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[1] Text with EEA relevance

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

The titles of all other acts are printed in bold type and preceded by an asterisk.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 1151/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 November 2012

on quality schemes for agricultural products and foodstuffs

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) and the first paragraph of Article 118 thereof,

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

(1) The quality and diversity of the Union's agricultural, fisheries and aquaculture production is one of its important strengths, giving a competitive advantage to the Union's producers and making a major contribution to its living cultural and gastronomic heritage. This is due to the skills and determination of Union farmers and producers who have kept traditions alive while taking into account the developments of new production methods and material.

(2) Citizens and consumers in the Union increasingly demand quality as well as traditional products. They are also concerned to maintain the diversity of the agricultural production in the Union. This generates a demand for agricultural products or foodstuffs with identifiable specific characteristics, in particular those linked to their geographical origin.

(3) Producers can only continue to produce a diverse range of quality products if they are rewarded fairly for their effort. This requires that they are able to communicate to buyers and consumers the characteristics of their product under conditions of fair competition. It also requires them to be able to correctly identify their products on the marketplace.

(4) Operating quality schemes for producers which reward them for their efforts to produce a diverse range of quality products can benefit the rural economy. This is particularly the case in less favoured areas, in mountain areas and in the most remote regions, where the farming sector accounts for a significant part of the economy and production costs are high. In this way quality schemes are able to contribute to and complement rural development policy as well as market and income support policies of the common agricultural policy (CAP). In particular, they may contribute to areas in which the farming sector is of greater economic importance and, especially, to disadvantaged areas.

(5) The Europe 2020 policy priorities as set out in the Commission Communication entitled 'Europe 2020: A strategy for smart, sustainable and inclusive growth', include the aims of achieving a competitive economy based on knowledge and innovation and fostering a high-employment economy delivering social and territorial cohesion. Agricultural product quality policy should therefore provide producers with the right tools to better identify and promote those of their products that have specific characteristics while protecting those producers against unfair practices.

([1]) OJ C 218, 23.7.2011, p. 114.
([2]) OJ C 192, 1.7.2011, p. 28.
([3]) Position of the European Parliament of 13 September 2012 (not yet published in the Official Journal) and decision of the Council of 13 November 2012.

(6) The set of complementary measures envisaged should respect the principles of subsidiarity and proportionality.

(7) Agricultural product quality policy measures are laid down in Council Regulation (EEC) No 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails ([1]); Council Directive 2001/110/EC of 20 December 2001 relating to honey ([2]) and in particular in Article 2 thereof, Council Regulation (EC) No 247/2006 of 30 January 2006 laying down specific measures for agriculture in the outermost regions of the Union ([3]) and in particular in Article 14 thereof; Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed ([4]); Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ([5]); Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ([6]) and in particular in Part II, Title II, Chapter I, Section I and in Section Ia, Subsection I thereof; Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products ([7]); and Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks ([8]).

(8) The labelling of agricultural products and foodstuffs should be subject to the general rules laid down in Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs ([9]), and in particular the provisions aimed at preventing labelling that may confuse or mislead consumers.

(9) The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on agricultural product quality policy identified the achievement of a greater overall coherence and consistency of agricultural product quality policy as a priority.

(10) The geographical indications scheme for agricultural products and foodstuffs and the traditional specialities guaranteed scheme have certain common objectives and provisions.

(11) The Union has for some time been pursuing an approach that aims to simplify the regulatory framework of the CAP. This approach should also be applied to regulations in the field of agricultural product quality policy, without, in so doing, calling into question the specific characteristics of those products.

(12) Some regulations that form part of the agricultural product quality policy have been reviewed recently but are not yet fully implemented. As a result, they should not be included in this Regulation. However, they may be incorporated at a later stage, once the legislation has been fully implemented.

(13) In the light of the aforementioned considerations, the following provisions should be amalgamated into a single legal framework comprising the new or updated provisions of Regulations (EC) No 509/2006 and (EC) No 510/2006 and those provisions of Regulations (EC) No 509/2006 and (EC) No 510/2006 that are maintained.

(14) In the interests of clarity and transparency, Regulations (EC) No 509/2006 and (EC) No 510/2006 should therefore be repealed and replaced by this Regulation.

(15) The scope of this Regulation should be limited to the agricultural products intended for human consumption listed in Annex I to the Treaty and to a list of products outside the scope of that Annex that are closely linked to agricultural production or to the rural economy.

(16) The rules provided for in this Regulation should apply without affecting existing Union legislation on wines, aromatised wines, spirit drinks, product of organic farming, or outermost regions.

(17) The scope for designations of origin and geographical indications should be limited to products for which an intrinsic link exists between product or foodstuff characteristics and geographical origin. The inclusion in the current scheme of only certain types of chocolate as confectionery products is an anomaly that should be corrected.

(18) The specific objectives of protecting designations of origin and geographical indications are securing a fair return for farmers and producers for the qualities and characteristics of a given product, or of its mode of production, and providing clear information on products with specific characteristics linked to geographical origin, thereby enabling consumers to make more informed purchasing choices.

([1]) OJ L 149, 14.6.1991, p. 1.
([2]) OJ L 10, 12.1.2002, p. 47.
([3]) OJ L 42, 14.2.2006, p. 1.
([4]) OJ L 93, 31.3.2006, p. 1.
([5]) OJ L 93, 31.3.2006, p. 12.
([6]) OJ L 299, 16.11.2007, p. 1.
([7]) OJ L 189, 20.7.2007, p. 1.
([8]) OJ L 39, 13.2.2008, p. 16.
([9]) OJ L 109, 6.5.2000, p. 29.

(19) Ensuring uniform respect throughout the Union for the intellectual property rights related to names protected in the Union is a priority that can be achieved more effectively at Union level.

(20) A Union framework that protects designations of origin and geographical indications by providing for their inclusion on a register facilitates the development of those instruments, since the resulting, more uniform, approach ensures fair competition between the producers of products bearing such indications and enhances the credibility of the products in the consumers' eyes. Provision should be made for the development of designations of origin and geographical indications at Union level and for promoting the creation of mechanisms for their protection in third countries in the framework of the World Trade Organisation (WTO) or multilateral and bilateral agreements, thereby contributing to the recognition of the quality of products and of their model of production as a factor that adds value.

(21) In the light of the experience gained from the implementation of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1] and Regulation (EC) No 510/2006, there is a need to address certain issues, to clarify and simplify some rules and to streamline the procedures of this scheme.

(22) In the light of existing practice, the two different instruments for identifying the link between the product and its geographical origin, namely the protected designation of origin and the protected geographical indication, should be further defined and maintained. Without changing the concept of those instruments, some modifications to the definitions should be adopted in order to better take into account the definition of geographical indications laid down in the Agreement on Trade-Related Aspects of Intellectual Property Rights and to make them simpler and clearer for operators to understand.

(23) An agricultural product or foodstuff bearing such a geographical description should meet certain conditions set out in a specification, such as specific requirements aimed at protecting the natural resources or landscape of the production area or improving the welfare of farm animals.

(24) To qualify for protection in the territories of Member States, designations of origin and geographical indications should be registered only at Union level. With effect from the date of application for such registration at Union level, Member States should be able to grant transitional protection at national level without affecting intra-Union or international trade. The protection afforded by this Regulation upon registration, should be equally available to designations of origin and geographical indications of third countries that meet the corresponding criteria and that are protected in their country of origin.

(25) The registration procedure at Union level should enable any natural or legal person with a legitimate interest from a Member State, other than the Member State of the application, or from a third country, to exercise their rights by notifying their opposition.

(26) Entry in the register of protected designations of origin and protected geographical indications should also provide information to consumers and to those involved in trade.

(27) The Union negotiates international agreements, including those concerning the protection of designations of origin and geographical indications, with its trade partners. In order to facilitate the provision to the public of information about the names so protected, and in particular to ensure protection and control of the use to which those names are put, the names may be entered in the register of protected designations of origin and protected geographical indications. Unless specifically identified as designations of origin in such international agreements, the names should be entered in the register as protected geographical indications.

(28) In view of their specific nature, special provisions concerning labelling should be adopted in respect of protected designations of origin and protected geographical indications that require producers to use the appropriate Union symbols or indications on packaging. In the case of Union names, the use of such symbols or indications should be made obligatory in order to make this category of products, and the guarantees attached to them, better known to consumers and in order to permit easier identification of these products on the market, thereby facilitating checks. Taking into account the requirements of the WTO, the use of such symbols or indications should be made voluntary for third-country geographical indications and designations of origin.

(29) Protection should be granted to names included in the register with the aim of ensuring that they are used fairly and in order to prevent practices liable to mislead consumers. In addition, the means of ensuring that geographical indications and designations of origin are protected should be clarified, particularly as regards the role of producer groups and competent authorities of Member States.

(30) Provision should be made for specific derogations that permit, for transitional periods, the use of a registered name alongside other names. Those derogations should

[1] OJ L 208, 24.7.1992, p. 1.

be simplified and clarified. In certain cases, in order to overcome temporary difficulties and with the long-term objective of ensuring that all producers comply with the specifications, those derogations may be granted for a period of up to 10 years.

(31) The scope of the protection granted under this Regulation should be clarified, in particular with regard to those limitations on registration of new trade marks set out in Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks [1] that conflict with the registration of protected designations of origin and protected geographical indications as is already the case for the registration of new trade marks at Union level. Such clarification is also necessary with regard to the holders of prior rights in intellectual property, in particular those concerning trade marks and homonymous names registered as protected designations of origin or as protected geographical indications.

(32) Protection of designations of origin and geographical indications should be extended to the misuse, imitation and evocation of the registered names on goods as well as on services in order to ensure a high level of protection and to align that protection with that which applies to the wine sector. When protected designations of origin or protected geographical indications are used as ingredients, the Commission Communication entitled 'Guidelines on the labelling of foodstuffs using protected designations of origin (PDOs) or protected geographical indications (PGIs) as ingredients' should be taken into account.

(33) The names already registered under Regulation (EC) No 510/2006 on 3 January 2013 should continue to be protected under this Regulation and they should be automatically included in the register.

(34) The specific objective of the scheme for traditional specialities guaranteed is to help the producers of traditional products to communicate to consumers the value-adding attributes of their product. However, as only a few names have been registered, the current scheme for traditional specialities guaranteed has failed to realise its potential. Current provisions should therefore be improved, clarified and sharpened in order to make the scheme more understandable, operational and attractive to potential applicants.

(35) The current scheme provides the option to register a name for identification purposes without reservation of the name in the Union. As this option has not been well understood by stakeholders and since the function of identifying traditional products can be better achieved at Member State or regional level in application of the principle of subsidiarity, this option should be discontinued. In the light of experience, the scheme should only deal with the reservation of names across the Union.

(36) To ensure that names of genuine traditional products are registered under the scheme, the criteria and conditions for registration of a name should be adapted, in particular those concerning the definition of 'traditional', which should cover products that have been produced for a significant period of time.

(37) To ensure that traditional specialities guaranteed comply with their specification and are consistent, producers organised into groups should themselves define the product in a specification. The option of registering a name as a traditional speciality guaranteed should be open to third-country producers.

(38) To qualify for reservation, traditional specialities guaranteed should be registered at Union level. The entry in the register should also provide information to consumers and to those involved in the trade.

(39) In order to avoid creating unfair conditions of competition, any producer, including a third-country producer, should be able to use a registered name of a traditional speciality guaranteed, provided that the product concerned complies with the requirements of the relevant specification and the producer is covered by a system of controls. For traditional specialities guaranteed produced within the Union, the Union symbol should be indicated on the labelling and it should be possible to associate it with the indication 'traditional speciality guaranteed'.

(40) In order to protect registered names from misuse, or from practices that might mislead consumers, their use should be reserved.

(41) For those names already registered under Regulation (EC) No 509/2006 that, on 3 January 2013, would otherwise not be covered by the scope of this Regulation, the terms of use laid down in Regulation (EC) No 509/2006 should continue to apply for a transitional period.

(42) A procedure should be introduced for registering names that are registered without reservation of name pursuant to Regulation (EC) No 509/2006, enabling them to be registered with reservation of name.

(43) Provision should also be made for transitional measures applicable to registration applications received by the Commission before 3 January 2013.

(44) A second tier of quality systems, based on quality terms which add value, which can be communicated on the internal market and which are to be applied voluntarily,

[1] OJ L 299, 8.11.2008, p. 25.

should be introduced. Those optional quality terms should refer to specific horizontal characteristics, with regard to one or more categories of products, farming methods or processing attributes which apply in specific areas. The optional quality term 'mountain product' has met the conditions up to now and will add value to the product on the market. In order to facilitate the application of Directive 2000/13/EC where the labelling of foodstuffs may give rise to consumer confusion in relation to optional quality terms, including in particular 'mountain products', the Commission may adopt guidelines.

(45) In order to provide mountain producers with an effective tool to better market their product and to reduce the actual risks of consumer confusion as to the mountain provenance of products in the market place, provision should be made for the definition at Union level of an optional quality term for mountain products. The definition of mountain areas should build on the general classification criteria employed to identify a mountain area in Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) ([1]).

(46) The added value of the geographical indications and traditional specialities guaranteed is based on consumer trust. It is only credible if accompanied by effective verification and controls. Those quality schemes should be subject to a monitoring system of official controls, in line with the principles set out in Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ([2]), and should include a system of checks at all stages of production, processing and distribution. In order to help Member States to better apply provisions of Regulation (EC) No 882/2004 for the controls of geographical indications and traditional specialities guaranteed, references to the most relevant articles should be mentioned in this Regulation.

(47) To guarantee to the consumer the specific characteristics of geographical indications and traditional specialities guaranteed, operators should be subject to a system that verifies compliance with the product specification.

(48) In order to ensure that they are impartial and effective, the competent authorities should meet a number of operational criteria. Provisions on delegating some competences of performing specific control tasks to control bodies should be envisaged.

(49) European standards (EN standards) developed by the European Committee for Standardisation (CEN) and international standards developed by the International Organisation for Standardisation (ISO) should be used for the accreditation of the control bodies as well as by those bodies for their operations. The accreditation of those bodies should take place in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products ([3]).

(50) Information on control activities for geographical indications and traditional specialities guaranteed should be included in the multiannual national control plans and annual report prepared by the Member States in accordance with Regulation (EC) No 882/2004.

(51) Member States should be authorised to charge a fee to cover the costs incurred.

(52) Existing rules concerning the continued use of names that are generic should be clarified so that generic terms that are similar to or form part of a name or term that is protected or reserved should retain their generic status.

(53) The date for establishing the seniority of a trade mark and of a designation of origin or a geographical indication should be that of the date of application of the trade mark for registration in the Union or in the Member States and the date of application for protection of a designation of origin or a geographical indication to the Commission.

(54) The provisions dealing with the refusal or coexistence of a designation of origin or a geographical indication on the ground of conflict with a prior trade mark should continue to apply.

(55) The criteria by which subsequent trade marks should be refused or, if registered, invalidated on the ground that they conflict with a prior designation of origin or geographical indication should correspond to the scope of protection of designation of origin or a geographical indication laid down.

(56) The provisions of systems establishing intellectual property rights, and particularly of those established by the quality scheme for designations of origin and geographical indications or those established under trade mark law, should not be affected by the reservation of names and the establishment of indications and symbols pursuant to the quality schemes for traditional specialities guaranteed and for optional quality terms.

([1]) OJ L 160, 26.6.1999, p. 80.
([2]) OJ L 165, 30.4.2004, p. 1.
([3]) OJ L 218, 13.8.2008, p. 30.

(57) The role of groups should be clarified and recognised. Groups play an essential role in the application process for the registration of names of designations of origin and geographical indications and traditional specialities guaranteed, as well as in the amendment of specifications and cancellation requests. The group can also develop activities related to the surveillance of the enforcement of the protection of the registered names, the compliance of the production with the product specification, the information and promotion of the registered name as well as, in general, any activity aimed at improving the value of the registered names and effectiveness of the quality schemes. Moreover, it should monitor the position of the products on the market. Nevertheless, these activities should not facilitate nor lead to anti-competitive conduct incompatible with Articles 101 and 102 of the Treaty.

(58) To ensure that registered names of designations of origin and geographical indications and traditional specialities guaranteed meet the conditions laid down by this Regulation, applications should be examined by the national authorities of the Member State concerned, in compliance with minimum common provisions, including a national opposition procedure. The Commission should subsequently scrutinise applications to ensure that there are no manifest errors and that Union law and the interests of stakeholders outside the Member State of application have been taken into account.

(59) Registration as designations of origin, geographical indications and traditional specialities guaranteed should be open to names that relate to products originating in third countries and that satisfy the conditions laid down by this Regulation.

(60) The symbols, indications and abbreviations identifying participation in a quality scheme, and the rights therein pertaining to the Union, should be protected in the Union as well as in third countries with the aim of ensuring that they are used on genuine products and that consumers are not misled as to the qualities of products. Furthermore, in order for the protection to be effective, the Commission should have recourse to reasonable budget resources on a centralised basis within the framework of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [1] and in accordance with Article 5 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy [2].

(61) The registration procedure for protected designations of origin, protected geographical indications and traditional specialities guaranteed, including the scrutiny and the opposition periods, should be shortened and improved, in particular as regards decision making. The Commission, in certain circumstances acting with the assistance of Member States, should be responsible for decision-making on registration. Procedures should be laid down to allow the amendment of product specifications after registration and the cancellation of registered names, in particular if the product no longer complies with the corresponding product specification or if a name is no longer used in the market place.

(62) In order to facilitate cross-border applications for joint registration of protected designations of origin, protected geographical indications or traditional specialities guaranteed, provision should be made for appropriate procedures.

(63) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of supplementing the list of products set out in Annex I to this Regulation; establishing the restrictions and derogations with regard to the sourcing of feed in the case of a designation of origin; establishing restrictions and derogations with regard to the slaughtering of live animals or with regard to the sourcing of raw materials; laying down rules which limit the information contained in the product specification; establishing the Union symbols; laying down additional transitional rules in order to protect the rights and legitimate interests of producers or stakeholders concerned; laying down further details on the eligibility criteria for the names of traditional specialities guaranteed; laying down detailed rules relating to the criteria for optional quality terms; reserving an additional optional quality term, laying down its conditions of use and amending those conditions; laying down derogations to the use of the term 'mountain product' and establishing the methods of production, and other criteria relevant for the application of that optional quality term, in particular, laying down the conditions under which raw materials or feedstuffs are permitted to come from outside the mountain areas; laying down additional rules for determining the generic status of terms in the Union; laying down rules for determining the use of the name of a plant variety or of an animal breed; defining the rules for carrying out the national objection procedure for joint applications concerning more than one national territory; and for

[1] OJ L 277, 21.10.2005, p. 1.

[2] OJ L 209, 11.8.2005, p. 1.

complementing the rules of the application process, the opposition process, the amendment application process and the cancellation process in general. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(64) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards laying down rules on the form of the product specification; laying down detailed rules on the form and content of the register of protected designations of origin and protected geographical indications; defining the technical characteristics of the Union symbols and indications as well as the rules on their use on products, including the appropriate linguistic versions to be used; granting and extending transitional periods for temporary derogations for use of protected designations of origin and protected geographical indication; laying down detailed rules on the form and content of the register of traditional specialities guaranteed; laying down rules for the protection of traditional specialities guaranteed; laying down all measures relating to forms, procedures and other technical details for the application of Title IV; laying down rules for the use of optional quality terms; laying down rules for the uniform protection of indications, abbreviations and symbols referring to the quality schemes; laying down detailed rules on the procedure, form and presentation of applications for registration and of oppositions; rejecting the application; deciding on the registration of a name if an agreement has not been reached; laying down detailed rules on the procedure, form and presentation of an amendment application; cancelling the registration of a protected designation of origin, a protected geographical indication or a traditional speciality guaranteed; and laying down detailed rules on the procedure and form of the cancellation process and on the presentation of the requests for cancellation. Those powers should be exercised in accordance with 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 ([1]).

(65) In respect of establishing and maintaining registers of protected designations of origin, protected geographical indications and traditional specialties guaranteed, recognised under this scheme; defining the means by which the name and address of product certification bodies are to be made public; and registering a name if there is no notice of opposition or no admissible reasoned statement of opposition or in the case there is one the agreement has been reached, the Commission should be empowered to adopt implementing acts without applying Regulation (EU) No 182/2011,

([1]) OJ L 55, 28.2.2011, p. 13.

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Objectives

1. This Regulation aims to help producers of agricultural products and foodstuffs to communicate the product characteristics and farming attributes of those products and foodstuffs to buyers and consumers, thereby ensuring:

(a) fair competition for farmers and producers of agricultural products and foodstuffs having value-adding characteristics and attributes;

(b) the availability to consumers of reliable information pertaining to such products;

(c) respect for intellectual property rights; and

(d) the integrity of the internal market.

The measures set out in this Regulation are intended to support agricultural and processing activities and the farming systems associated with high quality products, thereby contributing to the achievement of rural development policy objectives.

2. This Regulation establishes quality schemes which provide the basis for the identification and, where appropriate, protection of names and terms that, in particular, indicate or describe agricultural products with:

(a) value-adding characteristics; or

(b) value-adding attributes as a result of the farming or processing methods used in their production, or of the place of their production or marketing.

Article 2

Scope

1. This Regulation covers agricultural products intended for human consumption listed in Annex I to the Treaty and other agricultural products and foodstuffs listed in Annex I to this Regulation.

In order to take into account international commitments or new production methods or material, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, supplementing the list of products set out in Annex I to this Regulation. Such products shall be closely linked to agricultural products or to the rural economy.

2. This Regulation shall not apply to spirit drinks, aromatised wines or grapevine products as defined in Annex XIb to Regulation (EC) No 1234/2007, with the exception of wine-vinegars.

3. This Regulation shall apply without prejudice to other specific Union provisions relating to the placing of products on the market and, in particular, to the single common organisation of the markets, and to food labelling.

4. Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services [1] shall not apply to the quality schemes established by this Regulation.

Article 3

Definitions

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

(1) 'quality schemes' means the schemes established under Titles II, III and IV;

(2) 'group' means any association, irrespective of its legal form, mainly composed of producers or processors working with the same product;

(3) 'traditional' means proven usage on the domestic market for a period that allows transmission between generations; this period is to be at least 30 years;

(4) 'labelling' means any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a foodstuff and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such foodstuff;

(5) 'specific character' in relation to a product means the characteristic production attributes which distinguish a product clearly from other similar products of the same category;

(6) 'generic terms ' means the names of products which, although relating to the place, region or country where the product was originally produced or marketed, have become the common name of a product in the Union;

(7) 'production step' means production, processing or preparation;

(8) 'processed products' means foodstuffs resulting from the processing of unprocessed products. Processed products may contain ingredients that are necessary for their manufacture or to give them specific characteristics.

[1] OJ L 204, 21.7.1998, p. 37.

TITLE II

PROTECTED DESIGNATIONS OF ORIGIN AND PROTECTED GEOGRAPHICAL INDICATIONS

Article 4

Objective

A scheme for protected designations of origin and protected geographical indications is established in order to help producers of products linked to a geographical area by:

(a) securing fair returns for the qualities of their products;

(b) ensuring uniform protection of the names as an intellectual property right in the territory of the Union;

(c) providing clear information on the value-adding attributes of the product to consumers.

Article 5

Requirements for designations of origin and geographical indications

1. For the purpose of this Regulation, 'designation of origin' is a name which identifies a product:

(a) originating in a specific place, region or, in exceptional cases, a country;

(b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and

(c) the production steps of which all take place in the defined geographical area.

2. For the purpose of this Regulation, 'geographical indication' is a name which identifies a product:

(a) originating in a specific place, region or country;

(b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and

(c) at least one of the production steps of which take place in the defined geographical area.

3. Notwithstanding paragraph 1, certain names shall be treated as designations of origin even though the raw materials for the products concerned come from a geographical area larger than, or different from, the defined geographical area, provided that:

(a) the production area of the raw materials is defined;

(b) special conditions for the production of the raw materials exist;

(c) there are control arrangements to ensure that the conditions referred to in point (b) are adhered to; and

(d) the designations of origin in question were recognised as designations of origin in the country of origin before 1 May 2004.

Only live animals, meat and milk may be considered as raw materials for the purposes of this paragraph.

4. In order to take into account the specific character of production of products of animal origin, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, concerning restrictions and derogations with regard to the sourcing of feed in the case of a designation of origin.

In addition, in order to take into account the specific character of certain products or areas, the Commission shall be empowered to adopt delegated acts in accordance with Article 56, concerning restrictions and derogations with regard to the slaughtering of live animals or with regard to the sourcing of raw materials.

These restrictions and derogations shall, based on objective criteria, take into account quality or usage and recognised know-how or natural factors.

Article 6

Generic nature, conflicts with names of plant varieties and animal breeds, with homonyms and trade marks

1. Generic terms shall not be registered as protected designations of origin or protected geographical indications.

2. A name may not be registered as a designation of origin or geographical indication where it conflicts with a name of a plant variety or an animal breed and is likely to mislead the consumer as to the true origin of the product.

3. A name proposed for registration that is wholly or partially homonymous with a name already entered in the register established under Article 11 may not be registered unless there is sufficient distinction in practice between the conditions of local and traditional usage and presentation of the homonym registered subsequently and the name already entered in the register, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the products in question is concerned.

4. A name proposed for registration as a designation of origin or geographical indication shall not be registered where, in the light of a trade mark's reputation and renown and the length of time it has been used, registration of the name proposed as the designation of origin or geographical indication would be liable to mislead the consumer as to the true identity of the product.

Article 7

Product specification

1. A protected designation of origin or a protected geographical indication shall comply with a specification which shall include at least:

(a) the name to be protected as a designation of origin or geographical indication, as it is used, whether in trade or in common language, and only in the languages which are or were historically used to describe the specific product in the defined geographical area;

(b) a description of the product, including the raw materials, if appropriate, as well as the principal physical, chemical, microbiological or organoleptic characteristics of the product;

(c) the definition of the geographical area delimited with regard to the link referred to in point (f)(i) or (ii) of this paragraph, and, where appropriate, details indicating compliance with the requirements of Article 5(3);

(d) evidence that the product originates in the defined geographical area referred to in Article 5(1) or (2);

(e) a description of the method of obtaining the product and, where appropriate, the authentic and unvarying local methods as well as information concerning packaging, if the applicant group so determines and gives sufficient product-specific justification as to why the packaging must take place in the defined geographical area to safeguard quality, to ensure the origin or to ensure control, taking into account Union law, in particular that on the free movement of goods and the free provision of services;

(f) details establishing the following:

(i) the link between the quality or characteristics of the product and the geographical environment referred to in Article 5(1); or

(ii) where appropriate, the link between a given quality, the reputation or other characteristic of the product and the geographical origin referred to in Article 5(2);

(g) the name and address of the authorities or, if available, the name and address of bodies verifying compliance with the provisions of the product specification pursuant to Article 37 and their specific tasks;

(h) any specific labelling rule for the product in question.

2. In order to ensure that product specifications provide relevant and succinct information, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, laying down rules which limit the information contained in the specification referred to in paragraph 1 of this Article, where such a limitation is necessary to avoid excessively voluminous applications for registration.

The Commission may adopt implementing acts laying down rules on the form of the specification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

Article 8

Content of application for registration

1. An application for registration of a designation of origin or geographical indication pursuant to Article 49(2) or (5) shall include at least:

(a) the name and address of the applicant group and of the authorities or, if available, bodies verifying compliance with the provisions of the product specification;

(b) the product specification provided for in Article 7;

(c) a single document setting out the following:

(i) the main points of the product specification: the name, a description of the product, including, where appropriate, specific rules concerning packaging and labelling, and a concise definition of the geographical area;

(ii) a description of the link between the product and the geographical environment or geographical origin referred to in Article 5(1) or (2), as the case may be, including, where appropriate, the specific elements of the product description or production method justifying the link.

An application as referred to in Article 49(5) shall, in addition, include proof that the name of the product is protected in its country of origin.

2. An application dossier referred to in Article 49(4) shall comprise:

(a) the name and address of the applicant group;

(b) the single document referred to in point (c) of paragraph 1 of this Article;

(c) a declaration by the Member State that it considers that the application lodged by the applicant group and qualifying for the favourable decision meets the conditions of this Regulation and the provisions adopted pursuant thereto;

(d) the publication reference of the product specification.

Article 9

Transitional national protection

A Member State may, on a transitional basis only, grant protection to a name under this Regulation at national level, with effect from the date on which an application is lodged with the Commission.

Such national protection shall cease on the date on which either a decision on registration under this Regulation is taken or the application is withdrawn.

Where a name is not registered under this Regulation, the consequences of such national protection shall be the sole responsibility of the Member State concerned.

The measures taken by Member States under the first paragraph shall produce effects at national level only, and they shall have no effect on intra-Union or international trade.

Article 10

Grounds for opposition

1. A reasoned statement of opposition as referred to in Article 51(2) shall be admissible only if it is received by the Commission within the time limit set out in that paragraph and if it:

(a) shows that the conditions referred to in Article 5 and Article 7(1) are not complied with;

(b) shows that the registration of the name proposed would be contrary to Article 6(2), (3) or (4);

(c) shows that the registration of the name proposed would jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in point (a) of Article 50(2); or

(d) gives details from which it can be concluded that the name for which registration is requested is a generic term.

2. The grounds for opposition shall be assessed in relation to the territory of the Union.

Article 11

Register of protected designations of origin and protected geographical indications

1. The Commission shall adopt implementing acts, without applying the procedure referred to in Article 57(2), establishing and maintaining a publicly accessible updated register of protected designations of origin and protected geographical indications recognised under this scheme.

2. Geographical indications pertaining to products of third countries that are protected in the Union under an international agreement to which the Union is a contracting party may be entered in the register. Unless specifically identified in the said agreement as protected designations of origin under this Regulation, such names shall be entered in the register as protected geographical indications.

3. The Commission may adopt implementing acts laying down detailed rules on the form and content of the register. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

4. The Commission shall make public and regularly update the list of the international agreements referred to in paragraph 2 as well as the list of geographical indications protected under those agreements.

Article 12

Names, symbols and indications

1. Protected designations of origin and protected geographical indications may be used by any operator marketing a product conforming to the corresponding specification.

2. Union symbols designed to publicise protected designations of origin and protected geographical indications shall be established.

3. In the case of products originating in the Union that are marketed under a protected designation of origin or a protected geographical indication registered in accordance with the procedures laid down in this Regulation, the Union symbols associated with them shall appear on the labelling. In addition, the registered name of the product should appear in the same field of vision. The indications 'protected designation of origin' or 'protected geographical indication' or the corresponding abbreviations 'PDO' or 'PGI' may appear on the labelling.

4. In addition, the following may also appear on the labelling: depictions of the geographical area of origin, as referred to in Article 5, and text, graphics or symbols referring to the Member State and/or region in which that geographical area of origin is located.

5. Without prejudice to Directive 2000/13/EC, the collective geographical marks referred to in Article 15 of Directive 2008/95/EC may be used on labels, together with the protected designation of origin or protected geographical indication.

6. In the case of products originating in third countries marketed under a name entered in the register, the indications referred to in paragraph 3 or the Union symbols associated with them may appear on the labelling.

7. In order to ensure that the appropriate information is communicated to the consumer, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, establishing the Union symbols.

The Commission may adopt implementing acts defining the technical characteristics of the Union symbols and indications as well as the rules of their use on the products marketed under a protected designation of origin or a protected geographical indication, including rules concerning the appropriate linguistic versions to be used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

Article 13

Protection

1. Registered names shall be protected against:

(a) any direct or indirect commercial use of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name, including when those products are used as an ingredient;

(b) any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation' or similar, including when those products are used as an ingredient;

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product that is used on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;

(d) any other practice liable to mislead the consumer as to the true origin of the product.

Where a protected designation of origin or a protected geographical indication contains within it the name of a product which is considered to be generic, the use of that generic name shall not be considered to be contrary to points (a) or (b) of the first subparagraph.

2. Protected designations of origin and protected geographical indications shall not become generic.

3. Member States shall take appropriate administrative and judicial steps to prevent or stop the unlawful use of protected designations of origin and protected geographical indications, as referred to in paragraph 1, that are produced or marketed in that Member State.

To that end Member States shall designate the authorities that are responsible for taking these steps in accordance with procedures determined by each individual Member State.

These authorities shall offer adequate guarantees of objectivity and impartiality, and shall have at their disposal the qualified staff and resources necessary to carry out their functions.

