**

1. For the purposes of point (m) of Article 36(1), institutions shall determine the applicable amount of insufficient coverage separately for each non-performing exposure to be deducted from Common Equity Tier 1 items by subtracting the amount determined in point (b) of this paragraph from the amount determined in point (a) of this paragraph, where the amount referred to in point (a) exceeds the amount referred to in point (b):

- (a) the sum of:
  - (i) the unsecured part of each non-performing exposure, if any, multiplied by the applicable factor referred to in paragraph 2;
  - (ii) the secured part of each non-performing exposure, if any, multiplied by the applicable factor referred to in paragraph 3;
- (b) the sum of the following items provided they relate to the same non-performing exposure:
  - (i) specific credit risk adjustments;
  - (ii) additional value adjustments in accordance with Articles 34 and 105;
  - (iii) other own funds reductions;
  - (iv) for institutions calculating risk-weighted exposure amounts using the Internal Ratings Based Approach, the absolute value of the amounts deducted pursuant to point (d) of Article 36(1) which relate to non-performing exposures, where the absolute value attributable to each non-performing exposure is determined by multiplying the amounts deducted pursuant to point (d) of Article 36(1) by the contribution of the expected loss amount for the non-performing exposure to total expected loss amounts for defaulted or non-defaulted exposures, as applicable;
  - (v) where a non-performing exposure is purchased at a price lower than the amount owed by the debtor, the difference between the purchase price and the amount owed by the debtor;
  - (vi) amounts written-off by the institution since the exposure was classified as non-performing.

The secured part of a non-performing exposure is that part of the exposure which, for the purpose of calculating own funds requirements pursuant to Title II of Part Three, is considered to be covered by a funded credit protection or unfunded credit protection or fully and completely secured by mortgages.

The unsecured part of a non-performing exposure corresponds to the difference, if any, between the value of the exposure as referred to in Article 47a(1) and the secured part of the exposure, if any.

2. For the purposes of point (a)(i) of paragraph 1, the following factors shall apply:
    - (a) 0,35 for the unsecured part of a non-performing exposure to be applied during the period between the first and the last day of the third year following its classification as non-performing;
    - (b) 1 for the unsecured part of a non-performing exposure to be applied as of the first day of the fourth year following its classification as non-performing.
  3. For the purposes of point (a)(ii) of paragraph 1, the following factors shall apply:
    - (a) 0,25 for the secured part of a non-performing exposure to be applied during the period between the first and the last day of the fourth year following its classification as non-performing;
    - (b) 0,35 for the secured part of a non-performing exposure to be applied during the period between the first and the last day of the fifth year following its classification as non-performing;
    - (c) 0,55 for the secured part of a non-performing exposure to be applied during the period between the first and the last day of the sixth year following its classification as non-performing;
    - (d) 0,70 for the part of a non-performing exposure secured by immovable property pursuant to Title II of Part Three or that is a residential loan guaranteed by an eligible protection provider as referred to in Article 201, to be applied during the period between the first and the last day of the seventh year following its classification as non-performing;
    - (e) 0,80 for the part of a non-performing exposure secured by other funded or unfunded credit protection pursuant to Title II of Part Three to be applied during the period between the first and the last day of the seventh year following its classification as non-performing;
    - (f) 0,80 for the part of a non-performing exposure secured by immovable property pursuant to Title II of Part Three or that is a residential loan guaranteed by an eligible protection provider as referred to in Article 201, to be applied during the period between the first and the last day of the eighth year following its classification as non-performing;
    - (g) 1 for the part of a non-performing exposure secured by other funded or unfunded credit protection pursuant to Title II of Part Three to be applied as of the first day of the eighth year following its classification as non-performing;
    - (h) 0,85 for the part of a non-performing exposure secured by immovable property pursuant to Title II of Part Three or that is a residential loan guaranteed by an eligible protection provider as referred to in Article 201, to be applied during the period between the first and the last day of the ninth year following its classification as non-performing;
    - (i) 1 for the part of a non-performing exposure secured by immovable property pursuant to Title II of Part Three or that is a residential loan guaranteed by an eligible protection provider as referred to in Article 201, to be applied as of the first day of the tenth year following its classification as non-performing.
  4. By way of derogation from paragraph 3, the following factors shall apply to the part of the non-performing exposure guaranteed or insured by an official export credit agency:
    - (a) 0 for the secured part of the non-performing exposure to be applied during the period between one year and seven years following its classification as non-performing; and
    - (b) 1 for the secured part of the non-performing exposure to be applied as of the first day of the eighth year following its classification as non-performing.
  5. EBA shall assess the range of practices applied for the valuation of secured non-performing exposures and may develop guidelines to specify a common methodology, including possible minimum requirements for re-valuation in terms of timing and ad hoc methods, for the prudential valuation of eligible forms of funded and unfunded credit protection, in particular regarding assumptions pertaining to their recoverability and enforceability. Those guidelines may also include a common methodology for the determination of the secured part of a non-performing exposure, as referred to in paragraph 1.
- Those guidelines shall be issued in accordance with Article 16 of Regulation (EU) No 1093/2010.
6. By way of derogation from paragraph 2, where an exposure has, between one year and two years following its classification as non-performing, been granted a forbearance measure, the factor applicable in accordance with paragraph 2 on the date on which the forbearance measure is granted shall be applicable for an additional period of one year.

By way of derogation from paragraph 3, where an exposure has, between two and six years following its classification as non-performing, been granted a forbearance measure, the factor applicable in accordance with paragraph 3 on the date on which the forbearance measure is granted shall be applicable for an additional period of one year.

This paragraph shall only apply in relation to the first forbearance measure that has been granted since the classification of the exposure as non-performing.;

- (3) in the first subparagraph of Article 111(1), the introductory text is replaced by the following:

‘1. The exposure value of an asset item shall be its accounting value remaining after specific credit risk adjustments in accordance with Article 110, additional value adjustments in accordance with Articles 34 and 105, amounts deducted in accordance with point (m) Article 36(1) and other own funds reductions related to the asset item have been applied. The exposure value of an off-balance sheet item listed in Annex I shall be the following percentage of its nominal value after reduction of specific credit risk adjustments and amounts deducted in accordance with point (m) Article 36(1).’;

- (4) Article 127(1) is replaced by the following:

‘1. The unsecured part of any item where the obligor has defaulted in accordance with Article 178, or in the case of retail exposures, the unsecured part of any credit facility which has defaulted in accordance with Article 178 shall be assigned a risk weight of:

- (a) 150 %, where the sum of specific credit risk adjustments and of the amounts deducted in accordance with point (m) Article 36(1) is less than 20 % of the unsecured part of the exposure value if those specific credit risk adjustments and deductions were not applied;
- (b) 100 %, where the sum of the specific credit risk adjustments and of the amounts deducted in accordance with point (m) Article 36(1) is no less than 20 % of the unsecured part of the exposure value if those specific credit risk adjustments and deductions were not applied.;

- (5) Article 159 is replaced by the following:

‘Article 159

#### **Treatment of expected loss amounts**

Institutions shall subtract the expected loss amounts calculated in accordance with Article 158(5), (6) and (10) from the general and specific credit risk adjustments in accordance with Article 110, additional value adjustments in accordance with Articles 34 and 105 and other own funds reductions related to those exposures except for the deductions made in accordance with point (m) Article 36(1). Discounts on balance sheet exposures purchased when in default in accordance with Article 166(1) shall be treated in the same manner as specific credit risk adjustments. Specific credit risk adjustments on exposures in default shall not be used to cover expected loss amounts on other exposures. Expected loss amounts for securitised exposures and general and specific credit risk adjustments related to those exposures shall not be included in that calculation.;

- (6) point (b) of Article 178(1) is replaced by the following:

‘(b) the obligor is more than 90 days past due on any material credit obligation to the institution, the parent undertaking or any of its subsidiaries. Competent authorities may replace the 90 days with 180 days for exposures secured by residential property or SME commercial immovable property in the retail exposure class, as well as exposures to public sector entities. The 180 days shall not apply for the purposes of point (m) Article 36(1) or Article 127.;

- (7) the following Article is inserted:

‘Article 469a

#### **Derogation from deductions from Common Equity Tier 1 items for non-performing exposures**

By way of derogation from point (m) Article 36(1), institutions shall not deduct from Common Equity Tier 1 items the applicable amount of insufficient coverage for non-performing exposures where the exposure was originated prior to 26 April 2019.

Where the terms and conditions of an exposure which was originated prior to 26 April 2019 are modified by the institution in a way that increases the institution's exposure to the obligor, the exposure shall be considered as having been originated on the date when the modification applies and shall cease to be subject to the derogation provided for in the first subparagraph.’.

#### *Article 2*

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

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

Done at Strasbourg, 17 April 2019.

*For the European Parliament*

*The President*

A. TAJANI

*For the Council*

*The President*

G. CIAMBA

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**REGULATION (EU) 2019/631 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 17 April 2019****setting CO<sub>2</sub> emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011****(recast)****(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 <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Regulation (EC) No 443/2009 of the European Parliament and of the Council <sup>(3)</sup> and Regulation (EU) No 510/2011 of the European Parliament and of the Council <sup>(4)</sup> have been substantially amended several times. Since further amendments are to be made, those Regulations should be recast in the interests of clarity.
- (2) In order to provide a coherent and efficient transition following the recast and repeal of Regulations (EC) No 443/2009 and (EU) No 510/2011, this Regulation should apply from 1 January 2020. However, it is appropriate to maintain the CO<sub>2</sub> emission performance standards and the modalities for achieving them as set out in those Regulations without changes until 2024.
- (3) The Paris Agreement <sup>(5)</sup> sets out, inter alia, a long-term goal in line with the objective to keep the global average temperature increase well below 2 °C above pre-industrial levels and to pursue efforts to keep it to 1,5 °C above pre-industrial levels. The latest scientific findings reported by the Intergovernmental Panel on Climate Change (IPCC) in its special report on the impacts of global warming of 1,5 °C above pre-industrial levels and related global greenhouse gas emission pathways unequivocally confirm the negative impacts of climate change. That special report concludes that emissions reductions in all sectors are crucial to limit global warming.
- (4) In order to contribute to the objectives of the Paris Agreement, the transformation of the entire transport sector towards zero emissions needs to be accelerated, considering the Commission's communication of 28 November 2018 entitled 'A Clean Planet for all — a European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy', which outlines a vision of the economic and societal transformations required, engaging all sectors of the economy and society, to achieve the transition to net-zero greenhouse gas emissions by 2050. Emissions of air pollutants from transport that significantly harm our health and the environment need also to be drastically reduced without delay. Emissions from conventional combustion engine vehicles will need to be further reduced after 2020. Zero- and low-emission vehicles will need to be deployed and gain significant market share by 2030. Further CO<sub>2</sub> emissions reductions for passenger cars and light commercial vehicles will be necessary beyond 2030.

<sup>(1)</sup> OJ C 227, 28.6.2018, p. 52.

<sup>(2)</sup> Position of the European Parliament of 27 March 2019 (not yet published in the Official Journal) and decision of the Council of 15 April 2019.

<sup>(3)</sup> Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles (OJ L 140, 5.6.2009, p. 1).

<sup>(4)</sup> Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles (OJ L 145, 31.5.2011, p. 1).

<sup>(5)</sup> OJ L 282, 19.10.2016, p. 4.

- (5) The Commission's communications of 31 May 2017 entitled 'Europe on the move — An agenda for a socially fair transition towards clean, competitive and connected mobility for all' and of 8 November 2017 entitled 'Delivering on low-emission mobility — A European Union that protects the planet, empowers its consumers and defends its industry and workers' highlight that the CO<sub>2</sub> emission performance standards for passenger cars and light commercial vehicles are a strong driver for innovation and efficiency and will contribute to strengthening competitiveness of the automotive industry and pave the way for zero- and low-emission vehicles in a technology-neutral way.
- (6) This Regulation provides a clear pathway for CO<sub>2</sub> emissions reductions from the road transport sector and contributes to the binding target of at least a 40 % domestic reduction in economy-wide greenhouse gas emissions by 2030 compared to 1990, as was endorsed in the European Council conclusions of 23-24 October 2014, and approved as the Intended Nationally Determined Contribution of the Union and its Member States under the Paris Agreement at the Environment Council meeting on 6 March 2015.
- (7) Regulation (EU) 2018/842 of the European Parliament and of the Council <sup>(6)</sup> lays down obligations on Member States to fulfil the Union's target of reducing its greenhouse gas emissions by 30 % below 2005 levels in 2030 for the sectors that are not part of the European Union Emissions Trading System established by Directive 2003/87/EC of the European Parliament and of the Council <sup>(7)</sup>. Road transport is a major contributor to the emissions from those sectors. Moreover, emissions from road transport show an increasing trend, and remain significantly above 1990 levels. If road transport emissions increase further, such increases will continue to counteract emissions reductions made by other sectors to combat climate change.
- (8) The European Council conclusions of 23-24 October 2014 highlighted the importance of reducing greenhouse gas emissions and risks related to fossil fuel dependency in the transport sector through a comprehensive and technology neutral approach for the promotion of emissions reduction and energy efficiency in transport, for electric transportation and for renewable energy sources in transport also after 2020.
- (9) In order to give consumers in the Union secure, sustainable, competitive and affordable energy, energy efficiency contributing to moderation of demand is one of the five mutually-reinforcing and closely interrelated dimensions set out in the Commission's communication of 25 February 2015 entitled 'A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy'. That communication states that, while all economic sectors must take steps to increase the efficiency of their energy consumption, transport has a huge energy efficiency potential, which can be realised also with a continued focus on tightening CO<sub>2</sub> emission performance standards for passenger cars and light commercial vehicles in a 2030 perspective.
- (10) An evaluation of Regulations (EC) No 443/2009 and (EU) No 510/2011 in 2015 concluded that those Regulations have been relevant, broadly coherent, and have generated significant emissions savings, whilst being more cost-effective than originally anticipated. They have also generated significant added value for the Union that could not have been achieved to the same extent through national measures. However, the benefits of those Regulations have been eroded due to the increasing discrepancy between the CO<sub>2</sub> emissions measured under the New European Driving Cycle (NEDC) and the CO<sub>2</sub> emissions emitted from vehicles driven under real-world conditions.
- (11) It is, therefore, appropriate to pursue the objectives of Regulations (EC) No 443/2009 and (EU) No 510/2011 by setting new EU fleet-wide CO<sub>2</sub> emissions reduction targets for passenger cars and light commercial vehicles for the period up to 2030. In defining the levels of those targets, account has been taken of their effectiveness in delivering a cost-effective contribution to reducing emissions of the sectors covered by Regulation (EU) 2018/842 by 2030, of the resulting costs and savings for society, manufacturers and vehicle users, as well as of their direct and indirect implications for employment, competitiveness and innovation and the co-benefits generated in terms of reduced air pollution and energy security. Considering that the market share and, consequently, the overall contribution of CO<sub>2</sub> emissions from passenger cars are significantly higher than those of light commercial vehicles, a differentiated approach between passenger cars and light commercial vehicles is considered appropriate.

<sup>(6)</sup> Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018, p. 26).

<sup>(7)</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).



- (12) A socially acceptable and just transition towards zero-emission mobility should be ensured. It is important, therefore, to take into account the social effects of such transition throughout the whole automotive value chain and to address proactively the implications on employment. Targeted programmes at Union, national and regional levels are therefore to be considered for the re-skilling, up-skilling and redeployment of workers, as well as education and job-seeking initiatives in adversely affected communities and regions, in close dialogue with the social partners and competent authorities. As part of that transition, women's employment, as well as equal opportunities in this sector, should be strengthened.
- (13) A successful transition to zero-emission mobility requires an integrated approach and the right enabling environment to stimulate innovation and maintain the Union's technological leadership in this sector. That includes public and private investments in research and innovation, the increasing supply of zero- and low-emission vehicles, the roll-out of recharging and refuelling infrastructure, integration into the energy systems, as well as the sustainable materials supply and sustainable production, re-use and recycling of batteries in Europe. That requires coherent action at Union, national, regional and local levels.
- (14) As part of the implementation of Regulation (EC) No 715/2007 of the European Parliament and of the Council <sup>(8)</sup>, a new test procedure for measuring CO<sub>2</sub> emissions from, and fuel consumption of, passenger cars and light commercial vehicles, the Worldwide Harmonised Light Vehicles Test procedure ('WLTP'), set out in Commission Regulation (EU) 2017/1151 <sup>(9)</sup>, started to apply in 2017. That test procedure provides CO<sub>2</sub> emission and fuel consumption values that are more representative of real-world conditions.

It is appropriate, therefore, that the new CO<sub>2</sub> emissions targets should be based on the CO<sub>2</sub> emissions determined on the basis of that test procedure. Considering, however, that WLTP-based CO<sub>2</sub> emissions will be available for target compliance purposes from 2021, it is appropriate that the new CO<sub>2</sub> emission performance standards should be defined as reduction levels set in relation to the 2021 targets calculated on the basis of the CO<sub>2</sub> emissions measured for the purpose of the WLTP emissions test. In order to ensure the robustness and representativeness of the values used as the starting point for defining the emissions reduction targets to be applied in 2025 and 2030, the conditions for performing those measurements have been clarified as part of the implementation of Commission Implementing Regulations (EU) 2017/1152 <sup>(10)</sup> and (EU) 2017/1153 <sup>(11)</sup>.

- (15) It is important that the setting of CO<sub>2</sub> emissions reduction requirements continue to provide Union-wide predictability and planning security for vehicle manufacturers across their new passenger car and light commercial vehicle fleets in the Union.
- (16) The Commission's evaluation of Directive 1999/94/EC of the European Parliament and of the Council <sup>(12)</sup> in 2016 identified a need for further clarification and simplification of that legislative act, which could increase its relevance, effectiveness, efficiency and coherence. The Commission should, therefore, review that Directive no later than 31 December 2020 and, where appropriate, put forward a relevant legislative proposal. In order to support the uptake of the most fuel efficient and environmentally friendly vehicles, that review should in particular consider the inclusion of light commercial vehicles and the need for better designed and further harmonised Union requirements on labelling that could provide consumers with comparable, reliable and user friendly information about the benefits of zero- and low-emission vehicles, including information concerning air pollutants.

<sup>(8)</sup> Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 171, 29.6.2007, p. 1).

<sup>(9)</sup> Commission Regulation (EU) 2017/1151 of 1 June 2017 supplementing Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, amending Directive 2007/46/EC of the European Parliament and of the Council, Commission Regulation (EC) No 692/2008 and Commission Regulation (EU) No 1230/2012 and repealing Commission Regulation (EC) No 692/2008 (OJ L 175, 7.7.2017, p. 1).

<sup>(10)</sup> Commission Implementing Regulation (EU) 2017/1152 of 2 June 2017 setting out a methodology for determining the correlation parameters necessary for reflecting the change in the regulatory test procedure with regard to light commercial vehicles and amending Implementing Regulation (EU) No 293/2012 (OJ L 175, 7.7.2017, p. 644).

<sup>(11)</sup> Commission Implementing Regulation (EU) 2017/1153 of 2 June 2017 setting out a methodology for determining the correlation parameters necessary for reflecting the change in the regulatory test procedure and amending Regulation (EU) No 1014/2010 (OJ L 175, 7.7.2017, p. 679).

<sup>(12)</sup> Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO<sub>2</sub> emissions in respect of the marketing of new passenger cars (OJ L 12, 18.1.2000, p. 16).

