

Official Journal

of the European Union

L 130



English edition

Legislation

Volume 62

17 May 2019

Contents

I *Legislative acts*

REGULATIONS

- ★ **Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008** 1
- ★ **Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative ⁽¹⁾** 55

DIRECTIVES

- ★ **Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC ⁽¹⁾** 82
- ★ **Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC ⁽¹⁾** 92

⁽¹⁾ Text with EEA relevance.

EN

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

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

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2019/787 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2019

on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 43(2) and 114(1) thereof,

Having regard to the proposal from the European Commission,

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

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

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

Whereas:

- (1) Regulation (EC) No 110/2008 of the European Parliament and of the Council ⁽³⁾ has proved successful in regulating the spirit drinks sector. However, in the light of recent experience and technological innovation, market developments and evolving consumer expectations, it is necessary to update the rules on the definition, description, presentation and labelling of spirit drinks and to review the ways in which geographical indications for spirit drinks are registered and protected.
- (2) The rules applicable to spirit drinks should contribute to attaining a high level of consumer protection, removing information asymmetry, preventing deceptive practices and attaining market transparency and fair competition. They should safeguard the reputation which the Union's spirit drinks have achieved in the Union and on the world market by continuing to take into account the traditional practices used in the production of spirit drinks as well as increased demand for consumer protection and information. Technological innovation should also be taken into account in respect of spirit drinks, where it serves to improve quality, without affecting the traditional character of the spirit drinks concerned.
- (3) Spirit drinks represent a major outlet for the Union agricultural sector, and the production of spirit drinks is strongly linked to that sector. That link determines the quality, safety and reputation of the spirit drinks produced in the Union. That strong link to the agri-food sector should therefore be emphasised by the regulatory framework.
- (4) The rules applicable to spirit drinks constitute a special case compared with the general rules laid down for the agri-food sector and should also take into account the traditional production methods in use in the different Member States.

⁽¹⁾ OJ C 209, 30.6.2017, p. 54.

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

⁽³⁾ 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 and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).

- (5) This Regulation should set out clear criteria for the definition, description, presentation and labelling of spirit drinks as well as for the protection of geographical indications, and should be without prejudice to the diversity of the official languages and alphabets in the Union. It should also set out rules on the use of ethyl alcohol and distillates of agricultural origin in the production of alcoholic beverages and on the use of the legal names of spirit drinks in the presentation and labelling of foodstuffs.
- (6) In order to meet consumer expectations and to conform to traditional practices, ethyl alcohol and distillates used for the production of spirit drinks should be exclusively of agricultural origin.
- (7) In the interests of consumers, this Regulation should apply to all spirit drinks placed on the Union market, whether produced in the Member States or in third countries. In order to maintain and improve the reputation on the world market of spirit drinks produced in the Union, this Regulation should also apply to spirit drinks produced in the Union for export.
- (8) The definitions of and technical requirements for spirit drinks and the categorisation of spirit drinks should continue to take into account traditional practices. Specific rules for certain spirit drinks that are not included in the list of categories should also be laid down.
- (9) Regulations (EC) No 1333/2008 ⁽⁴⁾ and (EC) No 1334/2008 ⁽⁵⁾ of the European Parliament and of the Council also apply to spirit drinks. However, it is necessary to lay down additional rules concerning colours and flavourings, which should only apply to spirit drinks. It is also necessary to lay down additional rules concerning the dilution and dissolution of flavourings, colours and other authorised ingredients, which should only apply to the production of alcoholic beverages.
- (10) Rules should be laid down regarding the legal names to be used for spirit drinks that are placed on the Union market, in order to ensure that such legal names are used in a harmonised manner throughout the Union and to safeguard the transparency of information to consumers.
- (11) Given the importance and complexity of the spirit drinks sector, it is appropriate to lay down specific rules on the description, presentation and labelling of spirit drinks, in particular as regards the use of legal names, geographical indications, compound terms and allusions in the description, presentation and labelling.
- (12) Regulation (EU) No 1169/2011 of the European Parliament and of the Council ⁽⁶⁾ should apply to the description, presentation and labelling of spirit drinks, save as otherwise provided for in this Regulation. In that regard, given the importance and the complexity of the spirit drinks sector, it is appropriate to lay down in this Regulation specific rules on the description, presentation and labelling of spirit drinks that go beyond Regulation (EU) No 1169/2011. Those specific rules should also prevent the misuse of the term 'spirit drink' and of the legal names of spirit drinks, as regards products which do not meet the definitions and requirements laid down in this Regulation.
- (13) In order to ensure the uniform use of compound terms and allusions in Member States and in order to provide consumers with adequate information, thereby protecting them from being misled, it is necessary to lay down provisions concerning their use for the purpose of presentation of spirit drinks and other foodstuffs. The purpose of such provisions is also to protect the reputation of the spirit drinks used in this context.
- (14) In order to provide consumers with adequate information, provisions on the description, presentation and labelling of spirit drinks which qualify as mixtures or blends should be laid down.
- (15) While it is important to ensure that in general the maturation period or age stated in the description, presentation and labelling of spirit drinks only refers to the youngest alcoholic component, to take account of traditional ageing processes in Member States, it should be possible to provide, by means of delegated acts, for a derogation from that general rule and for appropriate control mechanisms in relation to *brandies* produced using the traditional dynamic ageing system known as the '*criaderas y solera*' system or '*solera e criaderas*' system.

⁽⁴⁾ Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ L 354, 31.12.2008, p. 16).

⁽⁵⁾ Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC (OJ L 354, 31.12.2008, p. 34).

⁽⁶⁾ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18).

- (16) For reasons of legal certainty and in order to ensure that adequate information is provided to consumers, the use of the names of raw materials or of adjectives as legal names for certain spirit drinks should not preclude the use of the names of such raw materials or of adjectives in the presentation and labelling of other foodstuffs. For the same reasons, the use of the German word '*-geist*' as the legal name of a category of spirit drinks should not preclude the use of that word as a fancy name to supplement the legal name of other spirit drinks or the name of other alcoholic beverages, provided that such use does not mislead the consumer.
- (17) In order to ensure that adequate information is provided to consumers and to enhance quality production methods, it should be possible for the legal name of any spirit drink to be supplemented by the term 'dry' or '*dry*', that is to say that term either translated in the language or languages of the relevant Member State, or untranslated as indicated in italics in this Regulation, if that spirit drink has not been sweetened. However, in line with the principle that food information is not to be misleading, particularly by suggesting that the food possesses special characteristics despite the fact that all similar foods possess such characteristics, this rule should not apply to spirit drinks that under this Regulation are not to be sweetened, even for rounding off the taste, in particular to *whisky* or *whiskey*. This rule should also not apply to *gin*, distilled *gin* and *London gin*, to which specific sweetening and labelling rules should continue to apply. Furthermore, it should be possible to label liqueurs characterised in particular by a tart, bitter, tangy, acerbic, sour or citrus taste, regardless of their degree of sweetening, as 'dry' or '*dry*'. Such labelling is not likely to mislead the consumer, since liqueurs are required to have a minimum sugar content. Accordingly, in the case of liqueurs, the term 'dry' or '*dry*' should not be understood to indicate that the spirit drink has not been sweetened.
- (18) To take into account consumer expectations about the raw materials used for vodka especially in the traditional vodka-producing Member States, adequate information should be provided on the raw material used where vodka is made from raw materials of agricultural origin other than cereals or potatoes or both.
- (19) In order to enforce and to check the application of the legislation relating to rules on ageing and labelling, and to combat fraud, the indication of the legal name and the maturation period of any spirit drink in electronic administrative documents should be made mandatory.
- (20) In some cases, food business operators wish to indicate the place of provenance of spirit drinks other than geographical indications and trade marks to draw consumers' attention to the qualities of their product. Therefore, specific provisions on the indication of the place of provenance in the description, presentation and labelling of spirit drinks should be laid down. In addition, the obligation, laid down in Regulation (EU) No 1169/2011, to indicate the country of origin or the place of provenance of a primary ingredient, should not apply in the case of spirit drinks, even if the country of origin or the place of provenance of the primary ingredient of a spirit drink is not the same as the place of provenance indicated in the description, presentation or labelling of that spirit drink.
- (21) In order to protect the reputation of certain spirit drinks, provisions should be laid down governing the translation, transcription and transliteration of legal names for export purposes.
- (22) In order to ensure that this Regulation is applied consistently, Union reference methods should be established for the analysis of spirit drinks and of ethyl alcohol used in the production of spirit drinks.
- (23) The use of lead-based capsules and lead-based foil to cover the closing devices of containers of spirit drinks should continue to be banned, in order to avoid any risk of contamination, in particular by accidental contact with such capsules or foil, and of environmental pollution from waste containing lead from such capsules or foil.
- (24) Concerning the protection of geographical indications, it is important to have due regard to the Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS Agreement'), and in particular Articles 22 and 23 thereof, and to the General Agreement on Tariffs and Trade ('GATT Agreement') including Article V thereof on freedom of transit, which were approved by Council Decision 94/800/EC⁽⁷⁾. Within such legal framework, in order to strengthen geographical indication protection and to combat counterfeiting more effectively, such protection should also apply with regard to goods entering the customs territory of the Union without being released for free circulation, and placed under special customs procedures such as those relating to transit, storage, specific use or processing.

⁽⁷⁾ Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1).

- (25) Regulation (EU) No 1151/2012 of the European Parliament and of the Council ⁽⁸⁾ does not apply to spirit drinks. Rules on the protection of geographical indications of spirit drinks should therefore be laid down. Geographical indications should be registered by the Commission.
- (26) Procedures for the registration, modification and possible cancellation of Union or third country geographical indications in accordance with the TRIPS Agreement should be laid down whilst automatically recognising the status of existing geographical indications that are protected in the Union. In order to make procedural rules on geographical indications consistent in all the sectors concerned, such procedures for spirit drinks should be modelled on the more exhaustive and well tested procedures for agricultural products and foodstuffs laid down in Regulation (EU) No 1151/2012, while taking into account specificities of spirit drinks. In order to simplify the registration procedures and to ensure that information for food business operators and consumers is electronically available, an electronic register of geographical indications should be established. Geographical indications protected under Regulation (EC) No 110/2008 should automatically be protected under this Regulation and listed in the electronic register. The Commission should complete the verification of geographical indications contained in Annex III to Regulation (EC) No 110/2008, in accordance with Article 20 of that Regulation.
- (27) For reasons of consistency with the rules applicable to geographical indications for food, wine and aromatised wine products, the name of the file setting out the specifications for spirit drinks which are registered as a geographical indication should be changed from 'technical file' to 'product specification'. Technical files submitted as part of any application under Regulation (EC) No 110/2008 should be deemed to be product specifications.
- (28) The relationship between trade marks and geographical indications of spirit drinks should be clarified in relation to criteria for refusal, invalidation and coexistence. Such clarification should not affect rights acquired by holders of geographical indications at national level or that exist by virtue of international agreements concluded by Member States for the period before the establishment of the Union protection system pursuant to Council Regulation (EEC) No 1576/89 ⁽⁹⁾.
- (29) Preserving a high standard of quality is essential if the spirit drinks sector's reputation and value are to be maintained. Member State authorities should be responsible for ensuring that that standard of quality is preserved through compliance with this Regulation. The Commission should be able to monitor and verify such compliance in order to ascertain that this Regulation is being uniformly enforced. Therefore the Commission and the Member States should be required to share relevant information with each other.
- (30) In applying a quality policy and in particular to attain a high level of quality of spirit drinks and diversity in the spirit drinks sector, Member States should be allowed to adopt rules on the production, description, presentation and labelling of spirit drinks produced in their territory that are stricter than those laid down in this Regulation.
- (31) In order to take into account evolving consumer demands, technological progress, developments in the relevant international standards, the need to improve the economic conditions of production and marketing, traditional ageing processes, and the law of the importing third countries, and in order to safeguard the legitimate interests of producers and food business operators as regards the protection of geographical indications, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union ('the Treaty') should be delegated to the Commission in respect of: amendments to and derogations from the technical definitions and requirements for spirit drinks; authorising new sweetening products; derogations related to the specification of maturation period or age for *brandy* and the setting up of the public register of bodies in charge of supervising ageing processes; the establishment of an electronic register of geographical indications of spirit drinks, and detailed rules on the form and content of that register; further conditions in relation to applications for the protection of a geographical indication and preliminary national procedures, scrutiny by the Commission, the opposition procedure and cancellation of geographical indications; conditions and requirements for the procedure concerning amendments to product specifications; and amendments to and derogations from certain definitions and rules on description, presentation and labelling. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement

⁽⁸⁾ 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 (OJ L 343, 14.12.2012, p. 1).