Article 14

Relations between trade marks, designations of origin and geographical indications

1. Where a designation of origin or a geographical indication is registered under this Regulation, the registration of a trade mark the use of which would contravene Article 13(1) and which relates to a product of the same type shall be refused if the application for registration of the trade mark is submitted after the date of submission of the registration application in respect of the designation of origin or the geographical indication to the Commission.

Trade marks registered in breach of the first subparagraph shall be invalidated.

The provisions of this paragraph shall apply notwithstanding the provisions of Directive 2008/95/EC.

2. Without prejudice to Article 6(4), a trade mark the use of which contravenes Article 13(1) which has been applied for, registered, or established by use if that possibility is provided for by the legislation concerned, in good faith within the territory of the Union, before the date on which the application for protection of the designation of origin or geographical indication is submitted to the Commission, may continue to be used and renewed for that product notwithstanding the registration of a designation of origin or geographical indication, provided that no grounds for its invalidity or revocation exist under Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark [1] or under Directive 2008/95/EC. In such cases, the use of the protected designation of origin or protected geographical indication shall be permitted as well as use of the relevant trade marks.

Article 15

Transitional periods for use of protected designations of origin and protected geographical indications

1. Without prejudice to Article 14, the Commission may adopt implementing acts granting a transitional period of up to five years to enable products originating in a Member State or a third country the designation of which consists of or contains a name that contravenes Article 13(1) to continue to use the designation under which it was marketed on condition that an admissible statement of opposition under Article 49(3) or Article 51 shows that:

(a) the registration of the name would jeopardise the existence of an entirely or partly identical name; or

(b) such products have been legally marketed with that name in the territory concerned for at least five years preceding the date of the publication provided for point (a) of Article 50(2).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

2. Without prejudice to Article 14, the Commission may adopt implementing acts extending the transitional period mentioned in paragraph 1 of this Article to 15 years in duly justified cases where it is shown that:

(a) the designation referred to in paragraph 1 of this Article has been in legal use consistently and fairly for at least 25 years before the application for registration was submitted to the Commission;

(b) the purpose of using the designation referred to in paragraph 1 of this Article has not, at any time, been to profit from the reputation of the registered name and it is shown that the consumer has not been nor could have been misled as to the true origin of the product.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

3. When using a designation referred to in paragraphs 1 and 2, the indication of country of origin shall clearly and visibly appear on the labelling.

4. To overcome temporary difficulties with the long-term objective of ensuring that all producers in the area concerned comply with the specification, a Member State may grant a transitional period of up to 10 years, with effect from the date on which the application is lodged with the Commission, on condition that the operators concerned have legally marketed the products in question, using the names concerned continuously for at least the five years prior to the lodging of the application to the authorities of the Member State and have made that point in the national opposition procedure referred to in Article 49(3).

The first subparagraph shall apply *mutatis mutandis* to a protected geographical indication or protected designation of origin referring to a geographical area situated in a third country, with the exception of the opposition procedure.

Such transitional periods shall be indicated in the application dossier referred to in Article 8(2).

Article 16

Transitional provisions

1. Names entered in the register provided for in Article 7(6) of Regulation (EC) No 510/2006 shall automatically be entered in the register referred to in Article 11 of this Regulation. The corresponding specifications shall be deemed to be the specifications referred to in Article 7 of this Regulation. Any specific transitional provisions associated with such registrations shall continue to apply.

[1] OJ L 78, 24.3.2009, p. 1.

2. In order to protect the rights and legitimate interests of producers or stakeholders concerned, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, concerning additional transitional rules.

3. This Regulation shall apply without prejudice to any right of coexistence recognised under Regulation (EC) No 510/2006 in respect of designations of origin and geographical indications, on the one hand, and trade marks, on the other.

TITLE III

TRADITIONAL SPECIALITIES GUARANTEED

Article 17

Objective

A scheme for traditional specialities guaranteed is established to safeguard traditional methods of production and recipes by helping producers of traditional product in marketing and communicating the value-adding attributes of their traditional recipes and products to consumers.

Article 18

Criteria

1. A name shall be eligible for registration as a traditional speciality guaranteed where it describes a specific product or foodstuff that:

(a) results from a mode of production, processing or composition corresponding to traditional practice for that product or foodstuff; or

(b) is produced from raw materials or ingredients that are those traditionally used.

2. For a name to be registered as a traditional speciality guaranteed, it shall:

(a) have been traditionally used to refer to the specific product; or

(b) identify the traditional character or specific character of the product.

3. If it is demonstrated in the opposition procedure under Article 51 that the name is also used in another Member State or in a third country, in order to distinguish comparable products or products that share an identical or similar name, the decision on registration taken in accordance with Article 52(3) may provide that the name of the traditional speciality guaranteed is to be accompanied by the claim 'made following the tradition of' immediately followed by the name of a country or a region thereof.

4. A name may not be registered if it refers only to claims of a general nature used for a set of products, or to claims provided for by particular Union legislation.

5. In order to ensure the smooth functioning of the scheme, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, concerning further details of the eligibility criteria laid down in this Article.

Article 19

Product specification

1. A traditional speciality guaranteed shall comply with a specification which shall comprise:

(a) the name proposed for registration, in the appropriate language versions;

(b) a description of the product including its main physical, chemical, microbiological or organoleptic characteristics, showing the product's specific character;

(c) a description of the production method that the producers must follow, including, where appropriate, the nature and characteristics of the raw materials or ingredients used, and the method by which the product is prepared; and

(d) the key elements establishing the product's traditional character.

2. In order to ensure that product specifications provide relevant and succinct information, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, laying down rules which limit the information contained in the specification referred to in paragraph 1 of this Article, where such a limitation is necessary to avoid excessively voluminous applications for registration.

The Commission may adopt implementing acts laying down rules on the form of the specification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

Article 20

Content of application for registration

1. An application for registration of a name as a traditional speciality guaranteed referred to in Article 49(2) or (5) shall comprise:

(a) the name and address of the applicant group;

(b) the product specification as provided for in Article 19.

2. An application dossier referred to in Article 49(4) shall comprise:

(a) the elements referred to in paragraph 1 of this Article; and

(b) a declaration by the Member State that it considers that the application lodged by the group and qualifying for the favourable decision meets the conditions of this Regulation and the provisions adopted pursuant thereto.

Article 21

Grounds for opposition

1. A reasoned statement of opposition as referred to in Article 51(2) shall be admissible only if it is received by the Commission before expiry of the time limit and if it:

(a) gives duly substantiated reasons why the proposed registration is incompatible with the terms of this Regulation; or

(b) shows that use of the name is lawful, renowned and economically significant for similar agricultural products or foodstuffs.

2. The criteria referred to in point (b) of paragraph 1 shall be assessed in relation to the territory of the Union.

Article 22

Register of traditional specialities guaranteed

1. The Commission shall adopt implementing acts, without applying the procedure referred to in Article 57(2), establishing and maintaining a publicly accessible updated register of traditional specialties guaranteed recognised under this scheme.

2. The Commission may adopt implementing acts laying down detailed rules on the form and content of the register. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

Article 23

Names, symbol and indication

1. A name registered as a traditional speciality guaranteed may be used by any operator marketing a product that conforms to the corresponding specification.

2. A Union symbol shall be established in order to publicise the traditional specialities guaranteed.

3. In the case of the products originating in the Union that are marketed under a traditional speciality guaranteed that is registered in accordance with this Regulation, the symbol referred to in paragraph 2 shall, without prejudice to paragraph 4, appear on the labelling. In addition, the name of the product should appear in the same field of vision. The indication 'traditional speciality guaranteed' or the corresponding abbreviation 'TSG' may also appear on the labelling.

The symbol shall be optional on the labelling of traditional specialities guaranteed which are produced outside the Union.

4. In order to ensure that the appropriate information is communicated to the consumer, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, establishing the Union symbol.

The Commission may adopt implementing acts defining the technical characteristics of the Union symbol and indication, as well as the rules of their use on the products bearing the name of a traditional speciality guaranteed, including as to the appropriate linguistic versions to be used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

Article 24

Restriction on use of registered names

1. Registered names shall be protected against any misuse, imitation or evocation, or against any other practice liable to mislead the consumer.

2. Member States shall ensure that sales descriptions used at national level do not give rise to confusion with names that are registered.

3. The Commission may adopt implementing acts laying down rules for the protection of traditional specialities guaranteed. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

Article 25

Transitional provisions

1. Names registered in accordance with Article 13(2) of Regulation (EC) No 509/2006 shall be automatically entered in the register referred to in Article 22 of this Regulation. The corresponding specifications shall be deemed to be the specifications referred to in Article 19 of this Regulation. Any specific transitional provisions associated with such registrations shall continue to apply.

2. Names registered in accordance with the requirements laid down in Article 13(1) of Regulation (EC) No 509/2006, including those registered pursuant to applications referred to in the second subparagraph of Article 58(1) of this Regulation, may continue to be used under the conditions provided for in Regulation (EC) No 509/2006 until 4 January 2023 unless Member States use the procedure set out in Article 26 of this Regulation.

3. In order to protect the rights and legitimate interests of producers or stakeholders concerned, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, laying down additional transitional rules.

Article 26

Simplified procedure

1. At the request of a group, a Member State may submit, no later than 4 January 2016, to the Commission names of traditional specialities guaranteed that are registered in accordance with Article 13(1) of Regulation (EC) No 509/2006 and that comply with this Regulation.

Before submitting a name, the Member State shall initiate an opposition procedure as defined in Article 49(3) and (4).

If it is demonstrated in the course of this procedure that the name is also used in reference to comparable products or products that share an identical or similar name, the name may be complemented by a term identifying its traditional or specific character.

A group from a third country may submit such names to the Commission, either directly or through the authorities of the third country.

2. The Commission shall publish the names referred to in paragraph 1 together with the specifications for each such name in the *Official Journal of the European Union* within two months from reception.

3. Articles 51 and 52 shall apply.

4. Once the opposition procedure has finished, the Commission shall, where appropriate, adjust the entries in the register set out in Article 22. The corresponding specifications shall be deemed to be the specifications referred to in Article 19.

TITLE IV

OPTIONAL QUALITY TERMS

Article 27

Objective

A scheme for optional quality terms is established in order to facilitate the communication within the internal market of the value-adding characteristics or attributes of agricultural products by the producers thereof.

Article 28

National Rules

Member States may maintain national rules on optional quality terms which are not covered by this Regulation, provided that such rules comply with Union law.

Article 29

Optional quality terms

1. Optional quality terms shall satisfy the following criteria:

(a) the term relates to a characteristic of one or more categories of products, or to a farming or processing attribute which applies in specific areas;

(b) the use of the term adds value to the product as compared to products of a similar type; and

(c) the term has a European dimension.

2. Optional quality terms that describe technical product qualities with the purpose of putting into effect compulsory marketing standards and are not intended to inform consumers about those product qualities shall be excluded from this scheme.

3. Optional quality terms shall exclude optional reserved terms which support and complement specific marketing standards determined on a sectoral or product category basis.

4. In order to take into account the specific character of certain sectors as well as consumer expectations, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, laying down detailed rules relating to the criteria referred to in paragraph 1 of this Article.

5. The Commission may adopt implementing acts laying down all measures related to forms, procedures or other technical details, necessary for the application of this Title. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

6. When adopting delegated and implementing acts in accordance with paragraphs 4 and 5 of this Article, the Commission shall take account of any relevant international standards.

Article 30

Reservation and amendment

1. In order to take account of the expectations of consumers, developments in scientific and technical knowledge, the market situation, and developments in marketing standards and in international standards, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, reserving an additional optional quality term and laying down its conditions of use.

2. In duly justified cases and in order to take into account the appropriate use of the additional optional quality term, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, laying down amendments to the conditions of use referred to in paragraph 1 of this Article.

Article 31

Mountain product

1. The term 'mountain product' is established as an optional quality term.

This term shall only be used to describe products intended for human consumption listed in Annex I to the Treaty in respect of which:

(a) both the raw materials and the feedstuffs for farm animals come essentially from mountain areas;

(b) in the case of processed products, the processing also takes place in mountain areas.

2. For the purposes of this Article, mountain areas within the Union are those delimited pursuant to Article 18(1) of Regulation (EC) No 1257/1999. For third-country products, mountain areas include areas officially designated as mountain areas by the third country or that meet criteria equivalent to those set out in Article 18(1) of Regulation (EC) No 1257/1999.

3. In duly justified cases and in order to take into account natural constraints affecting agricultural production in mountain areas, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, laying down derogations from the conditions of use referred to in paragraph 1 of this Article. In particular, the Commission shall be empowered to adopt a delegated act laying down the conditions under which raw materials or feedstuffs are permitted to come from outside the mountain areas, the conditions under which the processing of products is permitted to take place outside of the mountain areas in a geographical area to be defined, and the definition of that geographical area.

4. In order to take into account natural constraints affecting agricultural production in mountain areas, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, concerning the establishment of the methods of production, and other criteria relevant for the application of the optional quality term established in paragraph 1 of this Article.

Article 32

Product of island farming

No later than 4 January 2014 the Commission shall present a report to the European Parliament and to the Council on the case for a new term, 'product of island farming'. The term may only be used to describe the products intended for human consumption that are listed in Annex I to the Treaty the raw materials of which come from islands. In addition, for the term to be applied to processed products, processing must also take place on islands in cases where this substantially affects the particular characteristics of the final product.

That report shall, if necessary, be accompanied by appropriate legislative proposals to reserve an optional quality term 'product of island farming'.

Article 33

Restrictions on use

1. An optional quality term may only be used to describe products that comply with the corresponding conditions of use.

2. The Commission may adopt implementing acts laying down rules for the use of optional quality terms. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

Article 34

Monitoring

Member States shall undertake checks, based on a risk analysis, to ensure compliance with the requirements of this Title and, in the event of breach, shall apply appropriate administrative penalties.

TITLE V

COMMON PROVISIONS

CHAPTER I

Official controls of protected designations of origin, protected geographical indications and traditional specialities guaranteed

Article 35

Scope

The provisions of this Chapter shall apply in respect of the quality schemes set out in Title II and Title III.

Article 36

Designation of competent authority

1. In accordance with Regulation (EC) No 882/2004, Member States shall designate the competent authority or authorities responsible for official controls carried out to verify compliance with the legal requirements related to the quality schemes established by this Regulation.

Procedures and requirements of Regulation (EC) No 882/2004 shall apply *mutatis mutandis* to the official controls carried out to verify compliance with the legal requirement related to the quality schemes for all products covered by Annex I to this Regulation.

2. The competent authorities referred to in paragraph 1 shall offer adequate guarantees of objectivity and impartiality, and shall have at their disposal the qualified staff and resources necessary to carry out their functions.

3. Official controls shall cover:

(a) verification that a product complies with the corresponding product specification; and

(b) monitoring of the use of registered names to describe product placed on the market, in conformity with Article 13 for names registered under Title II and in conformity with Article 24 for names registered under Title III.

Article 37

Verification of compliance with product specification

1. In respect of protected designations of origin, protected geographical indications and traditional specialities guaranteed that designate products originating within the Union, verification of compliance with the product specification, before placing the product on the market, shall be carried out by:

(a) one or more of the competent authorities as referred to in Article 36 of this Regulation; and/or

(b) one or more of the control bodies within the meaning of point (5) of Article 2 of Regulation (EC) No 882/2004 operating as a product certification body.

The costs of such verification of compliance with the specifications may be borne by the operators that are subject to those controls. The Member States may also contribute to these costs.

2. In respect of designations of origin, geographical indications and traditional specialities guaranteed that designate products originating in a third country, the verification of compliance with the specifications before placing the product on the market shall be carried out by:

(a) one or more of the public authorities designated by the third country; and/or

(b) one or more of the product certification bodies.

3. Member States shall make public the name and address of the authorities and bodies referred to paragraph 1 of this Article, and update that information periodically.

The Commission shall make public the name and address of the authorities and bodies referred to in paragraph 2 of this Article and update that information periodically.

4. The Commission may adopt implementing acts, without applying the procedure referred to in Article 57(2), defining the means by which the name and address of product certification bodies referred to in paragraphs 1 and 2 of this Article shall be made public.

Article 38

Surveillance of the use of the name in the market place

Member States shall inform the Commission of the names and addresses of the competent authorities referred to in Article 36. The Commission shall make public the names and addresses of those authorities.

Member States shall carry out checks, based on a risk analysis, to ensure compliance with the requirements of this Regulation and, in the event of breaches, Member States shall take all necessary measures.

Article 39

Delegation by competent authorities to control bodies

1. Competent authorities may delegate, in accordance with Article 5 of Regulation (EC) No 882/2004, specific tasks related to official controls of the quality schemes to one or more control bodies.

2. Such control bodies shall be accredited in accordance with European Standard EN 45011 or ISO/IEC Guide 65 (General requirements for bodies operating product certification systems).

3. Accreditation referred to in paragraph 2 of this Article may only be performed by:

(a) a national accreditation body in the Union in accordance with the provisions of Regulation (EC) No 765/2008; or

(b) an accreditation body outside the Union that is a signatory of a multilateral recognition arrangement under the auspices of the International Accreditation Forum.

Article 40

Planning and reporting of control activities

1. Member States shall ensure that activities for the control of obligations under this Chapter are specifically included in a separate section within the multi-annual national control plans in accordance with Articles 41, 42 and 43 of Regulation (EC) No 882/2004.

2. The annual reports concerning the control of the obligations established by this Regulation shall include a separate section comprising the information laid down in Article 44 of Regulation (EC) No 882/2004.

CHAPTER II

Exceptions for certain prior uses

Article 41

Generic terms

1. Without prejudice to Article 13, this Regulation shall not affect the use of terms that are generic in the Union, even if the generic term is part of a name that is protected under a quality scheme.

2. To establish whether or not a term has become generic, account shall be taken of all relevant factors, in particular:

(a) the existing situation in areas of consumption;

(b) the relevant national or Union legal acts.

3. In order to fully protect the rights of interested parties, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, laying down additional rules for determining the generic status of terms referred to in paragraph 1 of this Article.

Article 42

Plant varieties and animal breeds

1. This Regulation shall not prevent the placing on the market of products the labelling of which includes a name or term protected or reserved under a quality scheme described in Title II, Title III, or Title IV that contains or comprises the name of a plant variety or animal breed, provided that the following conditions are met:

(a) the product in question comprises or is derived from the variety or breed indicated;

(b) consumers are not misled;

(c) the usage of the name of the variety or breed name constitutes fair competition;

(d) the usage does not exploit the reputation of the protected term; and

(e) in the case of the quality scheme described in Title II, production and marketing of the product had spread beyond its area of origin prior to the date of application for registration of the geographical indication.

2. In order to further clarify the extent of rights and freedoms of food business operators to use the name of a plant variety or of an animal breed referred to in paragraph 1 of this Article, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, concerning rules for determining the use of such names.

Article 43

Relation to intellectual property

The quality schemes described in Titles III and IV shall apply without prejudice to Union rules or to those of Member States governing intellectual property, and in particular to those concerning designations of origin and geographical indications and trade marks, and rights granted under those rules.

CHAPTER III

Quality scheme indications and symbols and role of producers

Article 44

Protection of indications and symbols

1. Indications, abbreviations and symbols referring to the quality schemes may only be used in connection with products produced in conformity with the rules of the quality scheme to which they apply. This applies in particular to the following indications, abbreviations and symbols:

(a) 'protected designation of origin', 'protected geographical indication', 'geographical indication', 'PDO', 'PGI', and the associated symbols, as provided for in Title II;

(b) 'traditional speciality guaranteed', 'TSG', and the associated symbol, as provided for in Title III;

(c) 'mountain product', as provided for in Title IV.

2. In accordance with Article 5 of Regulation (EC) No 1290/2005, the European Agricultural Fund for Rural Development (EAFRD) may, on the initiative of the Commission or on its behalf, finance, on a centralised basis, administrative support concerning the development, preparatory work, monitoring, administrative and legal support, legal defence, registration fees, renewal fees, trade mark watching fees, litigation fees and any other related measure required to protect the use of the indications, abbreviations and symbols referring to the quality schemes from misuse, imitation, evocation or any other practice liable to mislead the consumer, within the Union and in third countries.

3. The Commission shall adopt implementing acts laying down rules for the uniform protection of the indications, abbreviations and symbols referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

Article 45

Role of groups

1. Without prejudice to specific provisions on producer organisations and inter-branch organisations as laid down in Regulation (EC) No 1234/2007, a group is entitled to:

(a) contribute to ensuring that the quality, reputation and authenticity of their products are guaranteed on the market by monitoring the use of the name in trade and, if necessary, by informing competent authorities as referred to in Article 36, or any other competent authority within the framework of Article 13(3);

(b) take action to ensure adequate legal protection of the protected designation of origin or protected geographical indication and of the intellectual property rights that are directly connected with them;

(c) develop information and promotion activities aiming at communicating the value-adding attributes of the product to consumers;

(d) develop activities related to ensuring compliance of a product with its specification;

(e) take action to improve the performance of the scheme, including developing economic expertise, carrying out economic analyses, disseminating economic information on the scheme and providing advice to producers;

(f) take measures to enhance the value of products and, where necessary, take steps to prevent or counter any measures which are, or risk being, detrimental to the image of those products.

2. Member States may encourage the formation and functioning of groups on their territories by administrative means. Moreover, Member States shall communicate to the Commission the name and address of the groups referred to in point 2 of Article 3. The Commission shall make this information public.

Article 46

Right to use the schemes

1. Member States shall ensure that any operator complying with the rules of a quality scheme set out in Titles II and III is entitled to be covered by the verification of compliance established pursuant to Article 37.

2. Operators who prepare and store a product marketed under the traditional speciality guaranteed, protected designation of origin or protected geographical indication schemes or who place such products on the market shall also be subject to the controls laid down in Chapter I of this Title.

3. Member States shall ensure that operators willing to adhere to the rules of a quality scheme set out in Titles III and IV are able to do so and do not face obstacles to participation that are discriminatory or otherwise not objectively founded.

Article 47

Fees

Without prejudice to Regulation (EC) No 882/2004 and in particular the provisions of Chapter VI of Title II thereof, Member States may charge a fee to cover their costs of managing the quality schemes, including those incurred in processing applications, statements of opposition, applications for amendments and requests for cancellations provided for in this Regulation.

CHAPTER IV

Application and registration processes for designations of origin, geographical indications, and traditional specialities guaranteed

Article 48

Scope of application processes

The provisions of this Chapter shall apply in respect of the quality schemes set out in Title II and Title III.

Article 49

Application for registration of names

1. Applications for registration of names under the quality schemes referred to in Article 48 may only be submitted by groups who work with the products with the name to be registered. In the case of a 'protected designations of origin' or 'protected geographical indications' name that designates a trans-border geographical area or in the case of a 'traditional specialities guaranteed' name, several groups from different Member States or third countries may lodge a joint application for registration.

A single natural or legal person may be treated as a group where it is shown that both of the following conditions are fulfilled:

(a) the person concerned is the only producer willing to submit an application;

(b) with regard to protected designations of origin and protected geographical indications, the defined geographical area possesses characteristics which differ appreciably from those of neighbouring areas or the characteristics of the product are different from those produced in neighbouring areas.

2. Where the application under the scheme set out in Title II relates to a geographical area in a Member State, or where an application under the scheme set out in Title III is prepared by a group established in a Member State, the application shall be addressed to the authorities of that Member State.

The Member State shall scrutinise the application by appropriate means in order to check that it is justified and meets the conditions of the respective scheme.

3. As part of the scrutiny referred to in the second subparagraph of paragraph 2 of this Article, the Member State shall initiate a national opposition procedure that ensures adequate publication of the application and that provides for a reasonable period within which any natural or legal person having a legitimate interest and established or resident on its territory may lodge an opposition to the application.

The Member State shall examine the admissibility of oppositions received under the scheme set out in Title II in the light of the criteria referred to in Article 10(1), or the admissibility of oppositions received under the scheme set out in Title III in the light of the criteria referred to in Article 21(1).

4. If, after assessment of any opposition received, the Member State considers that the requirements of this Regulation are met, it may take a favourable decision and lodge an application dossier with the Commission. It shall in such case inform the Commission of admissible oppositions received from a natural or legal person that have legally marketed the products in question, using the names concerned continuously for at least five years preceding the date of the publication referred to in paragraph 3.

The Member State shall ensure that its favourable decision is made public and that any natural or legal person having a legitimate interest has an opportunity to appeal.

The Member State shall ensure that the version of the product specification on which its favourable decision is based, is published, and shall provide electronic access to the product specification.

With reference to protected designations of origin and protected geographical indications, the Member State shall also ensure adequate publication of the version of the product specification on which the Commission takes its decision pursuant to Article 50(2).

5. Where the application under the scheme set out in Title II relates to a geographical area in a third country, or where an application under the scheme set out in Title III is prepared by a group established in a third country, the application shall be lodged with the Commission, either directly or via the authorities of the third country concerned.

6. The documents referred to in this Article which are sent to the Commission shall be in one of the official languages of the Union.

7. In order to facilitate the application process, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, defining the rules for carrying out the national objection procedure for joint applications concerning more than one national territory and complementing the rules of the application process.

The Commission may adopt implementing acts laying down detailed rules on procedures, form and presentation of applications, including for applications concerning more than one national territory. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

Article 50

Scrutiny by the Commission and publication for opposition

1. The Commission shall scrutinise by appropriate means any application that it receives pursuant to Article 49, in order to check that it is justified and that it meets the conditions of the respective scheme. This scrutiny should not exceed a period of six months. Where this period is exceeded, the Commission shall indicate in writing to the applicant the reasons for the delay.

The Commission shall, at least each month, make public the list of names for which registration applications have been submitted to it, as well as their date of submission.

2. Where, based on the scrutiny carried out pursuant to the first subparagraph of paragraph 1, the Commission considers that the conditions laid down in this Regulation are fulfilled, it shall publish in the *Official Journal of the European Union*:

(a) for applications under the scheme set out in Title II, the single document and the reference to the publication of the product specification;

(b) for applications under the scheme set out in Title III, the specification.

Article 51

Opposition procedure

1. Within three months from the date of publication in the *Official Journal of the European Union*, the authorities of a Member State or of a third country, or a natural or legal person having a legitimate interest and established in a third country may lodge a notice of opposition with the Commission.

Any natural or legal person having a legitimate interest, established or resident in a Member State other than that from which the application was submitted, may lodge a notice of opposition with the Member State in which it is established within a time limit permitting an opposition to be lodged pursuant to the first subparagraph.

A notice of opposition shall contain a declaration that the application might infringe the conditions laid down in this Regulation. A notice of opposition that does not contain this declaration is void.

The Commission shall forward the notice of opposition to the authority or body that lodged the application without delay.

2. If a notice of opposition is lodged with the Commission and is followed within two months by a reasoned statement of opposition, the Commission shall check the admissibility of this reasoned statement of opposition.

3. Within two months after the receipt of an admissible reasoned statement of opposition, the Commission shall invite the authority or person that lodged the opposition and the authority or body that lodged the application to engage in appropriate consultations for a reasonable period that shall not exceed three months.

The authority or person that lodged the opposition and the authority or body that lodged the application shall start such appropriate consultations without undue delay. They shall provide each other with the relevant information to assess whether the application for registration complies with the conditions of this Regulation. If no agreement is reached, this information shall also be provided to the Commission.

At any time during these three months, the Commission may, at the request of the applicant extend the deadline for the consultations by a maximum of three months.

4. Where, following the appropriate consultations referred to in paragraph 3 of this Article, the details published in accordance with Article 50(2) have been substantially amended, the Commission shall repeat the scrutiny referred to in Article 50.

5. The notice of opposition, the reasoned statement of opposition and the related documents which are sent to the Commission in accordance with paragraphs 1 to 4 of this Article shall be in one of the official languages of the Union.

6. In order to establish clear procedures and deadlines for opposition, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, complementing the rules of the opposition procedure.

The Commission may adopt implementing acts laying down detailed rules on procedures, form and presentation of the oppositions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

Article 52

Decision on registration

1. Where, on the basis of the information available to the Commission from the scrutiny carried out pursuant to the first subparagraph of Article 50(1), the Commission considers that the conditions for registration are not fulfilled, it shall adopt implementing acts rejecting the application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

2. If the Commission receives no notice of opposition or no admissible reasoned statement of opposition under Article 51, it shall adopt implementing acts, without applying the procedure referred to in Article 57(2), registering the name.

3. If the Commission receives an admissible reasoned statement of opposition, it shall, following the appropriate consultations referred to in Article 51(3), and taking into account the results thereof, either:

(a) if an agreement has been reached, register the name by means of implementing acts adopted without applying the procedure referred to in Article 57(2), and, if necessary, amend the information published pursuant to Article 50(2) provided such amendments are not substantial; or

(b) if an agreement has not been reached, adopt implementing acts deciding on the registration. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

4. Acts of registration and decisions on rejection shall be published in the *Official Journal of the European Union*.

Article 53

Amendment to a product specification

1. A group having a legitimate interest may apply for approval of an amendment to a product specification.

Applications shall describe and give reasons for the amendments requested.

2. Where the amendment involves one or more amendments to the specification that are not minor, the amendment application shall follow the procedure laid down in Articles 49 to 52.

However, if the proposed amendments are minor, the Commission shall approve or reject the application. In the event of the approval of amendments implying a modification of the elements referred to in Article 50(2), the Commission shall publish those elements in the *Official Journal of the European Union*.

For an amendment to be regarded as minor in the case of the quality scheme described in Title II, it shall not:

(a) relate to the essential characteristics of the product;

(b) alter the link referred to in point (f)(i) or (ii) of Article 7(1);

(c) include a change to the name, or to any part of the name of the product;

(d) affect the defined geographical area; or

(e) represent an increase in restrictions on trade in the product or its raw materials.

For an amendment to be regarded as minor in the case of the quality scheme described in Title III, it shall not:

(a) relate to the essential characteristics of the product;

(b) introduce essential changes to the production method; or

(c) include a change to the name, or to any part of the name of the product.

The scrutiny of the application shall focus on the proposed amendment.

3. In order to facilitate the administrative process of an amendment application, including where the amendment does not involve any change to the single document and where it concerns a temporary change in the specification resulting from the imposition of obligatory sanitary or phytosanitary measures by the public authorities, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, complementing the rules of the amendment application process.

The Commission may adopt implementing acts laying down detailed rules on procedures, form and presentation of an amendment application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

Article 54

Cancellation

1. The Commission may, on its own initiative or at the request of any natural or legal person having a legitimate interest, adopt implementing acts to cancel the registration of a protected designation of origin or of a protected geographical indication or of a traditional speciality guaranteed in the following cases:

(a) where compliance with the conditions of the specification is not ensured;

(b) where no product is placed on the market under the traditional speciality guaranteed, the protected designation of origin or the protected geographical indication for at least seven years.

The Commission may, at the request of the producers of product marketed under the registered name, cancel the corresponding registration.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

2. In order to ensure legal certainty that all parties have the opportunity to defend their rights and legitimate interests, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56 complementing the rules regarding the cancellation process.

The Commission may adopt implementing acts laying down detailed rules on procedures and form of the cancellation process, as well as on the presentation of the requests referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

TITLE VI

PROCEDURAL AND FINAL PROVISIONS

CHAPTER I

Local farming and direct sales

Article 55

Reporting on local farming and direct sales

No later than 4 January 2014 the Commission shall present a report to the European Parliament and to the Council on the case for a new local farming and direct sales labelling scheme to assist producers in marketing their produce locally. That report shall focus on the ability of the farmer to add value to his produce through the new label, and should take into account other criteria, such as the possibilities of reducing carbon emissions and waste through short production and distribution chains.

That report shall, if necessary, be accompanied by appropriate legislative proposals on the creation of a local farming and direct sales labelling scheme.