- (17) Emissions reduction targets for the Union-wide fleets of new passenger cars and light commercial vehicles should, therefore, be set for 2025 and for 2030, taking into account the vehicle fleet renewal time and the need for the road transport sector to contribute to the 2030 climate and energy targets. That stepwise approach also provides a clear and early signal for the automotive industry not to delay the market introduction of energy efficient technologies and zero- and low-emission vehicles.
- (18) The CO<sub>2</sub> emission performance standards set out in this Regulation apply to new passenger cars and new light commercial vehicles. With regard to the existing fleet of such vehicles, including second-hand vehicles, additional measures aimed at reducing emissions may also be taken, inter alia, at national and Union level. For instance, measures may be taken to encourage a higher fleet renewal rate, in order to replace as fast as possible older, more emitting vehicles by more performant ones. Access to more affordable zero- and low-emission vehicles could stimulate consumer behaviour change and faster deployment of low-emission technologies.
- (19) While the Union is among the world's major producers of motor vehicles and demonstrates technological leadership in the global automotive sector, competition is increasing and this sector is changing rapidly through new innovations in electrified powertrains, and cooperative, connected and automated mobility. In order to retain its global competitiveness and access to markets, the Union needs a regulatory framework, including a particular incentive in the area of zero- and low-emission vehicles, which will contribute to creating a large domestic market and support technological development and innovation.
- (20) A dedicated incentive mechanism should be introduced to facilitate a smooth transition towards zero-emission mobility. That mechanism should be designed so as to promote the deployment on the Union market of zero- and low-emission vehicles. Also, a specific transitional measure should be put in place to enable access to zero- and low-emission vehicles to consumers from Member States with low levels of market penetration of such vehicles.
- (21) Setting appropriate benchmarks for the share of zero- and low-emission vehicles in the EU fleet, together with a well-designed mechanism for adjusting a manufacturer's specific emissions target based on the share of zero- and low-emission vehicles in the manufacturer's own fleet, should provide a strong and credible signal for the development, deployment and marketing of such vehicles while still allowing for the further improvement of the efficiency of the conventional internal combustion engines.
- (22) In determining the credits for the zero- and low-emission vehicles, it is appropriate to account for the difference in CO<sub>2</sub> emissions between the vehicles. As concerns passenger cars, the role of low-emission vehicles, in particular of plug-in hybrid vehicles, in the transition towards zero-emission vehicles should be recognised. The adjustment mechanism should ensure that a manufacturer exceeding the benchmark level would benefit from a higher specific emissions target. In order to ensure a balanced approach, limits should be set to the level of adjustment possible within that mechanism. This will provide for incentives, promoting a timely roll-out of recharging and refuelling infrastructure and yielding high benefits for consumers, competitiveness and the environment.
- (23) The legislative framework for implementing the EU fleet-wide target should ensure competitively neutral, socially equitable and sustainable emissions reduction targets which take account of the diversity of European automobile manufacturers and avoid any unjustified distortion of competition between them.
- (24) In order to maintain the diversity of the market for passenger cars and light commercial vehicles and its ability to cater for different consumer needs, specific emissions targets should be defined according to the utility of the vehicles on a linear basis. Maintaining mass as the utility parameter is considered coherent with the existing regime. In order to better reflect the mass of vehicles used on the road, the parameter should be changed, with effect from 2025, from mass in running order to the vehicle's test mass, as specified in the WLTP.
- (25) It should be avoided that the EU fleet-wide targets are altered due to changes in the average mass of the fleet. Changes in the average mass should therefore be reflected without delay in the specific emissions target calculations, and the adjustments of the average mass value that is used to this end should take place every two years with effect from 2025.
- (26) In order to distribute the emissions reduction effort in a competitively neutral and fair way that reflects the diversity of the market for passenger cars and light commercial vehicles, and in view of the change in 2021 to WLTP-based specific emissions targets, it is appropriate to determine the slope of the limit value curve on the basis of the specific emissions of CO<sub>2</sub> of all new vehicles registered in that year, and to take into account

the change in the EU fleet-wide targets between 2021, 2025 and 2030 with a view to ensuring an equal emissions reduction effort of all manufacturers. With regard to light commercial vehicles, the same approach as that for passenger car manufacturers should apply to manufacturers of lighter, car derived vans, while for manufacturers of vehicles falling within the heavier segments, a higher and fixed slope should be set for the whole target period.

- (27) This Regulation aims to achieve its objectives by, inter alia, creating incentives for the automotive industry to invest in new technologies. This Regulation actively promotes eco-innovation and provides a mechanism that should be able to acknowledge future technological development. Experience shows that eco-innovations have successfully contributed to the cost-effectiveness of Regulations (EC) No 443/2009 and (EU) No 510/2011 and to the reduction of real-world CO<sub>2</sub> emissions. This modality should, therefore, be maintained and the scope should be extended to incentivise efficiency improvements in air-conditioning systems.
- (28) A balance should be ensured, however, between incentives given to eco-innovations and those technologies for which the emissions reduction effect is demonstrated on the official test procedure. As a consequence, it is appropriate to maintain a cap on the eco-innovation savings that a manufacturer may take into account for target compliance purposes. The Commission should have the possibility to review the level of that cap, in particular, to take into account the effects of the change in the official test procedure. It is also appropriate to clarify how the savings should be calculated for target compliance purposes.
- (29) Sustainable light-weight components are important in reducing the energy consumption and CO<sub>2</sub> emissions of new vehicles. Their further development and deployment should support the transition towards zero- and low-emission mobility.
- (30) Directive 2007/46/EC of the European Parliament and of the Council <sup>(13)</sup> established a harmonised framework containing the administrative provisions and general technical requirements for approval of all new vehicles within its scope. The entity responsible for complying with this Regulation should be the same as the entity responsible for all aspects of the type-approval process in accordance with Directive 2007/46/EC and for ensuring conformity of production.
- (31) For the purposes of type-approval, specific requirements apply for special-purpose vehicles, as defined in Annex II to Directive 2007/46/EC, and they should therefore be excluded from the scope of this Regulation.
- (32) In cases where zero-emission light commercial vehicles with a reference mass exceeding 2 610 kg or 2 840 kg, as the case may be, would fall outside the scope of this Regulation due only to the mass of the energy storage system, it is appropriate to allow those vehicles to be counted as falling within the scope.
- (33) It is not appropriate to use the same method to determine the emissions reduction targets for large-volume manufacturers as for small-volume manufacturers that are considered as independent on the basis of the criteria set out in this Regulation. Those small-volume manufacturers should have the possibility to apply for alternative emissions reduction targets relating to the technological potential of a given manufacturer's vehicles to reduce their specific emissions of CO<sub>2</sub> and consistent with the characteristics of the market segments concerned.
- (34) In recognition of the disproportionate impact on the smallest manufacturers that would result from compliance with specific emissions targets defined on the basis of the utility of the vehicle, the high administrative burden of the derogation procedure, and the marginal resulting benefit in terms of CO<sub>2</sub> emissions reduction from the vehicles sold by those manufacturers, manufacturers responsible for fewer than 1 000 new passenger cars and new light commercial vehicles registered annually in the Union should be excluded from the scope of the specific emissions target and the excess emissions premium. However, where a manufacturer that is covered by an exemption nevertheless applies for, and is granted, a derogation, it is appropriate that such manufacturer should be required to comply with that derogation target.
- (35) The procedure for granting derogations from the 95 g CO<sub>2</sub>/km EU fleet-wide target to niche car manufacturers ensures that the emissions reduction effort required by those niche manufacturers is consistent with that of large-volume manufacturers with regard to that target. It is appropriate to continue to provide those niche manufacturers with the possibility of being granted a derogation also from the targets applicable from 2025, until 2028.

<sup>(13)</sup> Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).

- (36) In determining the average specific emissions of CO<sub>2</sub> for all the new passenger cars and new light commercial vehicles registered in the Union for which manufacturers are responsible, all passenger cars and light commercial vehicles should be taken into account irrespective of their mass or other characteristics, as the case may be. Although Regulation (EC) No 715/2007 does not cover passenger cars and light commercial vehicles with a reference mass exceeding 2 610 kg and to which type-approval is not extended in accordance with Article 2(2) of that Regulation, the emissions for these vehicles should be measured in accordance with the same measurement procedures as specified pursuant to Regulation (EC) No 715/2007, notably the procedures set out in Commission Regulation (EC) No 692/2008<sup>(14)</sup> and in Regulation (EU) 2017/1151, and the correlation procedures adopted on the basis of Regulations (EC) No 443/2009 and (EU) No 510/2011, in particular Implementing Regulations (EU) 2017/1152 and (EU) 2017/1153. The resulting CO<sub>2</sub> emission values should be entered in the certificate of conformity of the vehicle in order to enable their inclusion in the monitoring scheme.
- (37) The specific emissions of CO<sub>2</sub> of completed light commercial vehicles should be allocated to the manufacturer of the base vehicle.
- (38) Consideration should be given to the specific situation of manufacturers of light commercial vehicles producing incomplete vehicles that are type-approved in multiple stages. While those manufacturers are responsible for meeting the CO<sub>2</sub> emissions targets, they should have the possibility to predict with reasonable certainty the CO<sub>2</sub> emissions of the completed vehicles. The Commission should ensure that those needs are appropriately reflected in the implementing measures adopted pursuant to Regulation (EC) No 715/2007.
- (39) In order to provide for flexibility for the purposes of meeting their targets under this Regulation, manufacturers may agree to form a pool on an open, transparent and non-discriminatory basis. An agreement to form a pool should not exceed five years but should be able to be renewed. Where manufacturers form a pool, they should be deemed to have met their targets under this Regulation provided that the average emissions of the pool as a whole do not exceed the specific emissions target for the pool.
- (40) The possibility for manufacturers to form pools has proven a cost-effective way to achieve compliance with the CO<sub>2</sub> emissions targets, in particular facilitating compliance for those manufacturers that produce a limited range of vehicles. In order to improve competitive neutrality, the Commission should have the powers to clarify the conditions on which independent manufacturers may form a pool in order to allow them to be placed in a position equivalent to connected undertakings.
- (41) A robust compliance mechanism is necessary in order to ensure that the targets under this Regulation are met.
- (42) For achieving the CO<sub>2</sub> emissions reductions required under this Regulation, it is also essential that the emissions of vehicles in use are in conformity with the CO<sub>2</sub> values determined at type-approval. It should therefore be possible for the Commission to take into account in the calculation of the average specific emissions of CO<sub>2</sub> of a manufacturer any systemic non-conformity found by type-approval authorities with regard to the CO<sub>2</sub> emissions of vehicles in use.
- (43) The Commission should have the powers to establish and implement a procedure for verifying the correspondence between the CO<sub>2</sub> emissions of vehicles in-service, as determined in accordance with the WLTP, and the CO<sub>2</sub> emission values recorded in the certificates of conformity. In developing that procedure, particular consideration should be given to identifying methods, including the use of data from on-board fuel and/or energy consumption monitoring devices, for detecting strategies through which a vehicle's CO<sub>2</sub> performance is artificially improved in the type-approval test procedure. Where deviations or strategies that artificially improve a vehicle's CO<sub>2</sub> performance are found in the course of such verifications, those findings are to be considered as sufficient reason to suspect that there is a serious risk of non-compliance with regard to the requirements laid down in Regulation (EU) 2018/858 of the European Parliament and of the Council<sup>(15)</sup> and Regulation (EC) No 715/2007, and Member States should on that basis take the necessary measures pursuant to Chapter XI of Regulation (EU) 2018/858.
- (44) The specific emissions of CO<sub>2</sub> from new passenger cars and light commercial vehicles are measured on a harmonised basis in the Union in accordance with the WLTP. To minimise the administrative burden of this

<sup>(14)</sup> Commission Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 199, 28.7.2008, p. 1).

<sup>(15)</sup> Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (OJ L 151, 14.6.2018, p. 1).

Regulation, compliance should be measured by reference to data on registrations of new passenger cars and light commercial vehicles in the Union collected by Member States and reported to the Commission. To ensure the consistency of the data used to assess compliance, the rules for the collection and reporting of that data should be harmonised as far as possible. The competent authorities' responsibility to provide correct and complete data should, therefore, be clearly stated as well as the need for an effective cooperation between those authorities and the Commission in addressing data quality issues.

- (45) Manufacturers' compliance with the targets set out in this Regulation should be assessed at Union level. Manufacturers whose average specific emissions of CO<sub>2</sub> exceed those permitted under this Regulation should pay an excess emissions premium with respect to each calendar year. The amounts of the excess emissions premium should be considered as revenue for the general budget of the Union. The Commission should, in its 2023 review, evaluate the possibility of allocating the amounts of the excess emissions premium to a specific fund or a relevant programme that aims to ensure a just transition towards zero-emission mobility and to support re-skilling, up-skilling and other skills training of workers in the automotive sector.
- (46) Any national measure that Member States may maintain or introduce in accordance with Article 193 of the Treaty on the Functioning of the European Union (TFEU) should not, in consideration of the purpose of, and procedures established in, this Regulation, impose additional or more stringent penalties on manufacturers who fail to meet their targets under this Regulation.
- (47) This Regulation should be without prejudice to the full application of Union competition rules.
- (48) The effectiveness of the targets set out in this Regulation in reducing CO<sub>2</sub> emissions in reality is strongly dependent on the real-world representativeness of the official test procedure. In accordance with scientific opinion 1/2016 of the Scientific Advice Mechanism (SAM) entitled 'Closing the gap between light-duty vehicle real-world CO<sub>2</sub> emissions and laboratory testing' and the European Parliament recommendation of 4 April 2017 to the Council and the Commission following its inquiry into emission measurements in the automotive sector<sup>(16)</sup>, a mechanism should be put in place to assess the real-world representativeness of vehicle CO<sub>2</sub> emissions and energy consumption values determined in accordance with the WLTP. The most reliable way to ensure the real-world representativeness of type-approval values is by using data from the on-board fuel and/or energy consumption monitoring devices. The Commission should, therefore, have the powers to develop the procedures needed for collecting and processing fuel and energy consumption data required for making such assessments and to ensure the public availability of such data, whilst providing for the protection of any personal data. Moreover, it is appropriate, in order to ensure the availability of fuel and energy consumption data from battery electric vehicles and vehicles with power trains using gaseous fuels, including hydrogen, that the work on standardisation of the on-board fuel and/or energy consumption monitoring devices for such vehicles will be pursued without delay as part of the implementation of Regulation (EU) 2017/1151.
- (49) The Commission should, moreover, assess how fuel and energy consumption data may help to ensure that the vehicle CO<sub>2</sub> emissions determined in accordance with the WLTP remain representative of real-world emissions over time for all manufacturers and, more precisely, how such data can be used to monitor the gap between laboratory and real-world CO<sub>2</sub> emissions and, where necessary, to prevent this gap from increasing.
- (50) It is important to assess the full life-cycle emissions from passenger cars and light commercial vehicles at Union level. To that end, the Commission should no later than 2023 evaluate the possibility of developing a common Union methodology for the assessment and the consistent data reporting of the full life-cycle CO<sub>2</sub> emissions of such vehicles placed on the Union market. The Commission should adopt follow-up measures, including, where appropriate, legislative proposals.
- (51) In 2024, a review of the progress achieved under Regulation (EU) 2018/842 and Directive 2003/87/EC will take place. It is therefore appropriate to review comprehensively the effectiveness of this Regulation in 2023 to allow a coordinated and coherent assessment of the measures implemented under all those instruments. In that review of 2023, the Commission should also identify a clear pathway for further CO<sub>2</sub> emissions reductions for passenger cars and light commercial vehicles beyond 2030 in order to significantly contribute to achieving the long-term goal of the Paris Agreement. Where appropriate, the report on that review should be accompanied by a proposal to amend this Regulation.

<sup>(16)</sup> OJ C 298, 23.8.2018, p. 140.

- (52) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in relation to the specification of detailed conditions for pooling arrangements, adoption of detailed rules on the procedures for monitoring and reporting of data on average emissions and on the application of Annexes II and III, adoption of detailed rules on the procedures for reporting of deviations found, as a result of verifications, in the CO<sub>2</sub> emissions of vehicles in-service and taking those deviations into account in the calculation of the average specific emissions of CO<sub>2</sub> of a manufacturer, determination of the means for collecting excess emissions premiums, publication of performance of manufacturers, adoption of detailed provisions for a procedure to approve the innovative technologies or innovative technology packages, adoption of a detailed procedure for collecting and processing the parameters relating to real-world CO<sub>2</sub> emissions and fuel or energy consumption of passenger cars and light commercial vehicles, determination of the procedures for performing the verifications (i) that the CO<sub>2</sub> emission and fuel consumption values recorded in the certificates of conformity correspond to the CO<sub>2</sub> emissions from, and fuel consumption of, vehicles in-service; and (ii) the presence of any strategies on board or relating to the sampled vehicles that artificially improve the vehicle's performance in the tests performed for the purpose of type-approval, and determination of the correlation parameters necessary in order to reflect any change in the regulatory test procedure for the measurement of specific emissions of CO<sub>2</sub>. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(17)</sup>.
- (53) In order to amend or supplement, as appropriate, non-essential elements of the provisions of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending data requirements and data parameters set out in Annexes II and III of this Regulation, laying down rules, as regards the interpretation of the eligibility criteria for derogations for certain manufacturers, the content of the applications for a derogation, and the content and assessment of programmes for the reduction of specific emissions of CO<sub>2</sub>, amending Part A of Annex I of this Regulation for the purpose of setting out the calculation formulae of the derogation targets for niche manufacturers, adjusting the cap for total contribution of innovative technologies to reducing the average specific emissions of CO<sub>2</sub> of a manufacturer with effect from 2025 onwards, setting out the guiding principles and criteria for defining the procedures for performing the verifications, establishing the measures for adjustment of M<sub>0</sub> and TM<sub>0</sub> values, and adapting the formulae for calculating the specific emissions targets to reflect the change in the regulatory test procedure. 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 <sup>(18)</sup>. 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.
- (54) Regulations (EC) No 443/2009 and (EU) No 510/2011 should be repealed with effect from 1 January 2020.
- (55) Since the objectives of this Regulation, namely the establishment of CO<sub>2</sub> emissions performance requirements for new passenger cars and new light commercial vehicles, cannot be sufficiently achieved by the Member States, but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

#### Article 1

#### Subject matter and objectives

1. This Regulation establishes CO<sub>2</sub> emissions performance requirements for new passenger cars and for new light commercial vehicles in order to contribute to achieving the Union's target of reducing its greenhouse gas emissions, as laid down in Regulation (EU) 2018/842, and the objectives of the Paris Agreement and to ensure the proper functioning of the internal market.

<sup>(17)</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).

<sup>(18)</sup> OJ L 123, 12.5.2016, p. 1.

2. From 1 January 2020, this Regulation sets an EU fleet-wide target of 95 g CO<sub>2</sub>/km for the average emissions of new passenger cars and an EU fleet-wide target of 147 g CO<sub>2</sub>/km for the average emissions of new light commercial vehicles registered in the Union, as measured until 31 December 2020 in accordance with Regulation (EC) No 692/2008 together with Implementing Regulations (EU) 2017/1152 and (EU) 2017/1153, and from 1 January 2021 measured in accordance with Regulation (EU) 2017/1151.
3. This Regulation will, until 31 December 2024, be complemented by additional measures corresponding to a reduction of 10 g CO<sub>2</sub>/km as part of the Union's integrated approach referred to in the Commission's communication of 7 February 2007 entitled 'Results of the review of the Community Strategy to reduce CO<sub>2</sub> emissions from passenger cars and light-commercial vehicles'.
4. From 1 January 2025, the following EU fleet-wide targets shall apply:
  - (a) for the average emissions of the new passenger car fleet, an EU fleet-wide target equal to a 15 % reduction of the target in 2021 determined in accordance with point 6.1.1 of Part A of Annex I;
  - (b) for the average emissions of the new light commercial vehicles fleet, an EU fleet-wide target equal to a 15 % reduction of the target in 2021 determined in accordance with point 6.1.1 of Part B of Annex I.
5. From 1 January 2030, the following EU fleet-wide targets shall apply:
  - (a) for the average emissions of the new passenger car fleet, an EU fleet-wide target equal to a 37,5 % reduction of the target in 2021 determined in accordance with point 6.1.2 of Part A of Annex I;
  - (b) for the average emissions of the new light commercial vehicles fleet, an EU fleet-wide target equal to a 31 % reduction of the target in 2021 determined in accordance with point 6.1.2 of Part B of Annex I.
6. From 1 January 2025, a zero- and low-emission vehicles' benchmark equal to a 15 % share of the respective fleets of new passenger cars and new light commercial vehicles shall apply in accordance with points 6.3 of Parts A and B of Annex I, respectively.
7. From 1 January 2030, the following zero- and low-emission vehicles' benchmarks shall apply in accordance with points 6.3 of Parts A and B of Annex I, respectively:
  - (a) a benchmark equal to a 35 % share of the fleet of new passenger cars; and
  - (b) a benchmark equal to a 30 % share of the fleet of new light commercial vehicles.

## Article 2

### Scope

1. This Regulation shall apply to the following motor vehicles:
  - (a) category M<sub>1</sub> as defined in Annex II to Directive 2007/46/EC ('passenger cars') which are registered in the Union for the first time and which have not previously been registered outside the Union ('new passenger cars');
  - (b) category N<sub>1</sub> as defined in Annex II to Directive 2007/46/EC with a reference mass not exceeding 2 610 kg, and vehicles of category N<sub>1</sub> to which type-approval is extended in accordance with Article 2(2) of Regulation (EC) No 715/2007 ('light commercial vehicles'), which are registered in the Union for the first time and which have not previously been registered outside the Union ('new light commercial vehicles'). In the case of zero-emission vehicles of category N with a reference mass exceeding 2 610 kg or 2 840 kg, as the case may be, they shall, from 1 January 2025, for the purposes of this Regulation and without prejudice to Directive 2007/46/EC and Regulation (EC) No 715/2007, be counted as light commercial vehicles falling within the scope of this Regulation if the excess reference mass is due only to the mass of the energy storage system.
2. A previous registration outside the Union made less than three months before registration in the Union shall not be taken into account.
3. This Regulation shall not apply to special purpose vehicles as defined in point 5 of Part A of Annex II to Directive 2007/46/EC.

4. Article 4, points (b) and (c) of Article 7(4), Article 8 and points (a) and (c) of Article 9(1) shall not apply to a manufacturer which, together with all of its connected undertakings, is responsible for fewer than 1 000 new passenger cars or for fewer than 1 000 new light commercial vehicles registered in the Union in the previous calendar year, unless that manufacturer applies for and is granted a derogation in accordance with Article 10.