⁽⁹⁾ Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks (OJ L 160, 12.6.1989, p. 1).

of 13 April 2016 on Better Law-Making ⁽¹⁰⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (32) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission regarding the publication of the single document in the *Official Journal of the European Union*; and regarding decisions on registration of names as geographical indications where there is no notice of opposition or no admissible reasoned statement of opposition, or where there is an admissible reasoned statement of opposition and an agreement has been reached.
- (33) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission regarding: the rules on the use of new sweetening products; the information to be provided by Member States with regard to the bodies appointed to supervise ageing processes; the indication of the country of origin or place of provenance in the description, presentation or labelling of spirit drinks; the use of the Union symbol for protected geographical indications; detailed technical rules on the Union reference methods for the analysis of ethyl alcohol, distillates of agricultural origin and spirit drinks; granting a transitional period for the use of geographical indications and extensions of such periods; rejections of applications where the conditions for registration are not already fulfilled before the publication for opposition; registrations or rejections of geographical indications published for opposition where an opposition has been submitted and no agreement has been reached; approvals or rejections of Union amendments to a product specification; approvals or rejections of requests for cancellation of the registration of a geographical indication; the form of the product specification and measures concerning the information to be provided in the product specification with regard to the link between the geographical area and the final product; the procedures for, form and presentation of applications, of oppositions, of applications for amendments and communications concerning amendments, and of the cancellation process with regard to geographical indications; the checks and verifications to be carried out by the Member States; as well as the necessary information to be exchanged for the application of this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹¹⁾.
- (34) In order to ensure the implementation of the Agreement between the European Union and Japan for an Economic Partnership ⁽¹²⁾, it was necessary to provide for a derogation from the nominal quantities set out in the Annex to Directive 2007/45/EC of the European Parliament and of the Council ⁽¹³⁾ for spirit drinks in order to allow single distilled *shochu* produced by pot still and bottled in Japan to be placed on the Union market in traditional Japanese bottle sizes. That derogation was introduced by Regulation (EU) 2018/1670 of the European Parliament and of the Council ⁽¹⁴⁾ and should continue to apply.
- (35) Given the nature and extent of the modifications which need to be made to Regulation (EC) No 110/2008, there is a need for a new legal framework in this area to enhance legal certainty, clarity and transparency. Regulation (EC) No 110/2008 should therefore be repealed.
- (36) In order to protect the legitimate interests of producers or stakeholders concerned as regards benefitting from the publicity given to single documents under the new legal framework, it should be made possible that single documents concerning geographical indications registered in accordance with Regulation (EC) No 110/2008 are published at the request of the Member States concerned.
- (37) Since the rules on geographical indications enhance protection for operators, those rules should apply two weeks from the entry into force of this Regulation. However, provision should be made for appropriate arrangements to facilitate a smooth transition from the rules provided for in Regulation (EC) No 110/2008 to the rules laid down in this Regulation.

⁽¹⁰⁾ OJ L 123, 12.5.2016, p. 1.

⁽¹¹⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁽¹²⁾ OJ L 330, 27.12.2018, p. 3.

⁽¹³⁾ Directive 2007/45/EC of the European Parliament and of the Council of 5 September 2007 laying down rules on nominal quantities for prepacked products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC (OJ L 247, 21.9.2007, p. 17).

⁽¹⁴⁾ Regulation (EU) 2018/1670 of the European Parliament and of the Council of 23 October 2018 amending Regulation (EC) No 110/2008 as regards nominal quantities for the placing on the Union market of single distilled *shochu* produced by pot still and bottled in Japan (OJ L 284, 12.11.2018, p. 1).

- (38) As regards rules not relating to geographical indications, provision should be made to ensure that there is sufficient time to facilitate a smooth transition from the rules provided for in Regulation (EC) No 110/2008 to the rules laid down in this Regulation.
- (39) The marketing of existing stocks of spirit drinks should be allowed to continue after the dates of application of this Regulation, until those stocks are exhausted,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SCOPE, DEFINITIONS AND CATEGORIES OF SPIRIT DRINKS

Article 1

Subject matter and scope

1. This Regulation lays down rules on:
 - the definition, description, presentation and labelling of spirit drinks, as well as on the protection of geographical indications of spirit drinks;
 - the ethyl alcohol and distillates used in the production of alcoholic beverages; and
 - the use of legal names of spirit drinks in the presentation and labelling of foodstuffs other than spirit drinks.
2. This Regulation applies to products referred to in paragraph 1 that are placed on the Union market, whether produced in the Union or in third countries, as well as to those produced in the Union for export.
3. As regards the protection of geographical indications, Chapter III of this Regulation also applies to goods entering the customs territory of the Union without being released for free circulation there.

Article 2

Definition of and requirements for spirit drinks

For the purposes of this Regulation, a spirit drink is an alcoholic beverage which complies with the following requirements:

- (a) it is intended for human consumption;
- (b) it possesses particular organoleptic qualities;
- (c) it has a minimum alcoholic strength by volume of 15 %, except in the case of spirit drinks that comply with the requirements of category 39 of Annex I;
- (d) it has been produced either:
 - (i) directly by using, individually or in combination, any of the following methods:
 - distillation, with or without added flavourings or flavouring foodstuffs, of fermented products,
 - the maceration or similar processing of plant materials in ethyl alcohol of agricultural origin, distillates of agricultural origin or spirit drinks or a combination thereof,
 - the addition, individually or in combination, to ethyl alcohol of agricultural origin, distillates of agricultural origin or spirit drinks of any of the following:
 - flavourings used in accordance with Regulation (EC) No 1334/2008,
 - colours used in accordance with Regulation (EC) No 1333/2008,
 - other authorised ingredients used in accordance with Regulations (EC) No 1333/2008 and (EC) No 1334/2008,

- sweetening products,
 - other agricultural products,
 - foodstuffs; or
- (ii) by adding, individually or in combination, to it any of the following:
- other spirit drinks,
 - ethyl alcohol of agricultural origin,
 - distillates of agricultural origin,
 - other foodstuffs;
- (e) it does not fall within CN codes 2203, 2204, 2205, 2206 and 2207;
- (f) if water, which may be distilled, demineralised, permuted or softened, has been added in its production:
- (i) the quality of that water complies with Council Directive 98/83/EC⁽¹⁵⁾ and Directive 2009/54/EC of the European Parliament and of the Council⁽¹⁶⁾; and
 - (ii) the alcoholic strength of the spirit drink, after the addition of the water, still complies with the minimum alcoholic strength by volume provided for in point (c) of this Article or under the relevant category of spirit drinks as set out in Annex I.

Article 3

Definitions

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

- (1) 'legal name' means the name under which a spirit drink is placed on the market, within the meaning of point (n) of Article 2(2) of Regulation (EU) No 1169/2011;
- (2) 'compound term' means, in relation to the description, presentation and labelling of an alcoholic beverage, the combination of either a legal name provided for in the categories of spirit drinks set out in Annex I or the geographical indication for a spirit drink, from which all the alcohol of the final product originates, with one or more of the following:
 - (a) the name of one or more foodstuffs other than an alcoholic beverage and other than foodstuffs used for the production of that spirit drink in accordance with Annex I, or adjectives deriving from those names;
 - (b) the term 'liqueur' or 'cream';
- (3) 'allusion' means the direct or indirect reference to one or more legal names provided for in the categories of spirit drinks set out in Annex I or to one or more geographical indications for spirit drinks, other than a reference in a compound term or in a list of ingredients as referred to in Article 13(2), (3) and (4), in the description, presentation or labelling of:
 - (a) a foodstuff other than a spirit drink, or
 - (b) a spirit drink that complies with the requirements of categories 33 to 40 of Annex I;
- (4) 'geographical indication' means an indication which identifies a spirit drink as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of that spirit drink is essentially attributable to its geographical origin;
- (5) 'product specification' means a file attached to the application for the protection of a geographical indication, in which the specifications with which the spirit drink has to comply are set out, and which was referred to as a 'technical file' under Regulation (EC) No 110/2008;

⁽¹⁵⁾ Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ L 330, 5.12.1998, p. 32).

⁽¹⁶⁾ Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters (OJ L 164, 26.6.2009, p. 45).

- (6) 'group' means any association, irrespective of its legal form, that is mainly composed of producers or processors working with the spirit drinks concerned;
- (7) 'generic name' means a name of a spirit drink that has become generic and that, although it relates to the place or the region where the spirit drink was originally produced or marketed, has become the common name of that spirit drink in the Union;
- (8) 'visual field' means field of vision as defined in point (k) of Article 2(2) of Regulation (EU) No 1169/2011;
- (9) 'to mix' means to combine a spirit drink that either belongs to a category of spirit drinks set out in Annex I or to a geographical indication with one or more of the following:
 - (a) other spirit drinks which do not belong to the same category of spirit drinks set out in Annex I;
 - (b) distillates of agricultural origin;
 - (c) ethyl alcohol of agricultural origin;
- (10) 'mixture' means a spirit drink that has undergone mixing;
- (11) 'to blend' means to combine two or more spirit drinks of the same category that are distinguishable only by minor differences in composition due to one or more of the following factors:
 - (a) the method of production;
 - (b) the stills employed;
 - (c) the period of maturation or ageing;
 - (d) the geographical area of production;the spirit drink so produced belongs to the same category of spirit drinks as the original spirit drinks before blending;
- (12) 'blend' means a spirit drink that has undergone blending.

Article 4

Technical definitions and requirements

For the purposes of this Regulation, the following technical definitions and requirements apply:

- (1) 'description' means the terms used in the labelling, in the presentation and on the packaging of a spirit drink, on the documents accompanying the transport of a spirit drink, on the commercial documents, particularly the invoices and delivery notes, and in the advertising of a spirit drink;
- (2) 'presentation' means the terms used in the labelling and on the packaging, as well as in advertising and sales promotion of a product, in images or such like, as well as on the container, including on the bottle or the closure;
- (3) 'labelling' means any word, particulars, trade marks, brand name, pictorial matter or symbol relating to a product and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such product;
- (4) 'label' means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to the packaging or container of food;
- (5) 'packaging' means the protective wrappings, cartons, cases, containers and bottles used in the transport or sale of spirit drinks;
- (6) 'distillation' means a thermal separation process involving one or more separation steps intended to achieve certain organoleptic properties or a higher alcoholic concentration or both, regardless of whether such steps take place under normal pressure or under vacuum, due to the distilling device used; and can be single or multiple distillation or re-distillation;
- (7) 'distillate of agricultural origin' means an alcoholic liquid which is the result of the distillation, after alcoholic fermentation, of agricultural products listed in Annex I to the Treaty, which does not have the properties of ethyl alcohol and which retains the aroma and taste of the raw materials used;