CHAPTER II

Procedural rules

Article 56

Exercise of the delegation

1. The power to adopt the 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 the second subparagraph of Article 2(1), Article 5(4), the first subparagraph of Article 7(2), the first subparagraph of Article 12(5), Article 16(2), Article 18(5), the first subparagraph of Article 19(2), the first subparagraph of Article 23(4), Article 25(3), Article 29(4), Article 30, Article 31(3) and (4), Article 41(3), Article 42(2), the first subparagraph of Article 49(7), the first subparagraph of Article 51(6), the first subparagraph of Article 53(3) and the first subparagraph of Article 54(2) shall be conferred on the Commission for a period of five years from 3 January 2013. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in the second subparagraph of Article 2(1), Article 5(4), the first subparagraph of Article 7(2), the first subparagraph of Article 12(5), Article 16(2), Article 18(5), the first subparagraph of Article 19(2), the first subparagraph of Article 23(4), Article 25(3), Article 29(4), Article 30, Article 31(3) and (4), Article 41(3), Article 42(2), the first subparagraph of Article 49(7), the first subparagraph of Article 51(6), the first subparagraph of Article 53(3) and the first subparagraph of Article 54(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to the second subparagraph of Article 2(1), Article 5(4), the first subparagraph of Article 7(2), the first subparagraph of Article 12(5), Article 16(2), Article 18(5), the first subparagraph of Article 19(2), the first subparagraph of Article 23(4), Article 25(3), Article 29(4), Article 30, Article 31(3) and (4), Article 41(3), Article 42(2), the first subparagraph of Article 49(7), the first subparagraph of Article 51(6), the first subparagraph of Article 53(3) and the first subparagraph of Article 54(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 57

Committee procedure

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

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

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

CHAPTER III

Repeal and final provisions

Article 58

Repeal

1. Regulations (EC) No 509/2006 and (EC) No 510/2006 are hereby repealed.

However, Article 13 of Regulation (EC) No 509/2006 shall continue to apply in respect of applications concerning products falling outside the scope of Title III of this Regulation, received by the Commission prior to the date of entry into force of this Regulation.

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

Article 59

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*.

However, Article 12(3) and Article 23(3) shall apply from 4 January 2016, without prejudice to products already placed on the market before that date.

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

Done at Strasbourg, 21 November 2012.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A. D. MAVROYIANNIS

ANNEX I

AGRICULTURAL PRODUCTS AND FOODSTUFFS REFERRED TO IN ARTICLE 2(1)

I. Designations of Origin and Geographical indications

— beer,

— chocolate and derived products,

— bread, pastry, cakes, confectionery, biscuits and other baker's wares,

— beverages made from plant extracts,

— pasta,

— salt,

— natural gums and resins,

— mustard paste,

— hay,

— essential oils,

— cork,

— cochineal,

— flowers and ornamental plants,

— cotton,

— wool,

— wicker,

— scutched flax,

— leather,

— fur,

— feather.

II. Traditional specialities guaranteed

— prepared meals,

— beer,

— chocolate and derived products,

— bread, pastry, cakes, confectionery, biscuits and other baker's wares,

— beverages made from plant extracts,

— pasta,

— salt.

ANNEX II

CORRELATION TABLE REFERRED TO IN ARTICLE 58(2)

Regulation (EC) No 509/2006	This Regulation
Article 1(1)	Article 2(1)
Article 1(2)	Article 2(3)
Article 1(3)	Article 2(4)
Article 2(1), point (a)	Article 3, point (5)
Article 2(1), point (b)	Article 3, point (3)
Article 2(1), point (c)	—
Article 2(1), point (d)	Article 3, point (2)
Article 2(2), first to third subparagraph	—
Article 2(2), fourth subparagraph	—
Article 3	Article 22(1)
Article 4(1), first subparagraph	Article 18(1)
Article 4(2)	Article 18(2)
Article 4(3), first subparagraph	—
Article 4(3), second subparagraph	Article 18(4)
Article 5(1)	Article 43
Article 5(2)	Article 42(1)
Article 6(1)	Article 19(1)
Article 6(1), point (a)	Article 19(1), point (a)
Article 6(1), point (b)	Article 19(1), point (b)
Article 6(1), point (c)	Article 19(1), point (c)
Article 6(1), point (d)	—
Article 6(1), point (e)	Article 19(1), point (d)
Article 6(1), point (f)	—
Article 7(1) and (2)	Article 49(1)
Article 7(3), points (a) and (b)	Article 20(1), points (a) and (b)
Article 7(3), point (c)	—
Article 7(3), point (d)	—
Article 7(4)	Article 49(2)

Regulation (EC) No 509/2006	This Regulation
Article 7(5)	Article 49(3)
Article 7(6), points (a), (b) and (c)	Article 49(4)
Article 7(6), point (d)	Article 20(2)
Article 7(7)	Article 49(5)
Article 7(8)	Article 49(6)
Article 8(1)	Article 50(1)
Article 8(2), first subparagraph	Article 50(2), point (b)
Article 8(2), second subparagraph	Article 52(1)
Article 9(1) and (2)	Article 51(1)
Article 9(3)	Article 21(1) and (2)
Article 9(4)	Article 52(2)
Article 9(5)	Article 52(3) and (4)
Article 9(6)	Article 51(5)
Article 10	Article 54
Article 11	Article 53
Article 12	Article 23
Article 13(1)	—
Article 13(2)	—
Article 13(3)	—
Article 14(1)	Article 36(1)
Article 14(2)	Article 46(1)
Article 14(3)	Article 37(3), second subparagraph
Article 15(1)	Article 37(1)
Article 15(2)	Article 37(2)
Article 15(3)	Article 39(2)
Article 15(4)	Article 36(2)
Article 16	—
Article 17(1) and (2)	Article 24(1)
Article 17(3)	Article 24(2)

Regulation (EC) No 509/2006	This Regulation
Article 18	Article 57
Article 19(1), point (a)	—
Article 19(1), point (b)	Article 49(7), second subparagraph
Article 19(1), point (c)	Article 49(7), first subparagraph
Article 19(1), point (d)	Article 22(2)
Article 19(1), point (e)	Article 19(1), point (f)
Article 51(6)	Article 54(1)
Article 19(1), point (g)	Article 23(4)
Article 19(1), point (h)	—
Article 19(1), point (i)	—
Article 19(2)	Article 25(1)
Article 19(3), point (a)	—
Article 19(3), point (b)	Article 25(2)
Article 20	Article 47
Article 21	Article 58
Article 22	Article 59
Annex I	Annex I (Part II)

Regulation (EC) No 510/2006	This Regulation
Article 1(1)	Article 2(1) and (2)
Article 1(2)	Article 2(3)
Article 1(3)	Article 2(4)
Article 2	Article 5
Article 3(1), first subparagraph	Article 6(1)
Article 3(1), second and third subparagraph	Article 41(1), (2) and (3)
Article 3(2), (3) and (4)	Article 6(2), (3) and (4)
Article 4	Article 7
Article 5(1)	Article 3, point (2), and Article 49(1)

Regulation (EC) No 510/2006	This Regulation
Article 5(2)	Article 49(1)
Article 5(3)	Article 8(1)
Article 5(4)	Article 49(2)
Article 5(5)	Article 49(3)
Article 5(6)	Article 9
Article 5(7)	Article 8(2)
Article 5(8)	—
Article 5(9), first subparagraph	—
Article 5(9), second subparagraph	Article 49(5)
Article 5(10)	Article 49(6)
Article 5(11)	—
Article 6(1), first subparagraph	Article 50(1)
Article 6(2), first subparagraph	Article 50(2), point (a)
Article 6(2), second subparagraph	Article 52(1)
Article 7(1)	Article 51(1), first subparagraph
Article 7(2)	Article 51(1), second subparagraph
Article 7(3)	Article 10
Article 7(4)	Article 52(2) and (4)
Article 7(5)	Article 51(3) and Article 52(3) and (4)
Article 7(6)	Article 11
Article 7(7)	Article 51(5)
Article 8	Article 12
Article 9	Article 53
Article 10(1)	Article 36(1)
Article 10(2)	Article 46(1)
Article 10(3)	Article 37(3), second subparagraph
Article 11(1)	Article 37(1)
Article 11(2)	Article 37(2)

Regulation (EC) No 510/2006	This Regulation
Article 11(3)	Article 39(2)
Article 11(4)	Article 36(2)
Article 12	Article 54
Article 13(1)	Article 13(1)
Article 13(2)	Article 13(2)
Article 13(3)	Article 15(1)
Article 13(4)	Article 15(2)
Article 14	Article 14
Article 15	Article 57
Article 16, point (a)	Article 5(4), second subparagraph
Article 16, point (b)	—
Article 16, point (c)	—
Article 16, point (d)	Article 49(7)
Article 16, point (e)	—
Article 16, point (f)	Article 51(6)
Article 16, point (g)	Article 12(7)
Article 16, point (h)	—
Article 16, point (i)	Article 11(3)
Article 16, point (j)	—
Article 16, point (k)	Article 54(2)
Article 17	Article 16
Article 18	Article 47
Article 19	Article 58
Article 20	Article 59
Annex I and Annex II	Annex I (Part I)

REGULATION (EU) No 1152/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 November 2012

amending Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy

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 ([1]),

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

Whereas:

(1) Union fishing vessels have equal access to Union waters and resources, subject to the rules of the common fisheries policy.

(2) Regulation (EC) No 2371/2002 ([3]) provides for a derogation from the equal access rule, whereby Member States are authorised to restrict fishing to certain vessels in waters up to 12 nautical miles from their baselines.

(3) On 13 July 2011, in accordance with Regulation (EC) No 2371/2002, the Commission presented a report to the European Parliament and to the Council on the arrangements concerning access to fisheries resources within the 12 nautical mile zone. That report concluded that the access regime is very stable and that it has continued to operate satisfactorily since 2002.

(4) Rules in place restricting access to fisheries resources within the 12 nautical mile zone have had positive effects on conservation by restricting fishing effort in the most sensitive part of Union waters. Those rules have also preserved traditional fishing activities which are important for the social and economic development of certain coastal communities.

(5) The derogation entered into force on 1 January 2003 and is to expire on 31 December 2012. Its validity should be extended pending the adoption of a new regulation, based on the Commission proposal for a regulation of the European Parliament and of the Council on the common fisheries policy.

(6) Regulation (EC) No 2371/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

In Article 17(2) of Regulation (EC) No 2371/2002, the first subparagraph is replaced by the following:

‘2. In the waters up to 12 nautical miles from baselines under their sovereignty or jurisdiction, Member States shall be authorised from 1 January 2013 to 31 December 2014 to restrict fishing to fishing vessels that traditionally fish in those waters from ports on the adjacent coast. This shall be without prejudice to the arrangements for Union fishing vessels flying the flag of other Member States under existing neighbourhood relations between Member States and the arrangements contained in Annex I, fixing for each Member State the geographical zones within the coastal bands of other Member States where fishing activities are pursued and the species concerned.’.

Article 2

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

It shall apply from 1 January 2013.

([1]) OJ C 351, 15.11.2012, p. 89.
([2]) Position of the European Parliament of 25 October 2012 (not yet published in the Official Journal) and decision of the Council of 13 November 2012.
([3]) OJ L 358, 31.12.2002, p. 59.

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

Done at Strasbourg, 21 November 2012.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A. D. MAVROYIANNIS

DIRECTIVES

DIRECTIVE 2012/34/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 November 2012

establishing a single European railway area

(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 91 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the ordinary legislative procedure [3],

Whereas:

(1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways [4], Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings [5] and Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure [6] have been substantially amended. Since further amendments are necessary, those Directives should be recast and merged into a single act in the interest of clarity.

(2) Greater integration of the Union transport sector is an essential element of the completion of the internal market, and the railways are a vital part of the Union transport sector moving towards achieving sustainable mobility.

(3) The efficiency of the railway system should be improved, in order to integrate it into a competitive market, whilst taking account of the special features of the railways.

(4) Member States with an important share of rail traffic with third countries which have the same railway gauge which is different from the main rail network within the Union should be able to have specific operational rules ensuring both coordination between their infrastructure managers and those of the third countries concerned and fair competition between railway undertakings.

(5) In order to render railway transport efficient and competitive with other modes of transport, Member States should ensure that railway undertakings have the status of independent operators behaving in a commercial manner and adapting to market needs.

(6) In order to ensure the future development and efficient operation of the railway system, a distinction should be made between the provision of transport services and the operation of infrastructure. Given that situation, it is necessary for these two activities to be managed separately and to have separate accounts. Provided that those separation requirements are met, that no conflicts of interest arise and that the confidentiality of commercially sensitive information is guaranteed, infrastructure managers should have the possibility to outsource specific administrative tasks, such as the collection of charges, to entities other than those active in railway transport services markets.

(7) The principle of freedom to provide services should be applied to the railway sector, taking into account that sector's specific characteristics.

(8) In order to boost competition in railway service management in terms of improved comfort and the services provided to users, Member States should retain general responsibility for the development of the appropriate railway infrastructure.

[1] OJ C 132, 3.5.2011, p. 99.
[2] OJ C 104, 2.4.2011, p. 53.
[3] Position of the European Parliament of 16 November 2011 (not yet published in the Official Journal) and Position of the Council at first reading of 8 March 2012 (OJ C 108 E, 14.4.2012, p. 8). Position of the European Parliament of 3 July 2012 and decision of the Council of 29 October 2012.
[4] OJ L 237, 24.8.1991, p. 25.
[5] OJ L 143, 27.6.1995, p. 70.
[6] OJ L 75, 15.3.2001, p. 29.

(9) In the absence of common rules on allocation of infrastructure costs, Member States should, after consulting the infrastructure manager, lay down rules providing for railway undertakings to pay for the use of railway infrastructure. Such rules should not discriminate between railway undertakings.

(10) Member States should ensure that infrastructure managers and existing publicly owned or controlled railway transport undertakings are given a sound financial structure, having due regard to Union rules on State aid. This is without prejudice to the competence of the Member States regarding infrastructure planning and financing.

(11) Applicants should be given the opportunity to express their views on the content of the business plan as far as the use, provision and development of the infrastructure are concerned. This should not necessarily entail full disclosure of the business plan developed by the infrastructure manager.

(12) Since private branch lines and sidings, such as sidings and lines in private industrial facilities, are not part of the railway infrastructure as defined by this Directive, managers of those infrastructures should not be subject to the obligations imposed on infrastructure managers under this Directive. However, non-discriminatory access to branch lines and sidings should be guaranteed, irrespective of their ownership, where they are needed to get access to services facilities which are essential for the provision of transport services and where serving or potentially serving more than one final customer.

(13) Member States should be able to decide to cover infrastructure expenditure through means other than direct State funding, such as public private partnership and private sector financing.

(14) The profit and loss account of an infrastructure manager should be balanced over a reasonable time period, which, once established, might be exceeded under exceptional circumstances, such as a major and sudden deterioration in the economic situation in a Member State affecting substantially the level of traffic on its infrastructure or the level of available public financing. In accordance with international accounting rules, the amount of loans to finance infrastructure projects does not appear in such profit and loss accounts.

(15) An efficient freight sector, especially across borders, requires action to open up the market.

(16) In order to ensure that access rights to railway infrastructure are applied throughout the Union in a uniform and non-discriminatory manner, it is appropriate to introduce a licence for railway undertakings.

(17) In the case of journeys with intermediate stops, new market entrants should be authorised to pick up and set down passengers along the route in order to ensure that such operations are economically viable and to avoid placing potential competitors at a disadvantage compared to existing operators.

(18) The introduction of new, open-access, international passenger services with intermediate stops should not be used to open up the market for domestic passenger services, but should merely focus on stops that are ancillary to the international route. The principal purpose of the new services should be to carry passengers travelling on an international journey. When assessing whether that is the service's principal purpose, criteria such as the proportion of turnover, and of volume, derived from transport of domestic or international passengers, and the length of the service should be taken into account. The assessment of the service's principal purpose should be carried out by the respective national regulatory body at the request of an interested party.

(19) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road [1] authorises Member States and local authorities to award public service contracts which may contain exclusive rights to operate certain services. It is therefore necessary to ensure that the provisions of that Regulation are consistent with the principle of opening up international passenger services to competition.

(20) Opening up international passenger services to competition may have implications for the organisation and financing of rail passenger services provided under a public service contract. Member States should have the option of limiting the right of access to the market where that right would compromise the economic equilibrium of those public service contracts and where approval is given by the relevant regulatory body on the basis of an objective economic analysis, following a request from the competent authorities that awarded the public service contract.

(21) The assessment of whether the economic equilibrium of the public service contract has been compromised should take into account predetermined criteria such as the

[1] OJ L 315, 3.12.2007, p. 1.

impact on the profitability of any services which are included in a public service contract, including the resulting impacts on the net cost to the competent public authority that awarded the contract, passenger demand, ticket pricing, ticketing arrangements, location and number of stops on both sides of the border and timing and frequency of the proposed new service. In accordance with such an assessment and the decision of the relevant regulatory body, Member States should be able to authorise, modify or deny the right of access for the international passenger service sought, including the levying of a charge on the operator of a new international passenger service, in line with the economic analysis and in accordance with Union law and the principles of equality and non-discrimination.

(22) In order to contribute to the operation of passenger services on lines fulfilling a public service obligation, Member States should be able to authorise the authorities responsible for those services to impose a levy on passenger services which fall within the jurisdiction of those authorities. That levy should contribute to the financing of public service obligations laid down in public service contracts.

(23) The regulatory body should function in a way which avoids any conflict of interests and any possible involvement in the award of the public service contract under consideration. The powers of the regulatory body should be extended to allow for an assessment of the purpose of an international service and, where appropriate, of the potential economic impact on existing public service contracts.

(24) In order to invest in services using specialised infrastructure, such as high-speed railway lines, applicants need legal certainty given the substantial long-term investment involved.

(25) The regulatory bodies should exchange information and, where relevant in individual cases, should coordinate the principles and practice of assessing whether the economic equilibrium of a public service contract is compromised. They should progressively develop guidelines based on their experience.

(26) In order to ensure fair competition between railway undertakings and to guarantee full transparency and the non-discriminatory access to and supply of services, a distinction should be made between the provision of transport services and the operation of service facilities. Thus, it is necessary for these two types of activity to be managed independently where the operator of the service facility belongs to a body or firm which is also active and holds a dominant position at national level in at least one of the railway transport markets for the carriage of goods or passengers for which the facility is used. Such independence should not entail the establishment of a separate legal entity for service facilities.

(27) Non-discriminatory access to service facilities and the supply of rail-related services in these facilities should allow railway undertakings to offer better services to passengers and freight users.

(28) While Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity [1] provides for the opening of the European electricity market, traction current should be supplied to railway undertakings upon request in a non-discriminatory manner. When there is only one supplier available, the charge imposed for such service should be set under uniform charging principles.

(29) In respect of relations with third countries, special consideration should be given to the existence of reciprocal access for Union railway undertakings to the rail market of those third countries and this should be facilitated through the cross-border agreements.

(30) In order to ensure dependable and adequate services, it is necessary to ensure that, at all times, railway undertakings meet certain requirements in relation to good repute, financial fitness and professional competence.

(31) For the protection of customers and the third parties concerned it is essential to ensure that railway undertakings are sufficiently insured against liability. Coverage of that liability in the event of accidents through guarantees provided by banks or other undertakings should also be allowed, provided that such coverage is offered under market conditions, does not result in State aid and does not contain elements of discrimination against other railway undertakings.

(32) A railway undertaking should also be required to comply with national and Union law on the provision of railway services, applied in a non-discriminatory manner, which are intended to ensure that it can carry on its activity in complete safety and with due regard to health, social conditions and the rights of workers and consumers on specific stretches of track.

(33) The procedures for granting, maintaining and amending licences for railway undertakings should be transparent and in accordance with the principle of non-discrimination.

[1] OJ L 211, 14.8.2009, p. 55.

(34) To ensure transparency and non-discriminatory access to rail infrastructure, and to services in service facilities, for all railway undertakings, all the information required to use access rights should be published in a network statement. The network statement should be published in at least two official languages of the Union in line with existing international practices.

(35) Appropriate capacity-allocation schemes for rail infrastructure coupled with competitive operators will result in a better balance of transport between modes.

(36) Infrastructure managers should be given incentives, such as bonuses for managing directors, to reduce the level of access charges and the costs of providing infrastructure.

(37) The obligation of Member States to ensure that the infrastructure manager performance targets and medium to long-term incomes are implemented through a contractual agreement between the competent authority and the infrastructure manager should be without prejudice to the competence of the Member States regarding planning of and financing for railway infrastructure.

(38) Encouraging optimal use of the railway infrastructure will lead to a reduction in the cost of transport to society.

(39) Methods for apportioning costs established by infrastructure managers should be based on the best available understanding of cost causation and should apportion costs to the different services offered to railway undertakings and, where relevant, to types of rail vehicles.

(40) Appropriate charging schemes for rail infrastructure coupled with appropriate charging schemes for other transport infrastructures and competitive operators should result in an optimal balance of different transport modes on a sustainable basis.

(41) When levying mark-ups, distinct market segments should be defined by the infrastructure manager where the costs of providing the transport services, their market prices or their requirements for service quality differ considerably.

(42) The charging and capacity-allocation schemes should permit equal and non-discriminatory access for all undertakings and should attempt, as far as possible, to meet the needs of all users and traffic types in a fair and non-discriminatory manner. Such schemes should allow fair competition in the provision of railway services.

(43) Within the framework set out by Member States, charging and capacity-allocation schemes should encourage railway infrastructure managers to optimise use of their infrastructure.

(44) Railway undertakings should receive clear and consistent economic signals from capacity-allocation schemes and from charging schemes which lead them to make rational decisions.

(45) Rolling noise caused by brake blocks with cast iron technology, used on freight wagons, is one of the causes of noise emissions that could be reduced with appropriate technical solutions. Noise differentiated infrastructure charges should primarily address the freight wagons that do not fulfil the requirements of Commission Decision 2006/66/EC of 23 December 2005 concerning the technical specification for interoperability relating to the subsystem 'rolling stock — noise' of the trans-European conventional rail system [1]. When such differentiation results in a loss of revenue for the infrastructure manager, it should be without prejudice to Union rules on State aid.

(46) Noise-differentiated infrastructure charges should complement other measures to reduce noise produced by rail traffic, such as the adoption of technical specifications for interoperability (TSI) setting maximum levels of noise produced by railway vehicles, noise mapping and action plans to reduce noise exposure under Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise [2] as well as Union and national public funding for the retrofitting of rail vehicles and for noise-reduction infrastructures.

(47) Noise-reduction measures equivalent to those adopted for the rail sector should be considered for other modes of transport.

(48) In order to accelerate the installation of the European Train Control System (ETCS) on board locomotives, infrastructure managers should modify the charging system through a temporary differentiation for trains equipped with ETCS. Such a differentiation should give appropriate incentives to equip trains with ETCS.

(49) In order to take into account the need of users, or potential users, of railway infrastructure capacity to plan their business, and the needs of customers and funders, it is important that infrastructure managers ensure that infrastructure capacity is allocated in a way which reflects the need to maintain and improve service reliability levels.

[1] OJ L 37, 8.2.2006, p. 1.
[2] OJ L 189, 18.7.2002, p. 12.

(50) It is desirable for railway undertakings and the infrastructure manager to be provided with incentives to minimise disruption and improve performance of the network.

(51) Member States should have the option of allowing purchasers of railway services to enter the capacity-allocation process directly.

(52) It is important to have regard to the business requirements of both applicants and the infrastructure manager.

(53) It is important to maximise the flexibility available to infrastructure managers with regard to the allocation of infrastructure capacity, but this should be consistent with satisfying the applicant's reasonable requirements.

(54) The capacity-allocation process should prevent the imposition of undue constraints on the wishes of other undertakings, holding, or intending to hold, rights to use the infrastructure, to develop their business.

(55) Capacity allocation and charging schemes may need to take account of the fact that different components of the rail infrastructure network may have been designed with different principal users in mind.

(56) As different users and types of users will frequently have a different impact on infrastructure capacity, the needs of different services need to be properly balanced.

(57) Services operated under contract to a public authority may require special rules to safeguard their attractiveness to users.

(58) The charging and capacity-allocation schemes should take account of the effects of increasing saturation of infrastructure capacity and, ultimately, the scarcity of capacity.

(59) The different time-frames for planning traffic types should ensure that requests for infrastructure capacity which are made after the completion of the process for establishing the annual working timetable can be satisfied.

(60) To ensure the optimum outcome for railway undertakings, it is desirable to require an examination of the use of infrastructure capacity when the coordination of requests for capacity is required to meet the needs of users.

(61) In view of their monopolistic position, infrastructure managers should be required to examine the available infrastructure capacity, and methods of enhancing it when the capacity-allocation process is unable to meet the requirements of users.

(62) A lack of information about other railway undertakings' requests and about the constraints within the system may make it difficult for railway undertakings to seek to optimise their infrastructure capacity requests.

(63) It is important to ensure better coordination of allocation schemes in order to improve the attractiveness of rail for traffic which uses the network of more than one infrastructure manager, in particular for international traffic.

(64) It is important to minimise the distortions of competition which may arise, either between railway infrastructures or transport modes, from significant differences in charging principles.

(65) It is desirable to define those components of the infrastructure service which are essential to enable an operator to provide a service and which should be provided in return for minimum access charges.

(66) Investment in railway infrastructure is necessary and infrastructure charging schemes should provide incentives for infrastructure managers to make appropriate investments economically attractive.

(67) To enable the establishment of appropriate and fair levels of infrastructure charges, infrastructure managers need to record and establish the value of their assets and develop a clear understanding of the factors which determine the cost of operating the infrastructure.

(68) It is desirable to ensure that account is taken of external costs when making transport decisions and that rail infrastructure charging can contribute to the internalisation of external costs in a coherent and balanced way across all modes of transport.

(69) It is important to ensure that charges for domestic and international traffic are such as to permit rail to meet the needs of the market. Consequently, infrastructure charging should be set at the cost that is directly incurred as a result of operating the train service.

(70) The overall level of cost recovery through infrastructure charges affects the necessary level of government contribution. Member States may require different levels of overall cost recovery. However, any infrastructure charging scheme should allow traffic which can at least pay for the additional cost which it imposes to use the rail network.

(71) Railway infrastructure is a natural monopoly and it is therefore necessary to provide infrastructure managers with incentives to reduce costs and to manage their infrastructure efficiently.

(72) The development of railway transport should be achieved by using, inter alia, the Union instruments available, without prejudice to priorities already established.

(73) Discounts which are granted to railway undertakings should relate to actual administrative cost savings made, in particular transaction costs savings. Discounts may also be granted to promote the efficient use of infrastructure.

(74) It is desirable for railway undertakings and the infrastructure manager to be provided with incentives to minimise disruption of the network.

(75) The allocation of capacity is associated with a cost to the infrastructure manager, payment for which should be required.

(76) The efficient management and fair and non-discriminatory use of rail infrastructure require the establishment of a regulatory body that oversees the application of the rules set out in this Directive and acts as an appeal body, without prejudice to the possibility of judicial review. Such a regulatory body should be able to enforce its information requests and decisions by means of appropriate penalties.

(77) The financing of the regulatory body should guarantee its independence and should come either from the State budget or from contributions of the sector levied in a compulsory way, while respecting the principles of fairness, transparency, non-discrimination and proportionality.

(78) Appropriate procedures for appointing staff should contribute to guaranteeing the independence of the regulatory body, ensuring in particular that the appointment of persons in charge of decisions is made by a public authority which does not directly exert ownership rights over regulated undertakings. Provided that that condition is met, such an authority could be, for example, a parliament, a President or a Prime Minister.

(79) Specific measures are required to take account of the specific geopolitical and geographical situation of certain Member States and the particular organisation of the railway sector in various Member States while ensuring the integrity of the internal market.

(80) In order to take into account the evolution of the rail market, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the technical amendments to the information to be provided by the undertaking applying for a licence, to the list of classes of delay, to the schedule for the allocation process, and to the accounting information to be supplied to the regulatory bodies. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(81) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council 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 [1].

(82) Implementing acts related to the principal purpose of rail services, the assessment of impact of new international services on the economic equilibrium of public service contracts, the levies on railway undertakings providing passenger services, access to the services to be supplied in essential service facilities, the details on the procedure to be followed to obtain a licence, the modalities for the calculation of direct cost for the application of the charging for the cost of noise effects and for the application of the differentiation of the infrastructure charge to give incentives to equip trains with ETCS and the common principles and practices for the regulatory bodies decision-making should not be adopted by the Commission where the committee established pursuant to this Directive delivers no opinion on the draft implementing act presented by the Commission.

(83) Since the objectives of this Directive, namely to foster the development of the Union railways, to set out broad principles for granting licences to railway undertakings and to coordinate arrangements in the Member States governing the allocation of railway infrastructure capacity and the charges made for the use thereof, cannot be sufficiently achieved by the Member States on account of the manifestly international dimension of issuing such licences and operating significant elements of the railway networks, and of the need to ensure fair and non-discriminatory terms for access to the infrastructure, and can therefore, by reason of their trans-national implications, 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 to achieve those objectives.

(84) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions of this Directive, which are substantively unchanged as compared with the earlier Directives, arises under those Directives.

[1] OJ L 55, 28.2.2011, p. 13.

(85) The Member States which have no railway system, and no immediate prospect of having one, would be subject to a disproportionate and pointless obligation if they had to transpose and implement Chapters II and IV of this Directive. Therefore, such Member States should be exempted from that obligation.

(86) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents [1], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a Directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(87) This Directive should be without prejudice to the time limits set out in Part B of Annex IX, within which Member States are to comply with the earlier Directives,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject-matter and scope

1. This Directive lays down:

(a) the rules applicable to the management of railway infrastructure and to rail transport activities of the railway undertakings established or to be established in a Member State as set out in Chapter II;

(b) the criteria applicable to the issuing, renewal or amendment of licences by a Member State intended for railway undertakings which are or will be established in the Union as set out in Chapter III;

(c) the principles and procedures applicable to the setting and collecting of railway infrastructure charges and the allocation of railway infrastructure capacity as set out in Chapter IV.

2. This Directive applies to the use of railway infrastructure for domestic and international rail services.

Article 2

Exclusions from the scope

1. Chapter II shall not apply to railway undertakings which only operate urban, suburban or regional services on local and regional stand-alone networks for transport services on railway infrastructure or on networks intended only for the operation of urban or suburban rail services.

Notwithstanding the first subparagraph, when such a railway undertaking is under the direct or indirect control of an undertaking or another entity performing or integrating rail transport services other than urban, suburban or regional services, Articles 4 and 5 shall apply. Article 6 shall also apply to such a railway undertaking with regard to the relationship between the railway undertaking and the undertaking or entity which controls it directly or indirectly.

2. Member States may exclude the following from the application of Chapter III:

(a) undertakings which only operate rail passenger services on local and regional stand-alone railway infrastructure;

(b) undertakings which only operate urban or suburban rail passenger services;

(c) undertakings which only operate regional rail freight services;

(d) undertakings which only operate freight services on privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations.

3. Member States may exclude the following from the application of Articles 7, 8 and 13 and Chapter IV:

(a) local and regional stand-alone networks for passenger services on railway infrastructure;

(b) networks intended only for the operation of urban or suburban rail passenger services;

(c) regional networks which are used for regional freight services solely by a railway undertaking that is not covered under paragraph 1 until capacity on that network is requested by another applicant;

(d) privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations.

4. Without prejudice to paragraph 3, Member States may exclude local and regional railway infrastructures which do not have any strategic importance for the functioning of the rail market from the application of Article 8(3) and local railway infrastructures which do not have any strategic importance for the functioning of the rail market from the application of Chapter IV. Member States shall notify the Commission of their intention to exclude such railway infrastructures. In accordance with the advisory procedure referred to in Article 62(2), the Commission shall decide whether such railway infrastructure may be considered to be without any strategic importance taking into account the length of railway lines concerned, their level of use and the traffic volume potentially impacted.

[1] OJ C 369, 17.12 2011, p. 14.

5. Member States may exclude from the application of Article 31(5) vehicles operated or intended to be operated from and to third countries, running on a network whose track gauge is different from the main rail network within the Union.

6. Member States may decide time periods and deadlines for the schedule for capacity allocation which are different from those referred to in Article 43(2), point 2(b) of Annex VI and points 3, 4 and 5 of Annex VII if the establishment of international train paths in cooperation with infrastructure managers of third countries on a network whose track gauge is different from the main rail network within the Union has a significant impact on the schedule for capacity allocation in general.

7. Member States may decide to publish the charging framework and charging rules applicable specifically to international freight services from and to third countries operated on a network whose track gauge is different from the main rail network within the Union with different instruments and deadlines than those provided under Article 29(1) where this is required to ensure fair competition.

8. Member States may exclude from the application of Chapter IV railway infrastructure, whose track gauge is different from the main rail network within the Union, and which connects cross-border stations of a Member State to the territory of a third country.

9. This Directive shall not apply to undertakings the business of which is limited to providing solely shuttle services for road vehicles through undersea tunnels or to transport operations in the form of shuttle services for road vehicles through such tunnels except Article 6(1) and (4) and Articles 10, 11, 12 and 28.