### Article 3

#### Definitions

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

- (a) 'average specific emissions of CO<sub>2</sub>' means, in relation to a manufacturer, the average of the specific emissions of CO<sub>2</sub> of all new passenger cars or of all new light commercial vehicles of which it is the manufacturer;
- (b) 'certificate of conformity' means the certificate of conformity referred to in Article 18 of Directive 2007/46/EC;
- (c) 'completed vehicle' means a light commercial vehicle where type-approval is granted following completion of a process of multi-stage type-approval in accordance with Directive 2007/46/EC;
- (d) 'complete vehicle' means any light commercial vehicle which does not need to be completed in order to meet the relevant technical requirements of Directive 2007/46/EC;
- (e) 'base vehicle' means any light commercial vehicle which is used at the initial stage of a multi-stage type-approval process;
- (f) 'manufacturer' means the person or body responsible to the approval authority for all aspects of the EC type-approval procedure in accordance with Directive 2007/46/EC and for ensuring conformity of production;
- (g) 'mass in running order' or 'M' means the mass of the passenger car or light commercial vehicle with bodywork in running order as stated in the certificate of conformity and defined in point 2.6 of Annex I to Directive 2007/46/EC;
- (h) 'specific emissions of CO<sub>2</sub>' means the CO<sub>2</sub> emissions of a passenger car or a light commercial vehicle measured in accordance with Regulation (EC) No 715/2007 and its implementing Regulations and specified as the CO<sub>2</sub> mass emissions (combined) in the certificate of conformity of the vehicle. For passenger cars or light commercial vehicles which are not type-approved in accordance with Regulation (EC) No 715/2007, 'specific emissions of CO<sub>2</sub>' means the CO<sub>2</sub> emissions measured pursuant to Regulation (EC) No 715/2007, notably in accordance with the same measurement procedure as specified in Regulation (EC) No 692/2008 until 31 December 2020, and from 1 January 2021 in Regulation (EU) 2017/1151, or in accordance with procedures adopted by the Commission to establish the CO<sub>2</sub> emissions for such vehicles;
- (i) 'footprint' means the average track width multiplied by the wheelbase as stated in the certificate of conformity and defined in points 2.1 and 2.3 of Annex I to Directive 2007/46/EC;
- (j) 'specific emissions target' means, in relation to a manufacturer, the annual target determined in accordance with Annex I or, if the manufacturer is granted a derogation in accordance with Article 10, the specific emissions target determined according to that derogation;
- (k) 'EU fleet-wide target' means the average CO<sub>2</sub> emissions of all new passenger cars or all new light commercial vehicles to be achieved in a given period;
- (l) 'test mass' or 'TM' means the test mass of a passenger car or light commercial vehicle as stated in the certificate of conformity and as defined in point 3.2.25 of Annex XXI to Regulation (EU) 2017/1151;
- (m) 'zero- and low-emission vehicle' means a passenger car or a light commercial vehicle with tailpipe emissions from zero up to 50 g CO<sub>2</sub>/km, as determined in accordance with Regulation (EU) 2017/1151;
- (n) 'payload' means the difference between the technically permissible maximum laden mass pursuant to Annex II to Directive 2007/46/EC and the mass of the vehicle.

2. For the purposes of this Regulation, 'a group of connected manufacturers' means a manufacturer and its connected undertakings. In relation to a manufacturer, 'connected undertakings' means:

- (a) undertakings in which the manufacturer has, directly or indirectly:
  - (i) the power to exercise more than half the voting rights; or



- (ii) the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking; or
- (iii) the right to manage the undertaking's affairs;
- (b) undertakings which directly or indirectly have, over the manufacturer, the rights or powers referred to in point (a);
- (c) undertakings in which an undertaking referred to in point (b) has, directly or indirectly, the rights or powers referred to in point (a);
- (d) undertakings in which the manufacturer together with one or more of the undertakings referred to in point (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers referred to in point (a);
- (e) undertakings in which the rights or the powers referred to in point (a) are jointly held by the manufacturer or one or more of its connected undertakings referred to in points (a) to (d) and one or more third parties.

#### Article 4

##### Specific emissions targets

1. The manufacturer shall ensure that its average specific emissions of CO<sub>2</sub> do not exceed the following specific emissions targets:
  - (a) for the calendar year 2020, the specific emissions target determined in accordance with points 1 and 2 of Part A of Annex I in the case of passenger cars, or points 1 and 2 of Part B of Annex I in the case of light commercial vehicles, or where a manufacturer is granted a derogation under Article 10, in accordance with that derogation;
  - (b) for each calendar year from 2021 until 2024, the specific emissions targets determined in accordance with points 3 and 4 of Part A or B of Annex I, as appropriate, or, where a manufacturer is granted a derogation under Article 10, in accordance with that derogation and point 5 of Part A or B of Annex I;
  - (c) for each calendar year, starting from 2025, the specific emissions targets determined in accordance with point 6.3 of Part A or B of Annex I, or, where a manufacturer is granted a derogation under Article 10, in accordance with that derogation.
2. In the case of light commercial vehicles, where the specific emissions of CO<sub>2</sub> of the completed vehicle are not available, the manufacturer of the base vehicle shall use the specific emissions of CO<sub>2</sub> of the base vehicle for determining its average specific emissions of CO<sub>2</sub>.
3. For the purposes of determining each manufacturer's average specific emissions of CO<sub>2</sub>, the following percentages of each manufacturer's new passenger cars registered in the relevant year shall be taken into account:
  - 95 % in 2020,
  - 100 % from 2021 onwards.

#### Article 5

##### Super-credits

In calculating the average specific emissions of CO<sub>2</sub>, each new passenger car with specific emissions of CO<sub>2</sub> of less than 50 g CO<sub>2</sub>/km shall be counted as:

- 2 passenger cars in 2020,
- 1,67 passenger cars in 2021,
- 1,33 passenger cars in 2022,
- 1 passenger car from 2023,

for the year in which it is registered in the period from 2020 to 2022, subject to a cap of 7,5 g CO<sub>2</sub>/km over that period for each manufacturer, as calculated in accordance with Article 5 of Implementing Regulation (EU) 2017/1153.

*Article 6***Pooling**

1. Manufacturers, other than manufacturers which have been granted a derogation under Article 10, may form a pool for the purposes of meeting their obligations under Article 4.
2. An agreement to form a pool may relate to one or more calendar years, provided that the overall duration of each agreement does not exceed five calendar years, and must be entered into on or before 31 December in the first calendar year for which emissions are to be pooled. Manufacturers which form a pool shall file the following information with the Commission:
  - (a) the manufacturers who will be included in the pool;
  - (b) the manufacturer nominated as the pool manager who will be the contact point for the pool and will be responsible for paying any excess emissions premium imposed on the pool in accordance with Article 8;
  - (c) evidence that the pool manager will be able to fulfil the obligations under point (b);
  - (d) the category of vehicles registered as  $M_1$  or  $N_1$ , for which the pool shall apply.
3. Where the proposed pool manager fails to meet the requirement to pay any excess emissions premium imposed on the pool in accordance with Article 8, the Commission shall notify the manufacturers.
4. Manufacturers included in a pool shall jointly inform the Commission of any change of pool manager or of its financial status, in so far as this may affect its ability to meet the requirement to pay any excess emissions premium imposed on the pool in accordance with Article 8, and of any changes to the membership of the pool or the dissolution of the pool.
5. Manufacturers may enter into pooling arrangements provided that their agreements comply with Articles 101 and 102 TFEU and that they allow open, transparent and non-discriminatory participation on commercially reasonable terms by any manufacturer requesting membership of the pool. Without prejudice to the general applicability of Union competition rules to such pools, all members of a pool shall in particular ensure that neither data sharing nor information exchange may occur in the context of their pooling arrangement, except in respect of the following information:
  - (a) the average specific emissions of CO<sub>2</sub>;
  - (b) the specific emissions target;
  - (c) the total number of vehicles registered.
6. Paragraph 5 shall not apply where all the manufacturers included in the pool are part of the same group of connected manufacturers.
7. Except where notification is given under paragraph 3 of this Article, the manufacturers in a pool in respect of which information is filed with the Commission shall be considered as one manufacturer for the purposes of meeting their obligations under Article 4. Monitoring and reporting information in respect of individual manufacturers as well as any pools will be recorded, reported and made available in the central register referred to in Article 7(4).
8. The Commission may specify, by means of implementing acts, the detailed conditions that shall apply for a pooling arrangement set up pursuant to paragraph 5 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).

*Article 7***Monitoring and reporting of average emissions**

1. For each calendar year, each Member State shall record information for each new passenger car and each new light commercial vehicle registered in its territory in accordance with Parts A of Annexes II and III to this Regulation. That information shall be made available to the manufacturers and their designated importers or representatives in each Member State. Member States shall make every effort to ensure that reporting bodies operate in a transparent manner. Each Member State shall ensure that the specific emissions of CO<sub>2</sub> of passenger cars which are not type-approved in accordance with Regulation (EC) No 715/2007 are measured and recorded in the certificate of conformity.

2. By 28 February of each year, each Member State shall determine and transmit to the Commission the information listed in Parts A of Annexes II and III in respect of the preceding calendar year. The data shall be transmitted in accordance with the format specified in Part B of Annex II and Part C of Annex III.

3. On request from the Commission, a Member State shall also transmit the full set of data collected pursuant to paragraph 1.

4. The Commission shall keep a central register of the data reported by Member States under this Article, and by 30 June of each year, shall provisionally calculate the following for each manufacturer:

- (a) the average specific emissions of CO<sub>2</sub> in the preceding calendar year;
- (b) the specific emissions target in the preceding calendar year;
- (c) the difference between its average specific emissions of CO<sub>2</sub> in the preceding calendar year and its specific emissions target for that year.

The Commission shall notify each manufacturer of its provisional calculation for that manufacturer. The notification shall include data for each Member State on the number of new passenger cars and of new light commercial vehicles registered and their specific emissions of CO<sub>2</sub>.

The register shall be publicly available.

5. Manufacturers may, within three months of being notified of the provisional calculation under paragraph 4, notify the Commission of any errors in the data, specifying the Member State in which they consider that the error occurred.

The Commission shall consider any notifications from manufacturers and shall, by 31 October, either confirm or amend the provisional calculations under paragraph 4.

6. Member States shall designate a competent authority for the collection and communication of the monitoring data in accordance with this Regulation and shall inform the Commission of the competent authority designated.

The designated competent authorities shall ensure the correctness and completeness of the data transmitted to the Commission, and shall provide a contact point that is to be available to respond quickly to requests from the Commission to address errors and omissions in the transmitted datasets.

7. The Commission shall adopt, by means of implementing acts, detailed rules on the procedures for monitoring and reporting of data under paragraphs 1 to 6 of this Article, and on the application of Annexes II and III. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).

8. The Commission is empowered to adopt delegated acts in accordance with Article 17 in order to amend the data requirements and data parameters set out in Annexes II and III.

9. Type-approval authorities shall without delay report to the Commission deviations found in the CO<sub>2</sub> emissions of vehicles in-service as compared to the specific emissions of CO<sub>2</sub> indicated in the certificates of conformity as a result of verifications performed in accordance with Article 13.

The Commission shall take those deviations into account for the purpose of calculating the average specific emissions of CO<sub>2</sub> of a manufacturer.

The Commission shall adopt, by means of implementing acts, detailed rules on the procedures for reporting such deviations and for taking them into account in the calculation of the average specific emissions of CO<sub>2</sub>. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).

10. The Commission shall no later than 2023 evaluate the possibility of developing a common Union methodology for the assessment and the consistent data reporting of the full life-cycle CO<sub>2</sub> emissions of passenger cars and light commercial vehicles that are placed on the Union market. The Commission shall transmit to the European Parliament and to the Council that evaluation, including, where appropriate, proposals for follow-up measures, such as legislative proposals.

11. Member States shall also collect and report data, in accordance with this Article, on registrations of vehicles in categories M<sub>2</sub> and N<sub>2</sub>, as defined in Annex II to Directive 2007/46/EC, with a reference mass not exceeding 2 610 kg, and vehicles to which type-approval is extended in accordance with Article 2(2) of Regulation (EC) No 715/2007.

*Article 8***Excess emissions premium**

1. In respect of each calendar year, the Commission shall impose an excess emissions premium on a manufacturer or pool manager, as appropriate, where a manufacturer's average specific emissions of CO<sub>2</sub> exceed its specific emissions target.
2. The excess emissions premium under paragraph 1 shall be calculated using the following formula:  
(Excess emissions × EUR 95) × number of newly registered vehicles.  
For the purposes of this Article, the following definitions shall apply:
  - 'excess emissions' means the positive number of grams per kilometre by which a manufacturer's average specific emissions of CO<sub>2</sub>, taking into account CO<sub>2</sub> emissions reductions due to innovative technologies approved in accordance with Article 11, exceeded its specific emissions target in the calendar year or part thereof to which the obligation under Article 4 applies, rounded to the nearest three decimal places, and
  - 'number of newly registered vehicles' means the number of new passenger cars or new light commercial vehicles counted separately of which it is the manufacturer and which were registered in that period according to the phase-in criteria as set out in Article 4(3).
3. The Commission shall determine, by means of implementing acts, the means for collecting excess emissions premiums imposed under paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).
4. The amounts of the excess emissions premium shall be considered as revenue for the general budget of the Union.

*Article 9***Publication of performance of manufacturers**

1. By 31 October of each year, the Commission shall publish, by means of implementing acts, a list indicating:
  - (a) for each manufacturer, its specific emissions target for the preceding calendar year;
  - (b) for each manufacturer, its average specific emissions of CO<sub>2</sub> in the preceding calendar year;
  - (c) the difference between the manufacturer's average specific emissions of CO<sub>2</sub> in the preceding calendar year and its specific emissions target in that year;
  - (d) the average specific emissions of CO<sub>2</sub> for all new passenger cars and new light commercial vehicles registered in the Union in the previous calendar year;
  - (e) the average mass in running order for all new passenger cars and new light commercial vehicles registered in the Union in the preceding calendar year until 31 December 2020;
  - (f) the average test mass of all new passenger cars and new light commercial vehicles registered in the Union in the preceding calendar year.
2. The list published under paragraph 1 of this Article shall also indicate whether the manufacturer has complied with the requirements of Article 4 with respect to the preceding calendar year.
3. The list referred to in paragraph 1 of this Article shall, for the publication by 31 October 2022, also indicate the following:
  - (a) the 2025 and 2030 EU fleet-wide targets referred to in Article 1(4) and (5), respectively, calculated by the Commission in accordance with points 6.1.1 and 6.1.2 of Parts A and B of Annex I;
  - (b) the values for  $a_{2021}$ ,  $a_{2025}$  and  $a_{2030}$  calculated by the Commission in accordance with points 6.2 of Parts A and B of Annex I.

## Article 10

**Derogations for certain manufacturers**

1. An application for a derogation from the specific emissions target calculated in accordance with Annex I may be made by a manufacturer of fewer than 10 000 new passenger cars or 22 000 new light commercial vehicles registered in the Union per calendar year, and which:

- (a) is not part of a group of connected manufacturers; or
- (b) is part of a group of connected manufacturers that is responsible in total for fewer than 10 000 new passenger cars or 22 000 new light commercial vehicles registered in the Union per calendar year; or
- (c) is part of a group of connected manufacturers but operates its own production facilities and design centre.

2. A derogation applied for under paragraph 1 may be granted for a maximum period of five calendar years, which is renewable. An application shall be made to the Commission and shall include:

- (a) the name of, and contact person for, the manufacturer;
- (b) evidence that the manufacturer is eligible for a derogation under paragraph 1;
- (c) details of the passenger cars or light commercial vehicles which it manufactures including the test mass and specific emissions of CO<sub>2</sub> of those passenger cars or light commercial vehicles; and
- (d) a specific emissions target consistent with its reduction potential, including the economic and technological potential to reduce its specific emissions of CO<sub>2</sub> and taking into account the characteristics of the market for the type of passenger car or light commercial vehicle manufactured.

3. Where the Commission considers that the manufacturer is eligible for a derogation applied for under paragraph 1 and is satisfied that the specific emissions target proposed by the manufacturer is consistent with its reduction potential, including the economic and technological potential to reduce its specific emissions of CO<sub>2</sub>, and taking into account the characteristics of the market for the type of passenger car or light commercial vehicle manufactured, the Commission shall grant a derogation to the manufacturer.

The application shall be submitted at the latest by 31 October of the first year in which the derogation shall apply.

4. An application for a derogation from the specific emissions target calculated in accordance with points 1 to 4 and 6.3 of Part A of Annex I may be made by a manufacturer which is responsible, together with all of its connected undertakings, for between 10 000 and 300 000 new passenger cars registered in the Union per calendar year.

Such application may be made by a manufacturer in respect of itself or in respect of itself together with any of its connected undertakings. An application shall be made to the Commission and shall include:

- (a) all of the information referred to in points (a) and (c) of paragraph 2, including, where relevant, information about any connected undertakings;
- (b) in relation to applications referring to points 1 to 4 of Part A of Annex I, a target which is a 45 % reduction on the average specific emissions of CO<sub>2</sub> in 2007 or, where a single application is made in respect of a number of connected undertakings, a 45 % reduction on the average of those undertakings' average specific emissions of CO<sub>2</sub> in 2007;
- (c) in relation to applications referring to point 6.3 of Part A of Annex I to this Regulation, a target applicable in the calendar years 2025 to 2028 which is the reduction specified in point (a) of Article 1(4) of this Regulation on the target calculated in accordance with point (b) of this paragraph taking into account the CO<sub>2</sub> emissions measured pursuant to Regulation (EU) 2017/1151.

Where information on a manufacturer's average specific emissions of CO<sub>2</sub> does not exist for the year 2007, the Commission shall determine an equivalent reduction target based upon the best available CO<sub>2</sub> emissions reduction technologies deployed in passenger cars of comparable mass and taking into account the characteristics of the market for the type of car manufactured. That target shall be used by the applicant for the purposes of point (b) of the second subparagraph.

The Commission shall grant a derogation to the manufacturer where it is demonstrated that the criteria for the derogation referred to in this paragraph have been met.

5. A manufacturer which is subject to a derogation in accordance with this Article shall notify the Commission immediately of any change which affects or may affect its eligibility for a derogation.

6. Where the Commission considers, whether on the basis of a notification under paragraph 5 or otherwise, that a manufacturer is no longer eligible for the derogation, it shall revoke the derogation with effect from 1 January of the next calendar year and shall notify the manufacturer thereof.

7. Where the manufacturer does not attain its specific emissions target, the Commission shall impose the excess emissions premium on the manufacturer, as set out in Article 8.

8. The Commission is empowered to adopt delegated acts in accordance with Article 17 laying down rules to supplement paragraphs 1 to 7 of this Article, as regards the interpretation of the eligibility criteria for derogations, the content of the applications, and the content and assessment of programmes for the reduction of specific emissions of CO<sub>2</sub>.

The Commission is also empowered to adopt delegated acts in accordance with Article 17 to amend Part A of Annex I for the purpose of setting out the calculation formulae of the derogation targets referred to in point (c) of the second subparagraph of paragraph 4 of this Article.

9. Applications for a derogation, including the information supporting it, notifications under paragraph 5, revocations under paragraph 6, any imposition of an excess emissions premium under paragraph 7 and measures adopted pursuant to paragraph 8, shall be made publicly available, subject to Regulation (EC) No 1049/2001 of the European Parliament and of the Council <sup>(19)</sup>.

#### Article 11

##### **Eco-innovation**

1. Upon application by a supplier or a manufacturer, CO<sub>2</sub> savings achieved through the use of innovative technologies or a combination of innovative technologies ('innovative technology packages') shall be considered.

Such technologies shall be taken into consideration only if the methodology used to assess them is capable of producing verifiable, repeatable and comparable results.

The total contribution of those technologies to reducing the average specific emissions of CO<sub>2</sub> of a manufacturer may be up to 7 g CO<sub>2</sub>/km.

The Commission is empowered to adopt delegated acts in accordance with Article 17 in order to amend this Regulation by adjusting the cap referred to in the third subparagraph of this paragraph with effect from 2025 onwards to take into account technological developments while ensuring a balanced proportion of the level of that cap in relation to the average specific emissions of CO<sub>2</sub> of manufacturers.

2. The Commission shall adopt, by means of implementing acts, detailed provisions for a procedure to approve the innovative technologies or innovative technology packages referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2). Those detailed provisions shall be based on the following criteria for innovative technologies:

- (a) the supplier or manufacturer must be accountable for the CO<sub>2</sub> savings achieved through the use of the innovative technologies;
- (b) the innovative technologies must make a verified contribution to CO<sub>2</sub> reduction;
- (c) the innovative technologies must not be covered by the standard test cycle CO<sub>2</sub> measurement;
- (d) the innovative technologies must not:
  - (i) be covered by mandatory provisions due to complementary additional measures complying with the 10 g CO<sub>2</sub>/km reduction referred to in Article 1(3); or
  - (ii) be mandatory under other provisions of Union law.

With effect from 1 January 2025, the criterion referred to in point (d)(i) of the first subparagraph shall not apply with regard to efficiency improvements for air conditioning systems.

<sup>(19)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

3. A supplier or a manufacturer that applies for a measure to be approved as an innovative technology or innovative technology package shall submit a report, including a verification report undertaken by an independent and certified body, to the Commission. In the event of a possible interaction of the measure with another innovative technology or innovative technology package already approved, that report shall mention that interaction and the verification report shall evaluate to what extent that interaction modifies the reduction achieved by each measure.