- (8) 'to sweeten' means to use one or more sweetening products in the production of spirit drinks;
- (9) 'sweetening products' means:
- (a) semi-white sugar, white sugar, extra-white sugar, dextrose, fructose, glucose syrup, sugar solution, invert sugar solution and invert sugar syrup, as defined in Part A of the Annex to Council Directive 2001/111/EC ⁽¹⁷⁾;
 - (b) rectified concentrated grape must, concentrated grape must and fresh grape must;
 - (c) burned sugar which is the product obtained exclusively from the controlled heating of sucrose without bases, mineral acids or other chemical additives;
 - (d) honey as defined in point 1 of Annex I to Council Directive 2001/110/EC ⁽¹⁸⁾;
 - (e) carob syrup;
 - (f) any other natural carbohydrate substances having a similar effect as the products referred to in points (a) to (e);
- (10) 'addition of alcohol' means the addition of ethyl alcohol of agricultural origin or distillates of agricultural origin or both to a spirit drink; such addition does not include the use of alcohol for dilution or dissolution of colours, flavourings or any other authorised ingredients used in the production of spirit drinks;
- (11) 'maturation' or 'ageing' means the storage of a spirit drink in appropriate receptacles for a period of time for the purpose of allowing that spirit drink to undergo natural reactions that impart specific characteristics to that spirit drink;
- (12) 'to flavour' means to add flavourings or flavouring foodstuffs in the production of a spirit drink by means of one or more of the following processes: addition, infusion, maceration, alcoholic fermentation, or distillation of alcohol in the presence of the flavourings or flavouring foodstuffs;
- (13) 'flavourings' mean flavourings as defined in point (a) of Article 3(2) of Regulation (EC) No 1334/2008;
- (14) 'flavouring substance' means flavouring substance as defined in point (b) of Article 3(2) of Regulation (EC) No 1334/2008;
- (15) 'natural flavouring substance' means natural flavouring substance as defined in point (c) of Article 3(2) of Regulation (EC) No 1334/2008;
- (16) 'flavouring preparation' means flavouring preparation as defined in point (d) of Article 3(2) of Regulation (EC) No 1334/2008;
- (17) 'other flavouring' means other flavouring as defined in point (h) of Article 3(2) of Regulation (EC) No 1334/2008;
- (18) 'flavouring foodstuffs' mean foodstuffs as defined in Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council ⁽¹⁹⁾ and that are used in the production of spirit drinks with the main purpose of flavouring the spirit drinks;
- (19) 'to colour' means to use one or more colours in the production of a spirit drink;
- (20) 'colours' mean colours as defined in point 2 of Annex I to Regulation (EC) No 1333/2008;
- (21) 'caramel' means a food additive corresponding to E-numbers E 150a, E 150b, E 150c or E 150d and relating to products of a more or less intense brown colour which are intended for colouring, as referred to in Part B of Annex II to Regulation (EC) No 1333/2008; it does not correspond to the sugary aromatic product obtained from heating sugars and which is used for flavouring purposes;
- (22) 'other authorised ingredients' means food ingredients with flavouring properties authorised under Regulation (EC) No 1334/2008 and food additives other than colours authorised under Regulation (EC) No 1333/2008;

⁽¹⁷⁾ Council Directive 2001/111/EC of 20 December 2001 relating to certain sugars intended for human consumption (OJ L 10, 12.1.2002, p. 53).

⁽¹⁸⁾ Council Directive 2001/110/EC of 20 December 2001 relating to honey (OJ L 10, 12.1.2002, p. 47).

⁽¹⁹⁾ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

- (23) 'alcoholic strength by volume' means the ratio of the volume of pure alcohol present in a product at 20 °C to the total volume of that product at the same temperature;
- (24) 'volatile substances content' means the quantity of volatile substances, other than ethyl alcohol and methanol, contained in a spirit drink produced exclusively by distillation.

Article 5

Definition of and requirements for ethyl alcohol of agricultural origin

For the purposes of this Regulation, ethyl alcohol of agricultural origin is a liquid which complies with the following requirements:

- (a) it has been obtained exclusively from products listed in Annex I to the Treaty;
- (b) it has no detectable taste other than that of the raw materials used in its production;
- (c) its minimum alcoholic strength by volume is 96,0 %;
- (d) its maximum levels of residues do not exceed the following:
- (i) total acidity (expressed in acetic acid): 1,5 grams per hectolitre of 100 % vol. alcohol;
 - (ii) esters (expressed in ethyl acetate): 1,3 grams per hectolitre of 100 % vol. alcohol;
 - (iii) aldehydes (expressed in acetaldehyde): 0,5 grams per hectolitre of 100 % vol. alcohol;
 - (iv) higher alcohols (expressed in 2-methyl-1-propanol): 0,5 grams per hectolitre of 100 % vol. alcohol;
 - (v) methanol: 30 grams per hectolitre of 100 % vol. alcohol;
 - (vi) dry extract: 1,5 grams per hectolitre of 100 % vol. alcohol;
 - (vii) volatile bases containing nitrogen (expressed in nitrogen): 0,1 grams per hectolitre of 100 % vol. alcohol;
 - (viii) furfural: not detectable.

Article 6

Ethyl alcohol and distillates used in alcoholic beverages

1. The ethyl alcohol and distillates used in the production of spirit drinks shall be exclusively of agricultural origin, within the meaning of Annex I to the Treaty.
2. No alcohol other than ethyl alcohol of agricultural origin, distillates of agricultural origin or spirit drinks of categories 1 to 14 of Annex I shall be used to dilute or dissolve colours, flavourings or any other authorised ingredients used in the production of alcoholic beverages. Such alcohol used to dilute or dissolve colours, flavourings or any other authorised ingredients shall only be used in the amounts strictly necessary for that purpose.
3. Alcoholic beverages shall not contain alcohol of synthetic origin or other alcohol of non-agricultural origin, within the meaning of Annex I to the Treaty.

Article 7

Categories of spirit drinks

1. Spirit drinks shall be categorised in accordance with the general rules laid down in this Article and the specific rules laid down in Annex I.
2. Without prejudice to the specific rules laid down for each of the categories of spirit drinks 1 to 14 of Annex I, the spirit drinks of those categories shall:
 - (a) be produced by alcoholic fermentation and distillation, and exclusively obtained from the raw material provided for under the corresponding category of spirit drinks in Annex I;

- (b) have no addition of alcohol, whether diluted or not;
 - (c) not be flavoured;
 - (d) not be coloured with anything except caramel used exclusively for adjusting the colour of those spirit drinks;
 - (e) not be sweetened, except to round off the final taste of the product; the maximum content of sweetening products, expressed as invert sugar, shall not exceed the thresholds set out for each category in Annex I;
 - (f) not contain adjuncts other than whole unprocessed items of the raw material from which the alcohol is obtained, and which are mainly used for decorative purposes.
3. Without prejudice to the specific rules laid down for each of the categories of spirit drinks 15 to 44 of Annex I, the spirit drinks of those categories may:
- (a) be produced from any agricultural raw material listed in Annex I to the Treaty;
 - (b) have addition of alcohol;
 - (c) contain flavouring substances, natural flavouring substances, flavouring preparations and flavouring foodstuffs;
 - (d) be coloured;
 - (e) be sweetened.
4. Without prejudice to the specific rules laid down in Annex II, spirit drinks which do not comply with the specific rules laid down for each of the categories set out in Annex I may:
- (a) be produced from any agricultural raw material listed in Annex I to the Treaty or from any foodstuff or both;
 - (b) have addition of alcohol;
 - (c) be flavoured;
 - (d) be coloured;
 - (e) be sweetened.

Article 8

Delegated and implementing powers

1. The Commission is empowered to adopt delegated acts in accordance with Article 46 amending this Regulation by introducing amendments to the technical definitions and requirements laid down in point (f) of Article 2, and in Articles 4 and 5.

The delegated acts referred to in the first subparagraph shall be strictly limited to meeting demonstrated needs resulting from evolving consumer demands, technological progress or the need for product innovation.

The Commission shall adopt a separate delegated act in respect of each technical definition or requirement referred to in the first subparagraph.

2. The Commission is empowered to adopt delegated acts in accordance with Article 46 supplementing this Regulation by laying down, in exceptional cases, where the law of the importing third country so requires, derogations from the requirements set out in point (f) of Article 2, and in Articles 4 and 5, the requirements under the categories of spirit drinks set out in Annex I and the specific rules concerning certain spirit drinks set out in Annex II.

3. The Commission is empowered to adopt delegated acts in accordance with Article 46 supplementing this Regulation by specifying which other natural substances or agricultural raw materials having a similar effect to the products referred to in points (a) to (e) of Article 4(9) are authorised across the Union as sweetening products in the production of spirit drinks.

4. The Commission may, by means of implementing acts, adopt uniform rules for the use of other natural substances or agricultural raw materials authorised by delegated acts as sweetening products in the production of spirit drinks as referred to in paragraph 3, determining in particular the respective sweetening conversion factors. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 47(2).

CHAPTER II

DESCRIPTION, PRESENTATION AND LABELLING OF SPIRIT DRINKS AND USE OF THE NAMES OF SPIRIT DRINKS IN THE PRESENTATION AND LABELLING OF OTHER FOODSTUFFS*Article 9***Presentation and labelling**

Spirit drinks placed on the Union market shall comply with the presentation and labelling requirements set out in Regulation (EU) No 1169/2011, unless otherwise provided for in this Regulation.

*Article 10***Legal names of spirit drinks**

1. The name of a spirit drink shall be its legal name.

Spirit drinks shall bear legal names in their description, presentation and labelling.

Legal names shall be shown clearly and visibly on the label of the spirit drink and shall not be replaced or altered.

2. Spirit drinks that comply with the requirements of a category of spirit drinks set out in Annex I shall use the name of that category as their legal name, unless that category permits the use of another legal name.

3. A spirit drink that does not comply with the requirements laid down for any of the categories of spirit drinks set out in Annex I shall use the legal name 'spirit drink'.

4. A spirit drink that complies with the requirements for more than one category of spirit drinks set out in Annex I may be placed on the market under one or more of the legal names provided for under those categories in Annex I.

5. Notwithstanding paragraphs 1 and 2 of this Article, the legal name of a spirit drink may be:

(a) supplemented or replaced by a geographical indication referred to in Chapter III. In this case, the geographical indication may be supplemented further by any term permitted by the relevant product specification, provided that this does not mislead the consumer; and

(b) replaced by a compound term that includes the term 'liqueur' or 'cream', provided that the final product complies with the requirements of category 33 of Annex I.

6. Without prejudice to Regulation (EU) No 1169/2011 and to the specific rules laid down for the categories of spirit drinks in Annex I to this Regulation, the legal name of a spirit drink may be supplemented by:

(a) a name or geographical reference provided for in the laws, regulations and administrative provisions applicable in the Member State in which the spirit drink is placed on the market, provided that this does not mislead the consumer;

(b) a customary name as defined in point (o) of Article 2(2) of Regulation (EU) No 1169/2011, provided that this does not mislead the consumer;

(c) a compound term or an allusion in accordance with Articles 11 and 12;

(d) the term 'blend', 'blending' or 'blended', provided that the spirit drink has undergone blending;

(e) the term 'mixture', 'mixed' or 'mixed spirit drink', provided that the spirit drink has undergone mixing; or

(f) the term 'dry' or 'dry', except in the case of spirit drinks that comply with the requirements of category 2 of Annex I, without prejudice to the specific requirements laid down in categories 20 to 22 of Annex I, and provided that the spirit drink has not been sweetened, not even for rounding off the taste. By way of derogation from the first part of this point, the term 'dry' or 'dry' may supplement the legal name of spirit drinks that comply with the requirements of category 33 and have therefore been sweetened.

7. Without prejudice to Articles 11 and 12 and Article 13(2), (3) and (4), the use of the legal names referred to in paragraph 2 of this Article or geographical indications in the description, presentation or labelling of any beverage not complying with the requirements of the relevant category set out in Annex I or of the relevant geographical indication shall be prohibited. That prohibition shall also apply where such legal names or geographical indications are used in conjunction with words or phrases such as 'like', 'type', 'style', 'made', 'flavour' or any other similar terms.

Without prejudice to Article 12(1), flavourings that imitate a spirit drink or their use in the production of a foodstuff other than a beverage may bear, in their presentation and labelling, references to the legal names referred to in paragraph 2 of this Article, provided that such legal names are supplemented by the term 'flavour' or any other similar terms. Geographical indications shall not be used to describe such flavourings.