10. Member States may exclude from the application of Chapter II, with the exception of Article 14, and Chapter IV, any railway service carried out in transit through the Union.

11. Member States may exclude from the application of Article 32(4) trains not equipped with the European Train Control System (ETCS) and used for regional passenger services which have been placed into service for the first time before 1985.

Article 3

Definitions

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

(1) 'railway undertaking' means any public or private undertaking licensed according to this Directive, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only;

(2) 'infrastructure manager' means any body or firm responsible in particular for establishing, managing and maintaining railway infrastructure, including traffic management and control-command and signalling; the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or firms;

(3) 'railway infrastructure' means the items listed in Annex I;

(4) 'international freight service' means a transport service where the train crosses at least one border of a Member State; the train may be joined and/or split and the different sections may have different origins and destinations, provided that all wagons cross at least one border;

(5) 'international passenger service' means a passenger service where the train crosses at least one border of a Member State and where the principal purpose of the service is to carry passengers between stations located in different Member States; the train may be joined and/or split, and the different sections may have different origins and destinations, provided that all carriages cross at least one border;

(6) 'urban and suburban services' means transport services whose principal purpose is to meet the transport needs of an urban centre or conurbation, including a cross-border conurbation, together with transport needs between such a centre or conurbation and surrounding areas;

(7) 'regional services' means transport services whose principal purpose is to meet the transport needs of a region, including a cross-border region;

(8) 'transit' means crossing territory of the Union without loading or unloading goods, and/or without picking up passengers or setting them down in territory of the Union;

(9) 'alternative route' means another route between the same origin and destination where there is substitutability between the two routes for the operation of the freight or passenger service concerned by the railway undertaking;

(10) 'viable alternative' means access to another service facility which is economically acceptable to the railway undertaking, and allows it to operate the freight or passenger service concerned;

(11) 'service facility' means the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in points 2 to 4 of Annex II;

(12) 'operator of service facility' means any public or private entity responsible for managing one or more service facilities or supplying one or more services to railway undertakings referred to in points 2 to 4 of Annex II;

(13) 'cross-border agreement' means any agreement between two or more Member States or between Member States and third countries intended to facilitate the provision of cross-border rail services;

(14) 'licence' means an authorisation issued by a licensing authority to an undertaking, by which its capacity to provide rail transport services as a railway undertaking is recognised; that capacity may be limited to the provision of specific types of services;

(15) 'licensing authority' means the body responsible for granting licences within a Member State;

(16) 'contractual agreement' means an agreement or, *mutatis mutandis*, an arrangement within the framework of administrative measures;

(17) 'reasonable profit' means a rate of return on own capital that takes account of the risk, including that to revenue, or the absence of such risk, incurred by the operator of the service facility and is in line with the average rate for the sector concerned in recent years;

(18) 'allocation' means the allocation of railway infrastructure capacity by an infrastructure manager;

(19) 'applicant' means a railway undertaking or an international grouping of railway undertakings or other persons or legal entities, such as competent authorities under Regulation (EC) No 1370/2007 and shippers, freight forwarders and combined transport operators, with a public-service or commercial interest in procuring infrastructure capacity;

(20) 'congested infrastructure' means an element of infrastructure for which demand for infrastructure capacity cannot be fully satisfied during certain periods even after coordination of the different requests for capacity;

(21) 'capacity-enhancement plan' means a measure or series of measures with a calendar for their implementation which aim to alleviate the capacity constraints which led to the declaration of an element of infrastructure as 'congested infrastructure';

(22) 'coordination' means the process through which the infrastructure manager and applicants will attempt to resolve situations in which there are conflicting applications for infrastructure capacity;

(23) 'framework agreement' means a legally binding general agreement under public or private law, setting out the rights and obligations of an applicant and the infrastructure manager in relation to the infrastructure capacity to be allocated and the charges to be levied over a period longer than one working timetable period;

(24) 'infrastructure capacity' means the potential to schedule train paths requested for an element of infrastructure for a certain period;

(25) 'network' means the entire railway infrastructure managed by an infrastructure manager;

(26) 'network statement' means the statement which sets out in detail the general rules, deadlines, procedures and criteria for charging and capacity-allocation schemes, including such other information as is required to enable applications for infrastructure capacity;

(27) 'train path' means the infrastructure capacity needed to run a train between two places over a given period;

(28) 'working timetable' means the data defining all planned train and rolling-stock movements which will take place on the relevant infrastructure during the period for which it is in force;

(29) 'storage siding' means sidings specifically dedicated to temporary parking of railway vehicles between two assignments;

(30) 'heavy maintenance' means work that is not carried out routinely as part of day-to-day operations and requires the vehicle to be removed from service.

CHAPTER II

DEVELOPMENT OF THE UNION RAILWAYS

SECTION 1

Management independence

Article 4

Independence of railway undertakings and infrastructure managers

1. Member States shall ensure that, as regards management, administration and internal control over administrative, economic and accounting matters, railway undertakings directly or indirectly owned or controlled by Member States have independent status in accordance with which they will hold, in particular, assets, budgets and accounts which are separate from those of the State.

2. While respecting the charging and allocation framework and the specific rules established by the Member States, the infrastructure manager shall be responsible for its own management, administration and internal control.

Article 5

Management of the railway undertakings according to commercial principles

1. Member States shall enable railway undertakings to adjust their activities to the market and to manage those activities under the responsibility of their management bodies, in the interests of providing efficient and appropriate services at the lowest possible cost for the quality of service required.

Railway undertakings shall be managed according to the principles which apply to commercial companies, irrespective of their ownership. This shall also apply to the public service obligations imposed on them by Member States and to public service contracts which they conclude with the competent authorities of the State.

2. Railway undertakings shall determine their business plans, including their investment and financing programmes. Such plans shall be designed to achieve the undertakings' financial equilibrium and other technical, commercial and financial management objectives; they shall also indicate the means of attaining those objectives.

3. With reference to the general policy guidelines issued by each Member State and taking into account national plans and contracts (which may be multiannual) including investment and financing plans, railway undertakings shall, in particular, be free to:

(a) establish their internal organisation, without prejudice to the provisions of Articles 7, 29 and 39;

(b) control the supply and marketing of services and fix the pricing thereof;

(c) take decisions on staff, assets and own procurement;

(d) expand their market share, develop new technologies and new services and adopt any innovative management techniques;

(e) establish new activities in fields associated with the railway business.

This paragraph is without prejudice to Regulation (EC) No 1370/2007.

4. Notwithstanding paragraph 3, shareholders of publicly owned or controlled railway undertakings shall be able to require their own prior approval for major business management decisions in the same way as shareholders of private joint-stock companies under the rules of the company law of Member States. The provisions of this Article shall be without prejudice to the powers of supervisory bodies under the company law of Member States relating to the appointment of board members.

SECTION 2

Separation of infrastructure management and transport operations and of different types of transport operations

Article 6

Separation of accounts

1. Member States shall ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of transport services by railway undertakings and, on the other, for business relating to the management of railway infrastructure. Public funds paid to one of these two areas of activity shall not be transferred to the other.

2. Member States may also provide that this separation shall require the organisation of distinct divisions within a single undertaking or that the infrastructure and transport services shall be managed by separate entities.

3. Member States shall ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of rail freight transport services and, on the other, for activities relating to the provision of passenger transport services. Public funds paid for activities relating to the provision of transport services as public-service remits shall be shown separately in accordance with Article 7 of Regulation (EC) No 1370/2007 in the relevant accounts and shall not be transferred to activities relating to the provision of other transport services or any other business.

4. The accounts for the different areas of activity referred to in paragraphs 1 and 3 shall be kept in a way that allows for monitoring of the prohibition on transferring public funds paid to one area of activity to another and the monitoring of the use of income from infrastructure charges and surpluses from other commercial activities.

Article 7

Independence of essential functions of an infrastructure manager

1. Member States shall ensure that the essential functions determining equitable and non-discriminatory access to infrastructure, are entrusted to bodies or firms that do not themselves provide any rail transport services. Regardless of organisational structures, this objective shall be shown to have been achieved.

The essential functions shall be:

(a) decision-making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths; and

(b) decision-making on infrastructure charging, including determination and collection of the charges, without prejudice to Article 29(1).

Member States may, however, assign to railway undertakings or any other body the responsibility for contributing to the development of the railway infrastructure, for example through investment, maintenance and funding.

2. Where the infrastructure manager, in its legal form, organisation or decision-making functions, is not independent of any railway undertaking, the functions referred to in Sections 2 and 3 of Chapter IV shall be performed respectively by a charging body and by an allocation body that are independent in their legal form, organisation and decision-making from any railway undertaking.

3. When the provisions of Sections 2 and 3 of Chapter IV refer to the essential functions of an infrastructure manager, they shall be understood as applying to the charging body or the allocation body for their respective powers.

SECTION 3

Improvement of the financial situation

Article 8

Financing of the infrastructure manager

1. Member States shall develop their national railway infrastructure by taking into account, where necessary, the general needs of the Union, including the need to cooperate with neighbouring third countries. For that purpose, they shall publish by 16 December 2014, after consultation with the interested parties, an indicative rail infrastructure development strategy with a view to meeting future mobility needs in terms of maintenance, renewal and development of the infrastructure based on sustainable financing of the railway system. That strategy shall cover a period of at least five years and be renewable.

2. Having due regard to Articles 93, 107 and 108 TFEU, Member States may also provide the infrastructure manager with financing consistent with its functions as referred to in point (2) of Article 3, the size of the infrastructure and financial requirements, in particular in order to cover new investments. Member States may decide to finance those investments through means other than direct State funding. In any case, Member States shall comply with the requirements referred to in paragraph 4 of this Article.

3. Within the framework of general policy determined by the Member State concerned and taking into account the strategy referred to in paragraph 1 and the financing provided by the Member States referred to in paragraph 2, the infrastructure manager shall adopt a business plan including investment and financial programmes. The plan shall be designed to ensure optimal and efficient use, provision and development of the infrastructure while ensuring financial balance and providing means for these objectives to be achieved. The infrastructure manager shall ensure that known applicants and, upon their request, potential applicants have access to the relevant information and are given the opportunity to express their views on the content of the business plan regarding the conditions for access and use and the nature, provision and development of the infrastructure before its approval by the infrastructure manager.

4. Member States shall ensure that, under normal business conditions and over a reasonable period which shall not exceed a period of five years, the profit and loss account of an infrastructure manager shall at least balance income from infrastructure charges, surpluses from other commercial activities, non-refundable incomes from private sources and State funding, on the one hand, including advance payments from the State, where appropriate, and infrastructure expenditure, on the other hand.

Without prejudice to the possible long-term aim of user cover of infrastructure costs for all modes of transport on the basis of fair, non-discriminatory competition between the various modes, where rail transport is able to compete with other modes of transport, within the charging framework of Articles 31 and 32, a Member State may require the infrastructure manager to balance his accounts without State funding.

Article 9

Transparent debt relief

1. Without prejudice to Union rules on State aid and in accordance with Articles 93, 107 and 108 TFEU, Member States shall set up appropriate mechanisms to help reduce the indebtedness of publicly owned or controlled railway undertakings to a level which does not impede sound financial management and which improves their financial situation.

2. For the purposes referred to in paragraph 1, Member States may require a separate debt amortisation unit to be set up within the accounting departments of such railway undertakings.

The balance sheet of the unit may be charged with all the loans raised by the railway undertaking, both to finance investment and to cover excess operating expenditure resulting from the business of rail transport or from railway infrastructure management, until such time as these loans are extinguished. Debts arising from subsidiaries' operations shall not be taken into account.

3. Paragraphs 1 and 2 shall apply only to debts or interest due on such debts incurred by publicly owned or controlled railway undertakings by the date of market opening for all or part of rail transport services in the Member State concerned and in any case by 15 March 2001 or the date of accession to the Union for the Member States which joined the Union after that date.

SECTION 4

Access to railway infrastructure and services

Article 10

Conditions of access to railway infrastructure

1. Railway undertakings shall be granted, under equitable, non-discriminatory and transparent conditions, the right to access to the railway infrastructure in all Member States for the purpose of operating all types of rail freight services. That right shall include access to infrastructure connecting maritime and inland ports and other service facilities referred to in point 2 of Annex II, and to infrastructure serving or potentially serving more than one final customer.

2. Railway undertakings shall be granted the right of access to railway infrastructure in all Member States for the purpose of operating an international passenger service. Railway undertakings shall, in the course of an international passenger service, have the right to pick up passengers at any station located along the international route and set them down at another, including stations located in the same Member State. That right shall include access to infrastructure connecting service facilities referred to in point 2 of Annex II.

3. Following the request from the relevant competent authorities or interested railway undertakings, the relevant regulatory body or bodies referred to in Article 55 shall determine whether the principal purpose of the service is to carry passengers between stations located in different Member States.

4. Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the network referred to in Article 57(1), the Commission shall adopt by 16 December 2016 measures setting out the details of the procedure and criteria to be followed for the application of paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

Article 11

Limitation of the right of access and of the right to pick up and set down passengers

1. Member States may limit the right of access provided for in Article 10 on services between a place of departure and a destination which are covered by one or more public service contracts which are in accordance with Union law. Such limitation shall not have the effect of restricting the right to pick up passengers at any station located along the route of an international service and to set them down at another, including stations located in the same Member State, except where the exercise of that right would compromise the economic equilibrium of a public service contract.

2. Whether the economic equilibrium of a public service contract would be compromised shall be determined by the relevant regulatory body or bodies referred to in Article 55 on the basis of an objective economic analysis and based on pre-determined criteria, after a request from any of the following:

(a) the competent authority or competent authorities that awarded the public service contract;

(b) any other interested competent authority with the right to limit access under this Article;

(c) the infrastructure manager;

(d) the railway undertaking performing the public service contract.

The competent authorities and the railway undertakings providing the public services shall provide the relevant regulatory body or bodies with the information reasonably required to reach a decision. The regulatory body shall consider the information provided by these parties, and, as appropriate, shall ask for relevant information from, and initiate consultation with, all relevant parties, within one month of receipt of the request. The regulatory body shall consult all the relevant parties as appropriate, and shall inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks of receipt of all relevant information.

3. The regulatory body shall give the grounds for its decision and specify the time period within which, and the conditions under which, any of the following may request a reconsideration of the decision:

(a) the relevant competent authority or competent authorities;

(b) the infrastructure manager;

(c) the railway undertaking performing the public service contract;

(d) the railway undertaking seeking access.

4. Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the network referred to in Article 57(1), the Commission shall adopt by 16 December 2016 measures setting out the details of the procedure and criteria to be followed for the application of paragraphs 1, 2 and 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

5. Member States may also limit the right to pick up and set down passengers at stations within the same Member State along the route of an international passenger service where an exclusive right to convey passengers between those stations has been granted under a concession contract awarded before 4 December 2007 on the basis of a fair competitive tendering procedure and in accordance with the relevant principles of Union law. Such a limitation may continue for the original duration of the contract, or 15 years, whichever is shorter.

6. Member States shall ensure that the decisions referred to in paragraphs 1, 2, 3 and 5 are subject to judicial review.

Article 12

Levy on railway undertakings providing passenger services

1. Without prejudice to Article 11(2), Member States may, under the conditions laid down in this Article, authorise the authority responsible for rail passenger transport to impose a levy on railway undertakings providing passenger services for the operation of routes which fall within the jurisdiction of that authority and which are operated between two stations in that Member State.

In that case, railway undertakings providing domestic or international rail passenger transport services shall be subject to the same levy on the operation of routes which fall within the jurisdiction of that authority.

2. The levy is intended to compensate the authority for public service obligations laid down in public service contracts awarded in accordance with Union law. The revenue raised from such a levy and paid as compensation shall not exceed what is necessary to cover all or part of the cost incurred in the relevant public service obligations taking into account the relevant receipts and a reasonable profit for discharging those obligations.

3. The levy shall be imposed in accordance with Union law, and shall respect in particular the principles of fairness, transparency, non-discrimination and proportionality, in particular between the average price of the service to the passenger and the level of the levy. The total levies imposed pursuant to this paragraph shall not endanger the economic viability of the rail passenger transport service on which they are imposed.

4. The relevant authorities shall keep the information necessary to ensure that the origin of the levies and their use can be traced. Member States shall provide the Commission with this information.

5. Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the network referred to in Article 57(1), the Commission shall adopt measures setting out the details of the procedure and criteria to be followed for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

Article 13

Conditions of access to services

1. Infrastructure managers shall supply to all railway undertakings, in a non-discriminatory manner, the minimum access package laid down in point 1 of Annex II.

2. Operators of service facilities shall supply in a non-discriminatory manner to all railway undertakings access, including track access, to the facilities referred to in point 2 of Annex II, and to the services supplied in these facilities.

3. To guarantee full transparency and non-discrimination of access to the service facilities referred to in points 2(a), (b), (c), (d), (g) and (i) of Annex II, and the supply of services in these facilities where the operator of such a service facility is under direct or indirect control of a body or firm which is also active and holds a dominant position in national railway transport services markets for which the facility is used, the operators of these service facilities shall be organised in such a way that they are independent of this body or firm in organisational and decision-making terms. Such independence shall not imply the requirement of the establishment of a separate legal entity for service facilities and may be fulfilled with the organisation of distinct divisions within a single legal entity.

For all service facilities referred to in point 2 of Annex II, the operator and the body or firm shall have separate accounts, including separate balance sheets and profit and loss accounts.

Where operation of the service facility is ensured by an infrastructure manager or the operator of the service facility is under the direct or indirect control of an infrastructure manager compliance with the requirements set out in this paragraph shall be deemed to be demonstrated by the fulfilment of the requirements set out in Article 7.

4. Requests by railway undertakings for access to, and supply of services in the service facility referred to in point 2 of Annex II shall be answered within a reasonable time limit set by the regulatory body referred to in Article 55. Such requests may only be refused if there are viable alternatives allowing them to operate the freight or passenger service concerned on the same or alternative routes under economically acceptable conditions. This shall not oblige the operator of the service facility to make investments in resources or facilities in order to accommodate all requests by railway undertakings.

Where requests by railway undertakings concern access to, and supply of services in a service facility managed by an operator of the service facility referred to in paragraph 3, the operator of the service facility shall justify in writing any decision of refusal and indicate viable alternatives in other facilities.

5. Where an operator of the service facility referred to in point 2 of Annex II encounters conflicts between different requests, it shall attempt to meet all requests in so far as possible. If no viable alternative is available, and it is not possible to accommodate all requests for capacity for the relevant facility on the basis of demonstrated needs, the applicant may complain to the regulatory body referred to in Article 55 which shall examine the case and take action, where appropriate, to ensure that an appropriate part of the capacity is granted to that applicant.

6. Where a service facility referred to in point 2 of Annex II has not been in use for at least two consecutive years and interest by railway undertakings for access to this facility has been expressed to the operator of that service facility on the basis of demonstrated needs, its owner shall publicise the operation of the facility as being for lease or rent as a rail service facility, as a whole or in part, unless the operator of that service facility demonstrates that an ongoing process of reconversion prevents its use by any railway undertaking.

7. Where the operator of the service facility provides any of the services referred to in point 3 of Annex II as additional services, it shall supply them upon request to railway undertakings in a non-discriminatory manner.

8. Railway undertakings may request, as ancillary services, further services referred to in point 4 of Annex II from the infrastructure manager or from other operators of the service facility. The operator of the service facility is not obliged to supply these services. Where the operator of the service facility decides to offer to others any of these services, it shall supply them upon request to railway undertakings in a non-discriminatory manner.

9. Based on the experience of regulatory bodies and operators of service facilities and based on the activities of the network referred to in Article 57(1), the Commission may adopt measures setting out the details of the procedure and criteria to be followed for access to the services to be supplied in the service facilities referred to in points 2 to 4 of Annex II. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

SECTION 5

Cross-border agreements

Article 14

General principles for cross-border agreements

1. Member States shall ensure that the provisions contained in cross-border agreements do not discriminate between railway undertakings, or restrict the freedom of railway undertakings to operate cross-border services.

2. Member States shall notify the Commission of any cross-border agreement by 16 June 2013, for the agreements concluded before that date, and before their conclusion for new or revised agreements between Member States. The Commission shall decide whether such agreements are in compliance with Union law within nine months of notification for agreements concluded before 15 December 2012 and within four months of notification for new or revised agreements between Member States. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 62(2).

3. Without prejudice to the division of competence between the Union and the Member States, in accordance with Union law, Member States shall notify the Commission of their intention to enter into negotiations on, and to conclude, new or revised cross-border agreements between Member States and third countries.

4. If, within two months of the receipt of the notification of a Member State's intention to enter into the negotiations referred to in paragraph 2, the Commission concludes that the negotiations are likely to undermine the objectives of Union negotiations underway with the third countries concerned and/or to lead to an agreement which is incompatible with Union law, it shall inform the Member State accordingly.

Member States shall keep the Commission regularly informed of any such negotiations and, where appropriate, invite the Commission to participate as an observer.

5. Member States shall be authorised to provisionally apply and/or to conclude new or revised cross-border agreements with third countries, provided that they are compatible with Union law and do not harm the object and purpose of the transport policy of the Union. The Commission shall adopt such authorisation decisions. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 62(2).

SECTION 6

Monitoring tasks of the Commission

Article 15

Scope of market monitoring

1. The Commission shall make the necessary arrangements to monitor technical and economic conditions and market developments in Union rail transport.

2. In this context, the Commission shall closely involve representatives of the Member States, including representatives of the regulatory bodies referred to in Article 55, and representatives of the sectors concerned in its work, including, where appropriate, the railway sector's social partners, users and representatives of local and regional authorities, so that they are better able to monitor the development of the railway sector and the evolution of the market, to assess the effect of the measures adopted and to analyse the impact of the measures planned by the Commission. Where appropriate, the Commission shall also involve the European Railway Agency, in accordance with its functions as provided for in Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (Agency Regulation) ([1]).

3. The Commission shall monitor the use of the networks and the evolution of framework conditions in the rail sector, in particular infrastructure charging, capacity allocation, investments made in railway infrastructure, developments as regards prices and the quality of rail transport services, rail transport services covered by public service contracts, licensing and the degree of market opening and harmonisation between Member States, development of employment and the related social conditions in the rail sector. These monitoring activities are without prejudice to similar activities in Member States and to the role of social partners.

4. The Commission shall report every two years to the European Parliament and the Council on:

(a) the evolution of the internal market in rail services and services to be supplied to railway undertakings, as referred to in Annex II;

(b) the framework conditions referred to in paragraph 3, including for public passenger transport services by rail;

(c) the state of the Union railway network;

(d) the utilisation of access rights;

(e) barriers to more effective rail services;

(f) infrastructure limitations;

(g) the need for legislation.

5. For the purposes of market monitoring by the Commission, Member States shall, while respecting the role of the social partners, supply to the Commission on an annual basis the necessary information on the use of the networks and the evolution of framework conditions in the rail sector.

6. The Commission may adopt measures to ensure consistency in the reporting obligations of Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

([1]) OJ L 164, 30.4.2004, p. 1.

CHAPTER III

LICENSING OF RAILWAY UNDERTAKINGS

SECTION 1

Licensing authority

Article 16

Licensing authority

Each Member State shall designate a licensing authority that shall be responsible for issuing licences and for carrying out the obligations imposed by this Chapter.

The licensing authority shall not provide rail transport services itself and shall be independent of firms or entities that do so.

SECTION 2

Conditions for obtaining a licence

Article 17

General requirements

1. An undertaking shall be entitled to apply for a licence in the Member State in which it is established.

2. Member States shall not issue licences or extend their validity where the requirements of this Chapter are not complied with.

3. An undertaking which fulfils the requirements set out in this Chapter shall be authorised to receive a licence.

4. No undertaking shall be permitted to provide the rail transport services covered by this Chapter unless it has been granted the appropriate licence for the services to be provided.

However, such a licence shall not, in itself, entitle the holder to access the railway infrastructure.

5. The Commission shall adopt measures setting out the details for the use of a common template for the licence and, if needed to ensure fair and efficient competition in rail transport markets, details on the procedure to be followed for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

Article 18

Conditions for obtaining a licence

An undertaking applying for a licence shall be required to be able to demonstrate to the licensing authorities of the Member State concerned before the start of its activities that it will at any time be able to meet the requirements relating to good repute, financial fitness, professional competence and cover for its civil liability as listed in Articles 19 to 22.

For those purposes, each undertaking applying for a licence shall provide all relevant information.

Article 19

Requirements relating to good repute

Member States shall define the conditions under which the requirement of good repute is met to ensure that an undertaking applying for a licence or the persons in charge of its management:

(a) have not been convicted of serious criminal offences, including offences of a commercial nature;

(b) have not been declared bankrupt;

(c) have not been convicted of serious offences set out in specific legislation applicable to transport;

(d) have not been convicted of serious or repeated failure to fulfil social or labour law obligations, including obligations under occupational safety and health legislation, and customs law obligations in the case of a company seeking to operate cross-border freight transport subject to customs procedures.

Article 20

Requirements relating to financial fitness

1. The requirements relating to financial fitness shall be met when an undertaking applying for a licence can demonstrate that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of 12 months.

2. The licensing authority shall verify financial fitness especially by means of a railway undertaking's annual accounts or, in the case of undertakings applying for a licence which are unable to present annual accounts, a balance sheet. Each undertaking applying for a licence shall provide at least the information listed in Annex III.

3. The licensing authority shall not consider an undertaking applying for a licence to be financially fit if considerable or recurrent arrears of taxes or social security are owed as a result of that undertaking's activity.

4. The licensing authority may require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. Those documents shall include the information listed in Annex III.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex III. Thus, Annex III may be amended to specify the information to be provided by undertakings applying for a licence or supplemented in the light of the experience gained by licensing authorities or the evolution of the rail transport market.

Article 21

Requirements relating to professional competence

The requirements relating to professional competence shall be met when an undertaking applying for a licence can demonstrate that it has or will have a management organisation which possesses the knowledge or experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence.

Article 22

Requirements relating to cover for civil liability

Without prejudice to Union rules on State aid and in accordance with Articles 93, 107 and 108 TFEU, a railway undertaking shall be adequately insured or have adequate guarantees under market conditions for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of passengers, luggage, freight, mail and third parties. Notwithstanding this obligation, the specificities and the risk-profile of different types of services, in particular of railway operations for cultural or heritage purposes, may be taken into account.

SECTION 3

Validity of the licence

Article 23

Spatial and temporal validity

1. A licence shall be valid throughout the territory of the Union.

2. A licence shall be valid as long as the railway undertaking fulfils the obligations laid down in this Chapter. A licensing authority may, however, make provision for a regular review. If so, the review shall be carried out at least every five years.

3. Specific provisions governing the suspension or revocation of a licence may be incorporated in the licence itself.

Article 24

Temporary licence, approval, suspension and revocation

1. If there is serious doubt that a railway undertaking which it has licensed complies with the requirements of this Chapter, and in particular those of Article 18, the licensing authority may, at any time, check whether that railway undertaking does in fact comply with those requirements.

Where a licensing authority is satisfied that a railway undertaking can no longer meet the requirements, it shall suspend or revoke the licence.

2. Where the licensing authority of a Member State is satisfied that there is serious doubt regarding compliance with the requirements laid down in this Chapter on the part of a railway undertaking to which a licence has been issued by the licensing authority of another Member State, it shall inform the latter authority without delay.

3. Notwithstanding paragraph 1, where a licence is suspended or revoked on grounds of non-compliance with the requirement for financial fitness, the licensing authority may grant a temporary licence pending the reorganisation of the railway undertaking, provided that safety is not jeopardised. A temporary licence shall not, however, be valid for more than six months after its date of issue.

4. Where a railway undertaking has ceased operations for six months or has not started operations within six months of the grant of a licence, the licensing authority may decide that the licence shall be required to be resubmitted for approval or be suspended.

As regards the start of activities, the railway undertaking may ask for a longer period to be fixed, taking account of the specific nature of the services to be provided.

5. In the event of a change affecting the legal situation of an undertaking and, in particular, in the event of a merger or takeover, the licensing authority may decide that the licence shall be resubmitted for approval. The railway undertaking in question may continue operations, unless the licensing authority decides that safety is jeopardised. In that event, the grounds for such a decision shall be given.

6. Where a railway undertaking intends to significantly change or extend its activities, its licence shall be resubmitted to the licensing authority for review.

7. A licensing authority shall not permit a railway undertaking against which bankruptcy or similar proceedings have commenced to retain its licence if that authority is convinced that there is no realistic prospect of satisfactory financial restructuring within a reasonable period of time.

8. Where a licensing authority issues, suspends, revokes or amends a licence, it shall immediately inform the European Railway Agency accordingly. The European Railway Agency shall inform the licensing authorities of other Member States forthwith.

Article 25

Procedure for granting licences

1. The procedures for granting licences shall be made public by the Member State concerned, which shall inform the Commission thereof.

2. The licensing authority shall take a decision on an application as soon as possible, but not more than three months after all relevant information, notably the particulars referred to in Annex III, has been submitted. The licensing authority shall take into account all the available information. The decision shall be communicated to the undertaking applying for a licence without delay. A refusal shall state the grounds on which it is based.

3. Member States shall ensure that the licensing authority's decisions are subject to judicial review.

CHAPTER IV

LEVYING OF CHARGES FOR THE USE OF RAILWAY INFRASTRUCTURE AND ALLOCATION OF RAILWAY INFRASTRUCTURE CAPACITY

SECTION 1

General principles

Article 26

Effective use of infrastructure capacity

Member States shall ensure that charging and capacity-allocation schemes for railway infrastructure follow the principles set down in this Directive and thus allow the infrastructure manager to market and make optimum effective use of the available infrastructure capacity.

Article 27

Network statement

1. The infrastructure manager shall, after consultation with the interested parties, develop and publish a network statement which shall be obtainable against payment of a fee which shall not exceed the cost of publication of that statement. The network statement shall be published in at least two official languages of the Union. The content of the network statement shall be made available free of charge in electronic format on the web portal of the infrastructure manager and accessible through a common web portal. That web portal shall be set up by the infrastructure managers in the framework of their cooperation in accordance with Articles 37 and 40.

2. The network statement shall set out the nature of the infrastructure which is available to railway undertakings, and contain information setting out the conditions for access to the relevant railway infrastructure. The network statement shall also contain information setting out the conditions for access to service facilities connected to the network of the infrastructure manager and for supply of services in these facilities or indicate a website where such information is made available free of charge in electronic format. The content of the network statement is laid down in Annex IV.

3. The network statement shall be kept up to date and amended as necessary.

4. The network statement shall be published no less than four months in advance of the deadline for requests for infrastructure capacity.

Article 28

Agreements between railway undertakings and infrastructure managers

Any railway undertaking engaged in rail transport services shall conclude the necessary agreements under public or private law with the infrastructure managers of the railway infrastructure used. The conditions governing such agreements shall be non-discriminatory and transparent, in accordance with this Directive.

SECTION 2

Infrastructure and services charges

Article 29

Establishing, determining and collecting charges

1. Member States shall establish a charging framework while respecting the management independence laid down in Article 4.

Subject to that condition, Member States shall also establish specific charging rules or delegate such powers to the infrastructure manager.

Member States shall ensure that the network statement contains the charging framework and charging rules or indicates a website where the charging framework and charging rules are published.

The infrastructure manager shall determine and collect the charge for the use of infrastructure in accordance with the established charging framework and charging rules.

Without prejudice to the management independence laid down in Article 4 and provided that the right has been directly conferred by constitutional law before 15 December 2010, the national parliament may have the right to scrutinise and, where appropriate, review the level of charges determined by the infrastructure manager. Any such review shall ensure that charges comply with this Directive, the established charging framework and charging rules.

2. Except where specific arrangements are made under Article 32(3), infrastructure managers shall ensure that the charging scheme in use is based on the same principles over the whole of their network.

3. Infrastructure managers shall ensure that the application of the charging scheme results in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market and that the charges actually applied comply with the rules laid down in the network statement.

4. An infrastructure manager shall respect the commercial confidentiality of information provided to it by applicants.

Article 30

Infrastructure cost and accounts

1. Infrastructure managers shall, with due regard to safety and to maintaining and improving the quality of the infrastructure service, be given incentives to reduce the costs of providing infrastructure and the level of access charges.

2. Without prejudice to their competence regarding railway infrastructure planning and financing, and to the budgetary principle of annuality, where applicable, Member States shall ensure that a contractual agreement, fulfilling the basic principles and parameters set out in Annex V, is concluded between the competent authority and the infrastructure manager covering a period of not less than five years.