4. The Commission shall attest the reduction achieved on the basis of the criteria set out in paragraph 2.

#### Article 12

##### **Real-world CO<sub>2</sub> emissions and fuel or energy consumption**

1. The Commission shall monitor and assess the real-world representativeness of the CO<sub>2</sub> emissions and fuel or energy consumption values determined pursuant to Regulation (EC) No 715/2007.

Furthermore, the Commission shall regularly collect data on the real-world CO<sub>2</sub> emissions and fuel or energy consumption of passenger cars and light commercial vehicles using on-board fuel and/or energy consumption monitoring devices, starting with new passenger cars and new light commercial vehicles registered in 2021.

The Commission shall ensure that the public is informed of how that real-world representativeness evolves over time.

2. For the purpose referred to in paragraph 1, starting from 1 January 2021, the Commission shall ensure that the following parameters relating to real-world CO<sub>2</sub> emissions and fuel or energy consumption of passenger cars and light commercial vehicles are made available at regular intervals to it, from manufacturers, national authorities or through direct data transfer from vehicles, as the case may be:

- (a) vehicle identification number;
- (b) fuel and/or electric energy consumed;
- (c) total distance travelled;
- (d) for externally chargeable hybrid electric vehicles, the fuel and electric energy consumed and the distance travelled distributed over the different driving modes;
- (e) other parameters necessary to ensure that the obligations set out in paragraph 1 can be met.

The Commission shall process the data received under the first subparagraph to create anonymised and aggregated datasets, including per manufacturer, for the purposes of paragraph 1. The vehicle identification numbers shall be used only for the purpose of that data processing and shall not be retained longer than needed for that purpose.

3. In order to prevent the real-world emissions gap from growing, the Commission shall, no later than 1 June 2023, assess how fuel and energy consumption data may be used to ensure that the vehicle CO<sub>2</sub> emissions and fuel or energy consumption values determined pursuant to Regulation (EC) No 715/2007 remain representative of real-world emissions over time for each manufacturer.

The Commission shall monitor and report annually on how the gap referred to in the first subparagraph evolves over the period 2021 to 2026 and shall, with the view to preventing an increase in that gap, assess, in 2027, the feasibility of a mechanism to adjust the manufacturer's average specific emissions of CO<sub>2</sub> as of 2030, and, if appropriate, submit a legislative proposal to put such a mechanism in place.

4. The Commission shall adopt, by means of implementing acts, the detailed procedure for collecting and processing the data referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).

#### Article 13

##### **Verification of the CO<sub>2</sub> emissions of vehicles in-service**

1. Manufacturers shall ensure that the CO<sub>2</sub> emission and fuel consumption values recorded in the certificates of conformity correspond to the CO<sub>2</sub> emissions from, and fuel consumption of, vehicles in-service as determined in accordance with Regulation (EU) 2017/1151.

2. Following the entry into force of the procedures referred to in the first subparagraph of paragraph 4, type-approval authorities shall verify for those vehicle families for which they are responsible for the type-approval, on the basis of appropriate and representative vehicle samples, that the CO<sub>2</sub> emission and fuel consumption values recorded in the certificates of conformity correspond to the CO<sub>2</sub> emissions from, and fuel consumption of, vehicles in-service as determined in accordance with Regulation (EU) 2017/1151 while considering, inter alia, available data from on-board fuel and/or energy consumption monitoring devices.

Type-approval authorities shall also verify the presence of any strategies on board or relating to the sampled vehicles that artificially improve the vehicle's performance in the tests performed for the purpose of type-approval by, inter alia, using data from on-board fuel and/or energy consumption monitoring devices.

3. Where a lack of correspondence of CO<sub>2</sub> emission and fuel consumption values or the presence of any strategies artificially improving a vehicle's performance is found as a result of the verifications performed pursuant to paragraph 2, the responsible type-approval authority shall, in addition to taking the necessary measures set out in Chapter XI of Regulation (EU) 2018/858, ensure the correction of the certificates of conformity.

4. The Commission shall determine, by means of implementing acts, the procedures for performing the verifications referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).

The Commission is empowered, prior to adopting the implementing acts referred to in the first subparagraph of this paragraph, to adopt a delegated act in accordance with Article 17 in order to supplement this Regulation by setting out the guiding principles and criteria for defining the procedures referred to in the first subparagraph of this paragraph.

#### Article 14

##### Adjustment of M<sub>0</sub> and TM<sub>0</sub> values

1. The M<sub>0</sub> and TM<sub>0</sub> values referred to in Parts A and B of Annex I shall be adjusted as follows:
  - (a) by 31 October 2020, the M<sub>0</sub> value in point 4 of Part A of Annex I shall be adjusted to the average mass in running order of all new passenger cars registered in 2017, 2018, and 2019. That new M<sub>0</sub> value shall apply from 1 January 2022 until 31 December 2024;
  - (b) by 31 October 2022, the M<sub>0</sub> value in point 4 of Part B of Annex I shall be adjusted to the average mass in running order of all new light commercial vehicles registered in 2019, 2020 and 2021. That new M<sub>0</sub> value shall apply in 2024;
  - (c) by 31 October 2022, the indicative TM<sub>0</sub> value for 2025 shall be determined as the respective average test mass of all new passenger cars and new light commercial vehicles registered in 2021;
  - (d) by 31 October 2024, and every second year thereafter, the TM<sub>0</sub> value in point 6.2 of Parts A and B of Annex I shall be adjusted to the respective average test mass of all new passenger cars and new light commercial vehicles registered in the preceding two calendar years, starting with 2022 and 2023. The new TM<sub>0</sub> values shall apply from 1 January of the calendar year following the date of the adjustment.
2. The Commission is empowered to adopt delegated acts in accordance with Article 17 in order to supplement this Regulation by establishing the measures referred to in paragraph 1 of this Article.

#### Article 15

##### Review and report

1. The Commission shall, in 2023, thoroughly review the effectiveness of this Regulation and submit a report to the European Parliament and to the Council with the result of the review.
2. In the report referred to in paragraph 1, the Commission shall consider, inter alia, the real-world representativeness of the CO<sub>2</sub> emission and fuel or energy consumption values determined pursuant to Regulation (EC) No 715/2007; the deployment on the Union market of zero- and low-emission vehicles, in particular with respect to light commercial vehicles; the roll-out of recharging and refuelling infrastructure reported under Directive 2014/94/EU of the European



Parliament and of the Council <sup>(20)</sup>, including their financing; the potential contribution of the use of synthetic and advanced alternative fuels produced with renewable energy to emissions reductions; the CO<sub>2</sub> emissions reduction actually observed at the existing fleet level; the functioning of the incentive mechanism for zero- and low-emission vehicles; the potential effects of the transitional measure set out in point 6.3 of Part A of Annex I; the impact of this Regulation on consumers, particularly on those on low and medium incomes; as well as aspects to further facilitate an economically viable and socially fair transition towards clean, competitive and affordable mobility in the Union.

The Commission shall, in that report, also identify a clear pathway for further CO<sub>2</sub> emissions reductions for passenger cars and light commercial vehicles beyond 2030 in order to significantly contribute to achieving the long-term goal of the Paris Agreement.

3. The report referred to in paragraph 2 shall, where appropriate, be accompanied by a proposal for amending this Regulation, in particular, the possible revision of the EU fleet-wide targets for 2030 in light of the elements listed in paragraph 2, and the introduction of binding emissions reduction targets for 2035 and 2040 onwards for passenger cars and light commercial vehicles to ensure the timely transformation of the transport sector towards achieving net-zero emissions in line with the objectives of the Paris Agreement.

4. As part of the review referred to in paragraph 1 of this Article, the Commission shall assess the feasibility of developing real-world emission test procedures using portable emission measurement systems (PEMS). The Commission shall take into account that assessment as well as those made pursuant to Article 12 of this Regulation and may, where appropriate, review the procedures for measuring CO<sub>2</sub> emissions as set out under Regulation (EC) No 715/2007. The Commission shall, in particular, make appropriate proposals to adapt those procedures to reflect adequately the real-world CO<sub>2</sub> emissions of passenger cars and light commercial vehicles.

5. As part of the review referred to in paragraph 1 of this Article, the Commission shall evaluate the possibility to assign the revenue from the excess emissions premiums to a specific fund or a relevant programme, with the objective to ensure a just transition towards a climate-neutral economy as referred to in Article 4.1 of the Paris Agreement, in particular to support re-skilling, up-skilling and other skills training and reallocation of workers in the automotive sector in all affected Member States, in particular in the regions and the communities most affected by the transition. The Commission shall, if appropriate, make a legislative proposal to that effect by 2027 at the latest.

6. By 31 December 2020, the Commission shall review Directive 1999/94/EC considering the need to provide consumers with accurate, robust and comparable information on the fuel consumption, CO<sub>2</sub> emissions and air pollutant emissions of new passenger cars placed on the market, as well as evaluate the options for introducing a fuel economy and CO<sub>2</sub> emissions label for new light commercial vehicles. The review shall, where appropriate, be accompanied by a legislative proposal.

7. The Commission shall, by means of implementing acts, determine the correlation parameters necessary in order to reflect any change in the regulatory test procedure for the measurement of specific emissions of CO<sub>2</sub> referred to in Regulations (EC) No 715/2007 and (EC) No 692/2008 and, where applicable, Regulation (EU) 2017/1151. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2) of this Regulation.

8. The Commission is empowered to adopt delegated acts in accordance with Article 17 in order to amend this Regulation by adapting the formulae set out in Annex I, using the methodology adopted pursuant to paragraph 7 of this Article, while ensuring that reduction requirements of comparable stringency for manufacturers and vehicles of different utility are required under the old and new test procedures.

## Article 16

### Committee procedure

1. The Commission shall be assisted by the Climate Change Committee referred to in point (a) of Article 44(1) of Regulation (EU) 2018/1999 of the European Parliament and of the Council <sup>(21)</sup>. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

<sup>(20)</sup> Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1).

<sup>(21)</sup> Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

#### Article 17

##### 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 7(8), Article 10(8), the fourth subparagraph of Article 11(1), Article 13(4), Article 14(2) and Article 15(8) shall be conferred on the Commission for a period of six years from 15 May 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the six-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 7(8), Article 10(8), the fourth subparagraph of Article 11(1), Article 13(4), Article 14(2) and Article 15(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. 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 7(8), Article 10(8), the fourth subparagraph of Article 11(1), Article 13(4), Article 14(2) and Article 15(8) 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.

#### Article 18

##### Repeal

Regulations (EC) No 443/2009 and (EU) No 510/2011 are repealed with effect from 1 January 2020.

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

#### Article 19

##### 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 1 January 2020.

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

Done at Strasbourg, 17 April 2019.

*For the European Parliament*

*The President*

A. TAJANI

*For the Council*

*The President*

G. CIAMBA

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## ANNEX I

## PART A

## SPECIFIC EMISSIONS TARGETS FOR PASSENGER CARS

1. For the calendar year 2020, the specific emissions of CO<sub>2</sub> for each new passenger car shall, for the purposes of the calculations in this point and in point 2, be determined in accordance with the following formula:

$$\text{Specific emissions of CO}_2 = 95 + a \cdot (M - M_0)$$

where:

$M$  = Mass in running order of the vehicle in kilograms (kg)

$M_0$  = 1 379,88

$a$  = 0,0333

2. The specific emissions target for a manufacturer in 2020 shall be calculated as the average of the specific emissions of CO<sub>2</sub> determined according to point 1, of each new passenger car registered in that calendar year of which it is the manufacturer.
3. The specific emissions reference target for a manufacturer in 2021 shall be calculated as follows:

$$\text{WLTP specific emissions reference target} = \text{WLTP}_{\text{CO}_2} \cdot \left( \frac{\text{NEDC}_{2020\text{target}}}{\text{NEDC}_{\text{CO}_2}} \right)$$

where:

$\text{WLTP}_{\text{CO}_2}$  is the average specific emissions of CO<sub>2</sub> in 2020 determined in accordance with Annex XXI to Regulation (EU) 2017/1151 and calculated in accordance with the second indent of Article 4(3) of this Regulation, without including CO<sub>2</sub> savings resulting from the application of Articles 5 and 11 of this Regulation;

$\text{NEDC}_{\text{CO}_2}$  is the average specific emissions of CO<sub>2</sub> in 2020 determined in accordance with Implementing Regulation (EU) 2017/1153 and calculated in accordance with the second indent of Article 4(3) of this Regulation, without including CO<sub>2</sub> savings resulting from the application of Articles 5 and 11 of this Regulation;

$\text{NEDC}_{2020\text{target}}$  is the 2020 specific emissions target calculated in accordance with points 1 and 2.

4. For the calendar years 2021 to 2024, the specific emissions target for a manufacturer shall be calculated as follows:

$$\text{Specific emissions target} = \text{WLTP}_{\text{reference target}} + a [(M_0 - M_0) - (M_{0,2020} - M_{0,2020})]$$

where:

$\text{WLTP}_{\text{reference target}}$  is the 2021 WLTP specific emissions reference target calculated in accordance with point 3;

$a$  is 0,0333;

$M_0$  is the average of the mass in running order (M) of the new passenger cars of the manufacturer registered in the relevant target year in kilograms (kg);

$M_0$  is 1 379,88 in 2021, and as defined in point (a) of Article 14(1) for the years 2022, 2023 and 2024;

$M_{0,2020}$  is the average of the mass in running order (M) of the new passenger cars of the manufacturer registered in 2020 in kilograms (kg);

$M_{0,2020}$  is 1 379,88.

5. For a manufacturer that has been granted a derogation with regard to a specific NEDC based emissions target in 2021, the WLTP based derogation target shall be calculated as follows:

$$\text{Derogation target}_{2021} = \text{WLTP}_{\text{CO}_2} \cdot \left( \frac{\text{NEDC}_{2021\text{target}}}{\text{NEDC}_{\text{CO}_2}} \right)$$

where:

$\text{WLTP}_{\text{CO}_2}$  is  $\text{WLTP}_{\text{CO}_2}$  as defined in point 3;

$\text{NEDC}_{\text{CO}_2}$  is  $\text{NEDC}_{\text{CO}_2}$  as defined in point 3;

$\text{NEDC}_{2021\text{target}}$  is the 2021 derogation target granted by the Commission pursuant to Article 10.

6. From 1 January 2025, the EU fleet-wide targets and the specific emissions targets for a manufacturer shall be calculated as follows:

6.0. EU fleet-wide target<sub>2021</sub>

EU fleet-wide target<sub>2021</sub> is the average, weighted by the number of new passenger cars registered in 2021, of the reference-values<sub>2021</sub> determined for each individual manufacturer for which a specific emissions target applies in accordance with point 4.

The reference-value<sub>2021</sub> shall be determined, for each manufacturer, as follows:

$$\text{reference-value}_{2021} = \text{WLTP}_{\text{CO}_2, \text{measured}} \cdot \left( \frac{\text{NEDC}_{2020, \text{Fleet Target}}}{\text{NEDC}_{\text{CO}_2}} \right) + a(M_{e2021} - M_{0,2021})$$

where:

$\text{WLTP}_{\text{CO}_2, \text{measured}}$  is the average, for each manufacturer, of the measured CO<sub>2</sub> emissions combined of each new passenger car registered in 2020, as determined and reported in accordance with Article 7a of Implementing Regulation (EU) 2017/1153;

$\text{NEDC}_{2020, \text{Fleet Target}}$  is 95 g/km;

$\text{NEDC}_{\text{CO}_2}$  is as defined in point 3;

$M_{e2021}$  is the average of the mass in running order of the new passenger cars of the manufacturer registered in 2021 in kilograms (kg);

$M_{0,2021}$  is the average mass in running order in kilograms (kg) of all new passenger cars registered in 2021 of those manufacturers for which a specific emissions target applies in accordance with point 4;

$a$  is as defined in point 4.

6.1. EU fleet-wide targets for 2025 and 2030

6.1.1. EU fleet-wide target for 2025 to 2029

$$\text{EU fleet-wide target}_{2025} = \text{EU fleet-wide target}_{2021} \cdot (1 - \text{reduction factor}_{2025})$$

where:

EU fleet-wide target<sub>2021</sub> is as defined in point 6.0;

reduction factor<sub>2025</sub> is the reduction specified in point (a) of Article 1(4).

## 6.1.2. EU fleet-wide target for 2030 onwards

$$\text{EU fleet-wide target}_{2030} = \text{EU fleet-wide target}_{2021} \cdot (1 - \text{reduction factor}_{2030})$$

where:

EU fleet-wide target<sub>2021</sub> is as defined in point 6.0;

reduction factor<sub>2030</sub> is the reduction specified in point (a) of Article 1(5).

## 6.2. Specific emissions reference targets from 2025 onwards

## 6.2.1. Specific emissions reference targets for 2025 to 2029

$$\text{The specific emissions reference target} = \text{EU fleet-wide target}_{2025} + a_{2025} \cdot (TM - TM_0)$$

where:

EU fleet-wide target<sub>2025</sub> is as determined in accordance with point 6.1.1;

$$a_{2025} \text{ is } \frac{a_{2021} \cdot \text{EU fleet-wide target}_{2025}}{\text{Average emissions}_{2021}}$$

where:

$a_{2021}$  is the slope of the best fitting straight line established by applying the linear least squares fitting method to the test mass (independent variable) and the specific emissions of CO<sub>2</sub> (dependent variable) of each new passenger car registered in 2021;

average emissions<sub>2021</sub> is the average of the specific emissions of CO<sub>2</sub> of all new passenger cars registered in 2021 of those manufacturers for which a specific emissions target is calculated in accordance with point 4;

TM is the average test mass in kilograms (kg) of all new passenger cars of the manufacturer registered in the relevant calendar year;

TM<sub>0</sub> is the value in kilograms (kg) determined in accordance with point (d) of Article 14(1).

## 6.2.2. Specific emissions reference targets for 2030 onwards

$$\text{The specific emissions reference target} = \text{EU fleet-wide target}_{2030} + a_{2030} \cdot (TM - TM_0)$$

where:

EU fleet-wide target<sub>2030</sub> is as determined in accordance with point 6.1.2;

$$a_{2030} \text{ is } \frac{a_{2021} \cdot \text{EU fleet-wide target}_{2030}}{\text{Average emissions}_{2021}}$$

where:

$a_{2021}$  is as defined in point 6.2.1;

average emissions<sub>2021</sub> is as defined in point 6.2.1;

TM is as defined in point 6.2.1;

TM<sub>0</sub> is as defined in point 6.2.1.

## 6.3. Specific emissions targets from 2025 onwards

Specific emissions target = specific emissions reference target · ZLEV factor

where:

specific emissions reference target is the specific emissions reference target of CO<sub>2</sub> determined in accordance with point 6.2.1 for the period 2025 to 2029 and point 6.2.2 for 2030 onwards;

ZLEV factor is  $(1 + y - x)$ , unless this sum is larger than 1,05 or lower than 1,0 in which case the ZLEV factor shall be set to 1,05 or 1,0, as the case may be;

where:

y is the share of zero- and low-emission vehicles in the manufacturer's fleet of new passenger cars calculated as the total number of new zero- and low-emission vehicles, where each of them is counted as ZLEV<sub>specific</sub> in accordance with the following formula, divided by the total number of new passenger cars registered in the relevant calendar year:

$$\text{ZLEV}_{\text{specific}} = 1 - \left( \frac{\text{specific emissions of CO}_2 \cdot 0,7}{50} \right)$$

For new passenger cars registered in Member States with a share of zero- and low-emission vehicles in their fleet below 60 % of the Union average in the year 2017 <sup>(1)</sup> and with less than 1 000 new zero- and low-emission vehicles registered in 2017, ZLEV<sub>specific</sub> shall, until and including 2030, be calculated in accordance with the following formula:

$$\text{ZLEV}_{\text{specific}} = \left( 1 - \left( \frac{\text{specific emissions of CO}_2 \cdot 0,7}{50} \right) \right) \cdot 1,85$$

Where the share of zero- and low-emission vehicles in a Member State's fleet of new passenger cars registered in a year between 2025 and 2030 exceeds 5 %, that Member State shall not be eligible for the application of the multiplier of 1,85 in the subsequent years;

x is 15 % in the years 2025 to 2029 and 35 % from 2030 onwards.

## PART B

## SPECIFIC EMISSIONS TARGETS FOR LIGHT COMMERCIAL VEHICLES

1. For the calendar year 2020, the specific emissions of CO<sub>2</sub> for each new light commercial vehicle shall, for the purposes of the calculations in this point and in point 2, be determined in accordance with the following formula:

$$\text{Specific emissions of CO}_2 = 147 + a \cdot (M - M_0)$$

where:

M = Mass in running order of the vehicle in kilograms (kg)

M<sub>0</sub> = 1 766,4

a = 0,096

2. The specific emissions target for a manufacturer in 2020 shall be calculated as the average of the specific emissions of CO<sub>2</sub> determined according to point 1 of each new light commercial vehicle registered in that calendar year of which it is the manufacturer.

<sup>(1)</sup> The share of zero- and low-emission vehicles in the new passenger car fleet of a Member State in 2017 is calculated as the total number of new zero- and low-emission vehicles registered in 2017 divided by the total number of new passenger cars registered in the same year.