Article 11

Compound terms

1. In the description, presentation and labelling of an alcoholic beverage, the use in a compound term of either a legal name provided for in the categories of spirit drinks set out in Annex I or a geographical indication for spirit drinks shall be authorised on condition that:

- (a) the alcohol used in the production of the alcoholic beverage originates exclusively from the spirit drink referred to in the compound term, except for the alcohol that may be present in flavourings, colours or other authorised ingredients used for the production of that alcoholic beverage; and
- (b) the spirit drink has not been diluted by addition of water only, so that its alcoholic strength is below the minimum strength provided for under the relevant category of spirit drinks set out in Annex I.

2. Without prejudice to the legal names provided for in Article 10, the terms 'alcohol', 'spirit', 'drink', 'spirit drink' and 'water' shall not be part of a compound term describing an alcoholic beverage.

3. Compound terms describing an alcoholic beverage shall:

- (a) appear in uniform characters of the same font, size and colour;
- (b) not be interrupted by any textual or pictorial element which does not form part of them; and
- (c) not appear in a font size which is larger than the font size used for the name of the alcoholic beverage.

Article 12

Allusions

1. In the presentation and labelling of a foodstuff other than an alcoholic beverage, an allusion to legal names provided for in one or more categories of spirit drinks set out in Annex I, or to one or more geographical indications for spirit drinks, shall be authorised on condition that the alcohol used in the production of the foodstuff originates exclusively from the spirit drink or the spirit drinks referred to in the allusion, except as regards the alcohol that may be present in flavourings, colours or other authorised ingredients used for the production of that foodstuff.

2. By way of derogation from paragraph 1 of this Article and without prejudice to Regulations (EU) No 1308/2013⁽²⁰⁾ and (EU) No 251/2014⁽²¹⁾ of the European Parliament and of the Council, an allusion in the presentation and labelling of an alcoholic beverage other than a spirit drink to legal names provided for in one or more categories of spirit drinks set out in Annex I to this Regulation or to one or more geographical indications for spirit drinks shall be authorised on condition that:

- (a) the added alcohol originates exclusively from the spirit drink or spirit drinks referred to in the allusion; and
- (b) the proportion of each alcoholic ingredient is indicated at least once in the same visual field as the allusion, in descending order of quantities used. That proportion shall be equal to the percentage by volume of pure alcohol it represents in the total pure alcohol content by volume of the final product.

⁽²⁰⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

⁽²¹⁾ Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (OJ L 84, 20.3.2014, p. 14).

3. By way of derogation from paragraph 1 of this Article and from Article 13(4), in the description, presentation and labelling of a spirit drink that complies with the requirements of categories 33 to 40 of Annex I, the allusion to legal names provided for under one or more categories of spirit drinks set out in that Annex or to one or more geographical indications for spirit drinks shall be authorised on condition that:

- (a) the added alcohol originates exclusively from the spirit drink or spirit drinks referred to in the allusion;
- (b) the proportion of each alcoholic ingredient is indicated at least once in the same visual field as the allusion, in descending order of quantities used. That proportion shall be equal to the percentage by volume of pure alcohol it represents in the total pure alcohol content by volume of the final product; and
- (c) the term 'cream' does not appear in the legal name of a spirit drink that complies with the requirements of categories 33 to 40 of Annex I or in the legal name of the spirit drink or spirit drinks referred to in the allusion.

4. The allusions referred to in paragraphs 2 and 3 shall:

- (a) not be on the same line as the name of the alcoholic beverage; and
- (b) appear in a font size which is no larger than half the font size used for the name of the alcoholic beverage and, where compound terms are used, in a font size which is no larger than half the font size used for such compound terms, in accordance with point (c) of Article 11(3).

Article 13

Additional rules on description, presentation and labelling

1. The description, presentation or labelling of a spirit drink may refer to the raw materials used to produce the ethyl alcohol of agricultural origin or distillates of agricultural origin used in the production of that spirit drink only where that ethyl alcohol or those distillates have been obtained exclusively from those raw materials. In such a case, each type of ethyl alcohol of agricultural origin or distillate of agricultural origin shall be mentioned in descending order of quantity by volume of pure alcohol.

2. The legal names referred to in Article 10 may be included in a list of ingredients for foodstuffs, provided that the list is in accordance with Articles 18 to 22 of Regulation (EU) No 1169/2011.

3. In the case of a mixture or a blend, the legal names provided for in the categories of spirit drinks set out in Annex I or geographical indications for spirit drinks may be indicated only in a list of the alcoholic ingredients appearing in the same visual field as the legal name of the spirit drink.

In the case referred to in the first subparagraph, the list of alcoholic ingredients shall be accompanied by at least one of the terms referred to in points (d) and (e) of Article 10(6). Both the list of alcoholic ingredients and the accompanying term shall appear in the same visual field as the legal name of the spirit drink, in uniform characters of the same font and colour and in a font size which is no larger than half the font size used for the legal name.

In addition, the proportion of each alcoholic ingredient in the list of alcoholic ingredients shall be expressed at least once as a percentage, in descending order of quantities used. That proportion shall be equal to the percentage by volume of pure alcohol it represents in the total pure alcohol content by volume of the mixture.

This paragraph shall not apply to blends made of spirit drinks belonging to the same geographical indication or blends of which none of the spirit drinks belongs to a geographical indication.

4. By way of derogation from paragraph 3 of this Article, if a mixture complies with the requirements for one of the categories of spirit drinks set out in Annex I, that mixture shall bear the legal name provided for in the relevant category.

In the case referred to in the first subparagraph, the description, presentation or labelling of the mixture may show the legal names set out in Annex I or geographical indications corresponding to the spirits drinks that were mixed, provided that those names appear:

- (a) exclusively in a list of all the alcoholic ingredients contained in the mixture which shall appear in uniform characters of the same font and colour and in a font size which is no larger than half the font size used for the legal name; and
- (b) in the same visual field as the legal name of the mixture at least once.

In addition, the proportion of each alcoholic ingredient in the list of alcoholic ingredients shall be expressed at least once as a percentage, in descending order of quantities used. That proportion shall be equal to the percentage by volume of pure alcohol it represents in the total pure alcohol content by volume of the mixture.

5. The use of the names of plant raw materials which are used as the legal names of certain spirit drinks shall be without prejudice to the use of the names of those plant raw materials in the presentation and labelling of other foodstuffs. The names of such raw materials may be used in the description, presentation or labelling of other spirit drinks, provided that such use does not mislead the consumer.

6. A maturation period or age may only be specified in the description, presentation or labelling of a spirit drink where it refers to the youngest alcoholic component of the spirit drink and in any case provided that all the operations to age the spirit drink took place under revenue supervision of a Member State or supervision providing equivalent guarantees. The Commission shall set up a public register listing the bodies appointed by each Member State to supervise ageing processes.

7. The legal name of a spirit drink shall be indicated in the electronic administrative document referred to in Commission Regulation (EC) No 684/2009 ⁽²²⁾. Where a maturation period or age is indicated in the description, presentation or labelling of the spirit drink, it shall also be mentioned in that administrative document.

Article 14

Indication of place of provenance

1. Where the place of provenance of a spirit drink, other than a geographical indication or trade mark, is indicated in its description, presentation or labelling, it shall correspond to the place or region where the stage in the production process which conferred on the finished spirit drink its character and essential definitive qualities took place.

2. The indication of the country of origin or place of provenance of the primary ingredient as referred to in Regulation (EU) No 1169/2011 shall not be required for spirit drinks.

Article 15

Language used for the names of spirit drinks

1. The terms in italics in Annexes I and II and geographical indications shall not be translated either on the label or in the description and presentation of spirit drinks.

2. By way of derogation from paragraph 1, in the case of spirit drinks produced in the Union and destined for export, the terms referred to in paragraph 1 and geographical indications may be accompanied by translations, transcriptions or transliterations, provided that such terms and geographical indications in the original language are not hidden.

Article 16

Use of a Union symbol for geographical indications

The Union symbol for protected geographical indications established pursuant to Article 12(7) of Regulation (EU) No 1151/2012 may be used in the description, presentation and labelling of spirit drinks the names of which are geographical indications.

Article 17

Prohibition of lead-based capsules and lead-based foil

Spirit drinks shall not be held with a view to sale or be placed on the market in containers fitted with closing devices covered by lead-based capsules or lead-based foil.

⁽²²⁾ Commission Regulation (EC) No 684/2009 of 24 July 2009 implementing Council Directive 2008/118/EC as regards the computerised procedures for the movement of excise goods under suspension of excise duty (OJ L 197, 29.7.2009, p. 24).

Article 18

Union reference methods of analysis

1. Where ethyl alcohol of agricultural origin, distillates of agricultural origin or spirit drinks are to be analysed to verify that they comply with this Regulation, such analysis shall be in accordance with Union reference methods of analysis for the determination of their chemical and physical composition and organoleptic properties.

Other methods of analysis shall be permitted, under the responsibility of the director of the laboratory, on condition that the accuracy, repeatability and reproducibility of the methods are at least equivalent to those of the relevant Union reference methods of analysis.

2. Where Union methods of analysis are not laid down for the detection and quantification of substances contained in a particular spirit drink, one or more of the following methods shall be used:

- (a) methods of analysis that have been validated by internationally recognised procedures and that, in particular, meet the criteria set out in Annex III to Regulation (EC) No 882/2004 of the European Parliament and of the Council ⁽²³⁾;
- (b) methods of analysis conforming to the recommended standards of the International Organisation for Standardisation (ISO);
- (c) methods of analysis recognised and published by the International Organisation of Vine and Wine (OIV); or
- (d) in the absence of a method as referred to in points (a), (b) or (c), by reason of its accuracy, repeatability and reproducibility:
 - a method of analysis approved by the Member State concerned;
 - where necessary, any other suitable method of analysis.

Article 19

Delegated powers

1. In order to take into account the traditional dynamic ageing process for *brandy* in Member States which is known as the '*criaderas y solera*' system or '*solera e criaderas*' system as set out in Annex III, the Commission is empowered to adopt delegated acts in accordance with Article 46 supplementing this Regulation by:

- (a) laying down derogations from Article 13(6) concerning the specification of a maturation period or age in the description, presentation or labelling of such *brandy*; and
- (b) establishing appropriate control mechanisms for such *brandy*.

2. The Commission is empowered to adopt delegated acts in accordance with Article 46 supplementing this Regulation concerning the setting up of a public register listing the bodies appointed by each Member State to supervise ageing processes as provided for in Article 13(6).

Article 20

Implementing powers

The Commission may, by means of implementing acts, adopt:

- (a) the rules necessary for communications to be made by Member States with regard to the bodies appointed to supervise ageing processes in accordance with Article 13(6);
- (b) uniform rules for indicating the country of origin or the place of provenance in the description, presentation or labelling of spirit drinks referred to in Article 14;

⁽²³⁾ 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 (OJ L 165, 30.4.2004, p. 1).

- (c) rules on the use of the Union symbol referred to in Article 16 in the description, presentation and labelling of spirit drinks;
- (d) detailed technical rules on the Union reference methods of analysis referred to in Article 18.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 47(2).

CHAPTER III

GEOGRAPHICAL INDICATIONS

Article 21

Protection of geographical indications

1. Geographical indications protected under this Regulation may be used by any operator marketing a spirit drink produced in conformity with the corresponding product specification.
2. Geographical indications protected under this Regulation 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 where 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', 'flavour', 'like' 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 in the description, presentation or labelling of the product liable to convey a false impression as to the origin of the product;
 - (d) any other practice liable to mislead the consumer as to the true origin of the product.
3. Geographical indications protected under this Regulation shall not become generic in the Union.
4. The protection referred to in paragraph 2 shall also apply with regard to goods entering the customs territory of the Union without being released for free circulation there.