Member States shall ensure that contractual agreements in force on 15 December 2012 are modified, if necessary, to align them with this Directive upon their renewal, or at the latest by 16 June 2015.

3. Member States shall implement the incentives referred to in paragraph 1 through the contractual agreement referred to in paragraph 2 or through regulatory measures or through a combination of incentives to reduce costs in the contractual agreement and the level of charges through regulatory measures.

4. If a Member State decides to implement the incentives referred to in paragraph 1 through regulatory measures, this shall be based on an analysis of the achievable cost reductions. This shall be without prejudice to the powers of the regulatory body to review the charges referred to in Article 56.

5. The terms of the contractual agreement referred to in paragraph 2 and the structure of the payments agreed to provide funding to the infrastructure manager shall be agreed in advance to cover the whole of the contractual period.

6. Member States shall ensure that applicants and, upon their request, potential applicants are informed by the competent authority and the infrastructure manager and are given the opportunity to express their views on the content of the contractual agreement before it is signed. The contractual agreement shall be published within one month of concluding it.

The infrastructure manager shall ensure consistency between the provisions of the contractual agreement and the business plan.

7. Infrastructure managers shall develop and maintain a register of their assets and the assets they are responsible for managing which would be used to assess the financing needed to repair or replace them. This shall be accompanied by details of expenditure on renewal and upgrading of the infrastructure.

8. Infrastructure managers shall establish a method for apportioning costs to the different categories of services offered to railway undertakings. Member States may require prior approval. That method shall be updated from time to time on the basis of the best international practice.

Article 31

Principles of charging

1. Charges for the use of railway infrastructure and of service facilities shall be paid to the infrastructure manager and to the operator of service facility respectively and used to fund their business.

2. Member States shall require the infrastructure manager and the operator of service facility to provide the regulatory body with all necessary information on the charges imposed in order to allow the regulatory body to perform its functions as referred to in Article 56. The infrastructure manager and the operator of service facility shall, in this regard, be able to demonstrate to railway undertakings that infrastructure and service charges actually invoiced to the railway undertaking pursuant to Articles 30 to 37 comply with the methodology, rules and, where applicable, scales laid down in the network statement.

3. Without prejudice to paragraph 4 or 5 of this Article or to Article 32, the charges for the minimum access package and for access to infrastructure connecting service facilities shall be set at the cost that is directly incurred as a result of operating the train service.

Before 16 June 2015, the Commission shall adopt measures setting out the modalities for the calculation of the cost that is directly incurred as a result of operating the train. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

The infrastructure manager may decide to gradually adapt to those modalities during a period of no more than four years after the entry into force of those implementing acts.

4. The infrastructure charges referred to in paragraph 3 may include a charge which reflects the scarcity of capacity of the identifiable section of the infrastructure during periods of congestion.

5. The infrastructure charges referred to in paragraph 3 may be modified to take account of the cost of environmental effects caused by the operation of the train. Any such modification shall be differentiated according to the magnitude of the effect caused.

Based on the experience gained by infrastructure managers, railway undertakings, regulatory bodies and competent authorities, and recognising existing schemes on noise differentiation, the Commission shall adopt implementing measures setting out the modalities to be followed for the application of the charging for the cost of noise effects including its duration of application and enabling the differentiation of infrastructure charges to take into account, where appropriate, the sensitivity of the area affected, in particular in terms of the size of population affected and the train composition with an impact on the level of noise emissions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3). They shall not result in the undue distortion of competition between railway undertakings or affect the overall competitiveness of the rail sector.

Any such modification of infrastructure charges to take account of the cost of noise effects shall support the retrofitting of wagons with the most economically viable low-noise braking technology available.

Charging of environmental costs which results in an increase in the overall revenue accruing to the infrastructure manager shall however be allowed only if such charging is applied to road freight transport in accordance with Union law.

If charging for environmental costs generates additional revenue, it shall be for Member States to decide how the revenue is to be used.

Member States shall ensure that the necessary information is kept and that the origin of the charging of environmental costs and its application can be traced. Member States shall provide the Commission with this information upon request.

6. To avoid undesirable disproportionate fluctuations, the charges referred to in paragraphs 3, 4 and 5 may be averaged over a reasonable spread of train services and times. Nevertheless, the relative magnitude of the infrastructure charge shall be related to the costs attributable to the services.

7. The charge imposed for track access within service facilities referred to in point 2 of Annex II, and the supply of services in such facilities, shall not exceed the cost of providing it, plus a reasonable profit.

8. Where services listed in points 3 and 4 of Annex II, as additional and ancillary services are offered by only one supplier, the charge imposed for such a service shall not exceed the cost of providing it, plus a reasonable profit.

9. Charges may be levied for capacity used for the purpose of infrastructure maintenance. Such charges shall not exceed the net revenue loss to the infrastructure manager caused by the maintenance.

10. The operator of the facility for supply of the services referred to in points 2, 3 and 4 of Annex II shall provide the infrastructure manager with the information on charges to be included in the network statement or shall indicate a website where such information is made available free of charge in electronic format in accordance with Article 27.

Article 32

Exceptions to charging principles

1. In order to obtain full recovery of the costs incurred by the infrastructure manager a Member State may, if the market can bear this, levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing optimal competitiveness of rail market segments. The charging system shall respect the productivity increases achieved by railway undertakings.

The level of charges shall not, however, exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

Before approving the levy of such mark-ups, Member States shall ensure that the infrastructure managers evaluate their relevance for specific market segments, considering at least the pairs listed in point 1 of Annex VI and retaining the relevant ones. The list of market segments defined by infrastructure managers shall contain at least the three following segments: freight services, passenger services within the framework of a public service contract and other passenger services.

Infrastructure managers may further distinguish market segments according to commodity or passengers transported.

Market segments in which railway undertakings are not currently operating but may provide services during the period of validity of the charging system shall also be defined. The infrastructure manager shall not include a mark-up in the charging system for those market segments.

The list of market segments shall be published in the network statement and shall be reviewed at least every five years. The regulatory body referred to in Article 55 shall control that list in accordance with Article 56.

2. For the carriage of goods from and to third countries operated on a network whose track gauge is different from the main rail network within the Union, infrastructure managers may set higher charges in order to obtain full costs recovery of the costs incurred.

3. For specific future investment projects, or specific investment projects that have been completed after 1988, the infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of such projects if they increase efficiency or cost-effectiveness or both and could not otherwise be or have been undertaken. Such a charging arrangement may also incorporate agreements on the sharing of the risk associated with new investments.

4. The infrastructure charges for the use of railway corridors which are specified in Commission Decision 2009/561/EC [1] shall be differentiated to give incentives to equip trains with the ETCS compliant with the version adopted by the Commission Decision 2008/386/EC [2] and successive versions. Such differentiation shall not result in any overall change in revenue for the infrastructure manager.

Notwithstanding this obligation, Member States may decide that this differentiation of infrastructure charges does not apply to railway lines specified in Decision 2009/561/EC on which only ETCS equipped trains may run.

Member States may decide to extend this differentiation to railway lines not specified in Decision 2009/561/EC.

Before 16 June 2015 and following an impact assessment, the Commission shall adopt measures setting out modalities to be followed in applying the differentiation of the infrastructure charge according to a time-frame consistent with the ERTMS European Deployment Plan established under Decision 2009/561/EC and ensuring that it does not result in any overall change in revenue for the infrastructure manager. Those implementing measures shall adapt the modalities of the differentiation applicable to trains operating local and regional services using a limited section of the railway corridors specified in Decision 2009/561/EC. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3). They shall not result in the undue distortion of competition between railway undertakings or affect the overall competitiveness of the rail sector.

5. To prevent discrimination, Member States shall ensure that any given infrastructure manager's average and marginal charges for equivalent use of its infrastructure are comparable and that comparable services in the same market segment are subject to the same charges. The infrastructure manager shall show in the network statement that the charging system meets these requirements in so far as this can be done without disclosing confidential business information.

6. If an infrastructure manager intends to modify the essential elements of the charging system referred to in paragraph 1 of this Article, it shall make them public at least three months in advance of the deadline for the publication of the network statement according to Article 27(4).

Article 33

Discounts

1. Without prejudice to Articles 101, 102, 106 and 107 TFEU and notwithstanding the direct cost principle laid down in Article 31(3) of this Directive, any discount on the charges levied on a railway undertaking by the infrastructure manager, for any service, shall comply with the criteria set out in this Article.

2. With the exception of paragraph 3, discounts shall be limited to the actual saving of the administrative cost to the infrastructure manager. In determining the level of discount, no account may be taken of cost savings already internalised in the charge levied.

[1] Commission Decision 2009/561/EC of 22 July 2009 amending Decision 2006/679/EC as regards the implementation of the technical specification for interoperability relating to the control-command and signalling subsystem of the trans-European conventional rail system (OJ L 194, 25.7.2009, p. 60).

[2] Commission Decision 2008/386/EC of 23 April 2008 modifying Annex A to Decision 2006/679/EC concerning the technical specification for interoperability relating to the control-command and signalling subsystem of the trans-European conventional rail system and Annex A to Decision 2006/860/EC concerning the technical specification for interoperability relating to the control-command and signalling subsystem of the trans-European high-speed rail system (OJ L 136, 24.5.2008, p. 11).

3. Infrastructure managers may introduce schemes available to all users of the infrastructure, for specified traffic flows, granting time-limited discounts to encourage the development of new rail services, or discounts encouraging the use of considerably underutilised lines.

4. Discounts may relate only to charges levied for a specified infrastructure section.

5. Similar discount schemes shall apply for similar services. Discount schemes shall be applied in a non-discriminatory manner to any railway undertaking.

Article 34

Compensation schemes for unpaid environmental, accident and infrastructure costs

1. Member States may put in place a time-limited compensation scheme for the use of railway infrastructure for the demonstrably unpaid environmental, accident and infrastructure costs of competing transport modes in so far as these costs exceed the equivalent costs of rail.

2. Where a railway undertaking receiving compensation enjoys an exclusive right, the compensation shall be accompanied by comparable benefits to users.

3. The methodology used and calculations performed shall be publicly available. It shall in particular be possible to demonstrate the specific uncharged costs of the competing transport infrastructure that are avoided and to ensure that the scheme is granted on non-discriminatory terms to undertakings.

4. Member States shall ensure that the scheme is compatible with Articles 93, 107 and 108 TFEU.

Article 35

Performance scheme

1. Infrastructure charging schemes shall encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network through a performance scheme. This scheme may include penalties for actions which disrupt the operation of the network, compensation for undertakings which suffer from disruption and bonuses that reward better-than-planned performance.

2. The basic principles of the performance scheme as listed in point 2 of Annex VI shall apply throughout the network.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning amendments to point 2(c) of Annex VI. Thus point 2(c) of Annex VI, may be amended in the light of the evolution of the rail market and experience gained by regulatory bodies referred to in Article 55, infrastructure managers and railway undertakings. Such amendments shall adapt the classes of delay to the best practices developed by industry.

Article 36

Reservation charges

Infrastructure managers may levy an appropriate charge for capacity that is allocated but not used. That non-usage charge shall provide incentives for efficient use of capacity. The levy of such a charge on applicants that were allocated a train path shall be mandatory in the event of their regular failure to use allocated paths or part of them. For the imposition of this charge, the infrastructure managers shall publish in their network statement the criteria to determine such failure to use. The regulatory body referred to in Article 55 shall control such criteria in accordance with Article 56. Payments for this charge shall be made by either the applicant or the railway undertaking appointed in accordance with Article 41(1). The infrastructure manager shall always be able to inform any interested party of the infrastructure capacity which has already been allocated to user railway undertakings.

Article 37

Cooperation in relation to charging systems on more than one network

1. Member States shall ensure that infrastructure managers cooperate to enable the application of efficient charging schemes, and associate to coordinate the charging or to charge for the operation of train services which cross more than one infrastructure network of the rail system within the Union. Infrastructure managers shall, in particular, aim to guarantee the optimal competitiveness of international rail services and ensure the efficient use of the railway networks. To this end they shall establish appropriate procedures, subject to the rules set out in this Directive.

2. For the purpose of paragraph 1 of this Article, Member States shall ensure that infrastructure managers cooperate to enable mark-ups, as referred to in Article 32, and performance schemes, as referred to in Article 35, to be efficiently applied, for traffic crossing more than one network of the rail system within the Union.

SECTION 3

Allocation of infrastructure capacity

Article 38

Capacity rights

1. Infrastructure capacity shall be allocated by an infrastructure manager. Once allocated to an applicant, it shall not be transferred by the recipient to another undertaking or service.

Any trading in infrastructure capacity shall be prohibited and shall lead to exclusion from the further allocation of capacity.

The use of capacity by a railway undertaking when carrying out the business of an applicant which is not a railway undertaking shall not be considered as a transfer.

2. The right to use specific infrastructure capacity in the form of a train path may be granted to applicants for a maximum duration of one working timetable period.

An infrastructure manager and an applicant may enter into a framework agreement as laid down in Article 42 for the use of capacity on the relevant railway infrastructure for a longer term than one working timetable period.

3. The respective rights and obligations of infrastructure managers and applicants in respect of any allocation of capacity shall be laid down in contracts or in Member States' legislation.

4. Where an applicant intends to request infrastructure capacity with a view to operating an international passenger service, it shall inform the infrastructure managers and the regulatory bodies concerned. In order to enable them to assess whether the purpose of the international service is to carry passengers on a route between stations located in different Member States, and what the potential economic impact on existing public service contracts is, regulatory bodies shall ensure that any competent authority that has awarded a rail passenger service on that route defined in a public service contract, any other interested competent authority with a right to limit access under Article 11 and any railway undertaking performing the public service contract on the route of that international passenger service is informed.

Article 39

Capacity allocation

1. Member States may lay down a framework for the allocation of infrastructure capacity subject to the condition of management independence laid down in Article 4. Specific capacity-allocation rules shall be laid down. The infrastructure manager shall perform the capacity-allocation processes. In particular, the infrastructure manager shall ensure that infrastructure capacity is allocated in a fair and non-discriminatory manner and in accordance with Union law.

2. Infrastructure managers shall respect the commercial confidentiality of information provided to them.

Article 40

Cooperation in the allocation of infrastructure capacity on more than one network

1. Member States shall ensure that infrastructure managers cooperate to enable the efficient creation and allocation of infrastructure capacity which crosses more than one network of the rail system within the Union, including under framework agreements referred to in Article 42. Infrastructure managers shall establish appropriate procedures, subject to the rules set out in this Directive, and organise train paths crossing more than one network accordingly.

Member States shall ensure that representatives of infrastructure managers whose allocation decisions have an impact on other infrastructure managers associate in order to coordinate the allocation of or to allocate all relevant infrastructure capacity at an international level, without prejudice to the specific rules contained in Union law on rail freight oriented networks. The principles and criteria for capacity allocation established under this cooperation shall be published by infrastructure managers in their network statement in accordance with paragraph 3 of Annex IV. Appropriate representatives of infrastructure managers from third countries may be associated with these procedures.

2. The Commission shall be informed of and invited to attend as an observer at the main meetings at which common principles and practices for the allocation of infrastructure are developed. Regulatory bodies shall receive sufficient information about the development of common principles and practices for the allocation of infrastructure and from IT-based allocation systems, to allow them to perform their regulatory supervision in accordance with Article 56.

3. At any meeting or other activity undertaken to permit the allocation of infrastructure capacity for trans-network train services, decisions shall only be taken by representatives of infrastructure managers.

4. The participants in the cooperation referred to paragraph 1 shall ensure that its membership, methods of operation and all relevant criteria which are used for assessing and allocating infrastructure capacity be made publicly available.

5. Working in cooperation, as referred to in paragraph 1, infrastructure managers shall assess the need for, and may where necessary propose and organise international train paths to facilitate the operation of freight trains which are subject to an ad hoc request as referred to in Article 48.

Such prearranged international train paths shall be made available to applicants through any of the participating infrastructure managers.

Article 41

Applicants

1. Requests for infrastructure capacity may be made by applicants. In order to use such infrastructure capacity, applicants shall appoint a railway undertaking to conclude an agreement with the infrastructure manager in accordance with Article 28. This is without prejudice to the right of applicants to conclude agreements with infrastructure managers under Article 44(1).

2. The infrastructure manager may set requirements with regard to applicants to ensure that its legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded. Such requirements shall be appropriate, transparent and non-discriminatory. They shall be specified in the network statement as referred to in point 3(b) of Annex IV. They may only include the provision of a financial guarantee that shall not exceed an appropriate level which shall be proportional to the contemplated level of activity of the applicant, and assurance of the capability to prepare compliant bids for infrastructure capacity.

3. Before 16 June 2015, the Commission shall adopt implementing measures setting out the details of the criteria to be followed for the application of paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

Article 42

Framework agreements

1. Without prejudice to Articles 101, 102 and 106 TFEU, a framework agreement may be concluded between an infrastructure manager and an applicant. Such a framework agreement shall specify the characteristics of the infrastructure capacity required by and offered to the applicant over a period of time exceeding one working timetable period.

The framework agreement shall not specify a train path in detail, but shall be such as to meet the legitimate commercial needs of the applicant. A Member State may require prior approval of such a framework agreement by the regulatory body referred to in Article 55 of this Directive.

2. Framework agreements shall not be such as to preclude the use of the relevant infrastructure by other applicants or services.

3. Framework agreements shall allow for the amendment or limitation of its terms to enable better use to be made of the railway infrastructure.

4. Framework agreements may contain penalties should it be necessary to modify or terminate the agreement.

5. Framework agreements shall, in principle, cover a period of five years, renewable for periods equal to their original duration. The infrastructure manager may agree to a shorter or longer period in specific cases. Any period longer than five years shall be justified by the existence of commercial contracts, specialised investments or risks.

6. For services using specialised infrastructure referred to in Article 49 which requires substantial and long-term investment, duly justified by the applicant, framework agreements may be for a period of 15 years. Any period longer than 15 years shall be permissible only in exceptional cases, in particular where there is large-scale, long-term investment, and particularly where such investment is covered by contractual commitments including a multiannual amortisation plan.

In such exceptional cases, the framework agreement may set out the detailed characteristics of the capacity which is to be provided to the applicant for the duration of the framework agreement. Those characteristics may include the frequency, volume and quality of train paths. The infrastructure manager may reduce reserved capacity which, over a period of at least one month, has been used less than the threshold quota provided for in Article 52.

As from 1 January 2010, an initial framework agreement may be drawn up for a period of five years, renewable once, on the basis of the capacity characteristics used by applicants operating services before 1 January 2010, in order to take account of specialised investments or the existence of commercial contracts. The regulatory body referred to in Article 55 shall be responsible for authorising the entry into force of such an agreement.

7. While respecting commercial confidentiality, the general nature of each framework agreement shall be made available to any interested party.

8. Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the network referred to in Article 57(1), the Commission may adopt measures setting out the details of the procedure and criteria to be followed for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

Article 43

Schedule for the allocation process

1. The infrastructure manager shall adhere to the schedule for capacity allocation set out in Annex VII.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex VII. Thus, after consultation of all infrastructure managers, Annex VII may be amended to take into account operational considerations of the allocation process. Those amendments shall be based on what is necessary in the light of experience in order to ensure an efficient allocation process and to reflect the operational concerns of the infrastructure managers.

3. Infrastructure managers shall agree with the other relevant infrastructure managers concerned which international train paths are to be included in the working timetable, before commencing consultation on the draft working timetable. Adjustments shall only be made if absolutely necessary.

Article 44

Applications

1. Applicants may apply under public or private law to the infrastructure manager to request an agreement granting rights to use railway infrastructure against a charge as provided for in Section 2 of Chapter IV.

2. Requests relating to the regular working timetable shall comply with the deadlines set out in Annex VII.

3. An applicant who is a party to a framework agreement shall apply in accordance with that agreement.

4. For train paths crossing more than one network, infrastructure managers shall ensure that applicants may apply to a one-stop shop that is either a joint body established by the infrastructure managers or one single infrastructure manager involved in the train path. That infrastructure manager shall be permitted to act on behalf of the applicant to seek capacity with other relevant infrastructure managers. This requirement is without prejudice to Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight ([1]).

Article 45

Scheduling

1. The infrastructure manager shall, as far as possible, meet all requests for infrastructure capacity including requests for train paths crossing more than one network, and shall, as far as possible, take account of all constraints on applicants, including the economic effect on their business.

2. The infrastructure manager may give priority to specific services within the scheduling and coordination process but only as set out in Articles 47 and 49.

3. The infrastructure manager shall consult interested parties about the draft working timetable and allow them at least one month to present their views. Interested parties shall include all those who have requested infrastructure capacity and other parties who wish to have the opportunity to comment on how the working timetable may affect their ability to procure rail services during the working timetable period.

4. The infrastructure manager shall take appropriate measures to deal with any concerns that are expressed.

Article 46

Coordination process

1. During the scheduling process referred to in Article 45, where the infrastructure manager encounters conflicts between different requests, it shall attempt, through coordination of the requests, to ensure the best possible matching of all requirements.

2. Where a situation requiring coordination arises, the infrastructure manager shall have the right, within reasonable limits, to propose infrastructure capacity that differs from that which was requested.

3. The infrastructure manager shall attempt, through consultation with the appropriate applicants, to resolve any conflicts. Such consultation shall be based on the disclosure of the following information within a reasonable time, free of charge and in written or electronic form:

(a) train paths requested by all other applicants on the same routes;

(b) train paths allocated on a preliminary basis to all other applicants on the same routes;

(c) alternative train paths proposed on the relevant routes in accordance with paragraph 2;

(d) full details of the criteria being used in the capacity-allocation process.

In accordance with Article 39(2), that information shall be provided without disclosing the identity of other applicants, unless applicants concerned have agreed to such disclosure.

4. The principles governing the coordination process shall be set out in the network statement. These shall, in particular, reflect the difficulty of arranging international train paths and the effect that modification may have on other infrastructure managers.

5. Where requests for infrastructure capacity cannot be satisfied without coordination, the infrastructure manager shall attempt to accommodate all requests through coordination.

6. Without prejudice to the current appeal procedures and to Article 56, in the event of disputes relating to the allocation of infrastructure capacity, a dispute resolution system shall be made available in order to resolve such disputes promptly. This system shall be set out in the network statement. If this system is applied, a decision shall be reached within a time limit of 10 working days.

Article 47

Congested infrastructure

1. Where, after coordination of the requested train paths and consultation with applicants, it is not possible to satisfy requests for infrastructure capacity adequately, the infrastructure manager shall immediately declare that section of infrastructure on which this has occurred to be congested. This shall also be done for infrastructure which can be expected to suffer from insufficient capacity in the near future.

2. Where infrastructure has been declared to be congested, the infrastructure manager shall carry out a capacity analysis as provided for in Article 50, unless a capacity-enhancement plan, as provided for in Article 51, is already being implemented.

([1]) OJ L 276, 20.10.2010, p. 22.

3. Where charges in accordance with Article 31(4) have not been levied or have not achieved a satisfactory result and the infrastructure has been declared to be congested, the infrastructure manager may, in addition, employ priority criteria to allocate infrastructure capacity.

4. The priority criteria shall take account of the importance of a service to society relative to any other service which will consequently be excluded.

In order to guarantee the development of adequate transport services within this framework, in particular to comply with public-service requirements or to promote the development of national and international rail freight, Member States may take any measures necessary, under non-discriminatory conditions, to ensure that such services are given priority when infrastructure capacity is allocated.

Member States may, where appropriate, grant the infrastructure manager compensation corresponding to any loss of revenue related to the need to allocate a given capacity to certain services pursuant to the second subparagraph.

Those measures and that compensation shall include taking account of the effect of this exclusion in other Member States.

5. The importance of freight services, and in particular international freight services, shall be given adequate consideration in determining priority criteria.

6. The procedures to be followed and the criteria to be used where infrastructure is congested shall be set out in the network statement.

Article 48

Ad hoc requests

1. The infrastructure manager shall respond to ad hoc requests for individual train paths as quickly as possible, and in any event within five working days. Information supplied on available spare capacity shall be made available to all applicants who may wish to use this capacity.

2. Infrastructure managers shall, where necessary, undertake an evaluation of the need for reserve capacity to be kept available within the final scheduled working timetable to enable them to respond rapidly to foreseeable ad hoc requests for capacity. This shall also apply in cases of congested infrastructure.

Article 49

Specialised infrastructure

1. Without prejudice to paragraph 2, infrastructure capacity shall be considered to be available for the use of all types of service which conform to the characteristics necessary for operation on the train path.

2. Where there are suitable alternative routes, the infrastructure manager may, after consultation with interested parties, designate particular infrastructure for use by specified types of traffic. Without prejudice to Articles 101, 102 and 106 TFEU, where such designation has occurred, the infrastructure manager may give priority to this type of traffic when allocating infrastructure capacity.

Such designation shall not prevent the use of such infrastructure by other types of traffic when capacity is available.

3. Where infrastructure has been designated pursuant to paragraph 2, this shall be described in the network statement.

Article 50

Capacity analysis

1. The objective of capacity analysis is to determine the constraints on infrastructure capacity which prevent requests for capacity from being adequately met, and to propose methods of enabling additional requests to be satisfied. The capacity analysis shall identify the reasons for the congestion and what measures might be taken in the short and medium term to ease the congestion.

2. The capacity analysis shall consider the infrastructure, the operating procedures, the nature of the different services operating and the effect of all these factors on infrastructure capacity. Measures to be considered shall include in particular rerouting services, retiming services, speed alterations and infrastructure improvements.

3. A capacity analysis shall be completed within six months of the identification of infrastructure as congested.

Article 51

Capacity-enhancement plan

1. Within six months of the completion of a capacity analysis, the infrastructure manager shall produce a capacity-enhancement plan.

2. A capacity-enhancement plan shall be developed after consultation with users of the relevant congested infrastructure.

It shall identify:

(a) the reasons for the congestion;

(b) the likely future development of traffic;

(c) the constraints on infrastructure development;

(d) the options and costs for capacity enhancement, including likely changes to access charges.

On the basis of a cost benefit analysis of the possible measures identified, it shall also determine the action to be taken to enhance infrastructure capacity, including a timetable for implementing the measures.

The plan may be subject to prior approval by the Member State.

3. The infrastructure manager shall cease to levy any charges for the relevant infrastructure under Article 31(4) in cases where:

(a) it does not produce a capacity-enhancement plan; or

(b) it does not make progress with the actions identified in the capacity enhancement plan.

4. Notwithstanding paragraph 3 of this Article, the infrastructure manager may, subject to the approval of the regulatory body referred to in Article 55, continue to levy the charges if:

(a) the capacity-enhancement plan cannot be realised for reasons beyond its control; or

(b) the options available are not economically or financially viable.

Article 52

Use of train paths

1. In the network statement, the infrastructure manager shall specify conditions whereby it will take account of previous levels of utilisation of train paths in determining priorities for the allocation process.

2. For congested infrastructure in particular, the infrastructure manager shall require the surrender of a train path which, over a period of at least one month, has been used less than a threshold quota to be laid down in the network statement, unless this was due to non-economic reasons beyond the applicant's control.

Article 53

Infrastructure capacity for maintenance work

1. Requests for infrastructure capacity to enable maintenance work to be performed shall be submitted during the scheduling process.

2. Adequate account shall be taken by the infrastructure manager of the effect of infrastructure capacity reserved for scheduled track maintenance work on applicants.

3. The infrastructure manager shall inform, as soon as possible, interested parties about the unavailability of infrastructure capacity due to unscheduled maintenance work.

Article 54

Special measures to be taken in the event of disturbance

1. In the event of disturbance to train movements caused by technical failure or accident the infrastructure manager shall take all necessary steps to restore the situation to normal. To that end, it shall draw up a contingency plan listing the various bodies to be informed in the event of serious incidents or serious disturbance to train movements.

2. In an emergency and, where absolutely necessary, on account of a breakdown making the infrastructure temporarily unusable, the train paths allocated may be withdrawn without warning for as long as is necessary to repair the system.

The infrastructure manager may, if it deems this necessary, require railway undertakings to make available to it the resources which it feels are the most appropriate to restore the situation to normal as soon as possible.

3. Member States may require railway undertakings to be involved in assuring the enforcement and monitoring of their own compliance with the safety standards and rules.

SECTION 4

Regulatory body

Article 55

Regulatory body

1. Each Member State shall establish a single national regulatory body for the railway sector. Without prejudice to paragraph 2, this body shall be a stand-alone authority which is, in organisational, functional, hierarchical and decision-making terms, legally distinct and independent from any other public or private entity. It shall also be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. It shall furthermore be functionally independent from any competent authority involved in the award of a public service contract.

2. Member States may set up regulatory bodies which are competent for several regulated sectors, if these integrated regulatory authorities fulfil the independence requirements set out in paragraph 1 of this Article. The regulatory body for the rail sector may also be joined in organisational term with the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty [1], the safety authority established under Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety

[1] OJ L 1, 4.1.2003, p. 1.
Editorial note: The title of Council Regulation (EC) No 1/2003 has been adjusted to take account of the renumbering of the articles of the Treaty establishing the European Community, in accordance with Article 5 of the Treaty of Lisbon; the original reference was: Articles 81 and 82 of the Treaty.

on the Community's railways [1] or the licensing authority referred to in Chapter III of this Directive, if the joint body fulfils the independence requirements set out in paragraph 1 of this Article.

3. Member States shall ensure that the regulatory body is staffed and managed in a way that guarantees its independence. They shall, in particular, ensure that the persons in charge of decisions to be taken by the regulatory body in accordance with Article 56, such as members of its executive board, where relevant, be appointed under clear and transparent rules which guarantee their independence by the national cabinet or council of ministers or by any other public authority which does not directly exert ownership rights over regulated undertakings.

Member States shall decide whether these persons are appointed for a fixed and renewable term, or on a permanent basis which only allows dismissal for disciplinary reasons not related to their decision-making. They shall be selected in a transparent procedure on the basis of their merit, including appropriate competence and relevant experience, preferably in the field of railways or other network industries.

Member States shall ensure that these persons act independently from any market interest related to the railway sector, and shall therefore not have any interest or business relationship with any of the regulated undertakings or entities. To this effect, these persons shall make annually a declaration of commitment and a declaration of interests, indicating any direct or indirect interests that may be considered prejudicial to their independence and which might influence their performance of any function. These persons shall withdraw from decision-making in cases which concern an undertaking with which they had a direct or indirect connection during the year before the launch of a procedure.

They shall not seek or take instructions from any government or other public or private entity when carrying out the functions of the regulatory body, and have full authority over the recruitment and management of the staff of the regulatory body.

After their term in the regulatory body, they shall have no professional position or responsibility with any of the regulated undertakings or entities for a period of not less than one year.

Article 56

Functions of the regulatory body

1. Without prejudice to Article 46(6), an applicant shall have the right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking or the operator of a service facility concerning:

(a) the network statement in its provisional and final versions;

(b) the criteria set out in it;

(c) the allocation process and its result;

(d) the charging scheme;

(e) the level or structure of infrastructure charges which it is, or may be, required to pay;

(f) arrangements for access in accordance with Articles 10 to 13;

(g) access to and charging for services in accordance with Article 13.

2. Without prejudice to the powers of the national competition authorities for securing competition in the rail services markets, the regulatory body shall have the power to monitor the competitive situation in the rail services markets and shall, in particular, control points (a) to (g) of paragraph 1 on its own initiative and with a view to preventing discrimination against applicants. It shall, in particular, check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate against applicants.

3. The regulatory body shall also cooperate closely with the national safety authority within the meaning of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community [2], and the licensing authority within the meaning of this Directive.

Member States shall ensure that these authorities jointly develop a framework for information-sharing and cooperation aimed at preventing adverse effects on competition or safety in the railway market. This framework shall include a mechanism for the regulatory body to provide the national safety and licensing authorities with recommendations on issues that may affect competition in the railway market and for the national safety authority to provide the regulatory body and licensing authority with recommendations on issues that may affect safety. Without prejudice to the independence of each authority within the field of their respective competences, the relevant authority shall examine any such recommendation before adopting its decisions. If the relevant authority decides to deviate from these recommendations, it shall give reasons in its decisions.

[1] OJ L 164, 30.4.2004, p. 44.

[2] OJ L 191, 18.7.2008, p. 1.

4. Member States may decide that the regulatory body is given the task to adopt non-binding opinions on the provisional versions of the business plan referred to in Article 8(3), the contractual agreement and the capacity-enhancement plan to indicate in particular whether these instruments are consistent with the competitive situation in the rail services markets.