3. The specific emissions reference target for a manufacturer in 2021 shall be calculated as follows:

$$\text{WLTP specific emissions reference target} = \text{WLTP}_{\text{CO}_2} \cdot \left( \frac{\text{NEDC}_{2020\text{target}}}{\text{NEDC}_{\text{CO}_2}} \right)$$

where:

$\text{WLTP}_{\text{CO}_2}$  is the average specific emissions of  $\text{CO}_2$  in 2020 determined in accordance with Annex XXI to Regulation (EU) 2017/1151 without including  $\text{CO}_2$  savings resulting from the application of Article 11 of this Regulation;

$\text{NEDC}_{\text{CO}_2}$  is the average specific emissions of  $\text{CO}_2$  in 2020 determined in accordance with Implementing Regulation (EU) 2017/1152, without including  $\text{CO}_2$  savings resulting from the application of Article 11 of this Regulation;

$\text{NEDC}_{2020\text{target}}$  is the 2020 specific emissions target calculated in accordance with points 1 and 2.

4. For the calendar years 2021 to 2024, the specific emissions target for a manufacturer shall be calculated as follows:

$$\text{Specific emissions target} = \text{WLTP}_{\text{reference target}} + a [(M_{\theta} - M_0) - (M_{\theta 2020} - M_{0,2020})]$$

where:

$\text{WLTP}_{\text{reference target}}$  is the 2021 WLTP specific emissions reference target calculated in accordance with point 3;

$a$  is 0,096;

$M_{\theta}$  is the average of the mass in running order ( $M$ ) of the new light commercial vehicles of the manufacturer registered in the relevant target year in kilograms (kg);

$M_0$  is 1 766,4 in 2020 and, for the years 2021, 2022 and 2023, the value adopted pursuant to Article 13(5) of Regulation (EU) No 510/2011, and for 2024 the value adopted pursuant to point (b) of Article 14(1) of this Regulation;

$M_{\theta 2020}$  is the average of the mass in running order ( $M$ ) of the new light commercial vehicles of the manufacturer registered in 2020 in kilograms (kg);

$M_{0,2020}$  is 1 766,4.

5. For a manufacturer that has been granted a derogation with regard to a specific NEDC based emissions target in 2021, the WLTP based derogation target shall be calculated as follows:

$$\text{Derogation target}_{2021} = \text{WLTP}_{\text{CO}_2} \cdot \left( \frac{\text{NEDC}_{2021\text{target}}}{\text{NEDC}_{\text{CO}_2}} \right)$$

where:

$\text{WLTP}_{\text{CO}_2}$  is  $\text{WLTP}_{\text{CO}_2}$  as defined in point 3;

$\text{NEDC}_{\text{CO}_2}$  is  $\text{NEDC}_{\text{CO}_2}$  as defined in point 3;

$\text{NEDC}_{2021\text{target}}$  is the 2021 derogation target granted by the Commission pursuant to Article 10.



6. From 1 January 2025, the EU fleet-wide targets and the specific emissions targets for a manufacturer shall be calculated as follows:

6.0. EU fleet-wide target<sub>2021</sub>

EU fleet-wide target<sub>2021</sub> is the average, weighted by the number of new light commercial vehicles registered in 2021, of the reference-values<sub>2021</sub> determined for each individual manufacturer for which a specific emissions target applies in accordance with point 4.

The reference-value<sub>2021</sub> shall be determined, for each manufacturer, as follows:

$$\text{reference-value}_{2021} = \text{WLTP}_{\text{CO}_2, \text{measured}} \cdot \left( \frac{\text{NEDC}_{2020, \text{Fleet Target}}}{\text{NEDC}_{\text{CO}_2}} \right) + a(M_{\text{e}2021} - M_{0,2021})$$

where:

$\text{WLTP}_{\text{CO}_2, \text{measured}}$  is the average, for each manufacturer, of the measured CO<sub>2</sub> emissions combined of each new light commercial vehicle registered in 2020, as determined and reported in accordance with Article 7a of Implementing Regulation (EU) 2017/1152;

$\text{NEDC}_{2020, \text{Fleet Target}}$  is 147 g/km;

$\text{NEDC}_{\text{CO}_2}$  is as defined in point 3;

$M_{\text{e}2021}$  is the average of the mass in running order of the new light commercial vehicles of the manufacturer registered in 2021 in kilograms (kg);

$M_{0,2021}$  is the average mass in running order in kilograms (kg) of all new light commercial vehicles registered in 2021 of those manufacturers for which a specific emissions target applies in accordance with point 4;

$a$  is as defined in point 4.

6.1. The EU fleet-wide targets for 2025 and 2030

6.1.1. EU fleet-wide target for 2025 to 2029

$$\text{EU fleet-wide target}_{2025} = \text{EU fleet-wide target}_{2021} \cdot (1 - \text{reduction factor}_{2025})$$

where:

EU fleet-wide target<sub>2021</sub> is as defined in point 6.0;

reduction factor<sub>2025</sub> is the reduction specified in point (b) of Article 1(4).

6.1.2. EU fleet-wide target for 2030 onwards

$$\text{EU fleet-wide target}_{2030} = \text{EU fleet-wide target}_{2021} \cdot (1 - \text{reduction factor}_{2030})$$

where:

EU fleet-wide target<sub>2021</sub> is as defined in point 6.0;

reduction factor<sub>2030</sub> is the reduction specified in point (b) of Article 1(5).

6.2. Specific emissions reference targets from 2025 onwards

6.2.1. Specific emissions reference targets for 2025 to 2029

$$\text{The specific emissions reference target} = \text{EU fleet-wide target}_{2025} + a \cdot (TM - TM_0)$$

where:

EU fleet-wide target<sub>2025</sub> is as determined in accordance with point 6.1.1;

$a$  is  $a_{2025}$  where the average test mass of a manufacturer's new light commercial vehicles is equal to or lower than  $TM_0$  determined in accordance with point (d) of Article 14(1) and  $a_{2021}$  where the average test mass of a manufacturer's new light commercial vehicles is higher than  $TM_0$  determined in accordance with point (d) of Article 14(1);

where:

$a_{2025}$  is  $\frac{a_{2021} \cdot \text{EU fleet-wide target}_{2025}}{\text{Average emissions}_{2021}}$

$a_{2021}$  is the slope of the best fitting straight line established by applying the linear least squares fitting method to the test mass (independent variable) and the specific emissions of CO<sub>2</sub> (dependent variable) of each new light commercial vehicle registered in 2021;

average emissions<sub>2021</sub> is the average of the specific emissions of CO<sub>2</sub> of all new light commercial vehicles registered in 2021 of those manufacturers for which a specific emissions target is calculated in accordance with point 4;

TM is the average test mass in kilograms (kg) of all new light commercial vehicles of the manufacturer registered in the relevant calendar year;

TM<sub>0</sub> is the value in kilograms (kg) determined in accordance with point (d) of Article 14(1).

#### 6.2.2. Specific emissions reference targets from 2030 onwards

The specific emissions reference target = EU fleet-wide target<sub>2030</sub> +  $\alpha \cdot (TM - TM_0)$

where:

EU fleet-wide target<sub>2030</sub> is as determined in accordance with point 6.1.2;

$\alpha$  is  $a_{2030}$  where the average test mass of a manufacturer's new light commercial vehicles is equal to or lower than TM<sub>0</sub> determined in accordance with point (d) of Article 14(1) and  $a_{2021}$  where the average test mass of a manufacturer's new light commercial vehicles is higher than TM<sub>0</sub> determined in accordance with point (d) of Article 14(1);

where:

$a_{2030}$  is  $\frac{a_{2021} \cdot \text{EU fleet-wide target}_{2030}}{\text{Average emissions}_{2021}}$

$a_{2021}$  is as defined in point 6.2.1;

average emissions<sub>2021</sub> is as defined in point 6.2.1;

TM is as defined in point 6.2.1;

TM<sub>0</sub> is as defined in point 6.2.1.

#### 6.3. Specific emissions targets from 2025 onwards

##### 6.3.1. Specific emissions targets for 2025 to 2029

The specific emissions target = (specific emissions reference target – ( $\emptyset_{\text{targets}}$  – EU fleet-wide target<sub>2025</sub>)) · ZLEV factor

where:

specific emissions reference target is the specific emissions reference target for the manufacturer determined in accordance with point 6.2.1;

$\emptyset_{\text{targets}}$  is the average, weighted on the number of new light commercial vehicles of each individual manufacturer, of all the specific emissions reference targets determined in accordance with point 6.2.1;

ZLEV factor is (1 + y – x), unless this sum is larger than 1,05 or lower than 1,0 in which case the ZLEV factor shall be set to 1,05 or 1,0, as the case may be;

where:

y is the share of zero- and low-emission vehicles in the manufacturer's fleet of new light commercial vehicles calculated as the total number of new zero- and low-emission vehicles, where each of them is counted as  $ZLEV_{specific}$  in accordance with the following formula, divided by the total number of new light commercial vehicles registered in the relevant calendar year:

$$ZLEV_{specific} = 1 - \left( \frac{\text{specific emissions of CO}_2}{50} \right)$$

x is 15 %.

### 6.3.2. Specific emissions targets from 2030 onwards

The specific emissions target = (specific emissions reference target – ( $\phi_{targets}$  – EU fleet-wide target<sub>2030</sub>)) · ZLEV factor

where:

specific emissions reference target is the specific emissions reference target for the manufacturer determined in accordance with point 6.2.2;

$\phi_{targets}$  is the average, weighted on the number of new light commercial vehicles of each individual manufacturer, of all the specific emissions reference targets determined in accordance with point 6.2.2;

ZLEV factor is  $(1 + y - x)$ , unless this sum is larger than 1,05 or lower than 1,0 in which case the ZLEV factor shall be set to 1,05 or 1,0, as the case may be;

where:

y is the share of zero- and low-emission vehicles in the manufacturer's fleet of new light commercial vehicles calculated as the total number of new zero- and low-emission vehicles, where each of them is counted as  $ZLEV_{specific}$  in accordance with the following formula, divided by the total number of new light commercial vehicles registered in the relevant calendar year:

$$ZLEV_{specific} = 1 - \left( \frac{\text{specific emissions of CO}_2}{50} \right)$$

x is 30 %.

## ANNEX II

**MONITORING AND REPORTING OF EMISSIONS FROM NEW PASSENGER CARS****PART A****Collection of data on new passenger cars and determination of CO<sub>2</sub> emissions monitoring information**

1. Member States shall, for each calendar year, record the following detailed data for each new passenger car registered as an M<sub>1</sub> vehicle in their territory:
  - (a) the manufacturer;
  - (b) the type-approval number and its extension;
  - (c) the type, variant, and version (where applicable);
  - (d) make and commercial name;
  - (e) category of vehicle type-approved;
  - (f) total number of new registrations;
  - (g) mass in running order;
  - (h) the specific emissions of CO<sub>2</sub> (NEDC and WLTP);
  - (i) footprint: the wheel base, the track width of the steered axle and the track width other axle;
  - (j) the fuel type and fuel mode;
  - (k) engine capacity;
  - (l) electric energy consumption;
  - (m) code for the innovative technology or group of innovative technologies and the CO<sub>2</sub> emissions reduction due to that technology (NEDC and WLTP);
  - (n) maximum net power;
  - (o) vehicle identification number;
  - (p) WLTP test mass;
  - (q) deviation and verification factors referred to in point 3.2.8 of Annex I to Implementing Regulation (EU) 2017/1153;
  - (r) category of vehicle registered;
  - (s) vehicle family identification number;
  - (t) electric range, where applicable.

Member States shall make available to the Commission, in accordance with Article 7, all data listed in this point, in the format as specified in Section 2 of Part B.

2. The detailed data referred to in point 1 shall be taken from the certificate of conformity of the relevant passenger car. In the case of bi-fuelled vehicles (petrol/gas), the certificates of conformity of which bear specific emissions of CO<sub>2</sub> values for both types of fuel, Member States shall use only the value measured for gas.
3. Member States shall, for each calendar year, determine:
  - (a) the total number of new registrations of new passenger cars subject to EC type-approval;
  - (b) the total number of new registrations of new individually approved passenger cars;
  - (c) the total number of new registrations of new passenger cars subject to national type-approval of small series.

**PART B****Format for the transmission of data**

For each year, Member States shall report the information specified in points 1 and 3 of Part A in the following formats:

## SECTION 1

## AGGREGATED MONITORING DATA

Member State <sup>(1)</sup>	
Year	
Total number of new registrations of new passenger cars subject to EC type-approval	
Total number of new registrations of new individually approved passenger cars	
Total number of new registrations of new passenger cars subject to national type-approval of small series	

<sup>(1)</sup> ISO 3166 alpha-2 codes with the exception of Greece and the United Kingdom for which the codes are 'EL' and 'UK', respectively.

## SECTION 2

## DETAILED MONITORING DATA — ONE VEHICLE RECORD

Reference to point 1 of Part A	Detailed data per vehicle registered
(a)	Manufacturer name EU standard denomination
	Manufacturer name OEM declaration
	Manufacturer name in Member State registry <sup>(1)</sup>
(b)	Type-approval number and its extension
(c)	Type
	Variant
	Version
(d)	Make and commercial name
(e)	Category of vehicle type-approved
(f)	Total number of new registrations
(g)	Mass in running order
(h)	Specific emissions of CO <sub>2</sub> (combined) NEDC value until 31 December 2020 except for vehicles that fall within the scope of Article 5 for which the NEDC value shall be determined until 31 December 2022 in accordance with Article 5 of Implementing Regulation (EU) 2017/1153
	Specific emissions of CO <sub>2</sub> (combined) WLTP value

Reference to point 1 of Part A	Detailed data per vehicle registered
(i)	Wheel base
	Track width steered axle (Axle 1)
	Track width other axle (Axle 2)
(j)	Fuel type
	Fuel mode
(k)	Engine capacity (cm <sup>3</sup> )
(l)	Electric energy consumption (Wh/km)
(m)	Code of the eco-innovation(s)
	Total NEDC CO <sub>2</sub> emissions savings due to the eco-innovation(s) until 31 December 2020
	Total WLTP CO <sub>2</sub> emissions savings due to the eco-innovation(s)
(n)	Maximum net power
(o)	Vehicle identification number
(p)	WLTP test mass
(q)	Deviation factor De (where available)
	Verification factor (where available)
(r)	Category of vehicle registered
(s)	Vehicle family identification number
(t)	Electric range, where available

## Notes:

- (<sup>1</sup>) In the case of national type-approval of small series (NSS) or individual approval (IVA), the manufacturer's name shall be provided in the column 'Manufacturer name in Member State registry' whilst in the column 'Manufacturer name EU standard denomination' either of the following shall be indicated: 'AA-NSS' or 'AA-IVA', as the case may be.

## ANNEX III

**MONITORING AND REPORTING OF EMISSIONS FROM NEW LIGHT COMMERCIAL VEHICLES**A. Collection of data on new light commercial vehicles and determination of CO<sub>2</sub> emissions monitoring information

## 1. Detailed data

1.1. Complete vehicles registered as N<sub>1</sub>

In the case of EC type-approved complete vehicles registered as N<sub>1</sub>, Member States shall, for each calendar year, record the following detailed data for each new light commercial vehicle the first time that it is registered in their territory:

- (a) the manufacturer;
- (b) the type-approval number and its extension;
- (c) the type, variant, and version;
- (d) make;
- (e) category of vehicle type-approved;
- (f) category of vehicle registered;
- (g) the specific emissions of CO<sub>2</sub> (NEDC and WLTP);
- (h) mass in running order;
- (i) technically permissible maximum laden mass;
- (j) footprint: the wheel base, the track width steered axle and the track width other axle;
- (k) the fuel type and fuel mode;
- (l) engine capacity;
- (m) electric energy consumption;
- (n) code of the innovative technology or group of innovative technologies and the CO<sub>2</sub> emissions reduction due to that technology (NEDC and WLTP);
- (o) the vehicle identification number;
- (p) WLTP test mass;
- (q) deviation and verification factors referred to in point 3.2.8 of Annex I to Implementing Regulation (EU) 2017/1152;
- (r) vehicle family identification number determined in accordance with point 5.0 of Annex XXI to Regulation (EU) 2017/1151;
- (s) electric range, where applicable.

Member States shall make available to the Commission, in accordance with Article 7, all data listed in this point, in the format as specified in Section 2 of Part C of this Annex.

## 1.2. Vehicles approved in a multi-stage process and registered as N<sub>1</sub> vehicles

In the case of multi-stage vehicles registered as N<sub>1</sub> vehicles, Member States shall, for each calendar year, record the following detailed data with regard to:

- (a) the base (incomplete) vehicle: the data specified in points (a), (b), (c), (d), (e), (g), (h), (i), (n) and (o) of point 1.1, or, instead of the data specified in points (h) and (i), the default added mass provided as part of the type-approval information specified in point 2.17.2 of Annex I to Directive 2007/46/EC;
- (b) the base (complete) vehicle: the data specified in points (a), (b), (c), (d), (e), (g), (h), (i), (n) and (o) of point 1.1;
- (c) the completed vehicle: the data specified in points (a), (f), (g), (h), (j), (k), (l), (m) and (o) of point 1.1.

Where any of the data referred to in points (a) and (b) of the first subparagraph cannot be provided for the base vehicle, the Member State shall provide data with regard to the completed vehicle instead.

The format set out in Section 2 of Part C shall be used for completed N<sub>1</sub> vehicles.

The vehicle identification number referred to in point (o) of point 1.1 shall not be made public.

- 2. The details referred to in point 1 shall be taken from the certificate of conformity. In the case of bi-fuelled vehicles (petrol/gas) the certificates of conformity of which bear specific emissions of CO<sub>2</sub> values for both types of fuel, Member States shall use only the value measured for gas.
- 3. Member States shall, for each calendar year, determine:
  - (a) the total number of new registrations of new light commercial vehicles subject to EC type-approval;
  - (b) the total number of new registrations of new light commercial vehicles subject to multi-stage type-approval, where available;
  - (c) the total number of new registrations of new light commercial vehicles subject to individual approval;
  - (d) the total number of new registrations of new light commercial vehicles subject to national type-approval of small series.

## B. Methodology for determining CO<sub>2</sub> monitoring information for new light commercial vehicles

Monitoring information which Member States are required to determine in accordance with points 1 and 3 of Part A shall be determined in accordance with the methodology in this Part.

### 1. Number of new light commercial vehicles registered

Member States shall determine the number of new light commercial vehicles registered within their territory in the respective monitoring year divided into vehicles subject to EC type-approval, individual approval and national type-approval of small series and, where available, subject to multi-stage type-approval.

### 2. Completed vehicles

In the case of multi-stage vehicles, the specific emissions of CO<sub>2</sub> of completed vehicles shall be allocated to the manufacturer of the base vehicle.

In order to ensure that the values of CO<sub>2</sub> emissions, fuel efficiency and mass of completed vehicles are representative, without placing an excessive burden on the manufacturer of the base vehicle, the Commission shall come forward with a specific monitoring procedure and shall, where appropriate, make the necessary amendments to the relevant type-approval legislation.

Notwithstanding that for the purpose of the calculation of the 2020 target in accordance with point 2 of Part B of Annex I the default added mass shall be taken from Part C of this Annex, where that mass value cannot be determined, the mass in running order of the completed vehicle may be used for the provisional calculation of the specific emissions target referred to in Article 7(4).

Where the base vehicle is a complete vehicle, the mass in running order of that vehicle shall be used for the calculation of the specific emissions target. However, where that mass value cannot be determined, the mass in running order of the completed vehicle may be used for the provisional calculation of the specific emissions target.



## C. Formats for transmission of data

For each year, Member States shall report the information specified in points 1 and 3 of Part A in the following format:

## Section 1

## Aggregated monitoring data

Member State <sup>(1)</sup>	
Year	
Total number of new registrations of new light commercial vehicles subject to EC type-approval	
Total number of new registrations of individually approved new light commercial vehicles	
Total number of new registrations of new light commercial vehicles subject to national type-approval of small series	
Total number of new registrations of new light commercial vehicles subject to multi-stage type-approval (where available)	

<sup>(1)</sup> ISO 3166 alpha-2 codes with the exception of Greece and the United Kingdom for which the codes are 'EL' and 'UK', respectively.