Article 22

Product specification

1. A geographical indication protected under this Regulation shall comply with a product specification which shall include at least:
 - (a) the name to be protected as a geographical indication, as it is used, whether in trade or in common language, only in the languages which are or were historically used to describe the specific product in the defined geographical area, in the original script and in Latin transcription if different;
 - (b) the category of the spirit drink or the term 'spirit drink' if the spirit drink does not comply with the requirements laid down for the categories of spirit drinks set out in Annex I;
 - (c) a description of the characteristics of the spirit drink, including the raw materials from which it is produced, if appropriate, as well as the principal physical, chemical or organoleptic characteristics of the product and the specific characteristics of the product compared to spirit drinks of the same category;
 - (d) the definition of the geographical area delimited with regard to the link referred to in point (f);
 - (e) a description of the method of producing the spirit drink and, where appropriate, the authentic and unvarying local production methods;

- (f) details establishing the link between a given quality, reputation or other characteristic of the spirit drink and its geographical origin;
- (g) the names and addresses of the competent authorities or, if available, the names and addresses of the bodies that verify compliance with the provisions of the product specification pursuant to Article 38 and their specific tasks;
- (h) any specific labelling rule for the geographical indication in question.

Where applicable, requirements regarding packaging shall be included in the product specification, accompanied by a justification showing 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 Union law on the free movement of goods and the free provision of services.

2. Technical files submitted as part of any application before 8 June 2019 under Regulation (EC) No 110/2008 shall be deemed to be product specifications under this Article.

Article 23

Content of application for registration of a geographical indication

1. An application for registration of a geographical indication pursuant to Article 24(5) or (8) shall include at least:
 - (a) the name and address of the applicant group and of the competent authorities or, if available, the bodies that verify compliance with the provisions of the product specification;
 - (b) the product specification provided for in Article 22;
 - (c) a single document setting out the following:
 - (i) the main points of the product specification, including the name to be protected, the category to which the spirit drink belongs or the term 'spirit drink', the production method, a description of the characteristics of the spirit drink, a concise definition of the geographical area, and, where appropriate, specific rules concerning packaging and labelling;
 - (ii) a description of the link between the spirit drink and its geographical origin as referred to in point (4) of Article 3, including, where appropriate, the specific elements of the product description or production method justifying the link.

An application as referred to in Article 24(8) shall also include the publication reference of the product specification and proof that the name of the product is protected in its country of origin.

2. An application dossier as referred to in Article 24(7) shall include:
 - (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 meets the requirements of this Regulation and the provisions adopted pursuant thereto;
 - (d) the publication reference of the product specification.

Article 24

Application for registration of a geographical indication

1. Applications for the registration of a geographical indication under this Chapter may only be submitted by groups who work with the spirit drink, the name of which is proposed for registration.
2. An authority designated by a Member State may be deemed to be a group for the purposes of this Chapter if it is not feasible for the producers concerned to form a group by reason of their number, geographical locations or organisational characteristics. In such case, the application dossier referred to in Article 23(2) shall state those reasons.

3. A single natural or legal person may be deemed to be a group for the purpose of this Chapter if both of the following conditions are fulfilled:

- (a) the person concerned is the only producer willing to submit an application; and
- (b) the defined geographical area possesses characteristics which differ appreciably from those of neighbouring areas, the characteristics of the spirit drink are different from those produced in neighbouring areas or the spirit drink has a special quality, reputation or other characteristic which is clearly attributable to its geographical origin.

4. In the case of a geographical indication that designates a cross-border geographical area, several groups from different Member States or third countries may submit a joint application for registration.

Where a joint application is submitted, it shall be submitted to the Commission by a Member State concerned, or by an applicant group in a third country concerned, directly or through the authorities of that third country after consultation of all the authorities and applicant groups concerned. The joint application shall include the declaration referred to in point (c) of Article 23(2) from all the Member States concerned. The requirements laid down in Article 23 shall be fulfilled in all Member States and third countries concerned.

In the case of joint applications, the related national opposition procedures shall be carried out in all the Member States concerned.

5. Where the application relates to a geographical area in a Member State, the application shall be submitted to the authorities of that Member State.

The Member State shall scrutinise the application by appropriate means in order to check that it is reasoned and meets the requirements of this Chapter.

6. As part of the scrutiny referred to in the second subparagraph of paragraph 5, the Member State shall initiate a national opposition procedure that ensures adequate publication of the application referred to in paragraph 5 and that provides for a reasonable period within which any natural or legal person having a legitimate interest and resident or established on its territory may submit an opposition to the application.

The Member State shall examine the admissibility of any opposition received in accordance with the criteria referred to in Article 28.

7. If, after assessment of any opposition received, the Member State considers that the requirements of this Chapter are met, it may take a favourable decision and submit an application dossier to the Commission. In such a case, it shall inform the Commission of admissible oppositions received from a natural or legal person that has 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 6. Member States shall also keep the Commission informed of any national judicial proceedings that may affect the registration procedure.

The Member State shall ensure that where it takes a favourable decision pursuant to the first subparagraph, that 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.

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 26(2).

8. Where the application relates to a geographical area in a third country, the application shall be submitted to the Commission, either directly or via the authorities of the third country concerned.

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

Article 25

Provisional national protection

1. On a provisional basis only, a Member State may grant protection to a name under this Chapter at national level, with effect from the date on which an application is submitted to the Commission.

2. Such national protection shall cease on the date on which either a decision on registration under this Chapter is taken or the application is withdrawn.
3. Where a name is not registered under this Chapter, the consequences of such national protection shall be the sole responsibility of the Member State concerned.
4. The measures taken by Member States under paragraph 1 shall produce effects at national level only, and shall have no effect on intra-Union or international trade.

Article 26

Scrutiny by the Commission and publication for opposition

1. The Commission shall scrutinise by appropriate means any application that it receives pursuant to Article 24, in order to check that it is reasoned, that it meets the requirements of this Chapter, and that the interests of stakeholders outside the Member State of application have been taken into account. Such scrutiny shall be based on the single document referred to in point (c) of Article 23(1), shall consist of a check that there are no manifest errors in the application, and, as a general rule, shall not exceed a period of six months. However, where this period is exceeded, the Commission shall immediately 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. The list shall also contain the name of the Member State or third country from which the application came.

2. Where, based on the scrutiny carried out pursuant to the first subparagraph of paragraph 1, the Commission considers that the requirements of this Chapter are met, it shall publish in the *Official Journal of the European Union* the single document referred to in point (c) of Article 23(1) and the publication reference of the product specification.

Article 27

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 resident or established in a third country may submit a notice of opposition to the Commission.

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

A notice of opposition shall contain a declaration that the application might infringe the requirements of this Chapter.

A notice of opposition that does not contain such a declaration shall be void.

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

2. If a notice of opposition is submitted to 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 from the receipt of an admissible reasoned statement of opposition, the Commission shall invite the authority or person that submitted the opposition and the authority or body that submitted the application to engage in appropriate consultations for a period that shall not exceed three months. That deadline shall start on the date when the invitation to the interested parties is delivered by electronic means.

The authority or person that submitted the opposition and the authority or body that submitted 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 requirements of this Chapter. If no agreement is reached, that information shall also be provided to the Commission.

When the interested parties reach an agreement, the authorities of the Member State or of the third country from which the application was submitted shall notify the Commission of all the factors which enabled that agreement to be reached, including the opinions of the applicant and of the authorities of a Member State or of a third country, or of other natural and legal persons having submitted an opposition.

Irrespective of whether an agreement has been reached or not, the notification to the Commission shall be made within one month from the end of the consultations.

At any time during those 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 26(2) have been substantially amended, the Commission shall repeat the scrutiny referred to in Article 26.

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 shall be in one of the official languages of the Union.

Article 28

Grounds for opposition

1. A reasoned statement of opposition as referred to in Article 27(2) shall be admissible only if it is received by the Commission within the time limit set out in that Article and if it shows that:

- (a) the proposed geographical indication does not comply with the definition in point (4) of Article 3 or with the requirements referred to in Article 22;
- (b) the registration of the proposed geographical indication would be contrary to Article 34 or 35;
- (c) the registration of the proposed geographical indication 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 Article 26(2); or
- (d) the requirements referred to in Articles 31 and 32 are not complied with.

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

Article 29

Transitional periods for use of geographical indications

1. The Commission may adopt implementing acts granting a transitional period of up to five years to enable spirit drinks originating in a Member State or a third country, and the name of which contravenes Article 21(2), to continue to use the designation under which they were marketed on condition that an admissible statement of opposition under Article 24(6) or Article 27 shows that the registration of the name would jeopardise the existence of:

- (a) an entirely identical name or of a compound name, one term of which is identical to the name to be registered; or
- (b) other names similar to the name to be registered which refer to spirit drinks which have been legally on the market for at least five years preceding the date of the publication provided for in Article 26(2).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 47(2).

2. Without prejudice to Article 36, the Commission may adopt implementing acts extending the transitional period granted under paragraph 1 up to 15 years, or allowing continued use for up to 15 years in duly justified cases, provided it is shown that:

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

- (b) the purpose of using the designation referred to in paragraph 1 has not, at any time, been to profit from the reputation of the registered geographical indication; and
- (c) 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 47(2).

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

Article 30

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 26(1), the Commission considers that the conditions for the registration of a proposed geographical indication are not fulfilled, it shall inform the Member State or third country applicant concerned of the reasons for rejection and shall give it two months to submit observations. If the Commission receives no observations or if, despite the observations received, it still considers that the conditions for registration are not fulfilled it shall, by means of implementing acts, reject the application unless the application is withdrawn. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 47(2).

2. If the Commission receives no notice of opposition or no admissible reasoned statement of opposition under Article 27, it shall adopt implementing acts, without applying the procedure referred to in Article 47(2), to register the name.

3. If the Commission receives an admissible reasoned statement of opposition, it shall, following the appropriate consultations referred to in Article 27(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 47(2), and, if necessary, amend the information published pursuant to Article 26(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 47(2).

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

The act of registration shall grant the protection referred to in Article 21 to the geographical indication.

Article 31

Amendment to a product specification

1. Any 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. Amendments to a product specification shall be classified into two categories as regards their importance:

- (a) Union amendments requiring an opposition procedure at Union level;
- (b) standard amendments to be dealt with at Member State or third country level.

3. An amendment shall be considered a Union amendment if it:

- (a) includes a change in the name or any part of the name of the geographical indication registered under this Regulation;
- (b) consists of a change of the legal name or the category of the spirit drink;

- (c) risks voiding the given quality, reputation or other characteristic of the spirit drink that is essentially attributable to its geographical origin; or
- (d) entails further restrictions on the marketing of the product.

Any other amendments shall be considered standard amendments.

A standard amendment shall also be considered a temporary amendment when it concerns a temporary change in the product specification resulting from the imposition of obligatory sanitary and phytosanitary measures by the public authorities or is linked to natural disasters or adverse weather conditions formally recognised by the competent authorities.

- 4. Union amendments shall be approved by the Commission. The approval procedure shall follow, *mutatis mutandis*, the procedure laid down in Article 24 and Articles 26 to 30. Applications for Union amendments submitted by a third country or by third country producers shall contain proof that the requested amendment complies with the laws applicable in that third country to the protection of geographical indications.
- 5. Standard amendments shall be approved by the Member State in whose territory the geographical area of the product concerned is located. As regards third countries, amendments shall be approved in accordance with the law applicable in the third country concerned.
- 6. The scrutiny of the application for amendment shall only address the proposed amendment.

Article 32

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 geographical indication in either of the following cases:
 - (a) where compliance with the requirements for the product specification can no longer be ensured;
 - (b) where no product has been placed on the market under the geographical indication for at least seven consecutive years.

Articles 24, 26, 27, 28 and 30 shall apply *mutatis mutandis* to the cancellation procedure.

- 2. Notwithstanding paragraph 1, the Commission may, at the request of the producers of the spirit drink marketed under the registered geographical indication, adopt implementing acts cancelling the corresponding registration.
- 3. In the cases referred to in paragraphs 1 and 2, before adopting the implementing act, the Commission shall consult the authorities of the Member State, the authorities of the third country or, where possible, the third country producer which had originally applied for the registration of the geographical indication concerned, unless the cancellation is directly requested by those original applicants.
- 4. The implementing acts referred to in this Article shall be adopted in accordance with the examination procedure referred to in Article 47(2).