5. The regulatory body shall have the necessary organisational capacity in terms of human and material resources, which shall be proportionate to the importance of the rail sector in the Member State.

6. The regulatory body shall ensure that charges set by the infrastructure manager comply with Section 2 of Chapter IV and are non-discriminatory. Negotiations between applicants and an infrastructure manager concerning the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this Chapter.

7. The regulatory body shall, regularly and, in any case, at least every two years, consult representatives of users of the rail freight and passenger transport services, to take into account their views on the rail market.

8. The regulatory body shall have the power to request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned.

Information requested shall be supplied within a reasonable period set by the regulatory body that shall not exceed one month, unless, in exceptional circumstances, the regulatory body agrees to, and authorises, a time-limited extension, which shall not exceed two additional weeks. The regulatory body shall be able to enforce such requests with appropriate penalties, including fines. Information to be supplied to the regulatory body includes all data which the regulatory body requires in the framework of its appeal function and in its function of monitoring the competition in the rail services markets in accordance with paragraph 2. This includes data which are necessary for statistical and market observation purposes.

9. The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information. Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (g) of paragraph 1.

A decision of the regulatory body shall be binding on all parties covered by that decision, and shall not be subject to the control of another administrative instance. The regulatory body shall be able to enforce its decisions with the appropriate penalties, including fines.

In the event of an appeal against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the regulatory body shall either confirm that no modification of the infrastructure manager's decision is required, or it shall require modification of that decision in accordance with directions specified by the regulatory body.

10. Member States shall ensure that decisions taken by the regulatory body are subject to judicial review. The appeal may have suspensive effect on the decision of the regulatory body only when the immediate effect of the regulatory body's decision may cause irretrievable or manifestly excessive damages for the appellant. This provision is without prejudice to the powers of the court hearing the appeal as conferred by constitutional law, where applicable.

11. Member States shall ensure that decisions taken by the regulatory body are published.

12. The regulatory body shall have the power to carry out audits or initiate external audits with infrastructure managers, operators of service facilities and, where relevant, railway undertakings, to verify compliance with accounting separation provisions laid down in Article 6. In this respect, the regulatory body shall be entitled to request any relevant information. In particular the regulatory body shall have the power to request infrastructure manager, operators of service facilities and all undertakings or other entities performing or integrating different types of rail transport or infrastructure management as referred to in Article 6(1) and (2) and Article 13 to provide all or part of the accounting information listed in Annex VIII with a sufficient level of detail as deemed necessary and proportionate.

Without prejudice to the powers of the national authorities responsible for State aid issues, the regulatory body may also draw conclusions from the accounts concerning State aid issues which it shall report to those authorities.

13. The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex VIII. Thus, Annex VIII may be amended to adapt it to the evolution of accounting and control practices and/or to supplement it with additional elements necessary to verify separation of accounts.

Article 57

Cooperation between regulatory bodies

1. The regulatory bodies shall exchange information about their work and decision-making principles and practice and, in particular, exchange information on the main issues of their procedures and on the problems of interpreting transposed Union railway law. They shall otherwise cooperate for the purpose of coordinating their decision-making across the Union. For this purpose, they shall participate and work together in a network that convenes at regular intervals. The Commission shall be a member, coordinate and support the work of the network and make recommendations to the network, as appropriate. It shall ensure active cooperation of the appropriate regulatory bodies.

Subject to the rules on data protection provided for in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1] and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [2], the Commission shall support the exchange of the information referred above among the members of the network, possibly through electronic tools, respecting the confidentiality of business secrets supplied by the relevant undertakings.

2. The regulatory bodies shall cooperate closely, including through working arrangements, for the purposes of mutual assistance in their market monitoring tasks and handling complaints or investigations.

3. In the case of a complaint or an own-initiative investigation on issues of access or charging relating to an international train path, as well as in the framework of monitoring competition on the market related to international rail transport services, the regulatory body concerned shall consult the regulatory bodies of all other Member States through which the international train path concerned runs and, where appropriate, the Commission, and shall request all necessary information from them before taking its decision.

4. The regulatory bodies consulted in accordance with paragraph 3 shall provide all the information that they themselves have the right to request under their national law. This information may only be used for the purpose of handling the complaint or investigation referred to in paragraph 3.

5. The regulatory body receiving the complaint or conducting an investigation on its own initiative shall transfer relevant information to the regulatory body responsible in order for that body to take measures regarding the parties concerned.

6. Member States shall ensure that any associated representatives of infrastructure managers as referred to in Article 40(1) provide, without delay, all the information necessary for the purpose of handling the complaint or investigation referred to in paragraph 3 of this Article and requested by the regulatory body of the Member State in which the associated representative is located. That regulatory body shall be entitled to transfer such information regarding the international train path concerned to the regulatory bodies referred to in paragraph 3.

7. At the request of a regulatory body, the Commission may participate in the activities listed under paragraphs 2 to 6 for the purpose of facilitating the cooperation of regulatory bodies as outlined in those paragraphs.

8. Regulatory bodies shall develop common principles and practices for making the decisions for which they are empowered under this Directive. Based on the experience of regulatory bodies and on the activities of the network referred to in paragraph 1, and, if needed, to ensure efficient cooperation of regulatory bodies, the Commission may adopt measures setting out such common principles and practices. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

9. Regulatory bodies shall review decisions and practices of associations of infrastructure managers as referred to in Article 37 and Article 40(1) that implement provisions of this Directive or otherwise facilitate international rail transport.

CHAPTER V

FINAL PROVISIONS

Article 58

Public procurement rules

The provisions of this Directive shall be without prejudice to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors [3].

Article 59

Derogations

1. Until 15 March 2013, Ireland, as a Member State located on an island, with a rail link to only one other Member State, and the United Kingdom, in respect of Northern Ireland, on the same basis:

(a) do not need to entrust to an independent body the functions determining equitable and non-discriminatory access to infrastructure, as provided for in the first subparagraph of Article 7(1) in so far as that Article obliges Member States to establish independent bodies performing the tasks referred to in Article 7(2);

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.
[3] OJ L 134, 30.4.2004, p. 1.

(b) do not need to apply the requirements set out in Article 27, Article 29(2), Articles 38, 39 and 42, Article 46(4) and (6), Article 47, Article 49(3), and Articles 50 to 53, 55 and 56 on condition that decisions on the allocation of infrastructure capacity or the charging of fees are open to appeal, if so requested in writing by a railway undertaking, before an independent body which shall take its decision within two months of the submission of all relevant information and whose decision shall be subject to judicial review.

2. Where more than one railway undertaking licensed in accordance with Article 17, or, in the case of Ireland and Northern Ireland, a railway company so licensed elsewhere, submits an official application to operate competing railway services in, to or from Ireland or Northern Ireland, the continued applicability of this derogation shall be decided upon in accordance with the advisory procedure referred to in Article 62(2).

The derogations referred to in paragraph 1 shall not apply where a railway undertaking operating railway services in Ireland or Northern Ireland submits an official application to operate railway services on, to or from the territory of another Member State, with the exceptions of Ireland for railway undertakings operating in Northern Ireland and the United Kingdom for railway undertakings operating in Ireland.

Within one year from the receipt of either the decision referred to in the first subparagraph of this paragraph or notification of the official application referred to in the second subparagraph of this paragraph, the Member State or States concerned (Ireland or the United Kingdom with respect to Northern Ireland) shall put in place legislation to implement the Articles referred to in paragraph 1.

3. A derogation referred to in paragraph 1 may be renewed for periods not longer than five years. Not later than 12 months before the expiry date of the derogation a Member State availing itself of that derogation may address a request to the Commission for a renewed derogation. Any such request shall be justified. The Commission shall examine such a request and adopt a decision in accordance with the advisory procedure referred to in Article 62(2). That procedure shall apply to any decision related to the request.

When adopting its decision, the Commission shall take into account any development in the geopolitical situation and the development of the rail market in, from and to the Member State that requested the renewed derogation.

Article 60

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 20(5), Article 35(3), Article 43(2) and Article 56(13) shall be conferred on the Commission for a period of five years from 15 December 2012. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of powers referred to in Article 20(5), Article 35(3), Article 43(2) and Article 56(13) 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. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 20(5), Article 35(3), Article 43(2) and Article 56(13) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 61

Measures of application

At the request of a Member State, of a regulatory body or on its own initiative, the Commission shall examine specific measures adopted by national authorities in relation to the application of this Directive, concerning the conditions of access to railway infrastructure and services, the licensing of railway undertakings, infrastructure charging and capacity allocation within 12 months after adoption of those measures. The Commission shall decide in accordance with the procedure referred to in Article 62(2) whether the related measure may continue to be applied within four months of receipt of such a request.

Article 62

Committee procedure

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

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. When the committee delivers no opinion on a draft implementing act to be adopted pursuant to Article 10(4), Article 11(4), Article 12(5), Article 13(9) and Article 17(5), Article 31(3) and (5), Article 32(4) and Article 57(8), 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 63

Report

1. By 31 December 2012 at the latest, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of Chapter II. This report shall also assess the development of the market, including the state of preparation of a further opening-up of the rail market. In its report the Commission shall also analyse the different models for organising this market and the impact of this Directive on public service contracts and their financing. In so doing, the Commission shall take into account the implementation of Regulation (EC) No 1370/2007 and the intrinsic differences between Member States (density of networks, number of passengers, average travel distance). The Commission shall, if appropriate, propose legislative measures in relation to the opening of the domestic rail passenger market and to develop appropriate conditions to ensure non-discriminatory access to the infrastructure, building on the existing separation requirements between infrastructure management and transport operations, and shall assess the impact of any such measures.

2. In light of the experience acquired through the network of regulatory bodies, the Commission shall, by 16 December 2014, submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions a report on cooperation between regulatory bodies. The Commission shall, if appropriate, propose complementary measures to ensure a more integrated regulatory oversight of the European rail market, in particular for international services. To that end, legislative measures shall also be considered, if appropriate.

Article 64

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive including as regards compliance by undertakings, operators, applicants, authorities and other entities concerned by 16 June 2015. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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

The obligations for transposition and implementation of Chapters II and IV of this Directive shall not apply to Cyprus and Malta for as long as no railway system is established within their territory.

Article 65

Repeal

Directives 91/440/EEC, 95/18/EC and 2001/14/EC, as amended by the Directives listed in Annex IX, Part A, are repealed with effect from 15 December 2012, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Part B of Annex IX.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex X.

Article 66

Entry into force

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

Article 67

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 21 November 2012.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A. D. MAVROYIANNIS

ANNEX I

LIST OF RAILWAY INFRASTRUCTURE ITEMS

Railway infrastructure consists of the following items, provided they form part of the permanent way, including sidings, but excluding lines situated within railway repair workshops, depots or locomotive sheds, and private branch lines or sidings:

— Ground area,

— Track and track bed, in particular embankments, cuttings, drainage channels and trenches, masonry trenches, culverts, lining walls, planting for protecting side slopes, etc.; passenger and goods platforms, including in passenger stations and freight terminals; four-foot way and walkways; enclosure walls, hedges, fencing; fire protection strips; apparatus for heating points; crossings etc.; snow protection screens,

— Engineering structures: bridges, culverts and other overpasses, tunnels, covered cuttings and other underpasses; retaining walls, structures for protection against avalanches, falling stones, etc.,

— Level crossings, including appliances to ensure the safety of road traffic,

— Superstructure, in particular: rails, grooved rails and check rails; sleepers and longitudinal ties, small fittings for the permanent way, ballast including stone chippings and sand; points, crossings, etc.; turntables and traverses (except those reserved exclusively for locomotives),

— Access way for passengers and goods, including access by road and access for passengers arriving or departing on foot,

— Safety, signalling and telecommunications installations on the open track, in stations and in marshalling yards, including plant for generating, transforming and distributing electric current for signalling and telecommunications; buildings for such installations or plant; track brakes,

— Lighting installations for traffic and safety purposes,

— Plant for transforming and carrying electric power for train haulage: substations, supply cables between substations and contact wires, catenaries and supports; third rail with supports,

— Buildings used by the infrastructure department, including a proportion of installations for the collection of transport charges.

ANNEX II

SERVICES TO BE SUPPLIED TO THE RAILWAY UNDERTAKINGS

(referred to in Article 13)

1. The minimum access package shall comprise:
   (a) handling of requests for railway infrastructure capacity;
   (b) the right to utilise capacity which is granted;
   (c) use of the railway infrastructure, including track points and junctions;
   (d) train control including signalling, regulation, dispatching and the communication and provision of information on train movement;
   (e) use of electrical supply equipment for traction current, where available;
   (f) all other information required to implement or operate the service for which capacity has been granted.
2. Access, including track access, shall be given to the following services facilities, when they exist, and to the services supplied in these facilities:
   (a) passenger stations, their buildings and other facilities, including travel information display and suitable location for ticketing services;
   (b) freight terminals;
   (c) marshalling yards and train formation facilities, including shunting facilities;
   (d) storage sidings;
   (e) maintenance facilities, with the exception of heavy maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities;
   (f) other technical facilities, including cleaning and washing facilities;
   (g) maritime and inland port facilities which are linked to rail activities;
   (h) relief facilities;
   (i) refuelling facilities and supply of fuel in these facilities, charges for which shall be shown on the invoices separately.
3. Additional services may comprise:
   (a) traction current, charges for which shall be shown on the invoices separately from charges for using the electrical supply equipment, without prejudice to the application of Directive 2009/72/EC;
   (b) pre-heating of passenger trains;
   (c) tailor-made contracts for:
      — control of transport of dangerous goods,
      — assistance in running abnormal trains.
4. Ancillary services may comprise:
   (a) access to telecommunication networks;
   (b) provision of supplementary information;
   (c) technical inspection of rolling stock;
   (d) ticketing services in passenger stations;
   (e) heavy maintenance services supplied in maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities.

ANNEX III

FINANCIAL FITNESS

(referred to in Article 20)

The information to be provided by undertakings applying for a licence in accordance with Article 20 covers the following aspects:

(a) available funds, including the bank balance, pledged overdraft provisions and loans;

(b) funds and assets available as security;

(c) working capital;

(d) relevant costs, including purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock;

(e) charges on an undertaking's assets;

(f) taxes and social security contributions.

ANNEX IV

CONTENTS OF THE NETWORK STATEMENT

(referred to in Article 27)

The network statement referred to in Article 27 shall contain the following information:

1. A section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it. The information in this section shall be made consistent, on an annual basis with, or shall refer to, the rail infrastructure registers to be published in accordance with Article 35 of Directive 2008/57/EC.

2. A section on charging principles and tariffs. This shall contain appropriate details of the charging scheme as well as sufficient information on charges as well as other relevant information on access applying to the services listed in Annex II which are provided by only one supplier. It shall detail the methodology, rules and, where applicable, scales used for the application of Articles 31 to 36, as regards both costs and charges. It shall contain information on changes in charges already decided upon or foreseen in the next five years, if available.

3. A section on the principles and criteria for capacity allocation. This shall set out the general capacity characteristics of the infrastructure which is available to railway undertakings and any restrictions relating to its use, including likely capacity requirements for maintenance. It shall also specify the procedures and deadlines which relate to the capacity-allocation process. It shall contain specific criteria which are employed during that process, in particular:

   (a) the procedures according to which applicants may request capacity from the infrastructure manager;

   (b) the requirements governing applicants;

   (c) the schedule for the application and allocation processes and the procedures which shall be followed to request information on the scheduling and the procedures for scheduling planned and unforeseen maintenance work;

   (d) the principles governing the coordination process and the dispute resolution system made available as part of this process;

   (e) the procedures which shall be followed and criteria used where infrastructure is congested;

   (f) details of restrictions on the use of infrastructure;

   (g) conditions by which account is taken of previous levels of utilisation of capacity in determining priorities for the allocation process.

   It shall detail the measures taken to ensure adequate treatment of freight services, international services and requests subject to the ad hoc procedure. It shall contain a template form for capacity requests. The infrastructure manager shall also publish detailed information about the allocation procedures for international train paths.

4. A section on information relating to the application for a licence referred to in Article 25 of this Directive and rail safety certificates issued in accordance with Directive 2004/49/EC or indicating a website where such information is made available free of charge in electronic format.

5. A section on information about procedures for dispute resolution and appeal relating to matters of access to rail infrastructure and services and to the performance scheme referred to in Article 35.

6. A section on information on access to and charging for service facilities referred to in Annex II. Operators of service facilities which are not controlled by the infrastructure manager shall supply information on charges for gaining access to the facility and for the provision of services, and information on technical access conditions for inclusion in the network statement or shall indicate a website where such information is made available free of charge in electronic format.

7. A model agreement for the conclusion of framework agreements between an infrastructure manager and an applicant in accordance with Article 42.

ANNEX V

BASIC PRINCIPLES AND PARAMETERS OF CONTRACTUAL AGREEMENTS BETWEEN COMPETENT AUTHORITIES AND INFRASTRUCTURE MANAGERS

(referred to in Article 30)

The contractual agreement shall specify the provisions of Article 30 and include at least the following elements:

(1) the scope of the agreement as regards infrastructure and service facilities, structured in accordance with Annex II. It shall cover all aspects of infrastructure management, including maintenance and renewal of the infrastructure already in operation. Where appropriate, construction of new infrastructure may also be covered;

(2) the structure of payments or funds allocated to the infrastructure services listed in Annex II, to maintenance and renewal and to dealing with existing maintenance and renewal backlogs. Where appropriate, the structure of payments or funds allocated to new infrastructure may be covered;

(3) user-oriented performance targets, in the form of indicators and quality criteria covering elements such as:

(a) train performance, such as in terms of line speed and reliability, and customer satisfaction,

(b) network capacity,

(c) asset management,

(d) activity volumes,

(e) safety levels, and

(f) environmental protection;

(4) the amount of possible maintenance backlog and the assets which will be phased out of use and therefore trigger different financial flows;

(5) the incentives referred to in Article 30(1), with the exception of those incentives implemented through regulatory measures in accordance with Article 30(3);

(6) minimum reporting obligations for the infrastructure manager in terms of content and frequency of reporting, including information to be published annually;

(7) the agreed duration of the agreement, which shall be synchronised and consistent with the duration of the infrastructure manager's business plan, concession or licence, where appropriate, and the charging framework and rules set by the State;

(8) rules for dealing with major disruptions of operations and emergency situations, including contingency plans and early termination of the contractual agreement, and timely information to users;

(9) remedial measures to be taken if either of the parties is in breach of its contractual obligations, or in exceptional circumstances affecting the availability of public funding; this includes conditions and procedures for renegotiation and early termination.

ANNEX VI

REQUIREMENTS FOR COSTS AND CHARGES RELATED TO RAILWAY INFRASTRUCTURE

(referred to in Article 32(1) and Article 35)

1. The pairs to be considered by infrastructure managers when they define a list of market segments with a view to introducing mark-ups in the charging system according to Article 32(1) include at least the following:

   (a) passenger versus freight services;

   (b) trains carrying dangerous goods versus other freight trains;

   (c) domestic versus international services;

   (d) combined transport versus direct trains;

   (e) urban or regional versus interurban passenger services;

   (f) block trains versus single wagon load trains;

   (g) regular versus occasional train services.

2. The performance scheme as referred to in Article 35 shall be based on the following basic principles:

   (a) In order to achieve an agreed level of performance and not to endanger the economic viability of a service, the infrastructure manager shall agree with applicants the main parameters of the performance scheme, in particular the value of delays, the thresholds for payments due under the performance scheme relative both to individual train runs and to all train runs of a railway undertaking in a given period of time;

   (b) The infrastructure manager shall communicate to the railway undertakings the working timetable, on the basis of which delays will be calculated, at least five days before the train run. The infrastructure manager may apply a shorter notice period in case of force majeure or late alterations of the working timetable;

   (c) All delays shall be attributable to one of the following delay classes and sub-classes:

      1. Operation/planning management attributable to the infrastructure manager

      1.1. Timetable compilation

      1.2. Formation of train

      1.3. Mistakes in operations procedure

      1.4. Wrong application of priority rules

      1.5. Staff

      1.6. Other causes

      2. Infrastructure installations attributable to the infrastructure manager

      2.1. Signalling installations

      2.2. Signalling installations at level crossings

      2.3. Telecommunications installations

      2.4. Power supply equipment

      2.5. Track

      2.6. Structures

      2.7. Staff

      2.8. Other causes

      3. Civil engineering causes attributable to the infrastructure manager

      3.1. Planned construction work

3.2. Irregularities in execution of construction work

3.3. Speed restriction due to defective track

3.4. Other causes

4. Causes attributable to other infrastructure managers

4.1. Caused by previous infrastructure manager

4.2. Caused by next infrastructure manager

5. Commercial causes attributable to the railway undertaking

5.1. Exceeding the stop time

5.2. Request of the railway undertaking

5.3. Loading operations

5.4. Loading irregularities

5.5. Commercial preparation of train

5.6. Staff

5.7. Other causes

6. Rolling stock attributable to the railway undertaking

6.1. Roster planning/rerostering

6.2. Formation of train by railway undertaking

6.3. Problems affecting coaches (passenger transport)

6.4. Problems affecting wagons (freight transport)

6.5. Problems affecting cars, locomotives and rail cars

6.6. Staff

6.7. Other causes

7. Causes attributable to other railway undertakings

7.1. Caused by next railway undertaking

7.2. Caused by previous railway undertaking

8. External causes attributable to neither infrastructure manager nor railway undertaking

8.1. Strike

8.2. Administrative formalities

8.3. Outside influence

8.4. Effects of weather and natural causes

8.5. Delay due to external reasons on the next network

8.6. Other causes

9. Secondary causes attributable to neither infrastructure manager nor railway undertaking

9.1. Dangerous incidents, accidents and hazards

9.2. Track occupation caused by the lateness of the same train

9.3. Track occupation caused by the lateness of another train

9.4. Turn-around

9.5. Connection

9.6. Further investigation needed;

(d) Wherever possible, delays shall be attributed to a single organisation, considering both the responsibility for causing the disruption and the ability to re-establish normal traffic conditions;

(e) The calculation of payments shall take into account the average delay of train services of similar punctuality requirements;

(f) The infrastructure manager shall, as soon as possible, communicate to the railway undertakings a calculation of payments due under the performance scheme. This calculation shall encompass all delayed train runs within a period of at most one month;

(g) Without prejudice to the existing appeal procedures and to the provisions of Article 56, in the case of disputes relating to the performance scheme, a dispute resolution system shall be made available in order to settle such matters promptly. This dispute resolution system shall be impartial towards the parties involved. If this system is applied, a decision shall be reached within a time limit of 10 working days;

(h) Once a year, the infrastructure manager shall publish the annual average level of performance achieved by the railway undertakings on the basis of the main parameters agreed in the performance scheme.

ANNEX VII

SCHEDULE FOR THE ALLOCATION PROCESS

(referred to in Article 43)

1. The working timetable shall be established once per calendar year.

2. The change of working timetable shall take place at midnight on the second Saturday in December. Where a change or adjustment is carried out after the winter, in particular to take account, where appropriate, of changes in regional passenger traffic timetables, it shall take place at midnight on the second Saturday in June and at such other intervals between these dates as are required. Infrastructure managers may agree on different dates and in this case they shall inform the Commission if international traffic may be affected.

3. The final date for receipt of requests for capacity to be incorporated into the working timetable shall be no more than 12 months in advance of the entry into force of the working timetable.

4. No later than 11 months before the working timetable comes into force, the infrastructure managers shall ensure that provisional international train paths have been established in cooperation with other relevant infrastructure managers. Infrastructure managers shall ensure that as far as possible these are adhered to during the subsequent processes.

5. No later than four months after the deadline for submission of bids by applicants, the infrastructure manager shall prepare a draft working timetable.

ANNEX VIII

ACCOUNTING INFORMATION TO BE SUPPLIED TO THE REGULATORY BODY UPON REQUEST

(referred to in Article 56(12))

1. Account separation

   (a) separate profit and loss accounts and balance sheets for freight, passenger and infrastructure management activities;

   (b) detailed information on individual sources and uses of public funds and other forms of compensation in a transparent and detailed manner, including a detailed review of the businesses' cash flows in order to determine in what way these public funds and other forms of compensation have been used;

   (c) cost and profit categories making it possible to determine whether cross-subsidies between these different activities occurred, according to the requirements of the regulatory body;

   (d) methodology used to allocate costs between different activities;

   (e) where the regulated firm is part of a group structure, full details of inter-company payments.

2. Monitoring of track access charges

   (a) different cost categories, in particular providing sufficient information on marginal/direct costs of the different services or groups of services so that infrastructure charges can be monitored;

   (b) sufficient information to allow monitoring of the individual charges paid for services (or groups of services); if required by the regulatory body, this information shall contain data on volumes of individual services, prices for individual services and total revenues for individual services paid by internal and external customers;

   (c) costs and revenues for individual services (or groups of services) using the relevant cost methodology, as required by the regulatory body, to identify potentially anti-competitive pricing (cross-subsidies, predatory pricing and excessive pricing).

3. Indication of financial performance

   (a) a statement of financial performance;

   (b) a summary expenditure statement;

   (c) a maintenance expenditure statement;

   (d) an operating expenditure statement;

   (e) an income statement;

   (f) supporting notes that amplify and explain the statements, where appropriate.

ANNEX IX

PART A

REPEALED DIRECTIVES WITH LIST OF SUCCESSIVE AMENDMENTS

(referred to in Article 65)

Council Directive 91/440/EEC (OJ L 237, 24.8.1991, p. 25)	
Directive 2001/12/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 1)	
Directive 2004/51/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 164)	
Council Directive 2006/103/EC (OJ L 363, 20.12.2006, p. 344)	only Point B of the Annex
Directive 2007/58/EC of the European Parliament and of the Council (OJ L 315, 3.12.2007, p. 44)	only Article 1
Council Directive 95/18/EC (OJ L 143, 27.6.1995, p. 70)	
Directive 2001/13/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 26)	
Directive 2004/49/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 44)	only Article 29
Directive 2001/14/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 29)	
Commission Decision 2002/844/EC (OJ L 289, 26.10.2002, p. 30)	
Directive 2004/49/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 44)	only Article 30
Directive 2007/58/EC of the European Parliament and of the Council (OJ L 315, 3.12.2007, p. 44)	only Article 2

PART B

LIST OF TIME LIMITS FOR TRANSPOSITION INTO NATIONAL LAW

(referred to in Article 65)

Directive	Time limit for transposition
91/440/EEC	1 January 1993
95/18/EC	27 June 1997
2001/12/EC	15 March 2003
2001/13/EC	15 March 2003
2001/14/EC	15 March 2003
2004/49/EC	30 April 2006
2004/51/EC	31 December 2005
2006/103/EC	1 January 2007
2007/58/EC	4 June 2009

ANNEX X

CORRELATION TABLE

Directive 91/440/EEC	Directive 95/18/EC	Directive 2001/14/EC	This Directive
Article 2(1)	Article 1(1)	Article 1(1), first subparagraph	Article 1(1)
		Article 1(2)	Article 1(2)
Article 2(2)			Article 2(1)
	Article 1(2)		Article 2(2)
		Article 1(3)	Article 2(3)
			Article 2(4) to (9)
Article 2(4)			Article 2(10)
			Article 2(11)
Article 3			Article 3(1) to (8)
			Article 3(9) to (13)
	Article 2(b) and (c)		Article 3(14) and (15)
			Article 3(16) and (17)
		Article 2	Article 3(18) to (28)
			Article 3(29) and (30)
Article 4			Article 4
Article 5			Article 5(1) to (3)
			Article 5(4)
Article 6(1) and (2)			Article 6(1) and (2)
Article 9(4)			Article 6(3)
Article 6(1) second subparagraph			Article 6(4)
Article 6(3) and Annex II			Article 7(1)
		Article 4(2) and Article 14(2)	Article 7(2)

Directive 91/440/EEC	Directive 95/18/EC	Directive 2001/14/EC	This Directive
Article 7(1), (3) and (4)			Article 8(1), (2) and (3)
		Article 6(1)	Article 8(4)
Article 9(1) and (2)			Article 9(1) and (2)
Article 10(3) and (3a)			Article 10(1) and (2)
Article 10(3b)			Article 11(1), (2) and (3)
			Article 11(4)
Article 10(3c) and (3e)			Article 11(5) and (6)
Article 10(3f)			Article 12(1) to (4)
			Article 12(5)
		Article 5	Article 13
			Article 14
Article 10b			Article 15
	Article 3		Article 16
	Article 4(1) to (4)		Article 17(1) to (4)
	Article 5		Article 18
	Article 6		Article 19
	Article 7(1)		Article 20(1)
	Annex, Part I, point (1)		Article 20(2)
			Article 20(3)
	Article 8		Article 21
	Article 9		Article 22
	Article 4(5)		Article 23(1)
	Article 10		Article 23(2) and (3)
	Article 11		Article 24
	Article 15		Article 25
		Article 1(1), second subparagraph	Article 26
		Article 3	Article 27
Article 10(5)			Article 28

Directive 91/440/EEC	Directive 95/18/EC	Directive 2001/14/EC	This Directive
		Article 4(1) and (3) to (6)	Article 29
		Article 6(2) to (5)	Article 30
		Article 7	Article 31
		Article 8	Article 32
		Article 9	Article 33
		Article 10	Article 34
		Article 11	Article 35
		Article 12	Article 36
			Article 37
		Article 13	Article 38
		Article 14(1) and (3)	Article 39
		Article 15	Article 40
		Article 16	Article 41
		Article 17	Article 42
		Article 18	Article 43
		Article 19	Article 44
		Article 20(1), (2) and (3)	Article 45(1), (2) and (3)
			Article 45(4)
		Article 20(4)	Article 45(5)
		Article 21	Article 46
		Article 22	Article 47
		Article 23	Article 48
		Article 24	Article 49
		Article 25	Article 50

Directive 91/440/EEC	Directive 95/18/EC	Directive 2001/14/EC	This Directive
		Article 26	Article 51
		Article 27	Article 52
		Article 28	Article 53
		Article 29	Article 54
		Article 30(1)	Article 55
		Article 30(2)	Article 56(1)
		Article 31	Article 57
Article 12			Article 58
Article 14a		Article 33(1), (2) and (3)	Article 59
			Article 60
		Article 34(2)	Article 61
Article 11a		Article 35(1), (2) and (3)	Article 62
Article 10(9)			Article 63
		Article 38	Article 64
			Article 65
	Article 17	Article 39	Article 66
Article 16	Article 18	Article 40	Article 67
			Annex I
		Annex II	Annex II
	Annex		Annex III
		Annex I	Annex IV
			Annex V
			Annex VI
		Annex III	Annex VII
			Annex VIII

DIRECTIVE 2012/35/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 November 2012

amending Directive 2008/106/EC on the minimum level of training of seafarers

(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 100(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee [1],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) The training and certification of seafarers is regulated by the International Maritime Organisation (IMO) Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (the 'STCW Convention'), which entered into force in 1984 and which was significantly amended in 1995.

(2) The STCW Convention was incorporated into Union law for the first time by Council Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers [3]. The Union rules on training and certification of seafarers were later adapted to the subsequent amendments to the STCW Convention, and a common Union mechanism for the recognition of the systems of training and certification of seafarers in third countries was set up. Those rules are, as the result of a recast, contained in Directive 2008/106/EC of the European Parliament and of the Council [4].

(3) A Conference of Parties to the STCW Convention held in Manila in 2010 introduced significant amendments to the STCW Convention (the 'Manila amendments'), namely on the prevention of fraudulent practices for certificates, in the field of medical standards, in the matter of training on security, including piracy and armed robbery, and with respect to training in technology-related matters. The Manila amendments also introduced requirements for able seafarers and established new professional profiles, such as electro-technical officers.

(4) All Member States are parties to the STCW Convention and none of them has objected to the Manila amendments under the procedure foreseen to that effect. Member States should therefore align their national rules with the Manila amendments. A conflict between the international commitments of Member States and their Union commitments should be avoided. Moreover, given the global nature of shipping, Union rules on training and certification of seafarers should be kept in line with international rules. Several provisions of Directive 2008/106/EC should, therefore, be amended in order to reflect the Manila amendments.

(5) Improved training for seafarers should cover proper theoretical and practical training so as to ensure that seafarers are qualified to meet security and safety standards and are able to respond to hazards and emergencies.

(6) Quality standards and quality standards systems should be developed and implemented taking into account, where applicable, the Recommendation of the European Parliament and of the Council of 18 June 2009 on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training [5] and related measures adopted by the Member States.