## Section 2

## Detailed monitoring data — one vehicle record

Reference to point 1.1 of Part A	Detailed data per vehicle registered <sup>(1)</sup>
(a)	Manufacturer name EU standard denomination <sup>(2)</sup>
	Manufacturer name OEM declaration COMPLETE VEHICLE/BASE VEHICLE <sup>(3)</sup>
	Manufacturer name OEM declaration COMPLETED VEHICLE <sup>(3)</sup>
	Manufacturer name in Member State registry <sup>(2)</sup>
(b)	Type-approval number and its extension
(c)	Type
	Variant
	Version
(d)	Make
(e)	Category of vehicle type-approved
(f)	Category of vehicle registered
(g)	Specific emissions of CO <sub>2</sub> (combined) NEDC value until 31 December 2020
	Specific emissions of CO <sub>2</sub> (combined) WLTP value

Reference to point 1.1 of Part A	Detailed data per vehicle registered <sup>(1)</sup>
(h)	Mass in running order BASE VEHICLE
	Mass in running order COMPLETED VEHICLE/COMPLETE VEHICLE
(i) <sup>(4)</sup>	Technically permissible maximum laden mass
(j)	Wheel base
	Axle width steered axle (Axle 1)
	Axle width other axle (Axle 2)
(k)	Fuel type
	Fuel mode
(l)	Engine capacity (cm <sup>3</sup> )
(m)	Electric energy consumption (Wh/km)
(n)	Code of the eco-innovation(s)
	Total NEDC CO <sub>2</sub> emissions savings due to the eco-innovation(s) until 31 December 2020
	Total WLTP CO <sub>2</sub> emissions savings due to the eco-innovation(s)
(o)	Vehicle identification number
(p)	WLTP test mass
(q)	Deviation factor De (where available)
	Verification factor (where available)
(r)	Vehicle family identification number
(s)	Electric range, where available
Point 2.17.2 of Annex I to Directive 2007/46/EC <sup>(5)</sup>	Default added mass (where applicable in the case of multi-stage vehicles)

## Notes:

- <sup>(1)</sup> Where, in the case of multi-stage vehicles, data cannot be provided for the base vehicle, the Member State shall as a minimum provide the data specified in this format for the completed vehicle.
- <sup>(2)</sup> In the case of national type-approval of small series (NSS) or individual approval (IVA), the manufacturer's name shall be provided in the column 'Manufacturer name in Member State registry' whilst in the column 'Manufacturer name EU standard denomination' either of the following shall be indicated: 'AA-NSS' or 'AA-IVA', as the case may be.
- <sup>(3)</sup> In the case of multi-stage vehicles the base (incomplete/complete) vehicle manufacturer shall be indicated. If the base vehicle manufacturer is not available, the manufacturer of the completed vehicle only shall be indicated.
- <sup>(4)</sup> In the case of multi-stage vehicles, the technically permissible maximum laden mass of the base vehicle shall be indicated.
- <sup>(5)</sup> In the case of multi-stage vehicles, the mass in running order and the technically permissible maximum laden mass of the base vehicle may be replaced by the default added mass specified in the type-approval information in accordance with point 2.17.2 of Annex I to Directive 2007/46/EC.

## ANNEX IV

**REPEALED REGULATIONS WITH LISTS OF THEIR SUCCESSIVE AMENDMENTS**

Regulation (EC) No 443/2009 of the European Parliament and of the Council	(OJ L 140, 5.6.2009, p. 1).
Commission Regulation (EU) No 397/2013	(OJ L 120, 1.5.2013, p. 4).
Regulation (EU) No 333/2014 of the European Parliament and of the Council	(OJ L 103, 5.4.2014, p. 15).
Commission Delegated Regulation (EU) 2015/6	(OJ L 3, 7.1.2015, p. 1).
Commission Delegated Regulation (EU) 2017/1502	(OJ L 221, 26.8.2017, p. 4).
Commission Delegated Regulation (EU) 2018/649	(OJ L 108, 27.4.2018, p. 14).
Regulation (EU) No 510/2011 of the European Parliament and of the Council	(OJ L 145, 31.5.2011, p. 1).
Commission Delegated Regulation (EU) No 205/2012	(OJ L 72, 10.3.2012, p. 2).
Regulation (EU) No 253/2014 of the European Parliament and of the Council	(OJ L 84, 20.3.2014, p. 38).
Commission Delegated Regulation (EU) No 404/2014	(OJ L 121, 24.4.2014, p. 1).
Commission Delegated Regulation (EU) 2017/748	(OJ L 113, 29.4.2017, p. 9).
Commission Delegated Regulation (EU) 2017/1499	(OJ L 219, 25.8.2017, p. 1).

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## ANNEX V

## CORRELATION TABLE

Regulation (EC) No 443/2009	Regulation (EU) No 510/2011	This Regulation
Article 1, first paragraph	Article 1(1)	Article 1(1)
Article 1, second paragraph	Article 1(2)	Article 1(2)
Article 1, third paragraph	—	Article 1(3)
—	—	Article 1(4)
—	—	Article 1(5)
—	—	Article 1(6)
—	—	Article 1(7)
Article 2(1)	Article 2(1)	Article 2(1)
Article 2(2)	Article 2(2)	Article 2(2)
Article 2(3)	Article 2(3)	Article 2(3)
Article 2(4)	Article 2(4)	Article 2(4)
Article 3(1), introductory wording	Article 3(1), introductory wording	Article 3(1), introductory wording
Article 3(1), points (a) and (b)	Article 3(1), points (a) and (b)	Article 3(1), points (a) and (b)
—	Article 3(1), points (c), (d) and (e)	Article 3(1), points (c), (d) and (e)
Article 3(1), points (c) and (d)	Article 3(1), points (f) and (g)	Article 3(1), points (f) and (g)
Article 3(1), point (f)	Article 3(1), point (h)	Article 3(1), point (h)
Article 3(1), point (e)	Article 3(1), point (j)	Article 3(1), point (i)
Article 3(1), point (g)	Article 3(1), point (i)	Article 3(1), point (j)
—	—	Article 3(1), points (k), (l) and (m)
—	Article 3(1), point (k)	Article 3(1), point (n)
Article 3(2)	Article 3(2)	Article 3(2)
Article 4, first paragraph	Article 4, first paragraph	Article 4(1), introductory wording and points (a) and (b)
—	—	Article 4(1), point (c)
—	Article 4, second paragraph	Article 4(2)
Article 4, second paragraph	Article 4, third paragraph	Article 4(3)
Article 5	Article 5	—
Article 5a	—	Article 5
Article 6	Article 6	—
Article 7(1)	Article 7(1)	Article 6(1)
Article 7(2), points (a), (b) and (c)	Article 7(2), points (a), (b) and (c)	Article 6(2), points (a), (b) and (c)
—	—	Article 6(2), point (d)
Article 7(3)	Article 7(3)	Article 6(3)
Article 7(4)	Article 7(4)	Article 6(4)
Article 7(5)	Article 7(5)	Article 6(5)
Article 7(6)	Article 7(6)	Article 6(6)

Regulation (EC) No 443/2009	Regulation (EU) No 510/2011	This Regulation
Article 7(7)	Article 7(7)	Article 6(7)
Article 8(1)	Article 8(1)	Article 7(1)
Article 8(2)	Article 8(2)	Article 7(2)
Article 8(3)	Article 8(3)	Article 7(3)
Article 8(4), first and second subparagraphs	Article 8(4), first and second subparagraphs	Article 7(4), first and second subparagraphs
Article 8(4), third subparagraph	Article 8(4), first subparagraph	Article 7(4), third subparagraph
Article 8(5), first subparagraph	Article 8(5)	Article 7(5) first subparagraph
Article 8(5), second subparagraph	Article 8(6)	Article 7(5), second subparagraph
Article 8(6)	Article 8(7)	—
Article 8(7)	Article 8(8)	Article 7(6), first subparagraph
—	—	Article 7(6), second subparagraph
Article 8(8)	—	—
Article 8(9), first subparagraph	Article 8(9), first subparagraph	Article 7(7)
Article 8(9), second subparagraph	Article 8(9), second subparagraph	Article 7(8)
—	—	Article 7(9)
—	—	Article 7(10)
—	Article 8(10)	Article 7(11)
Article 9(1)	Article 9(1)	Article 8(1)
Article 9(2), first subparagraph, introductory wording	Article 9(2), first subparagraph, introductory wording	Article 8(2), first subparagraph, first part
Article 9(2), first subparagraph, point (a)	Article 9(2), first subparagraph, point (a)	—
Article 9(2), first subparagraph, point (b)	Article 9(2), first subparagraph, point (b)	Article 8(2), first subparagraph, second part
Article 9(2), second subparagraph	Article 9(2), second subparagraph	Article 8(2), second subparagraph
Article 9(3)	Article 9(3)	Article 8(3)
Article 9(4)	Article 9(4)	Article 8(4)
Article 10(1), introductory wording	Article 10(1), introductory wording	Article 9(1), introductory wording
Article 10(1), points (a) to (e)	Article 10(1), points (a) to (e)	Article 9(1), points (a) to (e)
—	—	Article 9(1), point (f)
Article 10(2)	Article 10(2)	Article 9(2)
—	—	Article 9(3)
Article 11(1)	Article 11(1)	Article 10(1)
Article 11(2)	Article 11(2)	Article 10(2)
Article 11(3)	Article 11(3)	Article 10(3), first subparagraph
—	—	Article 10(3), second subparagraph
Article 11(4), first subparagraph	—	Article 10(4), first subparagraph

Regulation (EC) No 443/2009	Regulation (EU) No 510/2011	This Regulation
Article 11(4), second subparagraph, introductory wording	—	Article 10(4), second subparagraph, introductory wording
Article 11(4), second subparagraph, point (a)	—	Article 10(4), second subparagraph, point (a)
Article 11(4), second subparagraph, point (b)	—	—
Article 11(4), second subparagraph, point (c)	—	Article 10(4), second subparagraph, point (b)
—	—	Article 10(4), second subparagraph, point (c)
Article 11(4), third and fourth subparagraphs	—	Article 10(4), third and fourth subparagraphs
Article 11(5)	Article 11(4)	Article 10(5)
Article 11(6)	Article 11(5)	Article 10(6)
Article 11(7)	Article 11(6)	Article 10(7)
Article 11(8)	Article 11(7)	Article 10(8)
Article 11(9)	Article 11(8)	Article 10(9)
Article 12(1), first subparagraph	Article 12(1), first subparagraph	Article 11(1), first subparagraph
Article 12(1), second subparagraph	—	Article 11(1), second subparagraph
Article 12(1), third subparagraph	Article 12(1), second subparagraph	Article 11(1), third subparagraph
—	—	Article 11(1), fourth subparagraph
Article 12(2)	Article 12(2)	Article 11(2), introductory wording, points (a), (b) and (c) and point (d), first part
—	—	Article 11(2), point (d), last part
Article 12(3)	Article 12(3)	Article 11(3)
Article 12(4)	Article 12(4)	Article 11(4)
—	—	Article 12
—	—	Article 13
Article 13(1)	—	—
—	Article 13(1)	—
—	—	Article 14, title
—	—	Article 14(1), first subparagraph, introductory wording
Article 13(2), first and second subparagraphs	—	Article 14(1) point (a)
—	Article 13(5)	Article 14(1), point (b)
		Article 14(1), points (c) and (d)

Regulation (EC) No 443/2009	Regulation (EU) No 510/2011	This Regulation
Article 13(2), third subparagraph	Article 13(5)	Article 14(2)
—	—	Article 15(1)
—	—	Article 15(2)
—	—	Article 15(3)
—	Article 13(2)	—
—	—	Article 15(4), first part
Article 13(3)	Article 13(6), first subparagraph	Article 15(4), second part
—	Article 13(4)	—
Article 13(4)	Article 13(6), second subparagraph	—
Article 13(5)	—	—
Article 13(6)	Article 13(3)	—
—	—	Article 15(5)
—	—	Article 15(6)
Article 13(7), first subparagraph	Article 13(6), third subparagraph	Article 15(7)
Article 13(7), second subparagraph	Article 13(6), fourth subparagraph	Article 15(8)
Article 14(1)	Article 14(1)	Article 16(1)
Article 14(2)	Article 14(2)	Article 16(2)
Article 14(3)	Article 14(2a)	Article 16(3)
Article 14a(1)	Article 15(3)	Article 17(1)
Article 14a(2)	Article 15(1)	Article 17(2)
Article 14a(3)	Article 16	Article 17(3)
Article 14a(4)	Article 15(2)	Article 17(4)
Article 14a(5)	Article 17	Article 17(5)
Article 15	—	—
—	—	Article 18
Article 16	Article 18	Article 19
Annex I	—	Annex I, part A, points 1 to 5
—	—	Annex I, part A, point 6
—	Annex I	Annex I, part B, points 1 to 5
—	—	Annex I, part B, point 6
Annex II, part A	—	Annex II, part A
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Annex II, part C	—	Annex II, part B
—	Annex II	Annex III
—	—	Annex IV
—	—	Annex V

**REGULATION (EU) 2019/632 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 17 April 2019**

**amending Regulation (EU) No 952/2013 to prolong the transitional use of means other than the  
electronic data-processing techniques provided for in the Union Customs Code**

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 33 and Article 207 thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure <sup>(1)</sup>,

Whereas:

- (1) Under Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code <sup>(2)</sup> ('the Code'), all exchanges of information between customs authorities and between economic operators and customs authorities, and the storage of such information, are to be made using electronic data-processing techniques.
- (2) However, the Code allows for the use of means of exchange and storage of information other than the electronic data-processing techniques referred to in Article 6(1) thereof during a transitional period, to the extent that the electronic systems necessary for the application of the provisions of the Code are not yet operational. That transitional period must end by 31 December 2020 at the latest.
- (3) In accordance with the Code, Member States are to cooperate with the Commission to develop, maintain and employ electronic systems for the exchange and the storage of customs information and the Commission is to draw up a work programme relating to the development and deployment of those electronic systems.
- (4) The Work Programme was established by Commission Implementing Decision (EU) 2016/578 <sup>(3)</sup>. It contains a list of 17 electronic systems that must be developed for the application of the Code, either by the Member States alone (in the case of systems to be managed at national level — 'national systems') or by the Member States and the Commission in close collaboration (in the case of Union-wide systems, some of which consist both of Union-wide components and national components — 'trans-European systems').
- (5) The Work Programme sets out the planning schedule for the implementation of those national and trans-European systems.
- (6) The shift to a complete use of electronic systems for interactions between economic operators and customs authorities, and between customs authorities, will enable the simplifications provided for in the Code to take full effect, resulting in improved exchange of information between actors, more effective registration of the arrival, transit and exit of goods, centralised customs clearance, and harmonised customs controls throughout the customs territory of the Union, thereby reducing administrative costs, red tape, errors and fraud in customs declarations, and import point shopping.
- (7) Setting up electronic systems requires the Commission and the Member States to harmonise the data elements on the basis of internationally accepted data models, as required by the Code, to make investments, both in financial

<sup>(1)</sup> Position of the European Parliament of 13 March 2019 (not yet published in the Official Journal) and decision of the Council of 9 April 2019.

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

<sup>(3)</sup> Commission Implementing Decision (EU) 2016/578 of 11 April 2016 establishing the Work Programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code (OJ L 99, 15.4.2016, p. 6).



terms and in terms of time, and, in some cases, to fully reprogramme existing electronic systems. Member States have scheduled the development of those electronic systems differently, which has led to differences in the timing of implementation of those systems across the Union. As the electronic systems are closely interlinked, introducing them in the right order is important. Delays in the development of one system will therefore unavoidably lead to delays in the development of others. The Code (including the end date for transitional measures on 31 December 2020) was adopted in 2013, but the rules supplementing and implementing it, namely Commission Delegated Regulation (EU) 2015/2446 <sup>(4)</sup>, Commission Implementing Regulation (EU) 2015/2447 <sup>(5)</sup> and Commission Delegated Regulation (EU) 2016/341 <sup>(6)</sup>, were only published in 2015 and 2016. This has caused a delay in setting out the functional and technical specifications necessary for the development of the electronic systems.

- (8) Although Article 278 of the Code set a single deadline of 31 December 2020 for the deployment of all the systems referred to in that Article, and despite the efforts made by the Union and some of the Member States at budgetary and operational levels to complete the work within the time limit given, it has become evident that some systems can only be partially deployed by that date. This implies that some pre-existing systems will need to continue in use beyond that date. In the absence of legislative amendments extending that deadline, companies and customs authorities will be unable to perform their duties and legal obligations as regards customs operations.
- (9) Work should continue after 31 December 2020 on three groups of systems. The first group consists of the national electronic systems concerned with notifications of arrival, presentation, declarations of temporary storage and customs declarations for goods brought into the customs territory of the Union (including the special procedures, with the exception of outward processing) that must be upgraded or constructed in order to take account of certain requirements of the Code, such as the harmonisation of the requirements on data to be entered into those systems. The second group consists of existing electronic systems that must be upgraded to take account of certain requirements of the Code, such as the harmonisation of the requirements on data to be entered into the systems. This group consists of three trans-European systems (the system dealing with entry summary declarations, the system dealing with external and internal transit, and the system dealing with goods taken out of the customs territory of the Union) as well as the National Export System (including the export component of the national Special Procedures System). The third group consists of three new trans-European electronic systems (the systems concerning guarantees for potential or existing customs debts, the customs status of goods, and centralised clearance). The Commission, in partnership with the Member States, has drawn up a detailed timetable with a view to deploying those systems over the period up to the end of 2025.
- (10) In line with the new planning for the development of the electronic systems, the period laid down in the Code during which means for the exchange and storage of information, other than the electronic data-processing techniques referred to in Article 6(1) thereof, may be used on a transitional basis, should be extended to 2022 as regards the first group and to 2025 as regards the second and third groups of electronic systems.
- (11) With regard to the other systems to be set up for the purposes of implementing the Code, the general end date of 31 December 2020 for the use of means for the exchange and storage of information other than the electronic data-processing techniques referred to in Article 6(1) thereof should continue to apply.
- (12) In order to enable the European Parliament and the Council to monitor the deployment of all the electronic systems necessary for the application of the provisions of the Code referred to in Article 278 thereof, the Commission should regularly report on the progress made and on the attainment of interim objectives within the planned schedule. The Member States should provide the appropriate information to the Commission for this purpose twice a year. Once all electronic systems are operational, the Commission should assess whether those systems are fit for purpose through a fitness check to be launched within one year of the first date on which those systems are all operational.
- (13) The Code should therefore be amended accordingly,

<sup>(4)</sup> Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

<sup>(5)</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

<sup>(6)</sup> Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446 (OJ L 69, 15.3.2016, p. 1).

HAVE ADOPTED THIS REGULATION:

*Article 1*

**Amendments to Regulation (EU) No 952/2013**

Regulation (EU) No 952/2013 is amended as follows:

(1) Article 278 is replaced by the following:

*‘Article 278*

**Transitional measures**

1. Until 31 December 2020 at the latest, means for the exchange and storage of information, other than the electronic data-processing techniques referred to in Article 6(1), may be used on a transitional basis where the electronic systems which are necessary for the application of the provisions of the Code other than those referred to in paragraphs 2 and 3 of this Article are not yet operational.

2. Until 31 December 2022 at the latest, means other than the electronic data-processing techniques referred to in Article 6(1) may be used on a transitional basis, where the electronic systems which are necessary for the application of the following provisions of the Code are not yet operational:

- (a) the provisions on the notification of arrival, on presentation and on declarations of temporary storage laid down in Articles 133, 139, 145 and 146; and
- (b) the provisions related to the customs declaration for goods brought into the customs territory of the Union laid down in Articles 158, 162, 163, 166, 167, 170 to 174, 201, 240, 250, 254 and 256.

3. Until 31 December 2025 at the latest, means other than the electronic data-processing techniques referred to in Article 6(1) may be used on a transitional basis, where the electronic systems which are necessary for the application of the following provisions of the Code are not yet operational:

- (a) the provisions on guarantees for potential or existing customs debts laid down in point (b) of Article 89(2) and Article 89(6);
- (b) the provisions on entry summary declarations and risk analysis laid down in Articles 46, 47, 127, 128 and 129;
- (c) the provisions on the customs status of goods laid down in Article 153(2);
- (d) the provisions on centralised clearance laid down in Article 179;
- (e) the provisions on transit laid down in point (a) of Article 210, Article 215(2) and Articles 226, 227, 233 and 234; and
- (f) the provisions on outward processing, pre-departure declarations, formalities on exit of goods, export of Union goods, re-export of non-Union goods and exit summary declarations for taking goods out of the customs territory of the Union laid down in Articles 258, 259, 263, 267, 269, 270, 271, 272, 274 and 275.’;

(2) the following Article is inserted:

*‘Article 278a*

**Reporting obligations**

1. By 31 December 2019 and every year thereafter until the date on which the electronic systems referred to in Article 278 become fully operational, the Commission shall submit an annual report to the European Parliament and to the Council on progress in developing those electronic systems.

2. The annual report shall assess the progress of the Commission and the Member States in developing each of the electronic systems, taking particular account of the following milestones:

- (a) the date of publication of the technical specifications for the external communication of the electronic system;
- (b) the period of conformance testing with economic operators; and
- (c) the expected and actual dates of deployment of the electronic systems.

3. If the assessment shows that the progress is not satisfactory, the report shall also describe the mitigating actions to be taken to ensure the deployment of the electronic systems before the end of the applicable transitional period.

4. The Member States shall provide the Commission, twice per year, with an updated table on their own progress in developing and deploying the electronic systems. The Commission shall publish such updated information on its website.;

(3) Article 279 is replaced by the following:

*'Article 279*

#### **Delegation of power**

The Commission shall be empowered to adopt delegated acts in accordance with Article 284 specifying the rules on the exchange and storage of data in the situations referred to in Article 278.'

#### *Article 2*

#### **Entry into force**

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

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

Done at Strasbourg, 17 April 2019.

*For the European Parliament*

*The President*

A. TAJANI

*For the Council*

*The President*

G. CIAMBA

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**Joint statement by the European Parliament and the Council**

The European Parliament and the Council welcome the European Court of Auditors' Special Report No 26/2018 entitled 'A series of delays in Customs IT systems: what went wrong?' and other recent relevant reports in the area of customs, which have given the co-legislators a better overview of the causes for the delays in the implementation of the IT systems necessary for improving customs operations in the EU.