Article 33

Register of geographical indications of spirit drinks

- 1. The Commission shall adopt, by 8 June 2021, delegated acts in accordance with Article 46 supplementing this Regulation by establishing a publicly accessible electronic register, which is kept up to date, of geographical indications of spirit drinks recognised under this scheme ('the register').
- 2. The name of a geographical indication shall be registered in its original script. Where the original script is not in Latin characters, a transcription or transliteration in Latin characters shall be registered together with the name in its original script.

For geographical indications registered under this Chapter, the register shall provide direct access to the single documents and shall also contain the publication reference of the product specification.

For geographical indications registered before 8 June 2019, the register shall provide direct access to the main specifications of the technical file as set out in Article 17(4) of Regulation (EC) No 110/2008.

The Commission shall adopt delegated acts in accordance with Article 46 supplementing this paragraph by laying down further detailed rules on the form and content of the register.

3. Geographical indications of spirit drinks produced in third countries that are protected in the Union pursuant to an international agreement to which the Union is a contracting party may be entered in the register as geographical indications.

Article 34

Homonymous geographical indications

1. If a name for which an application is submitted is a whole or partial homonym of a name already registered under this Regulation, the name shall be registered with due regard to local and traditional usage and any risk of confusion.
2. 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 those products is concerned.
3. The use of a registered homonymous geographical indication shall be subject to there being a sufficient distinction in practice between the homonym registered subsequently and the name already in the register, having regard to the need to treat the producers concerned in an equitable manner and not to mislead the consumer.
4. The protection of geographical indications of spirit drinks referred to in Article 21 of this Regulation shall be without prejudice to the protected geographical indications and designations of origin of products under Regulations (EU) No 1308/2013 and (EU) No 251/2014.

Article 35

Specific grounds for refusal of protection

1. A generic name shall not be protected as a geographical indication.

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

- (a) the existing situation in the Union, in particular in areas of consumption;
- (b) the relevant Union or national legislation.

2. A name shall not be protected as a geographical indication where, in the light of a trade mark's reputation and renown, protection could mislead the consumer as to the true identity of the spirit drink.
3. A name shall only be protected as a geographical indication if the production steps which give the spirit drink the quality, reputation or other characteristic that is essentially attributable to its geographical origin, take place in the relevant geographical area.

Article 36

Relationship between trade marks and geographical indications

1. The registration of a trade mark the use of which corresponds or would correspond to one or more of the situations referred to in Article 21(2) shall be refused or invalidated.

2. A trade mark the use of which corresponds to one or more of the situations referred to in Article 21(2), 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 geographical indication was submitted to the Commission, may continue to be used and renewed notwithstanding the registration of a geographical indication, provided that no grounds for its invalidity or revocation exist under Directive (EU) 2015/2436 of the European Parliament and of the Council ⁽²⁴⁾ or Regulation (EU) 2017/1001 of the European Parliament and of the Council ⁽²⁵⁾.

Article 37

Existing registered geographical indications

Geographical indications of spirit drinks registered in Annex III to Regulation (EC) No 110/2008 and thus protected under that Regulation shall automatically be protected as geographical indications under this Regulation. The Commission shall list them in the register referred to in Article 33 of this Regulation.

Article 38

Verification of compliance with the product specification

1. Member States shall draw up and keep up to date a list of operators that produce spirit drinks with a geographical indication registered under this Regulation.

2. In respect of the geographical indications that designate spirit drinks originating within the Union registered under this Regulation, verification of compliance with the product specification referred to in Article 22, before placing the product on the market, shall be carried out by:

- (a) one or more competent authorities referred to in Article 43(1); or
- (b) control bodies within the meaning of point 5 of the second subparagraph of Article 2 of Regulation (EC) No 882/2004, operating as a product certification body.

Where a Member State applies Article 24(2), verification of compliance with the product specification shall be ensured by an authority other than that deemed to be a group under that paragraph.

Notwithstanding the national law of Member States, the costs of such verification of compliance with the product specification may be borne by the operators which are subject to those controls.

3. In respect of the geographical indications that designate spirit drinks originating within a third country registered under this Regulation, verification of compliance with the product specification, before placing the product on the market, shall be carried out by:

- (a) a public competent authority designated by the third country; or
- (b) a product certification body.

4. Member States shall make public the names and addresses of the competent authorities and bodies referred to in paragraph 2, and update that information periodically.

The Commission shall make public the name and address of the competent authorities and bodies referred to in paragraph 3 and update that information periodically.

5. The control bodies referred to in point (b) of paragraph 2 and the product certification bodies referred to in point (b) of paragraph 3 shall comply with and be accredited in accordance with European standard ISO/IEC 17065:2012 or any applicable future revision or amended version thereof.

⁽²⁴⁾ Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ L 336, 23.12.2015, p. 1).

⁽²⁵⁾ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ L 154, 16.6.2017, p. 1).

6. The competent authorities referred to in paragraphs 2 and 3 that verify compliance of the geographical indication protected under this Regulation with the product specification shall be objective and impartial. They shall have at their disposal the qualified staff and resources necessary to carry out their tasks.

Article 39

Surveillance of the use of names in the market place

1. Member States shall carry out checks, based on a risk analysis, as regards the use, in the market place, of the geographical indications registered under this Regulation and shall take all necessary measures in the event of breaches of the requirements of this Chapter.

2. Member States shall take appropriate administrative and judicial steps to prevent or stop the unlawful use of the names of products or services that are produced or marketed in their territory and that are covered by geographical indications registered under this Regulation.

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

Those 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 tasks.

3. Member States shall inform the Commission of the names and addresses of the competent authorities responsible for controls as regards the use of names in the market place, and designated in accordance with Article 43. The Commission shall make public the names and addresses of those authorities.

Article 40

Procedure and requirements, and planning and reporting of control activities

1. The procedures and requirements laid down in Regulation (EC) No 882/2004 shall apply *mutatis mutandis* to the checks provided for in Articles 38 and 39 of this Regulation.

2. 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 to 43 of Regulation (EC) No 882/2004.

3. The annual reports referred to in Article 44(1) of Regulation (EC) No 882/2004 shall include in a separate section the information referred to in that provision concerning the control of the obligations established by this Regulation.

Article 41

Delegated powers

1. The Commission is empowered to adopt delegated acts in accordance with Article 46 supplementing this Regulation by setting out further conditions to be followed, including in cases where a geographical area includes more than one country, in respect of:

- (a) an application for the registration of a geographical indication as referred to in Articles 23 and 24; and
- (b) preliminary national procedures as referred to in Article 24, scrutiny by the Commission, the opposition procedure, and the cancellation of geographical indications.

2. The Commission is empowered to adopt delegated acts in accordance with Article 46 supplementing this Regulation by establishing conditions and requirements for the procedure concerning the Union amendments and standard amendments, including temporary amendments, to product specifications as referred to in Article 31.

*Article 42***Implementing powers**

1. The Commission may adopt implementing acts laying down detailed rules concerning:
 - (a) the form of the product specification referred to in Article 22, and measures on the information to be provided in the product specification with regard to the link between the geographical area and the final product as referred to in point (f) of Article 22(1);
 - (b) the procedures for, form and presentation of, oppositions as referred to in Articles 27 and 28;
 - (c) the form and presentation of applications for Union amendments and of communications concerning standard and temporary amendments as referred to in Article 31(4) and (5) respectively;
 - (d) the procedures for and form of the cancellation process referred to in Article 32, as well as on the presentation of the requests for cancellation; and
 - (e) the checks and verifications to be carried out by the Member States, including testing, as referred to in Article 38.
2. The Commission shall adopt, by 8 June 2021, implementing acts laying down detailed rules concerning the procedures for, form and presentation of, applications as referred to in Articles 23 and 24, including for applications concerning more than one national territory.
3. The implementing acts referred to in paragraphs 1 and 2 shall be adopted in accordance with the examination procedure referred to in Article 47(2).

CHAPTER IV

CHECKS, EXCHANGE OF INFORMATION, MEMBER STATES' LEGISLATION*Article 43***Checks on spirit drinks**

1. Member States shall be responsible for checks on spirit drinks. They shall take the measures necessary to ensure compliance with this Regulation and designate the competent authorities responsible for ensuring this Regulation is complied with.
2. The Commission shall ensure the uniform application of this Regulation and, where necessary, shall, by means of implementing acts, adopt the rules concerning administrative and physical checks to be conducted by the Member States with regard to the respect of the obligations resulting from the application of this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 47(2).

*Article 44***Exchange of information**

1. Member States and the Commission shall communicate to each other the information necessary for the application of this Regulation.
2. The Commission may adopt implementing acts concerning the nature and the type of the information to be exchanged and the methods for exchanging information.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 47(2).

*Article 45***Member States' legislation**

1. In applying a quality policy for spirit drinks produced in their own territory and in particular for geographical indications listed in the register or for the protection of new geographical indications, Member States may lay down rules on production, description, presentation and labelling that are stricter than those set out in Annexes I and II in so far as they are compatible with Union law.

2. Notwithstanding paragraph 1, Member States shall not prohibit or restrict the import, sale or consumption of spirit drinks produced in other Member States or third countries which comply with this Regulation.

CHAPTER V

DELEGATION OF POWER, IMPLEMENTING PROVISIONS, TRANSITIONAL AND FINAL PROVISIONS

SECTION 1

Delegation of power and implementing provisions

Article 46

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 Articles 8 and 19 shall be conferred on the Commission for a period of seven years from 24 May 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the seven-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The power to adopt delegated acts referred to in Articles 33 and 41 shall be conferred on the Commission for a period of five years from 24 May 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
4. The power to adopt delegated acts referred to in Article 50 shall be conferred on the Commission for a period of six years from 24 May 2019.
5. The delegation of power referred to in Articles 8, 19, 33, 41 and 50 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
6. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
7. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
8. A delegated act adopted pursuant to Articles 8, 19, 33, 41 and 50 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 47

Committee procedure

1. The Commission shall be assisted by the Committee for Spirit Drinks established by Regulation (EEC) No 1576/89. 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.

SECTION 2

Derogation, transitional and final provisions

Article 48

Derogation from nominal quantities requirements in Directive 2007/45/EC

By way of derogation from Article 3 of Directive 2007/45/EC, and from the sixth row of section 1 of the Annex to that Directive, single distilled *shochu* ⁽²⁶⁾, produced by pot still and bottled in Japan, may be placed on the Union market in nominal quantities of 720 ml and 1 800 ml.

Article 49

Repeal

1. Without prejudice to Article 50, Regulation (EC) No 110/2008 is repealed with effect from 25 May 2021. However, Chapter III thereof is repealed with effect from 8 June 2019.
2. By way of derogation from paragraph 1:
 - (a) Article 17(2) of Regulation (EC) No 110/2008 shall continue to apply until 25 May 2021;
 - (b) Article 20 of Regulation (EC) No 110/2008 and, without prejudice to the applicability of the other provisions of Commission Implementing Regulation (EU) No 716/2013 ⁽²⁷⁾, Article 9 of that Implementing Regulation shall continue to apply until the completion of the procedures provided for in Article 9 of that Implementing Regulation but, in any event, no later than 25 May 2021; and
 - (c) Annex III to Regulation (EC) No 110/2008 shall continue to apply until the register referred to in Article 33 of this Regulation has been established.
3. References to Regulation (EC) No 110/2008 shall be construed as references to this Regulation and be read in accordance with the correlation table set out in Annex IV to this Regulation.

Article 50

Transitional measures

1. Spirit drinks which do not meet the requirements of this Regulation but which meet the requirements of Regulation (EC) No 110/2008 and were produced before 25 May 2021 may continue to be placed on the market until stocks are exhausted.
2. Notwithstanding paragraph 1 of this Article, spirit drinks the description, presentation or labelling of which is not in conformity with Articles 21 and 36 of this Regulation but complies with Articles 16 and 23 of Regulation (EC) No 110/2008 and which were labelled before 8 June 2019 may continue to be placed on the market until stocks are exhausted.
3. Until 25 May 2025, the Commission is empowered to adopt delegated acts in accordance with Article 46 amending Article 3(2), (3), (9), (10), (11) and (12), Article 10(6) and (7), and Articles 11, 12 and 13 or supplementing this Regulation by derogating from those provisions.