[1] OJ C 43, 15.2.2012, p. 69.
[2] Position of the European Parliament of 23 October 2012 (not yet published in the Official Journal) and decision of the Council of 13 November 2012.
[3] OJ L 319, 12.12.1994, p. 28.
[4] OJ L 323, 3.12.2008, p. 33.
[5] OJ C 155, 8.7.2009, p. 1.

(7) European social partners have agreed on minimum hours of rest applicable to seafarers and Directive 1999/63/EC [1] was adopted with a view to implementing that agreement. That Directive also allows for the possibility to authorise exceptions to the minimum hours of rest for seafarers. The possibility to authorise exceptions should, however, be limited in terms of maximum duration, frequency and scope. The Manila amendments aimed, amongst other things, to set objective limits to the exceptions to the minimum rest hours for watchkeeping personnel and seafarers with designated tasks related to safety, security and prevention of pollution with a view to preventing fatigue. The Manila amendments should be incorporated in Directive 2008/106/EC in a manner that ensures coherence with Directive 1999/63/EC, as amended by Directive 2009/13/EC [2].

(8) Further recognising the importance of setting out minimum requirements governing the living and working conditions of all seafarers, Directive 2009/13/EC will take effect as specified therein, when the Maritime Labour Convention, 2006, enters into force.

(9) Directive 2008/106/EC also contains a mechanism for the recognition of the systems of training and certification of seafarers of third countries. The recognition is granted by the Commission in accordance with a procedure under which the Commission is assisted by the European Maritime Safety Agency (the 'Agency') established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council [3] and by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council [4]. Experience gained in applying that procedure suggests that it should be changed, namely with respect to the deadline for the Commission decision. Since the recognition requires an inspection to be performed by the Agency, which has to be planned and carried out, and, in most cases, involves significant adjustments to the STCW Convention requirements by the third country concerned, the whole process cannot be completed in three months. On the basis of experience, a more realistic time-frame in this respect appears to be 18 months. The deadline for the Commission decision should therefore be changed accordingly, while the possibility for the requesting Member State to provisionally recognise the third country's STCW system should be kept in order to maintain flexibility. Furthermore, the provisions for recognition of professional qualifications under Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [5] are not applicable with regard to the recognition of certificates of seafarers under Directive 2008/106/EC.

(10) Available statistics on seafarers in the Union are incomplete and often inaccurate, which makes policy-making in this sector more difficult. Detailed data on certification of seafarers cannot entirely solve this problem but they would clearly help. Under the STCW Convention Parties are obliged to maintain registers of all certificates and endorsements and the relevant revalidations or other measures affecting them. Member States are obliged to maintain a register of issued certificates and endorsements. In order to have information that is as complete as possible on the employment situation in the Union and exclusively with a view to facilitating policy-making by Member States and the Commission, Member States should be required to send to the Commission selected information already contained in their registers of seafarers' certificates of competency. That information should be communicated for the purposes of statistical analysis only, and is not to be used for administrative, legal or verification purposes. That information must be in line with the data protection requirements of the Union and, therefore, a provision to that effect should be introduced in Directive 2008/106/EC.

(11) The results of the analysis of such information should be used to anticipate trends in the labour market with a view to improving the options for seafarers with regard to career planning and taking advantage of available vocational education and training opportunities. Such results should also contribute to the improvement of vocational education and training.

[1] Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) — Annex: European Agreement on the organisation of working time of seafarers (OJ L 167, 2.7.1999, p. 33).

[2] Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 (OJ L 124, 20.5.2009, p. 30).

[3] OJ L 208, 5.8.2002, p. 1.

[4] OJ L 324, 29.11.2002, p. 1.

[5] OJ L 255, 30.9.2005, p. 22.

(12) In order to gather data on the seafaring profession in line with its evolution and with that of technology, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of adaptations of Annex V of Directive 2008/106/EC. The use of such delegated acts should be limited to cases in which amendments to the STCW Convention and Code require changes to that Annex. Additionally, such delegated acts should not modify the provisions on anonymising data referred to in that Annex. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

(13) The Union shipping sector has maritime expertise of high quality which helps to underpin its competitiveness. The quality of training for seafarers is important for the competitiveness of this sector and for attracting Union citizens, in particular young people, to the maritime professions.

(14) In order to uphold quality standards regarding training for seafarers, measures to prevent fraudulent practices associated with certificates of competency and of proficiency need to be improved.

(15) In order to ensure uniform conditions for the implementation of Directive 2008/106/EC implementing powers have been conferred on the Commission in the field of training and certification of seafarers. For the same reason implementing powers should also be conferred on the Commission in relation to the statistical data on seafarers to be supplied by Member States to the Commission. Those powers should be exercised in accordance with 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 the Member States of the Commission's exercise of implementing powers ([1]).

(16) The examination procedure should be used for the adoption of technical requirements necessary to ensure the appropriate management of statistical data referred to in Annex V to Directive 2008/106/EC and for the adoption of implementing decisions on the recognition and withdrawal of recognition of third countries' STCW systems.

([1]) OJ L 55, 28.2.2011, p. 13.

(17) The Manila amendments entered into force on 1 January 2012, whilst transitional arrangements may be applied until 1 January 2017. In order to allow for a smooth transition to the new rules, this Directive should provide for the same transitional arrangements as those established in the Manila amendments.

(18) The IMO Maritime Safety Committee at its 89th session noted the need for clarification with regard to the implementation of the Manila amendments, taking into account the transitional arrangements established therein and Resolution 4 of the STCW Conference which recognises the need for full compliance to be achieved by 1 January 2017. Such clarification was provided by the IMO Circulars STCW.7/Circ.16 and STCW.7/Circ.17. In particular, STCW.7/Circ.16 states that the validity of any revalidated certificate should not extend beyond 1 January 2017 for seafarers holding certificates issued in accordance with the provisions of the STCW Convention which applied immediately prior to 1 January 2012, and who have not met the requirements of the Manila amendments, and for seafarers who commenced approved seagoing service, an approved education and training programme or an approved training course before 1 July 2013.

(19) Further delays in incorporating the Manila amendments in Union law should be avoided, in order to maintain the competitiveness of seafarers from the Union as well as to uphold safety on board ships through up-to-date training.

(20) For the sake of uniform implementation of the Manila amendments within the Union, it is advisable that, when transposing this Directive, Member States should take into account the guidance contained in the IMO circulars STCW.7/Circ.16 and STCW.7/Circ.17.

(21) Since the objective of this Directive, namely the alignment of the current rules of the Union with international rules on training and certification of seafarers, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

(22) Directive 2008/106/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2008/106/EC

Directive 2008/106/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) points (18) and (19) are replaced by the following:

'(18) "Radio Regulations" means the radio regulations annexed to, or regarded as being annexed to, the International Telecommunication Convention, as amended;

(19) "passenger ship" means a ship as defined in the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74), as amended;';

(b) point (24) is replaced by the following:

'(24) "STCW Code" means the Seafarers' Training, Certification and Watchkeeping (STCW) Code as adopted by the 1995 Conference resolution 2, in its up-to-date version;';

(c) point (27) is deleted;

(d) point (28) is replaced by the following:

'(28) "seagoing service" means service on board a ship relevant to the issue or revalidation of a certificate of competency, certificate of proficiency or other qualification;';

(e) the following points are added:

'(32) "GMDSS radio operator" means a person qualified in accordance with Chapter IV of Annex I;

(33) "ISPS Code" means the International Ship and Port Facility Security Code adopted on 12 December 2002, by resolution 2 of the Conference of Contracting Governments to the SOLAS 74, in its up-to-date version;

(34) "ship security officer" means the person on board a ship, accountable to the master, designated by the company as responsible for the security of the ship including implementation and maintenance of the ship security plan and liaison with the company security officer and port facility security officers;

(35) "security duties" include all security tasks and duties on board ships as defined by Chapter XI/2 of the SOLAS 74, as amended, and by the ISPS Code;

(36) "certificate of competency" means a certificate issued and endorsed for masters, officers and GMDSS radio operators in accordance with Chapters II, III, IV or VII of Annex I, and entitling the lawful holder thereof to serve in the capacity and perform the functions involved at the level of responsibility specified therein;

(37) "certificate of proficiency" means a certificate, other than a certificate of competency, issued to a seafarer stating that the relevant requirements of training, competencies or seagoing service in this Directive have been met;

(38) "documentary evidence" means documentation, other than a certificate of competency or certificate of proficiency, used to establish that the relevant requirements in this Directive have been met;

(39) "electro-technical officer" means an officer qualified in accordance with Chapter III of Annex I;

(40) "able seafarer deck" means a rating qualified in accordance with Chapter II of Annex I;

(41) "able seafarer engine" means a rating qualified in accordance with Chapter III of Annex I;

(42) "electro-technical rating" means a rating qualified in accordance with Chapter III of Annex I.';

(2) in Article 3, paragraph 1 is replaced by the following:

'1. Member States shall take the measures necessary to ensure that seafarers serving on ships as referred to in Article 2 are trained as a minimum in accordance with the requirements of the STCW Convention, as laid down in Annex I to this Directive, and hold certificates as defined in points (36) and (37) of Article 1, and/or documentary evidence as defined in point (38) of Article 1.';

(3) Article 4 is deleted;

(4) Article 5 is amended as follows:

(a) the title is replaced by the following:

'Certificates of competency, certificates of proficiency and endorsements';

(b) paragraph 1 is replaced by the following:

'1. Member States shall ensure that certificates of competency and certificates of proficiency are issued only to candidates who comply with the requirements of this Article.';

(c) paragraph 3 is replaced by the following:

'3. Certificates of competency and certificates of proficiency shall be issued in accordance with Regulation I/2, paragraph 3 of the Annex to the STCW Convention.';

(d) the following paragraph is inserted:

'3a. Certificates of competency shall be issued only by the Member States, following verification of the authenticity and validity of any necessary documentary evidence and in accordance with the provisions laid down in this Article.';

(e) at the end of paragraph 5, the following sentence is added:

'Endorsements attesting the issue of a certificate of competency and endorsements attesting a certificate of proficiency issued to masters and officers in accordance with the Regulations V/1-1 and V/1-2 of Annex I shall be issued only if all the requirements of the STCW Convention and this Directive have been complied with.';

(f) paragraphs 6 and 7 are replaced by the following:

'6 A Member State which recognises a certificate of competency, or a certificate of proficiency, issued to masters and officers in accordance with Regulations V/1-1 and V/1-2 of the Annex to the STCW Convention under the procedure laid down in Article 19(2) of this Directive shall endorse that certificate to attest its recognition only after ensuring the authenticity and validity of the certificate. The form of the endorsement used shall be that set out in paragraph 3 of Section A-I/2 of the STCW Code.

7. The endorsements referred to in paragraphs 5 and 6:

(a) may be issued as separate documents;

(b) shall be issued by Member States only;

(c) shall each be assigned a unique number, except for endorsements attesting the issue of a certificate of competency, which may be assigned the same number as the certificate of competency concerned, provided that that number is unique; and

(d) shall each expire as soon as the endorsed certificate of competency or certificate of proficiency issued to masters and officers in accordance with Regulations V/1-1 and V/1-2 of the Annex to the STCW Convention expires or is withdrawn, suspended or cancelled by the Member State or third country which issued it and, in any case, within five years of their date of issue.';

(g) the following paragraphs are added:

'11. Candidates for certification shall provide satisfactory proof:

(a) of their identity;

(b) that their age is not less than that prescribed in the Regulations listed in Annex I relevant to the certificate of competency or certificate of proficiency applied for;

(c) that they meet the standards of medical fitness, specified in Section A-I/9 of the STCW Code;

(d) that they have completed the seagoing service and any related compulsory training prescribed in the Regulations listed in Annex I for the certificate of competency or certificate of proficiency applied for; and

(e) that they meet the standards of competence prescribed in the Regulations listed in Annex I for the capacities, functions and levels that are to be identified in the endorsement of the certificate of competency.

This paragraph shall not apply to recognition of endorsements under Regulation I/10 of the STCW Convention.

12. Each Member State shall undertake:

(a) to maintain a register or registers of all certificates of competency and certificates of proficiency and endorsements for masters and officers and, where applicable, ratings which are issued, have expired or have been revalidated, suspended, cancelled or reported as lost or destroyed, as well as of dispensations issued;

(b) to make available information on the status of certificates of competency, endorsements and dispensations to other Member States or other Parties to the STCW Convention and companies which request verification of the authenticity and validity of certificates of competency and/or certificates issued to masters and officers in accordance with Regulations V/1-1 and V/1-2 of Annex I produced to them by seafarers seeking recognition, under Regulation I/10 of the STCW Convention, or employment on board ship.

13. As of 1 January 2017, the information required to be available in accordance with point (b) of paragraph 12 shall be made available by electronic means.';

(5) the following Article is inserted:

'Article 5a

Information to the Commission

Each Member State shall make available to the Commission on a yearly basis the information indicated in Annex V to this Directive on certificates of competency, endorsements attesting the recognition of certificates of competency as well as, on a voluntary basis, certificates of proficiency issued to ratings in accordance with Chapters II, III, and VII of the Annex to the STCW Convention, for the purposes of statistical analysis only and exclusively for use by Member States and the Commission in policy-making.';

(6) Article 7 is amended as follows:

(a) the following paragraph is inserted:

'1a. A Member State, for ships afforded the benefits of the near-coastal voyage provisions of the STCW Convention, which includes voyages off the coast of other Member States or of Parties to the STCW Convention within the limits of their near-coastal definition, shall enter into an undertaking with the Member States or Parties concerned specifying both the details of the trading areas involved and other relevant provisions.';

(b) the following paragraphs are inserted:

'3a. The certificates of competency of seafarers issued by a Member State or a Party to the STCW Convention for its defined near-coastal voyage limits may be accepted by other Member States for service in their defined near-coastal voyage limits, provided the Member States or Parties concerned enter into an undertaking specifying the details of the trading areas involved and other relevant conditions thereof.

3b. Member States defining near-coastal voyages, in accordance with the requirements of this Article, shall:

(a) meet the principles governing near-coastal voyages specified in Section A-I/3 of the STCW Code;

(b) incorporate the near-coastal voyage limits in the endorsements issued pursuant to Article 5.';

(7) in Article 8, paragraph 1 is replaced by the following:

'1. Member States shall take and enforce appropriate measures to prevent fraud and other unlawful practices involving certificates and endorsements issued, and shall provide for penalties that are effective, proportionate and dissuasive.';

(8) Article 9 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. Member States shall establish processes and procedures for the impartial investigation of any reported incompetence, act, omission or compromise to security that may pose a direct threat to safety of life or property at sea or to the marine environment, on the part of the holders of certificates of competency and certificates of proficiency or endorsements issued by that Member State in connection with their performance of duties relating to their certificates of competency and certificates of proficiency and for the withdrawal, suspension and cancellation of such certificates of competency and certificates of proficiency for such cause and for the prevention of fraud.

2. Member States shall take and enforce appropriate measures to prevent fraud and other unlawful practices involving certificates of competency and certificates of proficiency and endorsements issued.';

(b) in paragraph 3, the introductory wording is replaced by the following:

'Penalties or disciplinary measures shall be prescribed and enforced in cases in which:';

(9) Article 10 is amended as follows:

(a) paragraph 1 is amended as follows:

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

'(a) all training, assessment of competence, certification, including medical certification, endorsement and revalidation activities carried out by non-governmental agencies or entities under their authority are continuously monitored through a quality standards system to ensure the achievement of defined objectives, including those concerning the qualifications and experience of instructors and assessors, in accordance with Section A-I/8 of the STCW Code;';

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

'(b) where governmental agencies or entities perform such activities, there is a quality standards system in accordance with Section A-I/8 of the STCW Code;';

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

'(c) education and training objectives and related quality standards of competence to be achieved are clearly defined and that the levels of knowledge, understanding and skills appropriate to the examinations and assessments required under the STCW Convention are identified;';

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

'(d) all applicable provisions of the STCW Convention and Code, including amendments are covered by the quality standards system. Member States may also include within this system the other applicable provisions of this Directive.';

(c) paragraph 3 is replaced by the following:

'3. A report relating to each evaluation carried out pursuant to paragraph 2 shall be communicated by the Member State concerned to the Commission, in accordance with the format specified in Section A-I/7 of the STCW Code, within six months of the date of the evaluation.';

(10) Article 11 is replaced by the following:

'Article 11

Medical standards

1. Each Member State shall establish standards of medical fitness for seafarers and procedures for the issue of a medical certificate in accordance with this Article and Section A-I/9 of the STCW Code, taking into account, as appropriate, Section B-I/9 of the STCW Code.

2. Each Member State shall ensure that those responsible for assessing the medical fitness of seafarers are medical practitioners recognised by that Member State for the purpose of seafarer medical examinations, in accordance with the Section A-I/9 of the STCW Code.

3. Every seafarer holding a certificate of competency or a certificate of proficiency, issued under the provisions of the STCW Convention, who is serving at sea shall also hold a valid medical certificate issued in accordance with this Article and Section A-I/9 of the STCW Code.

4. Candidates for medical certification shall:

(a) be not less than 16 years of age;

(b) provide satisfactory proof of their identity; and

(c) meet the applicable medical fitness standards established by the Member State concerned.

5. Medical certificates shall remain valid for a maximum period of two years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year.

6. If the period of validity of a medical certificate expires in the course of a voyage, Regulation I/9 of the Annex to the STCW Convention shall apply.

7. In urgent cases, a Member State may permit a seafarer to work without a valid medical certificate. In such cases, Regulation I/9 of the Annex to the STCW Convention shall apply.';

(11) Article 12 is amended as follows:

(a) the title is replaced by the following:

'Revalidation of certificates of competency and certificates of proficiency';

(b) the following paragraph is inserted:

'2a. Every master and officer shall, for continuing seagoing service on board tankers, meet the requirements of paragraph 1 of this Article and be required, at intervals not exceeding five years, to establish continued professional competence for tankers in accordance with paragraph 3 of Section A-I/11 of the STCW Code.';

(c) paragraph 3 is replaced by the following:

'3. Each Member State shall compare the standards of competence which are required of candidates for certificates of competency issued until 1 January 2017 with those specified for the relevant certificate of competency in Part A of the STCW Code, and shall determine the need to require the holders of such certificates of competency to undergo appropriate refresher and updating training or assessment.';

(d) paragraph 5 is replaced by the following:

'5. For the purpose of updating the knowledge of masters, officers and radio operators, each Member State shall ensure that the texts of recent changes in national and international regulations concerning the safety of life at sea, security and the protection of the marine environment are made available to ships entitled to fly its flag, while respecting point (b) of Article 14(3) and Article 18.';

(12) in Article 13, paragraph 2 is deleted;

(13) Article 14 is amended as follows:

(a) in paragraph 1, the following points are added:

'(f) seafarers assigned to any of its ships have received refresher and updating training as required by the STCW Convention;

(g) at all times on board its ships there shall be effective oral communication in accordance with paragraphs 3 and 4 of Chapter V of Regulation 14, of the SOLAS 74, as amended.';

(b) the following paragraph is added:

'4. Companies shall ensure that masters, officers and other personnel assigned specific duties and responsibilities on board their ro-ro passenger ships shall have completed familiarisation training to attain the abilities that are appropriate to the capacity to be filled and duties and responsibilities to be taken up, taking into account the guidance given in Section B-I/14 of the STCW Code.';

(14) Article 15 is replaced by the following:

'Article 15

Fitness for duty

1. For the purpose of preventing fatigue, Member States shall:

(a) establish and enforce rest periods for watchkeeping personnel and those whose duties involve designated safety, security and prevention of pollution duties in accordance with paragraphs 3 to 13;

(b) require that watch systems are arranged in such a way that the efficiency of watchkeeping personnel is not impaired by fatigue, and that duties are organised in such a way that the first watch at the start of a voyage and subsequent relieving watches are sufficiently rested and otherwise fit for duty.

2. Member States shall, for the purpose of preventing drug and alcohol abuse, ensure that adequate measures are established in accordance with the provisions laid down in this Article.

3. Member States shall take account of the danger posed by fatigue of seafarers, especially those whose duties involve the safe and secure operation of a ship.

4. All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch, and those whose duties involve designated safety, prevention of pollution and security duties shall be provided with a rest period of not less than:

(a) a minimum of 10 hours of rest in any 24-hour period; and

(b) 77 hours in any seven-day period.

5. The hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the intervals between consecutive periods of rest shall not exceed 14 hours.

6. The requirements for rest periods laid down in paragraphs 4 and 5 need not be maintained in the case of an emergency or in other overriding operational conditions. Musters, firefighting and lifeboat drills, and drills prescribed by national laws and regulations and by international instruments, shall be conducted in a manner that minimises the disturbance of rest periods and does not induce fatigue.

7. Member States shall require that watch schedules be posted where they are easily accessible. The schedules shall be established in a standardised format in the working language or languages of the ship and in English.

8. When a seafarer is on call, such as when a machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.

9. Member States shall require that records of daily hours of rest of seafarers be maintained in a standardised format, in the working language or languages of the ship and in English, to allow monitoring and verification of compliance with this Article. Seafarers shall receive a copy of the records pertaining to them, which shall be endorsed by the master, or by a person authorised by the master, and by the seafarers.

10. Notwithstanding the rules laid down in paragraphs 3 to 9, the master of a ship shall be entitled to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. Accordingly, the master may suspend the schedule of hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

11. With due regard for the general principles of the protection of the health and safety of workers and in line with Directive 1999/63/EC Member States may, by means of national laws, regulations or a procedure for the competent authority, authorise or register collective agreements permitting exceptions to the required hours of rest set out in point (b) of paragraph 4 and in paragraph 5 of this Article provided that the rest period is no less than 70 hours in any seven-day period and respects the limits set out in paragraphs 12 and 13 of this Article. Such exceptions shall, as far as possible, follow the standards set out but may take account of more frequent or longer leave periods, or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages. Exceptions shall, as far as possible, take into account the guidance regarding prevention of fatigue laid down in Section B-VIII/1 of the STCW Code. Exceptions to the minimum hours of rest provided for in point (a) of paragraph 4 of this Article shall not be allowed.

12. Exceptions referred to in paragraph 11 to the weekly rest period provided for in point (b) of paragraph 4 shall not be allowed for more than two consecutive weeks. The intervals between two periods of exceptions on board shall not be less than twice the duration of the exception.

13. In the framework of possible exceptions to paragraph 5 referred to in paragraph 11, the minimum hours of rest in any 24-hour period provided for in point (a) of paragraph 4 may be divided into no more than three periods of rest, one of which shall be at least six hours in length and neither of the two other periods shall be less than one hour in length. The intervals between consecutive periods of rest shall not exceed 14 hours. Exceptions shall not extend beyond two 24-hour periods in any seven-day period.

14. Member States shall establish, for the purpose of preventing alcohol abuse, a limit of not greater than 0,05 % blood alcohol level (BAC) or 0,25 mg/l alcohol in the breath or a quantity of alcohol leading to such alcohol concentration for masters, officers and other seafarers while performing designated safety, security and marine environmental duties.';

(15) in Article 17(1), point (c) is replaced by the following:

'(c) issue the certificates referred to in Article 5;';

(16) Article 19 is amended as follows:

(a) the title is replaced by the following:

'Recognition of certificates of competency and certificates of proficiency';

(b) paragraph 1 is replaced by the following:

'1. Seafarers who do not possess the certificates of competency issued by Member States and/or the certificates of proficiency issued by Member States to masters and officers in accordance with Regulations V/1-1 and V/1-2 of the STCW Convention, may be allowed to serve on ships flying the flag of a Member State provided that a decision on the recognition of their certificates of competency and certificates of proficiency has been adopted through the procedures set out in paragraphs 2 to 6 of this Article.';

(c) in paragraph 2, the first subparagraph is replaced by the following:

'2. A Member State which intends to recognise, by endorsement, the certificates of competency and/or the certificates of proficiency referred to in paragraph 1 issued by a third country to a master, officer or radio operator, for service on ships flying its flag, shall submit a request for recognition of that third country to the Commission, stating its reasons.';

(d) paragraph 3 is replaced by the following:

'3. The decision on the recognition of a third country shall be taken by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2), within 18 months of the date of the request for the recognition. The Member State submitting the request may decide to recognise the third country unilaterally until a decision is taken under this paragraph.';

(17) in Article 20, paragraph 6 is replaced by the following:

'6. The decision on the withdrawal of the recognition shall be taken by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2). The Member States concerned shall take appropriate measures to implement the decision.';

(18) in Article 22, paragraph 1 is replaced by the following:

'1. Irrespective of the flag it flies, each ship, with the exception of those types of ships excluded by Article 2, shall, while in the ports of a Member State, be subject to port State control by officers duly authorised by that Member State to verify that all seafarers serving on board who are required to hold a certificate of competency and/or a certificate of proficiency and/or documentary evidence under the STCW Convention, hold such a certificate of competency or valid dispensation and/or certificate of proficiency and/or documentary evidence.';

(19) in Article 23(1), point (a) is replaced by the following:

'(a) verification that every seafarer serving on board who is required to hold a certificate of competency and/or a certificate of proficiency in accordance with the STCW Convention holds such a certificate of competency or valid dispensation and/or certificate of proficiency, or provides documentary proof that an application for an endorsement attesting recognition of a certificate of competency has been submitted to the authorities of the flag State;';

(20) in Article 23, paragraph 2 is amended as follows:

(a) the introductory wording is replaced by the following:

'2. The ability of the ship's seafarers to maintain watchkeeping and security standards, as appropriate, as required by the STCW Convention shall be assessed in accordance with Part A of the STCW Code if there are clear grounds for believing that such standards are not being maintained because any of the following has occurred:';

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

'(d) the ship is otherwise being operated in such a manner as to pose a danger to persons, property or the environment, or to compromise security;';

(21) the following Article is inserted:

'Article 25a

Information for statistical purposes

1. The Member States shall communicate the information listed in Annex V to the Commission for the purposes of statistical analysis only. Such information may not be used for administrative, legal or verification purposes, and is exclusively for use by Member States and the Commission in policy-making.

2. That information shall be made available by Member States to the Commission on a yearly basis and in electronic format and shall include information registered until 31 December of the previous year. Member States shall retain all property rights to the information in its raw data format. Processed statistics drawn up on the basis of such information shall be made publicly available in accordance with the provisions on transparency and protection of information set out in Article 4 of Regulation (EC) No 1406/2002.

3. In order to ensure the protection of personal data, Member States shall anonymise all personal information as indicated in Annex V by using software provided or accepted by the Commission before transmitting it to the Commission. The Commission shall use this anonymised information only.

4. Member States and the Commission shall ensure that measures for collecting, submitting, storing, analysing and disseminating such information are designed in such a way that statistical analysis is made possible.

For the purposes of the first subparagraph, the Commission shall adopt detailed measures regarding the technical requirements necessary to ensure the appropriate management of the statistical data. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).';

(22) Article 27 is replaced by the following:

'*Article 27*

Amendment

The Commission shall be empowered to adopt delegated acts, in accordance with Article 27a, amending Annex V to this Directive with respect to specific and relevant content and details of the information that needs to be reported by Member States provided that such acts are limited to taking into account the amendments to the STCW Convention and Code and respect the safeguards on data protection. Such delegated acts shall not change the provisions of anonymisation of data as required by Article 25a(3).';

(23) the following Article is inserted:

'*Article 27a*

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 delegation of power referred to in Article 27 shall be conferred on the Commission for a period of five years from 3 January 2013. The Commission shall draw up a report in respect of the delegation of power not later than 4 April 2017. 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 27 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. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 27 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.';

(24) Article 28 is replaced by the following:

'*Article 28*

Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council (*). That committee shall be a committee within the meaning of 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 (**).

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

(*) OJ L 324, 29.11.2002, p. 1.
(**) OJ L 55, 28.2.2011, p. 13.';

(25) Article 29 is replaced by the following:

'*Article 29*

Penalties

Member States shall lay down systems of penalties for breaching the national provisions adopted pursuant to Articles 3, 5, 7, 9 to 15, 17, 18, 19, 22, 23, 24 and Annex I, and shall take all the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.';

(26) Article 30 is replaced by the following:

'*Article 30*

Transitional provisions

In respect of those seafarers who commenced approved seagoing service, an approved education and training programme or an approved training course before 1 July 2013, Member States may continue to issue, recognise and endorse, until 1 January 2017, certificates of competency in accordance with the requirements of this Directive as they were before 3 January 2013.

Until 1 January 2017, Member States may continue to renew and revalidate certificates of competency and endorsements in accordance with the requirements of this Directive as they were before 3 January 2013';

(27) Article 33 is deleted;

(28) this point does not concern the English version;

(29) the Annexes are amended as follows:

(a) Annex I to Directive 2008/106/EC is replaced by Annex I to this Directive;

(b) Annex II to Directive 2008/106/EC is amended as laid down in Annex II to this Directive;

(c) the text set out in Annex III to this Directive is added as Annex V to Directive 2008/106/EC.

Article 2

Transposition

1. Without prejudice to Article 30 of Directive 2008/106/EC, as amended by point (26) of Article 1 of this Directive, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 4 July 2014, and with respect to point (5) of Article 1 of this Directive by 4 January 2015. They shall forthwith communicate to the Commission the text of those provisions.

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

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

Article 3

Entry into force

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

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 21 November 2012.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A. D. MAVROYIANNIS

ANNEX I

'ANNEX I

TRAINING REQUIREMENTS OF THE STCW CONVENTION, REFERRED TO IN ARTICLE 3

CHAPTER I

GENERAL PROVISIONS

1. The Regulations referred to in this Annex are supplemented by the mandatory provisions contained in Part A of the STCW Code with the exception of Chapter VIII, Regulation VIII/2.

   Any reference to a requirement in a Regulation also constitutes a reference to the corresponding section of Part A of the STCW Code.

2. Part A of the STCW Code contains standards of competence required to be demonstrated by candidates for the issue, and revalidation of certificates of competency under the provisions of the STCW Convention. To clarify the linkage between the alternative certification provisions of Chapter VII and the certification provisions of Chapters II, III and IV, the abilities specified in the standards of competence are grouped as appropriate under the following seven functions:

   (1) Navigation;

   (2) Cargo handling and stowage;

   (3) Controlling the operation of the ship and care for persons on board;

   (4) Marine engineering;

   (5) Electrical, electronic and control engineering;

   (6) Maintenance and repair;

   (7) Radio communications,

   at the following levels of responsibility:

   (1) Management level;

   (2) Operational level;

   (3) Support level.

   Functions and levels of responsibility are identified by subtitle in the tables of standards of competence given specified in Chapters II, III and IV of the Part A of the STCW Code.

CHAPTER II

MASTER AND DECK DEPARTMENT

Regulation II/1

Mandatory minimum requirements for certification of officers in charge of a navigational watch on ships of 500 gross tonnage or more

1. Every officer in charge of a navigational watch serving on a seagoing ship of 500 gross tonnage or more shall hold a certificate of competency.

2. Every candidate for certification shall:

   2.1. be not less than 18 years of age;

   2.2. have approved seagoing service of not less than 12 months as part of an approved training programme which includes onboard training which meets the requirements of Section A-II/1 of the STCW Code and is documented in an approved training record book, or otherwise have approved seagoing service of not less than 36 months;

2.3. have performed, during the required seagoing service, bridge watchkeeping duties under the supervision of the master or a qualified officer for a period of not less than six months;

2.4. meet the applicable requirements of the regulations in Chapter IV, as appropriate, for performing designed radio duties in accordance with the Radio Regulations;

2.5. have completed approved education and training and meet the standard of competence specified in Section A-II/1 of the STCW Code; and

2.6. meet the standard of competence specified in Section A-VI/1, paragraph 2, Section A-VI/2 paragraphs 1 to 4, Section A-VI/3 paragraphs 1 to 4 and Section A-VI/4 paragraphs 1 to 3 of the STCW Code.

Regulation II/2

Mandatory minimum requirements for certification of masters and chief mates on ships of 500 gross tonnage or more

Master and chief mate on ships of 3000 gross tonnage or more

1. Every master and chief mate on a seagoing ship of 3 000 gross tonnage or more shall hold a certificate of competency.

2. Every candidate for certification shall:

2.1. meet the requirements for certification as an officer in charge of a navigational watch on ships of 500 gross tonnage or more and have approved seagoing service in that capacity:

2.1.1. for certification as chief mate, not less than 12 months; and

2.1.2. for certification as master, not less than 36 months; however, this period may be reduced to not less than 24 months if not less than 12 months of such seagoing service has been served as chief mate; and

2.2. have completed approved education and training and meet the standard of competence specified in Section A-II/2 of the STCW Code for masters and chief mates on ships of 3 000 gross tonnage or more.