The European Parliament and the Council consider that any future audit by the European Court of Auditors assessing the reports prepared by the Commission on the basis of Article 278a of the Union Customs Code could positively contribute to the avoidance of further delays.

The European Parliament and the Council call on the Commission and the Member States to take full account of such audits.

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# DIRECTIVES

## DIRECTIVE (EU) 2019/633 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2019

### on unfair trading practices in business-to-business relationships in the agricultural and food supply chain

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 43(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) Within the agricultural and food supply chain, significant imbalances in bargaining power between suppliers and buyers of agricultural and food products are a common occurrence. Those imbalances in bargaining power are likely to lead to unfair trading practices when larger and more powerful trading partners seek to impose certain practices or contractual arrangements which are to their advantage in relation to a sales transaction. Such practices may, for example: grossly deviate from good commercial conduct, be contrary to good faith and fair dealing and be unilaterally imposed by one trading partner on the other; impose an unjustified and disproportionate transfer of economic risk from one trading partner to another; or impose a significant imbalance of rights and obligations on one trading partner. Certain practices might be manifestly unfair even when both parties agree to them. A minimum Union standard of protection against unfair trading practices should be introduced to reduce the occurrence of such practices which are likely to have a negative impact on the living standards of the agricultural community. The minimum harmonisation approach in this Directive allows Member States to adopt or maintain national rules which go beyond the unfair trading practices listed in this Directive.
- (2) Three Commission publications since 2009 (the communication of the Commission of 28 October 2009 on a better functioning of the food supply chain in Europe, the communication of the Commission of 15 July 2014 on tackling unfair trading practices in the business-to-business food supply chain, and the report of the Commission of 29 January 2016 on unfair business-to-business trading practices in the food supply chain) have focused on the working of the food supply chain, including the occurrence of unfair trading practices. The Commission suggested desirable features for national and voluntary governance frameworks for dealing with unfair trading practices in the food supply chain. Not all of those features have become part of the legal framework or voluntary governance regimes in Member States, leaving the occurrence of such practices still the focus of the political debate in the Union.
- (3) In 2011, the Commission-led High Level Forum for a Better Functioning Food Supply Chain endorsed a set of principles of good practice in vertical relations in the food supply chain, which was agreed by organisations representing a majority of the operators in the food supply chain. Those principles became the basis for the Supply Chain Initiative launched in 2013.

<sup>(1)</sup> OJ C 440, 6.12.2018, p. 165.

<sup>(2)</sup> OJ C 387, 25.10.2018, p. 48.

<sup>(3)</sup> Position of the European Parliament of 12 March 2019 (not yet published in the Official Journal) and decision of the Council of 9 April 2019.

- (4) The European Parliament, in its resolution of 7 June 2016 on unfair trading practices in the food supply chain <sup>(4)</sup>, invited the Commission to submit a proposal for a Union legal framework concerning unfair trading practices. The Council, in its conclusions of 12 December 2016 on Strengthening farmers' position in the food supply chain and tackling unfair trading practices, invited the Commission to undertake, in a timely manner, an impact assessment with a view to proposing a Union legislative framework or non-legislative measures to address unfair trading practices. An impact assessment was prepared by the Commission, which was preceded by an open public consultation as well as targeted consultations. In addition, during the legislative process the Commission provided information demonstrating that large operators represent a considerable share of the overall value of production.
- (5) Different operators are active in the agricultural and food supply chain at different stages of the production, processing, marketing, distribution and retail of agricultural and food products. That chain is by far the most important channel for bringing agricultural and food products from 'farm to fork'. Those operators trade agricultural and food products, that is to say primary agricultural products, including fishery and aquaculture products, as listed in Annex I to the Treaty on the Functioning of the European Union (TFEU), and products not listed in that Annex but processed for use as food using products listed in that Annex.
- (6) While business risk is inherent in all economic activity, agricultural production is particularly fraught with uncertainty due to its reliance on biological processes and its exposure to weather conditions. That uncertainty is compounded by the fact that agricultural and food products are to a greater or lesser extent perishable and seasonal. In an agricultural policy environment that is distinctly more market-oriented than in the past, protection against unfair trading practices has become more important for operators active in the agricultural and food supply chain.
- (7) In particular, such unfair trading practices are likely to have a negative impact on the living standards of the agricultural community. That impact is understood to be either direct, as it concerns agricultural producers and their organisations as suppliers, or indirect, through a cascading of the consequences of the unfair trading practices occurring in the agricultural and food supply chain in a manner that negatively affects the primary producers in that chain.
- (8) A majority of Member States, but not all of them, have specific national rules that protect suppliers against unfair trading practices occurring in business-to-business relationships in the agricultural and food supply chain. Where reliance on contract law or self-regulatory initiatives is possible, fear of commercial retaliation against a complainant, as well as financial risks involved in challenging such practices, limit the practical value of those forms of redress. Certain Member States which have specific rules on unfair trading practices therefore entrust the enforcement of such rules to administrative authorities. However, Member States' unfair trading practices rules — to the extent they exist — are characterised by significant divergence.
- (9) The number and size of operators vary across the different stages of the agricultural and food supply chain. Differences in bargaining power, which correspond to the economic dependence of the supplier on the buyer, are likely to lead to larger operators imposing unfair trading practices on smaller operators. A dynamic approach, which is based on the relative size of the supplier and the buyer in terms of annual turnover, should provide better protection against unfair trading practices for those operators who need it most. Unfair trading practices are particularly harmful for small and medium-sized enterprises (SMEs) in the agricultural and food supply chain. Enterprises larger than SMEs but with an annual turnover not exceeding EUR 350 000 000 should also be protected against unfair trading practices to avoid the costs of such practices being passed on to agricultural producers. The cascading effect on agricultural producers appears to be particularly significant for enterprises with an annual turnover of up to EUR 350 000 000. The protection of intermediary suppliers of agricultural and food products, including processed products, can also serve to avoid the diversion of trade away from agricultural producers and their associations which produce processed products to non-protected suppliers.
- (10) The protection provided by this Directive should benefit agricultural producers and natural or legal persons that supply agricultural and food products, including producer organisations, whether recognised or not, and associations of producer organisations, whether recognised or not, subject to their relative bargaining power. Those producer organisations and associations of producer organisations include cooperatives. Those producers

<sup>(4)</sup> OJ C 86, 6.3.2018, p. 40.

and persons are particularly vulnerable to unfair trading practices and least able to weather them without negative effects on their economic viability. As regards the categories of suppliers that should be protected under this Directive, it is noteworthy that a significant proportion of farmer-constituted cooperatives are enterprises larger than SMEs but with an annual turnover not exceeding EUR 350 000 000.

- (11) This Directive should cover commercial transactions irrespective of whether they are carried out between enterprises or between enterprises and public authorities, given that public authorities, when buying agricultural and food products, should be held to the same standards. This Directive should apply to all public authorities acting as buyers.
- (12) Suppliers in the Union should be protected not only against unfair trading practices by buyers that are established in the same Member State as the supplier or in a different Member State than the supplier, but also against unfair trading practices by buyers established outside the Union. Such protection would avoid possible unintended consequences, such as choosing the place of establishment on the basis of applicable rules. Suppliers established outside the Union should also enjoy protection against unfair trading practices when they sell agricultural and food products into the Union. Not only are such suppliers liable to be equally vulnerable to unfair trading practices, but a broader scope could also avoid the unintended diversion of trade towards non-protected suppliers, which would undermine the protection of suppliers in the Union.
- (13) Certain services that are ancillary to the sale of agricultural and food products should be included in the scope of this Directive.
- (14) This Directive should apply to the business conduct of larger operators towards operators who have less bargaining power. A suitable approximation for relative bargaining power is the annual turnover of the different operators. While being an approximation, this criterion gives operators predictability concerning their rights and obligations under this Directive. An upper limit should prevent protection from being afforded to operators who are not vulnerable or are significantly less vulnerable than their smaller partners or competitors. Therefore, this Directive establishes turnover-based categories of operators according to which protection is afforded.
- (15) As unfair trading practices may occur at any stage of the sale of an agricultural or food product, before, during or after a sales transaction, Member States should ensure that this Directive applies to such practices whenever they occur.
- (16) When deciding whether a particular trading practice is considered unfair, it is important to reduce the risk of limiting the use of fair and efficiency-creating agreements agreed between parties. Therefore, it is appropriate to distinguish between practices that are provided for in clear and unambiguous terms in supply agreements or in subsequent agreements between parties and practices that occur after the transaction has started without having been agreed beforehand, so that only unilateral and retrospective changes to those clear and unambiguous terms of the supply agreement are prohibited. However, certain trading practices are considered as unfair by their very nature and should not be subject to the parties' contractual freedom.
- (17) Late payments for agricultural and food products, including late payments for perishable products, and short notice cancellations of orders of perishable products impact negatively on the economic viability of the supplier, without providing off-setting benefits. Such practices should therefore be prohibited. In that context, it is appropriate to provide for a definition of perishable agricultural and food products for the purposes of this Directive. The definitions used in Union acts relating to food law relate to different objectives, such as health and food safety, and are therefore not appropriate for the purposes of this Directive. A product should be considered perishable if it can be expected to become unfit for sale within 30 days from the last act of harvesting, production or processing by the supplier, regardless of whether the product is further processed after sale, and regardless of whether the product is handled after sale in accordance with other rules, in particular food safety rules. Perishable products are normally used or sold quickly. Payments for perishable products that are made later than 30 days after delivery, 30 days after the end of an agreed delivery period where products are delivered on a regular basis, or 30 days after the date on which the amount payable is set, are not compatible with fair trading. In order to provide increased protection to farmers and their liquidity, suppliers of other agricultural and food products should not have to wait for payment longer than 60 days after delivery, 60 days after the end of an agreed delivery period where products are delivered on a regular basis, or 60 days after the date on which the amount payable is set.

Those limitations should only apply to payments related to the sale of agricultural and food products, and not to other payments such as supplementary payments by a cooperative to its members. In accordance with Directive 2011/7/EU of the European Parliament and of the Council <sup>(5)</sup>, it should also be possible to consider the date on which the amount payable for an agreed delivery period is set, for the purposes of this Directive, as the date of the issuance of the invoice or the date of its receipt by the buyer.

- (18) The late payment provisions laid down in this Directive constitute specific rules for the agricultural and food sector in relation to the provisions on the payment periods set out in Directive 2011/7/EU. The late payment provisions laid down in this Directive should not affect agreements concerning value-sharing clauses within the meaning of Article 172a of Regulation (EU) No 1308/2013 of the European Parliament and of the Council <sup>(6)</sup>. In order to safeguard the smooth functioning of the school scheme pursuant to Article 23 of Regulation (EU) No 1308/2013, the late payment provisions laid down in this Directive should not apply to payments made by a buyer (i.e. aid applicant) to a supplier in the framework of the school scheme. Taking into account the challenges for public entities providing healthcare to prioritise healthcare in a way that balances the needs of individual patients with the financial resources, these provisions should also not apply to public entities providing healthcare within the meaning of point (b) of Article 4(4) of Directive 2011/7/EU.
- (19) Grapes and must for wine production have special characteristics, because grapes are harvested only during a very limited period of the year, but are used to produce wine which in some cases will only be sold many years later. In order to cater for that special situation, producer organisations and interbranch organisations have traditionally developed standard contracts for the supply of such products. Such standard contracts provide for specific payment deadlines with instalments. As those standard contracts are used by suppliers and buyers for multiannual arrangements, they not only provide agricultural producers with the security of longstanding sales relations, but also contribute to the stability of the supply chain. Where such standard contracts have been drawn up by a recognised producer organisation, interbranch organisation or association of producer organisations and been made binding by a Member State under Article 164 of Regulation (EU) No 1308/2013 ('extension') before 1 January 2019, or where the extension of the standard contracts is renewed by a Member State without any significant changes to the payment terms to the disadvantage of suppliers of grapes and must, the late payment provisions laid down in this Directive should not apply to such contracts between suppliers of grapes and must for wine production and their direct buyers. Member States are required to notify the respective agreements of recognised producer organisations, interbranch organisations and associations of producer organisations to the Commission under Article 164(6) of Regulation (EU) No 1308/2013.
- (20) Notices of cancellation for perishable products of less than 30 days should be considered unfair, as the supplier would not be in a position to find an alternative outlet for those products. However, for products in certain sectors, even shorter cancellation periods might still leave sufficient time for suppliers to sell the products elsewhere or to use them themselves. Member States should therefore be allowed to provide for shorter cancellation periods for such sectors in duly justified cases.
- (21) Stronger buyers should not change agreed contract terms unilaterally, e.g. by delisting products covered by a supply agreement. However, this should not apply in situations in which there is an agreement between a supplier and a buyer that specifically stipulates that the buyer can specify a concrete element of the transaction at a later stage in respect of future orders. This could for instance relate to the quantities ordered. An agreement is not necessarily concluded at one point in time for all aspects of the transaction between the supplier and the buyer.
- (22) Suppliers and buyers of agricultural and food products should be able to freely negotiate sales transactions, including prices. Such negotiations also include payments for services provided by the buyer to the supplier, such as listing, marketing and promotion. However, where a buyer charges a supplier payments which are not related to a specific sales transaction, this should be considered unfair and should be prohibited under this Directive.
- (23) While there should be no obligation to use written contracts, the use of written contracts in the agricultural and food supply chain may help to avoid certain unfair trading practices. Therefore, and in order to protect suppliers

<sup>(5)</sup> Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ L 48, 23.2.2011, p. 1).

<sup>(6)</sup> Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).



from those unfair practices, suppliers or their associations should have the right to request written confirmation of the terms of a supply agreement where those terms have already been agreed. In such cases, the refusal by a buyer to confirm in writing the terms of the supply agreement should be considered as an unfair trading practice and should be prohibited. In addition, Member States might identify, share and promote best practices concerning the conclusion of long-term contracts aimed at strengthening the bargaining position of producers within the agricultural and food supply chain.

- (24) This Directive does not harmonise the rules on the burden of proof to be applied in proceedings before the national enforcement authorities, nor does it harmonise the definition of supply agreements. Therefore, the rules on the burden of proof and the definition of supply agreements are those laid down by the national law of Member States.
- (25) Under this Directive, suppliers should be able to file complaints against certain unfair trading practices. Commercial retaliation by buyers against suppliers who exercise their rights, or the threat thereof, e.g. by delisting products, reducing the quantities of products ordered or stopping certain services which the buyer provides to the supplier such as marketing or promotions on the suppliers' products, should be prohibited and treated as an unfair trading practice.
- (26) The costs of stocking, displaying or listing agricultural and food products, or of making such products available on the market, are normally borne by the buyer. As a consequence, it should be prohibited under this Directive for a supplier to be charged payment, to be made either to the buyer or to a third party for those services, unless the payment has been agreed in clear and unambiguous terms at the conclusion of the supply agreement or in a subsequent agreement between the buyer and the supplier. Where such a payment is agreed, it should be based on objective and reasonable estimates.
- (27) For contributions by a supplier to the costs of the promotion, marketing or advertising of agricultural and food products, including promotional displays in stores and sales campaigns, to be considered fair, they should be agreed in clear and unambiguous terms at the conclusion of the supply agreement or in a subsequent agreement between the buyer and the supplier. Otherwise, they should be prohibited under this Directive. Where such a contribution is agreed, it should be based on objective and reasonable estimates.
- (28) Member States should designate enforcement authorities to ensure the effective enforcement of the prohibitions laid down in this Directive. Those authorities should be able to act either on their own initiative or on the basis of complaints by parties affected by unfair trading practices in the agricultural and food supply chain, complaints by whistle-blowers, or anonymous complaints. An enforcement authority might find that there are not sufficient grounds to act on a complaint. Administrative priorities might also lead to such a finding. If the enforcement authority finds that it will not be able to give priority to a complaint, it should inform the complainant and give the reasons therefor. Where a complainant requests that its identity remain confidential because of fear of commercial retaliation, the enforcement authorities of the Member States should take appropriate measures.
- (29) If a Member State has more than one enforcement authority, it should designate a single contact point with a view to facilitating effective cooperation among the enforcement authorities and cooperation with the Commission.
- (30) Suppliers might find it easier to address complaints to the enforcement authority of their own Member State, e.g. for linguistic reasons. However, in terms of enforcement, filing a complaint with the enforcement authority of the Member State in which the buyer is established might be more effective. Suppliers should be given a choice as to the authority to which they address complaints.
- (31) Complaints by producer organisations, other organisations of suppliers and associations of such organisations, including representative organisations, can serve to protect the identities of individual members of the organisation who consider that they are affected by unfair trading practices. Other organisations that have a legitimate interest in representing suppliers should also have the right to submit complaints at the request of a supplier and in the interest of that supplier, provided that such organisations are independent non-profit-making legal persons. The enforcement authorities of the Member States should therefore be able to accept and act upon complaints by such entities, while protecting the procedural rights of the buyer.
- (32) In order to ensure the effective enforcement of the prohibition of unfair trading practices, the designated enforcement authorities should have the necessary resources and expertise.

- (33) The enforcement authorities of the Member States should have the necessary powers and expertise to conduct investigations. The empowerment of those authorities does not mean that they are obliged to use those powers in each investigation that they conduct. The powers of the enforcement authorities should, for example, enable them to effectively gather factual information, and the enforcement authorities should have the power to order the termination of a prohibited practice, where applicable.
- (34) The existence of a deterrent, such as the power to impose, or initiate proceedings, e.g. court proceedings, for the imposition of, fines and other equally effective penalties, and to publish investigation results, including the publication of information relating to buyers that have committed infringements, can encourage behavioural changes and pre-litigation solutions between the parties, and should therefore be part of the powers of the enforcement authorities. Fines may be particularly effective and dissuasive. However, the enforcement authority should be able to decide in each investigation which of its powers it will exercise and whether it will impose, or initiate proceedings for the imposition of, a fine or another equally effective penalty.
- (35) The exercise of the powers conferred on enforcement authorities pursuant to this Directive should be subject to appropriate safeguards which meet the standards of the general principles of Union law and the Charter of Fundamental Rights of the European Union, in accordance with the case-law of the Court of Justice of the European Union, including the respect of the buyer's rights of defence.
- (36) The Commission and the enforcement authorities of the Member States should cooperate closely to ensure a common approach with respect to the application of the rules set out in this Directive. In particular, the enforcement authorities should provide each other with mutual assistance, for example by sharing information and assisting in investigations that have a cross-border dimension.
- (37) To facilitate effective enforcement, the Commission should help organise regular meetings between the enforcement authorities of the Member States at which relevant information, best practices, new developments, enforcement practices and recommendations with regard to the application of the provisions laid down in this Directive can be shared.
- (38) To facilitate those exchanges, the Commission should establish a public website which contains references to the national enforcement authorities including information on the national measures that transpose this Directive.
- (39) As a majority of Member States already have national rules on unfair trading practices, albeit diverging rules, it is appropriate to use a Directive to introduce a minimum standard of protection under Union law. This should enable Member States to integrate the relevant rules into their national legal order in such a way as to enable cohesive regimes to be established. Member States should not be precluded from maintaining or introducing in their territory stricter national rules that provide for a higher level of protection against unfair trading practices in business-to-business relationships in the agricultural and food supply chain, subject to the limits of Union law applicable to the functioning of the internal market, provided that such rules are proportionate.
- (40) Member States should also be able to maintain or introduce national rules designed to combat unfair trading practices that are not within the scope of this Directive, subject to the limits of Union law applicable to the functioning of the internal market, provided that such rules are proportionate. Such national rules could go beyond this Directive, for example as regards the size of the buyers and suppliers, protection of buyers, the scope of products and the scope of services. Such national rules could also go beyond the number and type of prohibited unfair trading practices listed in this Directive.
- (41) Such national rules would apply alongside voluntary governance measures, such as national codes of conduct or the Supply Chain Initiative. The use of voluntary alternative dispute resolution between suppliers and buyers should be explicitly encouraged, without prejudice to the right of the supplier to submit complaints or turn to civil law courts.
- (42) The Commission should have an overview of the implementation of this Directive in the Member States. In addition, the Commission should be able to assess the effectiveness of this Directive. To that end, the enforcement authorities of the Member States should submit annual reports to the Commission. Those reports should, where applicable, provide quantitative and qualitative information on complaints, investigations and

decisions taken. In order to ensure uniform conditions for the implementation of the reporting obligation, 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 <sup>(7)</sup>.