The delegated acts referred to in the first subparagraph shall be strictly limited to meeting demonstrated needs that result from market circumstances.

The Commission shall adopt a separate delegated act in respect of each definition, technical definition or requirement in the provisions referred to in the first subparagraph.

⁽²⁶⁾ As referred to in Annex 2-D to the Agreement between the European Union and Japan for an Economic Partnership.

⁽²⁷⁾ Commission Implementing Regulation (EU) No 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks (OJ L 201, 26.7.2013, p. 21).

4. Articles 22 to 26, 31 and 32 of this Regulation shall not apply to applications for registration or for amendment or to requests for cancellation, which are pending on 8 June 2019. Articles 17(4), (5) and (6), 18 and 21 of Regulation (EC) No 110/2008 shall continue to apply to such applications and requests for cancellation.

The provisions on the opposition procedure referred to in Articles 27, 28 and 29 of this Regulation shall not apply to the applications for registration or to the applications for amendment, in relation to which the main specifications of the technical file or an application for amendment, respectively, have already been published for opposition in the *Official Journal of the European Union* on 8 June 2019. Article 17(7) of Regulation (EC) No 110/2008 shall continue to apply to such applications.

The provisions on the opposition procedure referred to in Articles 27, 28 and 29 of this Regulation shall not apply to a request for cancellation which is pending on 8 June 2019. Article 18 of Regulation (EC) No 110/2008 shall continue to apply to such requests for cancellation.

5. For the geographical indications registered under Chapter III of this Regulation and of which the application for registration was pending on the date of application of the implementing acts laying down detailed rules on the procedures for, form and presentation of, applications as referred to in Article 23 provided for in Article 42(2) of this Regulation, the register may provide direct access to the main specifications of the technical file within the meaning of Article 17(4) of Regulation (EC) No 110/2008.

6. In respect of geographical indications registered in accordance with Regulation (EC) No 110/2008 the Commission shall, at the request of a Member State, publish a single document submitted by that Member State in the *Official Journal of the European Union*. That publication shall be accompanied by the publication reference of the product specification and shall not be followed by an opposition procedure.

Article 51

Entry into force and application

1. 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 25 May 2021.

2. Notwithstanding paragraph 1, Article 16, point (c) of Article 20, Articles 21, 22 and 23, Article 24(1), (2) and (3), the first and second subparagraphs of Article 24(4), Article 24(8) and (9), Articles 25 to 42, Articles 46 and 47, Article 50(1), (4) and (6), points 39(d) and 40(d) of Annex I and the definitions set out in Article 3 relating to those provisions shall apply from 8 June 2019.

3. The delegated acts provided for in Articles 8, 19 and 50, adopted in accordance with Article 46, and the implementing acts provided for in Article 8(4) and Articles 20, 43 and 44, adopted in accordance with Article 47, shall apply from 25 May 2021.

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

Done at Strasbourg, 17 April 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

ANNEX I

CATEGORIES OF SPIRIT DRINKS

1. Rum

- (a) Rum is a spirit drink produced exclusively by the distillation of the product obtained by the alcoholic fermentation of molasses or syrup produced in the manufacture of cane sugar or of sugar-cane juice itself, distilled at less than 96 % vol., so that the distillate has the discernible specific organoleptic characteristics of rum.
- (b) The minimum alcoholic strength by volume of rum shall be 37,5 %.
- (c) No addition of alcohol, diluted or not, shall take place.
- (d) Rum shall not be flavoured.
- (e) Rum may only contain added caramel as a means of adjusting the colour.
- (f) Rum may be sweetened in order to round off the final taste. However, the final product may not contain more than 20 grams of sweetening products per litre, expressed as invert sugar.
- (g) In the case of geographical indications registered under this Regulation, the legal name of rum may be supplemented by:
- (i) the term '*traditionnel*' or '*tradicional*', provided that the rum in question:
 - has been produced by distillation at less than 90 % vol., after alcoholic fermentation of alcohol-producing materials originating exclusively from the place of production considered, and
 - has a volatile substances content equal to or exceeding 225 grams per hectolitre of 100 % vol. alcohol, and
 - is not sweetened;
 - (ii) the term '*agricultural*', provided that the rum in question complies with the requirements under point (i) and has been produced exclusively by distillation after alcoholic fermentation of sugar-cane juice. The term '*agricultural*' may only be used in the case of a geographical indication of a French Overseas Department or the Autonomous Region of Madeira.

This point shall be without prejudice to the use of the term '*agricultural*', '*traditionnel*' or '*tradicional*' in connection with any product not covered by this category, in accordance with their own specific criteria.

2. Whisky or whiskey

- (a) Whisky or whiskey is a spirit drink produced exclusively by carrying out all of the following production operations:
- (i) distillation of a mash made from malted cereals, with or without whole grains of unmalted cereals, which has been:
 - saccharified by the diastase of the malt contained therein, with or without other natural enzymes,
 - fermented by the action of yeast;
 - (ii) each and every distillation is carried out at less than 94,8 % vol., so that the distillate has an aroma and taste derived from the raw materials used;
 - (iii) maturation of the final distillate for at least three years in wooden casks not exceeding 700 litres capacity.

The final distillate, to which only water and plain caramel (for colouring) may be added, shall retain the colour, aroma and taste it derived from the production process referred to in points (i), (ii) and (iii).

- (b) The minimum alcoholic strength by volume of whisky or whiskey shall be 40 %.
- (c) No addition of alcohol, diluted or not, shall take place.

- (d) *Whisky* or *whiskey* shall not be sweetened, even for rounding off the taste, or flavoured, or contain any additives other than plain caramel (E 150a) used for adjusting the colour.
- (e) The legal name of '*whisky*' or '*whiskey*' may be supplemented by the term 'single malt' only if it has been distilled exclusively from malted barley at a single distillery.

3. Grain spirit

- (a) Grain spirit is a spirit drink produced exclusively by the distillation of a fermented mash of whole grain cereals and having organoleptic characteristics derived from the raw materials used.
- (b) With the exception of *Korn*, the minimum alcoholic strength by volume of grain spirit shall be 35 %.
- (c) No addition of alcohol, diluted or not, shall take place.
- (d) Grain spirit shall not be flavoured.
- (e) Grain spirit may only contain added caramel as a means of adjusting the colour.
- (f) Grain spirit may be sweetened in order to round off the final taste. However, the final product may not contain more than 10 grams of sweetening products per litre, expressed as invert sugar.
- (g) A grain spirit may bear the legal name 'grain brandy' if it has been produced by distillation at less than 95 % vol. from a fermented mash of whole grain cereals, presenting organoleptic features deriving from the raw materials used.
- (h) In the legal name 'grain spirit' or 'grain brandy', the word 'grain' may be replaced with the name of the cereal used exclusively in the production of the spirit drink.

4. Wine spirit

- (a) Wine spirit is a spirit drink which meets the following requirements:
 - (i) it is produced exclusively by the distillation at less than 86 % vol. of wine, wine fortified for distillation or wine distillate distilled at less than 86 % vol.;
 - (ii) it has a volatile substances content equal to or exceeding 125 grams per hectolitre of 100 % vol. alcohol;
 - (iii) it has a maximum methanol content of 200 grams per hectolitre of 100 % vol. alcohol.
- (b) The minimum alcoholic strength by volume of wine spirit shall be 37,5 %.
- (c) No addition of alcohol, diluted or not, shall take place.
- (d) Wine spirit shall not be flavoured. This shall not preclude traditional production methods.
- (e) Wine spirit may only contain added caramel as a means of adjusting the colour.
- (f) Wine spirit may be sweetened in order to round off the final taste. However, the final product may not contain more than 20 grams of sweetening products per litre, expressed as invert sugar.
- (g) Where wine spirit has been matured, it may continue to be placed on the market as 'wine spirit' provided that it has been matured for as long as, or longer than, the maturation period provided for in respect of the spirit drink defined under category 5.
- (h) This Regulation shall be without prejudice to the use of the term '*Branntwein*' in combination with the term '*essig*' in the presentation and labelling of vinegar.

5. Brandy or Weinbrand

- (a) *Brandy* or *Weinbrand* is a spirit drink which meets the following requirements:
 - (i) it is produced from wine spirit to which wine distillate may be added, provided that that wine distillate has been distilled at less than 94,8 % vol. and does not exceed a maximum of 50 % of the alcoholic content of the finished product;

- (ii) it has matured for at least:
 - one year in oak receptacles with a capacity of at least 1 000 litres each; or
 - six months in oak casks with a capacity of less than 1 000 litres each;
 - (iii) it has a volatile substances content equal to or exceeding 125 grams per hectolitre of 100 % vol. alcohol, and derived exclusively from the distillation of the raw materials used;
 - (iv) it has a maximum methanol content of 200 grams per hectolitre of 100 % vol. alcohol.
- (b) The minimum alcoholic strength by volume of *brandy* or *Weinbrand* shall be 36 %.
 - (c) No addition of alcohol, diluted or not, shall take place.
 - (d) *Brandy* or *Weinbrand* shall not be flavoured. This shall not preclude traditional production methods.
 - (e) *Brandy* or *Weinbrand* may only contain added caramel as a means of adjusting the colour.
 - (f) *Brandy* or *Weinbrand* may be sweetened in order to round off the final taste. However, the final product may not contain more than 35 grams of sweetening products per litre, expressed as invert sugar.

6. Grape marc spirit or grape marc

- (a) Grape marc spirit or grape marc is a spirit drink which meets the following requirements:
 - (i) it is produced exclusively from grape marc fermented and distilled either directly by water vapour or after water has been added and both of the following conditions are fulfilled:
 - each and every distillation is carried out at less than 86 % vol.;
 - the first distillation is carried out in the presence of the marc itself;
 - (ii) a quantity of lees may be added to the grape marc that does not exceed 25 kg of lees per 100 kg of grape marc used;
 - (iii) the quantity of alcohol derived from the lees shall not exceed 35 % of the total quantity of alcohol in the finished product;
 - (iv) it has a volatile substances content equal to or exceeding 140 grams per hectolitre of 100 % vol. alcohol and has a maximum methanol content of 1 000 grams per hectolitre of 100 % vol. alcohol.
- (b) The minimum alcoholic strength by volume of grape marc spirit or grape marc shall be 37,5 %.
- (c) No addition of alcohol, diluted or not, shall take place.
- (d) Grape marc spirit or grape marc shall not be flavoured. This shall not preclude traditional production methods.
- (e) Grape marc spirit or grape marc may only contain added caramel as a means of adjusting the colour.
- (f) Grape marc spirit or grape marc may be sweetened in order to round off the final taste. However, the final product may not contain more than 20 grams of sweetening products per litre, expressed as invert sugar.

7. Fruit marc spirit

- (a) Fruit marc spirit is a spirit drink which meets the following requirements:
 - (i) it is produced exclusively by fermentation and distillation of fruit marc other than grape marc and both of the following conditions are fulfilled:
 - each and every distillation is carried out at less than 86 % vol.;
 - the first distillation is carried out in the presence of the marc itself;
 - (ii) it has a minimum volatile substances content of 200 grams per hectolitre of 100 % vol. alcohol;
 - (iii) the maximum methanol content shall be 1 500 grams per hectolitre of 100 % vol. alcohol;
 - (iv) the maximum hydrocyanic acid content shall be 7 grams per hectolitre of 100 % vol. alcohol in the case of stone-fruit marc spirit.

- (b) The minimum alcoholic strength by volume of fruit marc spirit shall be 37,5 %.
- (c) No addition of alcohol, diluted or not, shall take place.
- (d) Fruit marc spirit shall not be flavoured.
- (e) Fruit marc spirit may only contain added caramel as a means of adjusting the colour.
- (f) Fruit marc spirit may be sweetened in order to round off the final taste. However, the final product may not contain more than 20 grams of sweetening products per litre, expressed as invert sugar.
- (g) The legal name shall consist of the name of the fruit followed by 'marc spirit'. If marc of several different fruits is used, the legal name shall be 'fruit marc spirit' and may be supplemented by the name of each fruit in decreasing order of the quantity used.