Master and chief mate on ships of between 500 and 3000 gross tonnage

3. Every master and chief mate on a seagoing ship of between 500 and 3 000 gross tonnage shall hold a certificate of competency.

4. Every candidate for certification shall:

4.1. for certification as chief mate, meet the requirements of an officer in charge of a navigational watch on ships of 500 gross tonnage or more;

4.2. for certification as master, meet the requirements of an officer in charge of a navigational watch on ships of 500 gross tonnage or more and have approved seagoing service of not less than 36 months in that capacity; however, this period may be reduced to not less than 24 months if not less than 12 months of such seagoing service has been served as chief mate; and

4.3. have completed approved training and meet the standard of competence specified in Section A-II/2 of the STCW Code for masters and chief mates on ships of between 500 and 3 000 gross tonnage.

Regulation II/3

Mandatory minimum requirements for certification of officers in charge of a navigational watch and of masters on ships of less than 500 gross tonnage

Ships not engaged on near-coastal voyages

1. Every officer in charge of a navigational watch serving on a seagoing ship of less than 500 gross tonnage not engaged on near-coastal voyages shall hold a certificate of competency for ships of 500 gross tonnage or more.

2. Every master serving on a seagoing ship of less than 500 gross tonnage not engaged on near-coastal voyages shall hold a certificate of competency for service as master on ships of between 500 and 3 000 gross tonnage.

Ships engaged on near-coastal voyages

Officer in charge of a navigational watch

3. Every officer in charge of a navigational watch on a seagoing ship of less than 500 gross tonnage engaged on near-coastal voyages shall hold a certificate of competency.

4. Every candidate for certification as officer in charge of a navigational watch on a seagoing ship of less than 500 gross tonnage engaged on near-coastal voyages shall:

4.1. be not less than 18 years of age;

4.2. have completed:

4.2.1. special training, including an adequate period of appropriate seagoing service as required by the Member State; or

4.2.2. approved seagoing service in the deck department of not less than 36 months;

4.3. meet the applicable requirements of the regulations in Chapter IV, as appropriate, for performing designated radio duties in accordance with the Radio Regulations;

4.4. have completed approved education and training and meet the standard of competence specified in Section A-II/3 of the STCW Code for officers in charge of a navigational watch on ships of less than 500 gross tonnage engaged on near-coastal voyages; and

4.5. meet the standard of competence specified in Section A-VI/1, paragraph 2, Section A-VI/2 paragraphs 1 to 4, Section A-VI/3 paragraphs 1 to 4 and Section A-VI/4 paragraphs 1 to 3 of the STCW Code;

Master

5. Every master serving on a seagoing ship of less than 500 gross tonnage engaged on near-coastal voyages shall hold a certificate of competency.

6. Every candidate for certification as master on a seagoing ship of less than 500 gross tonnage engaged on a near-coastal voyages shall:

6.1. be not less than 20 years of age;

6.2. have approved seagoing service of not less than 12 months as officer in charge of a navigational watch;

6.3. have completed approved education and training and meet the standard of competence specified in Section A-II/3 of the STCW Code for masters on ships of less than 500 gross tonnage engaged on near-coastal voyages; and

6.4. meet the standard of competence specified in Section A-VI/1, paragraph 2, Section A-VI/2 paragraphs 1 to 4, Section A-VI/3 paragraphs 1 to 4 and Section A-VI/4 paragraphs 1 to 3 of the STCW Code.

Exemptions

7. The Administration, if it considers that a ship's size and the conditions of its voyage are such as to render the application of the full requirements of this regulation and Section A-II/3 of the STCW Code unreasonable or impracticable, may to that extent exempt the master and the officer in charge of a navigational watch on such a ship or class of ships from some of the requirements, bearing in mind the safety of all ships which may be operating in the same waters.

Regulation II/4

Mandatory minimum requirements for certification of ratings forming part of a navigational watch

1. Every rating forming part of a navigational watch on a seagoing ship of 500 gross tonnage or more, other than ratings under training and ratings whose duties while on watch are of an unskilled nature, shall be duly certificated to perform such duties.

2. Every candidate for certification shall:

2.1. be not less than 16 years of age;

2.2. have completed:

2.2.1. approved seagoing service including not less than six months training and experience; or

2.2.2. special training, either pre-sea or on board ship, including an approved period of seagoing service which shall not be less than two months; and

2.3. meet the standard of competence specified in Section A-II/4 of the STCW Code.

3. The seagoing service, training and experience required by points 2.2.1 and 2.2.2 shall be associated with navigational watchkeeping functions and involve the performance of duties carried out under the direct supervision of the master, the officer in charge of the navigational watch or a qualified rating.

Regulation II/5

Mandatory minimum requirements for certification of ratings as able seafarer deck

1. Every able seafarer deck serving on a seagoing ship of 500 gross tonnage or more shall be duly certificated.

2. Every candidate for certification shall:

2.1. be not less than 18 years of age;

2.2. meet the requirements for certification as a rating forming part of a navigational watch;

2.3. while qualified to serve as a rating forming part of a navigational watch, have approved seagoing service in the deck department of:

2.3.1. not less than 18 months; or

2.3.2. not less than 12 months and have completed approved training; and

2.4. meet the standard of competence specified in Section A-II/5 of the STCW Code.

3. Every Member State shall compare the standards of competence which it required of Able Seamen for certificates issued before 1 January 2012 with those specified for the certificate in Section A-II/5 of the STCW Code, and shall determine the need, if any, for requiring these personnel to update their qualifications.

4. Until 1 January 2017, a Member State which is also a party to the International Labour Organisation Certification of Able Seamen Convention, 1946 (No 74) may continue to renew and revalidate certificates and endorsements in accordance with the provisions of the aforesaid Convention.

5. Seafarers may be considered by the Member State to have met the requirements of this regulation if they have served in a relevant capacity in the deck department for a period of not less than 12 months within the last 60 months preceding the entry into force of the present Directive.

CHAPTER III

ENGINE DEPARTMENT

Regulation III/1

Mandatory minimum requirements for certification of officers in charge of an engineering watch in a manned engine-room or designated duty engineers in a periodically unmanned engine-room

1. Every officer in charge of an engineering watch in a manned engine-room or designated duty engineer officer in a periodically unmanned engine-room on a seagoing ship powered by main propulsion machinery of 750 kW propulsion power or more shall hold a certificate of competency.

2. Every candidate for certification shall:

2.1. be not less than 18 years of age;

2.2. have completed combined workshop skill training and an approved seagoing service of not less than 12 months as part of an approved training programme which includes onboard training which meets the requirements of Section A-III/1 of the STCW Code and is documented in an approved training record book, or otherwise have completed combined workshop skill training and an approved seagoing service of not less than 36 months of which not less than 30 months will be seagoing service in the engine department;

2.3. have performed, during the required seagoing service, engine-room watchkeeping duties under the supervision of the chief engineer officer or a qualified engineer officer for a period of not less than six months;

2.4. have completed approved education and training and meet the standards of competence specified in Section A-III/1 of the STCW Code; and

2.5. meet the standards of competence specified in Section A-VI/1, paragraph 2, Section A-VI/2, paragraphs 1 to 4, Section A-VI/3, paragraphs 1 to 4 and Section A-VI/4, paragraphs 1 to 3 of the STCW Code.

Regulation III/2

Mandatory minimum requirements for certification of chief engineer officers and second engineer officers on ships powered by main propulsion machinery of 3 000 kW propulsion power or more

1. Every chief engineer officer and second engineer officer on a seagoing ship powered by main propulsion machinery of 3 000 kW propulsion power or more shall hold a certificate of competency.

2. Every candidate for certification shall:

2.1. meet the requirements for certification as an officer in charge of an engineering watch on seagoing ships powered by main propulsion machinery of 750 kW propulsion power or more and have approved seagoing service in that capacity:

2.1.1. for certification as a second engineer officer, not less than 12 months as qualified engineer officer; and

2.1.2. for certification as chief engineer officer, not less than 36 months, however, this period may be reduced to not less than 24 months if not less than 12 months of such seagoing service has been served as second engineer officer; and

2.2. have completed approved education and training and meet the standard of competence specified in Section A-III/2 of the STCW Code.

Regulation III/3

Mandatory minimum requirements for certification of chief engineer officers and second engineer officers on ships powered by main propulsion machinery of between 750 kW and 3 000 kW propulsion power

1. Every chief engineer officer and second engineer officer on a seagoing ship powered by main propulsion machinery of between 750 and 3 000 kW propulsion power shall hold a certificate of competency.

2. Every candidate for certification shall:

2.1. meet the requirements for certification as an officer in charge of an engineering watch and:

2.1.1. for certification as second engineer officer, shall have not less than 12 months approved seagoing service as assistant engineer officer or engineer officer; and

2.1.2. for certification as chief engineer officer, shall have not less than 24 months approved seagoing service of which not less than 12 months shall be served while qualified to serve as second engineer officer; and

2.2. have completed approved education and training and meet the standard of competence specified in Section A-III/3 of the STCW Code.

3. Every engineer officer who is qualified to serve as second engineer officer on ships powered by main propulsion machinery of 3 000 kW propulsion power or more, may serve as chief engineer officer on ships powered by main propulsion machinery of less than 3 000 kW propulsion power, provided that the certificate is so endorsed.

Regulation III/4

Mandatory minimum requirements for certification of ratings forming part of a watch in a manned engine-room or designated to perform duties in a periodically unmanned engine-room

1. Every rating forming part of an engine-room watch or designated to perform duties in a periodically unmanned engine-room on a seagoing ship powered by main propulsion machinery of 750 kW propulsion power or more, other than ratings under training and ratings whose duties are of an unskilled nature, shall be duly certificated to perform such duties.

2. Every candidate for certification shall:

2.1. be not less than 16 years of age;

2.2. have completed:

2.2.1. approved seagoing service including not less than six months training and experience; or

2.2.2. special training, either pre-sea or on board ship, including an approved period of seagoing service which shall not be less than two months; and

2.3. meet the standard of competence specified in Section A-III/4 of the STCW Code.

3. The seagoing service, training and experience required by points 2.2.1 and 2.2.2 shall be associated with engine-room watchkeeping functions and involve the performance of duties carried out under the direct supervision of a qualified engineer officer or a qualified rating.

Regulation III/5

Mandatory minimum requirements for certification of ratings as able seafarer engine in a manned engine-room or designated to perform duties in a periodically unmanned engine-room

1. Every able seafarer engine serving on a seagoing ship powered by main propulsion machinery of 750 kW propulsion power or more shall be duly certificated.

2. Every candidate for certification shall:

2.1. be not less than 18 years of age;

2.2. meet the requirements for certification as a rating forming part of a watch in a manned engine-room or designated to perform duties in a periodically unmanned engine-room;

2.3. while qualified to serve as a rating forming part of an engineering watch, have approved seagoing service in the engine department of:

2.3.1. not less than 12 months; or

2.3.2. not less than six months and have completed approved training; and

2.4. meet the standard of competence specified in Section A-III/5 of the STCW Code.

3. Every Member State shall compare the standards of competence which it required of ratings in the engine department for certificates issued before 1 January 2012 with those specified for the certificate in Section A-III/5 of the STCW Code, and shall determine the need, if any, for requiring these personnel to update their qualifications.

4. Seafarers may be considered by the Member State to have met the requirements of this regulation if they have served in a relevant capacity in the engine department for a period of not less than 12 months within the last 60 months preceding the entry into force of this Directive.

Regulation III/6

Mandatory minimum requirements for certification of electro-technical officer

1. Every electro-technical officer serving on a seagoing ship powered by main propulsion machinery of 750 kW propulsion power or more, shall hold a certificate of competency.

2. Every candidate for certification shall:

   2.1. be not less than 18 years of age;

   2.2. have completed not less than 12 months of combined workshop skills training and approved seagoing service of which not less than six months will be seagoing service as part of an approved training programme which meets the requirements of Section A-III/6 of the STCW Code and is documented in an approved training record book, or otherwise not less than 36 months of combined workshop skills training and approved seagoing service of which not less than 30 months will be seagoing service in the engine department;

   2.3. have completed approved education and training and meet the standards of competence specified in Section A-III/6 of the STCW Code; and

   2.4. meet the standards of competence specified in Section A-VI/1, paragraph 2, Section A-VI/2, paragraphs 1 to 4, Section A-VI/3 paragraphs 1 to 4 and Section A-VI/4 paragraphs 1 to 3 of the STCW Code.

3. Every Member State shall compare the standards of competence which it required of electro-technical officers for certificates issued before 1 January 2012 with those specified for the certificate in Section A-III/6 of the STCW Code, and shall determine the need for requiring those personnel to update their qualifications.

4. Seafarers may be considered by the Member State to have met the requirements of this regulation if they have served in a relevant capacity on board a ship for a period of not less than 12 months within the last 60 months preceding the entry into force of this Directive and meet the standard of competence specified in Section A-III/6 of the STCW Code.

5. Notwithstanding the above requirements of paragraphs 1 to 4, a suitably qualified person may be considered by a Member State able to perform certain functions of Section A-III/6.

Regulation III/7

Mandatory minimum requirements for certification of electro-technical rating

1. Every electro-technical rating serving on a seagoing ship powered by main propulsion machinery of 750 kW propulsion power or more shall be duly certificated.

2. Every candidate for certification shall:

   2.1. be not less than 18 years of age;

   2.2. have completed approved seagoing service including not less than 12 months training and experience; or

   2.3. have completed approved training, including an approved period of seagoing service which shall not be less than six months; or

   2.4. have qualifications that meet the technical competences in table A-III/7 of the STCW Code and an approved period of seagoing service, which shall not be less than three months; and

   2.5. meet the standard of competence specified in Section A-III/7 of the STCW Code;

3. Every Member State shall compare the standards of competence which it required of electro-technical ratings for certificates issued before 1 January 2012 with those specified for the certificate in Section A-III/7 of the STCW Code, and shall determine the need, if any, for requiring these personnel to update their qualifications.

4. Seafarers may be considered by the Member State to have met the requirements of this regulation if they have served in a relevant capacity on board a ship for a period of not less than 12 months within the last 60 months preceding the entry into force of this Directive and meet the standard of competence specified in Section A-III/7 of the STCW Code.

5. Notwithstanding the above requirements of paragraphs 1 to 4, a suitably qualified person may be considered by a Member State able to perform certain functions of Section A-III/7.

CHAPTER IV

RADIO COMMUNICATION AND RADIO OPERATORS

Explanatory note

Mandatory provisions relating to radio watchkeeping are set forth in the Radio Regulations and in the SOLAS 74, as amended. Provisions for radio maintenance are set forth in the SOLAS 74, as amended, and the guidelines adopted by the International Maritime Organisation.

Regulation IV/1

Application

1. Except as provided in point 2, the provisions of this chapter apply to radio operators on ships operating in the global maritime distress and safety system (GMDSS) as prescribed by the SOLAS 74, as amended.

2. Radio operators on ships not required to comply with the provisions of the GMDSS in Chapter IV of the SOLAS 74 are not required to meet the provisions of this chapter. Radio operators on these ships are, nevertheless, required to comply with the Radio Regulations. Member States shall ensure that the appropriate certificates as prescribed by the Radio Regulations are issued to or recognised in respect of such radio operators.

Regulation IV/2

Mandatory minimum requirements for certification of GMDSS radio operators

1. Every person in charge of or performing radio duties on a ship required to participate in the GMDSS shall hold an appropriate certificate related to the GMDSS, issued or recognised by the Member State under the provisions of the Radio Regulations.

2. In addition, every candidate for certification of competency under this regulation for service on a ship which is required by the SOLAS 74, as amended, to have a radio installation shall:

   2.1. be not less than 18 years of age; and

   2.2. have completed approved education and training and meet the standard of competence specified in Section A-IV/2 of the STCW Code.

CHAPTER V

SPECIAL TRAINING REQUIREMENTS FOR PERSONNEL ON CERTAIN TYPES OF SHIPS

Regulation V/1-1

Mandatory minimum requirements for the training and qualifications of masters, officers and ratings on oil and chemical tankers

1. Officers and ratings assigned specific duties and responsibilities related to cargo or cargo equipment on oil or chemical tankers shall hold a certificate in basic training for oil and chemical tanker cargo operations.

2. Every candidate for a certificate in basic training for oil and chemical tanker cargo operations shall have completed basic training in accordance with provisions of Section A-VI/1 of the STCW Code and shall have completed:

   2.1. at least three months of approved seagoing service on oil or chemical tankers and meet the standard of competence specified in Section A-V/1-1, paragraph 1 of the STCW Code; or

   2.2. an approved basic training for oil and chemical tanker cargo operations and meet the standard of competence specified in Section A-V/1-1, paragraph 1 of the STCW Code.

3. Masters, chief engineer officers, chief mates, second engineer officers and any person with immediate responsibility for loading, discharging, care in transit, handling of cargo, tank cleaning or other cargo-related operations on oil tankers shall hold a certificate in advanced training for oil tanker cargo operations.

4. Every candidate for a certificate in advanced training for oil tanker cargo operations shall:

4.1. meet the requirements for certification in basic training for oil and chemical tanker cargo operations; and

4.2. while qualified for certification in basic training for oil and chemical tanker cargo operations have:

4.2.1. at least three months of approved seagoing service on oil tankers; or

4.2.2. at least one month of approved onboard training on oil tankers in a supernumerary capacity which includes at least three loading and three unloading operations and is documented in an approved training record book taking into account guidance in Section B-V/1 of the STCW Code; and

4.3. have completed approved advanced training for oil tanker cargo operations and meet the standard of competence specified in Section A-V/1-1, paragraph 2 of the STCW Code.

5. Masters, chief engineer officers, chief mates, second engineer officers and any person with immediate responsibility for loading, discharging, care in transit, handling of cargo, tank cleaning or other cargo-related operations on chemical tankers shall hold a certificate in advanced training for chemical tanker cargo operations.

6. Every candidate for a certificate in advanced training for chemical tanker cargo operations shall:

6.1. meet the requirements for certification in basic training for oil and chemical tanker cargo operations; and

6.2. while qualified for certification in basic training for oil and chemical tanker cargo operations have:

6.2.1. at least three months of approved seagoing service on chemical tankers; or

6.2.2. at least one month of approved onboard training on chemical tankers in a supernumerary capacity which includes at least three loading and three unloading operations and is documented in an approved training record book taking into account guidance in Section B-V/1 of the STCW Code; and

6.3. have completed approved advanced training for chemical tanker cargo operations and meet the standard of competence specified in Section A-V/1-1, paragraph 3 of the STCW Code.

7. Member States shall ensure that a certificate of proficiency is issued to seafarers, who are qualified in accordance with paragraph 2, 4 or 6 as appropriate, or that an existing certificate of competency or certificate of proficiency is duly endorsed.

Regulation V/1-2

Mandatory minimum requirements for the training and qualifications of masters, officers and ratings on liquefied gas tankers

1. Officers and ratings assigned specific duties and responsibilities related to cargo or cargo equipment on liquefied gas tankers shall hold a certificate in basic training for liquefied gas tanker cargo operations.

2. Every candidate for a certificate in basic training for liquefied gas tanker cargo operations shall have completed basic training in accordance with provisions of Section A-VI/1 of the STCW Code and shall have completed:

2.1. at least three months of approved seagoing service on liquefied gas tankers and meet the standard of competence specified in Section A-V/1-2, paragraph 1 of the STCW Code; or

2.2. an approved basic training for liquefied gas tanker cargo operations and meet the standard of competence specified in Section A-V/1-2, paragraph 1 of the STCW Code.

3. Masters, chief engineer officers, chief mates, second engineer officers and any person with immediate responsibility for loading, discharging, care in transit, handling of cargo, tank cleaning or other cargo-related operations on liquefied gas tankers shall hold a certificate in advanced training for liquefied gas tanker cargo operations.

4. Every candidate for a certificate in advanced training for liquefied gas tanker cargo operations shall:

4.1. meet the requirements for certification in basic training for liquefied gas tanker cargo operations; and

4.2. while qualified for certification in basic training for liquefied gas tanker cargo operations have:

4.2.1. at least three months of approved seagoing service on liquefied gas tankers; or

4.2.2. at least one month of approved onboard training on liquefied gas tankers in a supernumerary capacity which includes at least three loading and three unloading operations and is documented in an approved training record book taking into account guidance in Section B-V/1 of the STCW Code; and

4.3. have completed approved advanced training for liquefied gas tanker cargo operations and meet the standard of competence specified in Section A-V/1-2, paragraph 2 of the STCW Code.

5. Member States shall ensure that a certificate of proficiency is issued to seafarers, who are qualified in accordance with paragraph 2 or 4 as appropriate, or that an existing certificate of competency or certificate of proficiency is duly endorsed.

Regulation V/2

Mandatory minimum requirements for the training and qualifications of masters, officers, ratings and other personnel on passenger ships

1. This Regulation applies to masters, officers, ratings and other personnel serving on board passenger ships engaged on international voyages. Member States shall determine the applicability of these requirements to personnel serving on passenger ships engaged on domestic voyages.

2. Prior to being assigned shipboard duties on board passenger ships, seafarers shall have completed the training required by paragraphs 4 to 7 below in accordance with their capacities, duties and responsibilities.

3. Seafarers who are required to be trained in accordance with paragraphs 4, 6 and 7 shall at intervals not exceeding five years undertake appropriate refresher training or be required to provide evidence of having achieved the required standard of competence within the previous five years.

4. Masters, officers and other personnel designated on muster lists to assist passengers in emergency situations on board passenger ships shall have completed training in crowd management as specified in Section A-V/2, paragraph 1, of the STCW Code.

5. Personnel providing direct service to passengers in passenger spaces on board passenger ships shall have completed the safety training specified in Section A-V/2, paragraph 2, of the STCW Code.

6. Masters, chief engineer officers, chief mates, second engineer officers and any person designated on muster lists of having responsibility for the safety of passengers in emergency situations on board passenger ships shall have completed approved training in crisis management and human behaviour as specified in Section A-V/2, paragraph 3 of the STCW Code.

7. Masters, chief mates, chief engineer officers, second engineer officers and every person assigned immediate responsibility for embarking and disembarking passengers, loading, discharging or securing cargo, or closing hull openings on board ro-ro passenger ships shall have completed approved training in passenger safety, cargo safety and hull integrity as specified in Section A-V/2, paragraph 4, of the STCW Code.

8. Member States shall ensure that documentary evidence of the training which has been completed is issued to every person found qualified under the provisions of this regulation.

CHAPTER VI

EMERGENCY, OCCUPATIONAL SAFETY, SECURITY, MEDICAL CARE AND SURVIVAL FUNCTIONS

Regulation VI/1

Mandatory minimum requirements for safety familiarisation, basic training and instruction for all seafarers

1. Seafarers shall receive familiarisation and basic training or instruction in accordance with Section A-VI/1 of the STCW Code and shall meet the appropriate standard of competence specified therein.

2. Where basic training is not included in the qualification for the certificate to be issued, a certificate of proficiency shall be issued indicating that the holder has attended the course in basic training.

Regulation VI/2

Mandatory minimum requirements for the issue of certificates of proficiency in survival craft, rescue boats and fast rescue boats

1. Every candidate for a certificate of proficiency in survival craft and rescue boats other than fast rescue boats shall:

   1.1. be not less than 18 years of age;

   1.2. have approved seagoing service of not less than 12 months or have attended an approved training course and have approved seagoing service of not less than six months; and

   1.3. meet the standard of competence for certificates of proficiency in survival craft and rescue boats set out in Section A-VI/2, paragraphs 1 to 4, of the STCW Code.

2. Every candidate for a certificate of proficiency in fast rescue boats shall:

   2.1. be the holder of a certificate of proficiency in survival craft and rescue boats other than fast rescue boats;

   2.2. have attended an approved training course; and

   2.3. meet the standard of competence for certificates of proficiency in fast rescue boats set out in Section A-VI/2, paragraphs 7 to 10, of the STCW Code.

Regulation VI/3

Mandatory minimum requirements for training in advanced firefighting

1. Seafarers designated to control firefighting operations shall have successfully completed advanced training in techniques for fighting fire with particular emphasis on organisation, tactics and command in accordance with the provisions of Section A-VI/3 paragraphs 1 to 4 of the STCW Code and shall meet the standard of competence specified therein.

2. Where training in advanced firefighting is not included in the qualifications for the certificate to be issued, a certificate of proficiency shall be issued indicating that the holder has attended a course of training in advanced firefighting.

Regulation VI/4

Mandatory minimum requirements relating to medical first aid and medical care

1. Seafarers designated to provide medical first aid on board ship shall meet the standard of competence in medical first aid specified in Section A-VI/4, paragraphs 1, 2 and 3, of the STCW Code.

2. Seafarers designated to take charge of medical care on board ship shall meet the standard of competence in medical care on board ships specified in Section A-VI/4, paragraphs 4, 5 and 6, of the STCW Code.

3. Where training in medical first aid or medical care is not included in the qualifications for the certificate to be issued, a certificate of proficiency shall be issued indicating that the holder has attended a course of training in medical first aid or in medical care.

Regulation VI/5

Mandatory minimum requirements for the issue of certificates of proficiency for ship security officers

1. Every candidate for a certificate of proficiency as ship security officer shall:

   1.1. have approved seagoing service of not less than 12 months or appropriate seagoing service and knowledge of ship operations; and

   1.2. meet the standard of competence for certification of proficiency as ship security officer, set out in Section A-VI/5, paragraphs 1 to 4, of the STCW Code.

2. Member States shall ensure that every person found qualified under the provisions of this regulation is issued with a certificate of proficiency.

Regulation VI/6

Mandatory minimum requirements for security related training and instruction for all seafarers

1. Seafarers shall receive security-related familiarisation and security-awareness training or instruction in accordance with Section A-VI/6, paragraphs 1 to 4 of the STCW Code and shall meet the appropriate standard of competence specified therein.

2. Where security awareness is not included in the qualification for the certificate to be issued, a certificate of proficiency shall be issued indicating that the holder has attended the a course in security awareness training.

3. Every Member State shall compare the security-related training or instruction it requires of seafarers who hold or can document qualifications before the entry into force of this Directive, with those specified in Section A-VI/6, paragraph 4 of the STCW Code, and shall determine the need for requiring these seafarers to update their qualifications.

Seafarers with designated security duties

4. Seafarers with designated security duties shall meet the standard of competence specified in Section A-VI/6, paragraphs 6 to 8 of the STCW Code.

5. Where training in designated security duties is not included in the qualifications for the certificate to be issued, a certificate of proficiency shall be issued indicating that the holder has attended a course of training for designated security duties.

6. Every Member State shall compare the security training standards required of seafarers with designated security duties who hold or can document qualifications before the entry into force of this directive with those specified in Section A-VI/6, paragraph 8 of the STCW Code, and shall determine the need for requiring these seafarers to update their qualifications.

CHAPTER VII

ALTERNATIVE CERTIFICATION

Regulation VII/1

Issue of alternative certificates

1. Notwithstanding the requirements for certification laid down in Chapters II and III of this Annex, Member States may elect to issue or authorise the issue of certificates other than those mentioned in the regulations of those chapters, provided that:

   1.1. the associated functions and levels of responsibility to be stated on the certificates and in the endorsements are selected from and identical to those appearing in Sections A-II/1, A-II/2, A-II/3, A-II/4, A-II/5, A-III/1, A-III/2, A-III/3, A-III/4, A-III/5, and A-IV/2 of the STCW Code;

   1.2. the candidates have completed approved education and training and meet the requirements for standards of competence, prescribed in the relevant sections of the STCW Code and as set forth in Section A-VII/1 of this Code, for the functions and levels that are to be stated on the certificates and in the endorsements;

1.3. the candidates have completed approved seagoing service appropriate to the performance of the functions and levels that are to be stated on the certificate. The minimum duration of seagoing service shall be equivalent to the duration of seagoing service prescribed in Chapters II and III of this Annex. However, the minimum duration of seagoing service shall be not less than as prescribed in Section A-VII/2 of the STCW Code;

1.4. the candidates for certification who are to perform the function of navigation at the operational level shall meet the applicable requirements of the regulations in Chapter IV, as appropriate, for performing designated radio duties in accordance with the Radio Regulations;

1.5. the certificates are issued in accordance with the requirements of Article 5 of this Directive and the provisions set forth in Chapter VII of the STCW Code.

2. No certificate shall be issued under this chapter unless the Member State has communicated the information required by the STCW Convention to the Commission.

Regulation VII/2

Certification of seafarers

Every seafarer who performs any function or group of functions specified in tables A-II/1, A-II/2, A-II/3, A-II/4 or A-II/5 of Chapter II or in tables A-III/1, A-III/2, A-III/3, or A-III/4 or A-III/5 of Chapter III or A-IV/2 of Chapter IV of the STCW Code shall hold a certificate of competency or certificate of proficiency, as applicable.

Regulation VII/3

Principles governing the issue of alternative certificates

1. A Member State which elects to issue or authorise the issue of alternative certificates shall ensure that the following principles are observed:

1.1. no alternative certification system shall be implemented unless it ensures a degree of safety at sea and has a preventive effect as regards pollution at least equivalent to that provided by the other chapters; and

1.2. any arrangement for alternative certification issued under this chapter shall provide for the interchangeability of certificates with those issued under the other chapters.

2. The principle of interchangeability in point 1 shall ensure that:

2.1. seafarers certificated under the arrangements of Chapters II and/or III and those certificated under Chapter VII are able to serve on ships which have either traditional or other forms of shipboard organisation; and

2.2. seafarers are not trained for specific shipboard arrangements in such a way as would impair their ability to take their skills elsewhere.

3. In issuing any certificate under the provisions of this chapter the following principles shall be taken into account:

3.1. the issue of alternative certificates shall not be used in itself:

3.1.1. to reduce the number of crew on board;

3.1.2. to lower the integrity of the profession or "deskill" seafarers; or

3.1.3. to justify the assignment of the combined duties of the engine and deck watchkeeping officers to a single certificate holder during any particular watch; and

3.2. the person in command shall be designated as the master and the legal position and authority of the master and others shall not be adversely affected by the implementation of any arrangement for alternative certification.

4. The principles contained in points 1 and 2 shall ensure that the competency of both deck and engineer officers is maintained.'.

ANNEX II

Point 3 of Annex II is replaced by the following:

'3. The Commission, assisted by the European Maritime Safety Agency and with the possible involvement of any Member State concerned, has confirmed, through an evaluation of that Party, which may include inspection of facilities and procedures, that the requirements of the STCW Convention regarding standards of competence, training and certification and quality standards are fully complied with.'.

ANNEX III

'ANNEX V

TYPE OF INFORMATION TO BE COMMUNICATED TO THE COMMISSION FOR STATISTICAL PURPOSES

1. Where reference is made to this Annex, the following information specified in Section A-I/2, paragraph 9 of the STCW Code for all certificates of competency or endorsements attesting their issue, all endorsements attesting the recognition of certificates of competency issued by other countries, shall be provided and where marked (*) this provision shall be in an anonymised form as required by Article 25a(3):

Certificates of competency (CoC)/Endorsements attesting their issue (EaI):

— seafarer's unique identifier, if available (*),

— seafarer's name (*),

— seafarer's date of birth,

— seafarer's nationality,

— seafarer's gender,

— CoC endorsed number (*),

— EaI number (*),

— capacity(ies),

— date of issue or the most recent date of revalidation of the document,

— date of expiry,

— status of the certificate,

— limitations.

Endorsements attesting the recognition of certificates of competency issued by other countries (EaR):

— seafarer's unique identifier, if available (*),

— seafarer's name (*),

— seafarer's date of birth,

— seafarer's nationality,

— seafarer's gender,

— country issuing the original CoC,

— original CoC number (*),

— EaR number (*),

— capacity(ies),

— date of issue or the most recent date of revalidation of the document,

— date of expiry,

— status of the endorsement,

— limitations.

2. Member States may provide, on a voluntary basis, information on the certificates of proficiency (CoP) issued to ratings in accordance with Chapters II, III, and VII of the Annex to the STCW Convention, such as:

— seafarer's unique identifier, if available (*),

— seafarer's name (*),

— seafarer's date of birth,

— seafarer's nationality,

— seafarer's gender,

— CoP number (*),

— capacity(ies),

— date of issue or date of the most recent revalidation of the document,

— date of expiry,

— status of the CoP.'.

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