- (43) In the interest of an effective implementation of the policy in respect of unfair trading practices in business-to-business relationships in the agricultural and food supply chain, the Commission should review the application of this Directive and submit a report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. That review should assess, in particular, the effectiveness of national measures aimed at combating unfair trading practices in the agricultural and food supply chain and the effectiveness of cooperation among enforcement authorities. The review should also pay particular attention to whether the protection of buyers of agricultural and food products in the supply chain – in addition to the protection of suppliers – in the future would be justified. The report should be accompanied, if appropriate, by legislative proposals.
- (44) Since the objective of this Directive, namely the laying down of a minimum Union standard of protection by harmonising Member States' diverging measures relating to unfair trading practices, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

### **Subject matter and scope**

1. With a view to combating practices that grossly deviate from good commercial conduct, that are contrary to good faith and fair dealing and that are unilaterally imposed by one trading partner on another, this Directive establishes a minimum list of prohibited unfair trading practices in relations between buyers and suppliers in the agricultural and food supply chain and lays down minimum rules concerning the enforcement of those prohibitions and arrangements for coordination between enforcement authorities.
2. This Directive applies to certain unfair trading practices which occur in relation to sales of agricultural and food products by:
  - (a) suppliers which have an annual turnover not exceeding EUR 2 000 000 to buyers which have an annual turnover of more than EUR 2 000 000;
  - (b) suppliers which have an annual turnover of more than EUR 2 000 000 and not exceeding EUR 10 000 000 to buyers which have an annual turnover of more than EUR 10 000 000;
  - (c) suppliers which have an annual turnover of more than EUR 10 000 000 and not exceeding EUR 50 000 000 to buyers which have an annual turnover of more than EUR 50 000 000;
  - (d) suppliers which have an annual turnover of more than EUR 50 000 000 and not exceeding EUR 150 000 000 to buyers which have an annual turnover of more than EUR 150 000 000;
  - (e) suppliers which have an annual turnover of more than EUR 150 000 000 and not exceeding EUR 350 000 000 to buyers which have an annual turnover of more than EUR 350 000 000.

The annual turnover of the suppliers and buyers referred to in points (a) to (e) of the first subparagraph shall be understood in accordance with the relevant parts of the Annex to Commission Recommendation 2003/361/EC <sup>(8)</sup> and in particular Articles 3, 4 and 6 thereof, including the definitions of 'autonomous enterprise', 'partner enterprise' and 'linked enterprise', and other issues relating to the annual turnover.

<sup>(7)</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).

<sup>(8)</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).

By way of derogation from the first subparagraph, this Directive applies in relation to sales of agricultural and food products by suppliers which have an annual turnover not exceeding EUR 350 000 000 to all buyers which are public authorities.

This Directive applies to sales where either the supplier or the buyer, or both, are established in the Union.

This Directive also applies to services, insofar as explicitly referred to in Article 3, provided by the buyer to the supplier.

This Directive does not apply to agreements between suppliers and consumers.

3. This Directive applies to supply agreements concluded after the date of application of the measures transposing this Directive in accordance with the second subparagraph of Article 13(1).

4. Supply agreements concluded before the date of publication of the measures transposing this Directive in accordance with the first subparagraph of Article 13(1) shall be brought into compliance with this Directive within 12 months after that date of publication.

## Article 2

### Definitions

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

- (1) 'agricultural and food products' means products listed in Annex I to the TFEU as well as products not listed in that Annex, but processed for use as food using products listed in that Annex;
- (2) 'buyer' means any natural or legal person, irrespective of that person's place of establishment, or any public authority in the Union, who buys agricultural and food products; the term 'buyer' may include a group of such natural and legal persons;
- (3) 'public authority' means national, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;
- (4) 'supplier' means any agricultural producer or any natural or legal person, irrespective of their place of establishment, who sells agricultural and food products; the term 'supplier' may include a group of such agricultural producers or a group of such natural and legal persons, such as producer organisations, organisations of suppliers and associations of such organisations;
- (5) 'perishable agricultural and food products' means agricultural and food products that by their nature or at their stage of processing are liable to become unfit for sale within 30 days after harvest, production or processing.

## Article 3

### Prohibition of unfair trading practices

1. Member States shall ensure that at least all the following unfair trading practices are prohibited:

- (a) the buyer pays the supplier,
  - (i) where the supply agreement provides for the delivery of products on a regular basis:
    - for perishable agricultural and food products, later than 30 days after the end of an agreed delivery period in which deliveries have been made or later than 30 days after the date on which the amount payable for that delivery period is set, whichever of those two dates is the later;
    - for other agricultural and food products, later than 60 days after the end of an agreed delivery period in which deliveries have been made or later than 60 days after the date on which the amount payable for that delivery period is set, whichever of those two dates is the later;

for the purposes of the payment periods in this point, the agreed delivery periods shall in any event be considered not to exceed one month;

(ii) where the supply agreement does not provide for the delivery of products on a regular basis:

- for perishable agricultural and food products, later than 30 days after the date of delivery or later than 30 days after the date on which the amount payable is set, whichever of those two dates is the later;
- for other agricultural and food products, later than 60 days after the date of delivery or later than 60 days after the date on which the amount payable is set, whichever of those two dates is the later.

Notwithstanding points (i) and (ii) of this point, where the buyer sets the amount payable:

- the payment periods referred to in point (i) shall start to run from the end of an agreed delivery period in which the deliveries have been made; and
- the payment periods referred to in point (ii) shall start to run from the date of delivery;

- (b) the buyer cancels orders of perishable agricultural and food products at such short notice that a supplier cannot reasonably be expected to find an alternative means of commercialising or using those products; notice of less than 30 days shall always be considered as short notice; Member States may set periods shorter than 30 days for specific sectors in duly justified cases;
- (c) the buyer unilaterally changes the terms of a supply agreement for agricultural and food products that concern the frequency, method, place, timing or volume of the supply or delivery of the agricultural and food products, the quality standards, the terms of payment or the prices, or as regards the provision of services insofar as these are explicitly referred to in paragraph 2;
- (d) the buyer requires payments from the supplier that are not related to the sale of the agricultural and food products of the supplier;
- (e) the buyer requires the supplier to pay for the deterioration or loss, or both, of agricultural and food products that occurs on the buyer's premises or after ownership has been transferred to the buyer, where such deterioration or loss is not caused by the negligence or fault of the supplier;
- (f) the buyer refuses to confirm in writing the terms of a supply agreement between the buyer and the supplier for which the supplier has asked for written confirmation; this shall not apply where the supply agreement concerns products to be delivered by a member of a producer organisation, including a cooperative, to the producer organisation of which the supplier is a member, if the statutes of that producer organisation or the rules and decisions provided for in, or derived from, those statutes contain provisions having similar effects to the terms of the supply agreement;
- (g) the buyer unlawfully acquires, uses or discloses the trade secrets of the supplier within the meaning of Directive (EU) 2016/943 of the European Parliament and of the Council <sup>(9)</sup>;
- (h) the buyer threatens to carry out, or carries out, acts of commercial retaliation against the supplier if the supplier exercises its contractual or legal rights, including by filing a complaint with enforcement authorities or by cooperating with enforcement authorities during an investigation;
- (i) the buyer requires compensation from the supplier for the cost of examining customer complaints relating to the sale of the supplier's products despite the absence of negligence or fault on the part of the supplier.

The prohibition referred to in point (a) of the first subparagraph shall be without prejudice:

- to the consequences of late payments and remedies as laid down in Directive 2011/7/EU, which shall apply, by way of derogation from the payment periods set out in that Directive, on the basis of the payment periods set out in this Directive;
- to the option of a buyer and a supplier to agree on a value sharing clause within the meaning of Article 172a of Regulation (EU) No 1308/2013.

<sup>(9)</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

The prohibition referred to in point (a) of the first subparagraph shall not apply to payments:

- made by a buyer to a supplier where such payments are made in the framework of the school scheme pursuant to Article 23 of Regulation (EU) No 1308/2013;
- made by public entities providing healthcare in the meaning of point (b) of Article 4(4) of Directive 2011/7/EU;
- under supply agreements between suppliers of grapes or must for wine production and their direct buyers, provided:
  - (i) that the specific terms of payment for the sales transactions are included in standard contracts which have been made binding by the Member State pursuant to Article 164 of Regulation (EU) No 1308/2013 before 1 January 2019, and that this extension of the standard contracts is renewed by the Member States from that date without any significant changes to the terms of payment to the disadvantage of suppliers of grapes or must; and
  - (ii) that the supply agreements between suppliers of grapes or must for wine production and their direct buyers are multiannual or become multiannual.

2. Member States shall ensure that at least all the following trading practices are prohibited, unless they have been previously agreed in clear and unambiguous terms in the supply agreement or in a subsequent agreement between the supplier and the buyer:

- (a) the buyer returns unsold agricultural and food products to the supplier without paying for those unsold products or without paying for the disposal of those products, or both;
- (b) the supplier is charged payment as a condition for stocking, displaying or listing its agricultural and food products, or of making such products available on the market;
- (c) the buyer requires the supplier to bear all or part of the cost of any discounts on agricultural and food products that are sold by the buyer as part of a promotion;
- (d) the buyer requires the supplier to pay for the advertising by the buyer of agricultural and food products;
- (e) the buyer requires the supplier to pay for the marketing by the buyer of agricultural and food products;
- (f) the buyer charges the supplier for staff for fitting-out premises used for the sale of the supplier's products.

Member States shall ensure that the trading practice referred to in point (c) of the first subparagraph is prohibited unless the buyer, prior to a promotion that is initiated by the buyer, specifies the period of the promotion and the expected quantity of the agricultural and food products to be ordered at the discounted price.

3. Where a payment is required by the buyer for the situations referred to in points (b), (c), (d), (e) or (f) of the first subparagraph of paragraph 2, if requested by the supplier, the buyer shall provide the supplier with an estimate in writing of the payments per unit or the overall payments, whichever is appropriate, and, insofar as the situations referred to in points (b), (d), (e) or (f) of the first subparagraph of paragraph 2 are concerned, shall also provide, in writing, an estimate of the cost to the supplier and the basis for that estimate.

4. Member States shall ensure that the prohibitions laid down in paragraphs 1 and 2 constitute overriding mandatory provisions which are applicable to any situation falling within the scope of those prohibitions, irrespective of the law that would otherwise be applicable to the supply agreement between the parties.

#### *Article 4*

#### **Designated enforcement authorities**

1. Each Member State shall designate one or more authorities to enforce the prohibitions laid down in Article 3 at national level ('enforcement authority'), and shall inform the Commission of that designation.

2. If a Member State designates more than one enforcement authority in its territory, it shall designate a single contact point for both cooperation among the enforcement authorities and cooperation with the Commission.

*Article 5***Complaints and confidentiality**

1. Suppliers may address complaints either to the enforcement authority of the Member State in which the supplier is established or to the enforcement authority of the Member State in which the buyer that is suspected to have engaged in a prohibited trading practice is established. The enforcement authority to which the complaint is addressed shall be competent to enforce the prohibitions laid down in Article 3.
2. Producer organisations, other organisations of suppliers and associations of such organisations, shall have the right to submit a complaint at the request of one or more of their members or, where appropriate, at the request of one or more members of their member organisations, where those members consider that they have been affected by a prohibited trading practice. Other organisations that have a legitimate interest in representing suppliers shall have the right to submit complaints, at the request of a supplier, and in the interest of that supplier, provided that such organisations are independent non-profit-making legal persons.
3. Member States shall ensure that, where the complainant so requests, the enforcement authority shall take the necessary measures for the appropriate protection of the identity of the complainant or the members or suppliers referred to in paragraph 2 and for the appropriate protection of any other information in respect of which the complainant considers that the disclosure of such information would be harmful to the interests of the complainant or of those members or suppliers. The complainant shall identify any information for which it requests confidentiality.
4. Member States shall ensure that the enforcement authority that receives the complaint shall inform the complainant within a reasonable period of time after the receipt of the complaint of how it intends to follow up on the complaint.
5. Member States shall ensure that, where an enforcement authority considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant of the reasons therefor within a reasonable period of time after the receipt of the complaint.
6. Member States shall ensure that, where an enforcement authority considers that there are sufficient grounds for acting on a complaint, it shall initiate, conduct and conclude an investigation of the complaint within a reasonable period of time.
7. Member States shall ensure that, where an enforcement authority finds that a buyer has infringed the prohibitions referred to in Article 3, it shall require the buyer to bring the prohibited trading practice to an end.

*Article 6***Powers of enforcement authorities**

1. Member States shall ensure that each of their enforcement authorities has the necessary resources and expertise to perform its duties, and shall confer on it the following powers:
  - (a) the power to initiate and conduct investigations on its own initiative or on the basis of a complaint;
  - (b) the power to require buyers and suppliers to provide all necessary information in order to conduct investigations of prohibited trading practices;
  - (c) the power to carry out unannounced on-site inspections within the framework of its investigations, in accordance with national rules and procedures;
  - (d) the power to take decisions finding an infringement of the prohibitions laid down in Article 3 and requiring the buyer to bring the prohibited trading practice to an end; the authority may abstain from taking any such decision, if that decision would risk revealing the identity of a complainant or would risk disclosing any other information in respect of which the complainant considers that such disclosure would be harmful to its interests, and provided that the complainant has identified that information in accordance with Article 5(3);
  - (e) the power to impose, or initiate proceedings for the imposition of, fines and other equally effective penalties and interim measures on the author of the infringement, in accordance with national rules and procedures;
  - (f) the power to publish its decisions taken under points (d) and (e) on a regular basis.

The penalties referred to in point (e) of the first subparagraph shall be effective, proportionate and dissuasive, taking into account the nature, duration, recurrence and gravity of the infringement.

2. Member States shall ensure that the exercise of the powers referred to in paragraph 1 is subject to appropriate safeguards in respect of rights of defence, in accordance with the general principles of Union law and the Charter of Fundamental Rights of the European Union, including in cases where the complainant requests confidential treatment of information pursuant to Article 5(3).

#### *Article 7*

### **Alternative dispute resolution**

Without prejudice to the right of suppliers to submit complaints under Article 5, and the powers of enforcement authorities under Article 6, Member States may promote the voluntary use of effective and independent alternative dispute resolution mechanisms, such as mediation, with a view to the settlement of disputes between suppliers and buyers regarding the use of unfair trading practices by the buyer.

#### *Article 8*

### **Cooperation among enforcement authorities**

1. Member States shall ensure that enforcement authorities cooperate effectively with each other and with the Commission, and that they provide each other with mutual assistance in investigations that have a cross-border dimension.

2. The enforcement authorities shall meet at least once per year to discuss the application of this Directive, on the basis of the annual reports referred to in Article 10(2). The enforcement authorities shall discuss best practices, new cases and new developments in the area of unfair trading practices in the agricultural and food supply chain, and shall exchange information, in particular on the implementing measures that they have adopted in accordance with this Directive and on their enforcement practices. The enforcement authorities may adopt recommendations in order to encourage the consistent application of this Directive and to improve enforcement. The Commission shall facilitate those meetings.

3. The Commission shall establish and manage a website that allows the exchange of information among the enforcement authorities and the Commission, in particular in relation to the annual meetings. The Commission shall establish a public website that provides the contact details of the designated enforcement authorities and links to websites of the national enforcement authorities or other authorities of Member States that provide information about the measures transposing this Directive referred to in Article 13(1).

#### *Article 9*

### **National rules**

1. With a view to ensuring a higher level of protection, Member States may maintain or introduce stricter rules aimed at combating unfair trading practices than those laid down by this Directive, provided that such national rules are compatible with the rules on the functioning of the internal market.

2. This Directive shall be without prejudice to national rules aimed at combating unfair trading practices that are not within the scope of this Directive, provided that such rules are compatible with the rules on the functioning of the internal market.

#### *Article 10*

### **Reporting**

1. Member States shall ensure that their enforcement authorities publish an annual report about their activities falling within the scope of this Directive, which shall, inter alia, state the number of complaints received and the number of investigations opened or closed during the previous year. For each closed investigation, the report shall contain a summary description of the matter, the outcome of the investigation and, where applicable, the decision taken, subject to the confidentiality requirements laid down in Article 5(3).

2. By 15 March of each year, Member States shall send to the Commission a report on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. That report shall contain, in particular, all relevant data on the application and enforcement of the rules under this Directive in the Member State concerned during the previous year.



3. The Commission may adopt implementing acts laying down:
  - (a) rules on the information necessary for the application of paragraph 2;
  - (b) arrangements for the management of the information to be sent by Member States to the Commission and rules on the content and form of such information;
  - (c) arrangements for transmitting, or for making information and documents available, to the Member States, international organisations, the competent authorities in third countries, or the public, subject to the protection of personal data and the legitimate interests of agricultural producers and enterprises in the protection of their business secrets.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(2).

#### *Article 11*

##### **Committee procedure**

1. The Commission shall be assisted by the Committee for the Common Organisation of the Agricultural Markets established by Article 229 of Regulation (EU) No 1308/2013. 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 12*

##### **Evaluation**

1. By 1 November 2025, the Commission shall carry out the first evaluation of this Directive and shall present a report on the main findings of that evaluation to the European Parliament and to the Council, as well as to the European Economic and Social Committee and the Committee of the Regions. Such report shall be accompanied, if appropriate, by legislative proposals.
2. That evaluation shall assess at least:
  - (a) the effectiveness of the measures implemented at national level aimed at combating unfair trading practices in the agricultural and food supply chain;
  - (b) the effectiveness of cooperation among competent enforcement authorities and, where appropriate, shall identify ways to improve that cooperation.
3. The Commission shall base the report referred to in paragraph 1 on the annual reports referred to in Article 10(2). If necessary, the Commission may request additional information from Member States, including information on the effectiveness of the measures that were implemented at national level and the effectiveness of cooperation and mutual assistance.
4. By 1 November 2021, the Commission shall present an interim report on the state of the transposition and implementation of this Directive to the European Parliament and to the Council, as well as to the European Economic and Social Committee and the Committee of the Regions.

#### *Article 13*

##### **Transposition**

1. Member States shall adopt and publish, by 1 May 2021, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures not later than 1 November 2021.

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

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

*Article 14***Entry into force**

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

*Article 15***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 17 April 2019.

*For the European Parliament*  
*The President*  
A. TAJANI

*For the Council*  
*The President*  
G. CIAMBA

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## II

*(Non-legislative acts)*

## RULES OF PROCEDURE

## AMENDMENTS OF THE RULES OF PROCEDURE OF THE COURT OF JUSTICE

THE COURT OF JUSTICE,

Having regard to the Treaty on the Functioning of the European Union, and in particular the sixth paragraph of Article 253 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Having regard to the Protocol on the Statute of the Court of Justice of the European Union, and in particular Article 63 thereof,

Whereas it is appropriate to set out, in the Rules of Procedure, the detailed rules implementing the procedure whereby the Court first decides whether an appeal should be allowed to proceed referred to in Article 58a of the Protocol on the Statute of the Court of Justice of the European Union, and to determine both the procedure for submission and examination of requests that an appeal be allowed to proceed and the specific conduct of the proceedings following such examination,

With the approval of the Council given on 9 April 2019,

HAS ADOPTED THE FOLLOWING AMENDMENTS TO ITS RULES OF PROCEDURE:

*Article 1*

The following chapter is inserted in Title V of the Rules of Procedure of the Court of Justice of 25 September 2012 <sup>(1)</sup>:

*‘Chapter 1a*

PRIOR DETERMINATION AS TO WHETHER APPEALS UNDER ARTICLE 58a OF THE STATUTE SHOULD BE ALLOWED TO PROCEED

*Article 170a***Request that the appeal be allowed to proceed**

1. In the situations referred to in the first and second paragraphs of Article 58a of the Statute, the appellant shall annex to the appeal a request that the appeal be allowed to proceed, setting out the issue raised by the appeal that is significant with respect to the unity, consistency or development of European Union law and containing all the information necessary to enable the Court of Justice to rule on that request. If there is no such request, the Vice-President of the Court shall declare the appeal inadmissible.

2. The request that the appeal be allowed to proceed shall not exceed seven pages and shall be drawn up taking into account all the formal requirements contained in the Practice Directions to parties concerning cases brought before the Court, adopted on the basis of these Rules.

3. If the request that the appeal be allowed to proceed does not comply with the requirements set out in the preceding paragraph, the Registrar shall prescribe a reasonable time-limit within which the appellant is to put the request in order. If the appellant fails to put the request in order within the time-limit prescribed, the Vice-President of the Court shall decide, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, whether the non-compliance with that formal requirement renders the appeal formally inadmissible.

<sup>(1)</sup> OJ L 265, 29.9.2012, p. 1, as amended on 18 June 2013 (OJ L 173, 26.6.2013, p. 65) and 19 July 2016 (OJ L 217, 12.8.2016, p. 69).

*Article 170b***Decision on the request that the appeal be allowed to proceed**

1. The Court of Justice shall rule as soon as possible on the request that the appeal be allowed to proceed.
2. The decision on that request shall be taken, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, by a Chamber specially established for that purpose, presided over by the Vice-President of the Court and including also the Judge-Rapporteur and the President of the Chamber of three Judges to which the Judge-Rapporteur is attached on the date on which the request is made.
3. The decision on the request that the appeal be allowed to proceed shall take the form of a reasoned order.
4. Where the Court of Justice decides that the appeal should be allowed to proceed, wholly or in part, having regard to the criteria set out in the third paragraph of Article 58a of the Statute, the proceedings shall continue in accordance with Articles 171 to 190a of these Rules. The order referred to in the preceding paragraph shall be served, together with the appeal, on the parties to the relevant case before the General Court and shall specify, where the appeal is to be allowed to proceed in part, the pleas in law or parts of the appeal to which the response must relate.
5. The General Court and, if they were not parties to the proceedings before it, the Member States, the European Parliament, the Council and the European Commission shall forthwith be informed by the Registrar of the decision that the appeal should be allowed to proceed.'

*Article 2*

These amendments of the Rules of Procedure, authentic in the languages referred to in Article 36 of those Rules, shall be published in the *Official Journal of the European Union* and shall enter into force on the first day of the month following that of their publication.

Done at Luxembourg, 9 April 2019.

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