8. Raisin spirit or *raisin brandy*

- (a) Raisin spirit or *raisin brandy* is a spirit drink produced exclusively by the distillation of the product obtained by the alcoholic fermentation of extract of dried grapes of the 'Corinth Black' or 'Moscatel of Alexandria' varieties, distilled at less than 94,5 % vol., so that the distillate has an aroma and taste derived from the raw materials used.
- (b) The minimum alcoholic strength by volume of raisin spirit or *raisin brandy* shall be 37,5 %.
- (c) No addition of alcohol, diluted or not, shall take place.
- (d) Raisin spirit or *raisin brandy* shall not be flavoured.
- (e) Raisin spirit or *raisin brandy* may only contain added caramel as a means of adjusting the colour.
- (f) Raisin spirit or *raisin brandy* may be sweetened in order to round off the final taste. However, the final product may not contain more than 20 grams of sweetening products per litre, expressed as invert sugar.

9. Fruit spirit

- (a) Fruit spirit is a spirit drink which meets the following requirements:
 - (i) it is produced exclusively by the alcoholic fermentation and distillation, with or without stones, of fresh and fleshy fruit, including bananas, or the must of such fruit, berries or vegetables;
 - (ii) each and every distillation shall be carried out at less than 86 % vol. so that the distillate has an aroma and taste derived from the raw materials distilled;
 - (iii) it has a volatile substances content equal to or exceeding 200 grams per hectolitre of 100 % vol. alcohol;
 - (iv) in the case of stone-fruit spirits, it has a hydrocyanic acid content not exceeding 7 grams per hectolitre of 100 % vol. alcohol.
- (b) The maximum methanol content of fruit spirit shall be 1 000 grams per hectolitre of 100 % vol. alcohol, except:
 - (i) in the case of fruit spirits produced from the following fruits or berries, and in respect of which the maximum methanol content shall be 1 200 grams per hectolitre of 100 % vol. alcohol:
 - apple (*Malus domestica* Borkh.),
 - apricots (*Prunus armeniaca* L.),
 - plum (*Prunus domestica* L.),
 - quetsch (*Prunus domestica* L.),
 - mirabelle (*Prunus domestica* L. subsp. *syriaca* (Borkh.) Janch. ex Mansf.),
 - peach (*Prunus persica* (L.) Batsch),
 - pear (*Pyrus communis* L.), except for Williams pears (*Pyrus communis* L. cv 'Williams'),
 - blackberry (*Rubus* sect. *Rubus*),
 - raspberry (*Rubus idaeus* L.).

- (ii) in the case of fruit spirits produced from the following fruits or berries, and in respect of which the maximum methanol content shall be 1 350 grams per hectolitre of 100 % vol. alcohol:
- quince (*Cydonia oblonga* Mill.),
 - juniper berry (*Juniperus communis* L. or *Juniperus oxicedrus* L.),
 - Williams pear (*Pyrus communis* L. cv 'Williams'),
 - blackcurrant (*Ribes nigrum* L.),
 - redcurrant (*Ribes rubrum* L.),
 - rosehip (*Rosa canina* L.),
 - elderberry (*Sambucus nigra* L.),
 - rowanberry (*Sorbus aucuparia* L.),
 - sorb apple (*Sorbus domestica* L.),
 - wild service tree (*Sorbus torminalis* (L.) Crantz).
- (c) The minimum alcoholic strength by volume of fruit spirit shall be 37,5 %.
- (d) Fruit spirit shall not be coloured.
- (e) Notwithstanding point (d) of this category and by way of derogation from food category 14.2.6 of Part E of Annex II to Regulation (EC) No 1333/2008, caramel may be used to adjust the colour of fruit spirits that have been aged at least one year in contact with wood.
- (f) No addition of alcohol, diluted or not, shall take place.
- (g) Fruit spirit shall not be flavoured.
- (h) Fruit spirit may be sweetened in order to round off the final taste. However, the final product may not contain more than 18 grams of sweetening products per litre, expressed as invert sugar.
- (i) The legal name of fruit spirit shall be 'spirit' supplemented by the name of the fruit, berry or vegetable. In the Bulgarian, Czech, Greek, Croatian, Polish, Romanian, Slovak and Slovenian languages, the legal name may be expressed by the name of the fruit, berry or vegetable, supplemented by a suffix.

Alternatively:

- (i) the legal name referred to in the first subparagraph may be 'wasser', used together with the name of the fruit; or
- (ii) the following legal names may be used in the following cases:
- 'kirsch' for cherry spirit (*Prunus avium* (L.) L.);
 - 'plum', 'quetsch' or 'slivovitz' for plum spirit (*Prunus domestica* L.);
 - 'mirabelle' for mirabelle spirit (*Prunus domestica* L. subsp. *syriaca* (Borkh.) Janch. ex Mansf.);
 - 'fruit of arbutus' for fruit of arbutus spirit (*Arbutus unedo* L.);
 - 'Golden Delicious' for apple spirit (*Malus domestica* var. 'Golden Delicious');
 - 'Obstler' for a fruit spirit produced from fruits, with or without berries, provided that at least 85 % of the mash is derived from different varieties of apples, pears or both.

The name 'Williams' or 'williams' may be used only to place on the market pear spirit produced solely from pears of the 'Williams' variety.

If there is a risk that the final consumer does not easily understand one of the legal names not containing the word 'spirit' referred to in this point, the description, presentation and labelling shall include the word 'spirit', which may be supplemented by an explanation.

- (j) Whenever two or more fruits, berries or vegetables are distilled together, the product shall be placed on the market under the legal name:
- ‘fruit spirit’ for spirit drinks exclusively produced by distillation of fruits or berries or both; or
 - ‘vegetable spirit’ for spirit drinks exclusively produced by distillation of vegetables; or
 - ‘fruit and vegetable spirit’ for spirit drinks produced by distillation of a combination of fruits, berries and vegetables.

The legal name may be supplemented by that of each fruit, berry or vegetable, in decreasing order of the quantity used.

10. Cider spirit, perry spirit and cider and perry spirit

- (a) Cider spirit, perry spirit and cider and perry spirit are spirit drinks which meet the following requirements:
- (i) they are produced exclusively by the distillation at less than 86 % vol. of cider or perry so that the distillate has an aroma and taste derived from the fruits;
 - (ii) they have a volatile substances content equal to or exceeding 200 grams per hectolitre of 100 % vol. alcohol;
 - (iii) they have a maximum methanol content of 1 000 grams per hectolitre of 100 % vol. alcohol.
- (b) The minimum alcoholic strength by volume of cider spirit, perry spirit and cider and perry spirit shall be 37,5 %.
- (c) No addition of alcohol, diluted or not, shall take place.
- (d) Cider spirit, perry spirit and cider and perry spirit shall not be flavoured. This shall not preclude traditional production methods.
- (e) Cider spirit, perry spirit and cider and perry spirit may only contain added caramel as a means of adjusting the colour.
- (f) Cider spirit, perry spirit and cider and perry spirit may be sweetened in order to round off the final taste. However, the final product may not contain more than 15 grams of sweetening products per litre, expressed as invert sugar.
- (g) The legal name shall be:
- ‘cider spirit’ for spirit drinks exclusively produced by the distillation of cider;
 - ‘perry spirit’ for spirit drinks exclusively produced by the distillation of perry; or
 - ‘cider and perry spirit’ for spirit drinks produced by the distillation of cider and perry.

11. Honey spirit

- (a) Honey spirit is a spirit drink which meets the following requirements:
- (i) it is produced exclusively by fermentation and distillation of honey mash;
 - (ii) it is distilled at less than 86 % vol. so that the distillate has the organoleptic characteristics derived from the raw materials used.
- (b) The minimum alcoholic strength by volume of honey spirit shall be 35 %.
- (c) No addition of alcohol, diluted or not, shall take place.
- (d) Honey spirit shall not be flavoured.
- (e) Honey spirit may only contain added caramel as a means of adjusting the colour.
- (f) Honey spirit may only be sweetened with honey in order to round off the final taste. However, the final product may not contain more than 20 grams of honey per litre, expressed as invert sugar.

12. *Hefebrand* or lees spirit

- (a) *Hefebrand* or lees spirit is a spirit drink produced exclusively by the distillation at less than 86 % vol. of lees of wine, lees of beer or lees of fermented fruit.
- (b) The minimum alcoholic strength by volume of *Hefebrand* or lees spirit shall be 38 %.
- (c) No addition of alcohol, diluted or not, shall take place.
- (d) *Hefebrand* or lees spirit shall not be flavoured.
- (e) *Hefebrand* or lees spirit may only contain added caramel as a means of adjusting the colour.
- (f) *Hefebrand* or lees spirit may be sweetened in order to round off the final taste. However, the final product may not contain more than 20 grams of sweetening products per litre, expressed as invert sugar.
- (g) The legal name '*Hefebrand*' or 'lees spirit' shall be supplemented by the name of the raw materials used.

13. Beer spirit

- (a) Beer spirit is a spirit drink produced exclusively by direct distillation under normal pressure of fresh beer with an alcoholic strength by volume of less than 86 %, so that the resulting distillate has organoleptic characteristics deriving from the beer.
- (b) The minimum alcoholic strength by volume of beer spirit shall be 38 %.
- (c) No addition of alcohol, diluted or not, shall take place.
- (d) Beer spirit shall not be flavoured.
- (e) Beer spirit may only contain added caramel as a means of adjusting the colour.
- (f) Beer spirit may be sweetened in order to round off the final taste. However, the final product may not contain more than 20 grams of sweetening products per litre, expressed as invert sugar.

14. *Topinambur* or Jerusalem artichoke spirit

- (a) *Topinambur* or Jerusalem artichoke spirit is a spirit drink produced exclusively by fermentation and distillation at less than 86 % vol. of Jerusalem artichoke tubers (*Helianthus tuberosus* L.).
- (b) The minimum alcoholic strength by volume of *topinambur* or Jerusalem artichoke spirit shall be 38 %.
- (c) No addition of alcohol, diluted or not, shall take place.
- (d) *Topinambur* or Jerusalem artichoke spirit shall not be flavoured.
- (e) *Topinambur* or Jerusalem artichoke spirit may only contain added caramel as a means of adjusting the colour.
- (f) *Topinambur* or Jerusalem artichoke spirit may be sweetened in order to round off the final taste. However, the final product may not contain more than 20 grams of sweetening products per litre, expressed as invert sugar.

15. Vodka

- (a) Vodka is a spirit drink produced from ethyl alcohol of agricultural origin obtained following fermentation with yeast of either:

- potatoes or cereals or both,
- other agricultural raw materials,

distilled so that the organoleptic characteristics of the raw materials used and by-products formed in fermentation are selectively reduced.

This may be followed by additional distillation or treatment with appropriate processing aids or both, including treatment with activated charcoal, to give it special organoleptic characteristics.

Maximum levels of residue for the ethyl alcohol of agricultural origin used to produce vodka shall meet those levels set out in point (d) of Article 5, except that the methanol content shall not exceed 10 grams per hectolitre of 100 % vol. alcohol.

- (b) The minimum alcoholic strength by volume of vodka shall be 37,5 %.

- (c) The only flavourings which may be added are natural flavouring substances or flavouring preparations that are present in distillate obtained from the fermented raw materials. In addition, the product may be given special organoleptic characteristics, other than a predominant flavour.
- (d) Vodka shall not be coloured.
- (e) Vodka may be sweetened in order to round off the final taste. However, the final product may not contain more than 8 grams of sweetening products per litre, expressed as invert sugar.
- (f) The description, presentation or labelling of vodka not produced exclusively from potatoes or cereals or both shall prominently bear the indication 'produced from ...', supplemented by the name of the raw materials used to produce the ethyl alcohol of agricultural origin. This indication shall appear in the same visual field as the legal name.
- (g) The legal name may be 'vodka' in any Member State.

16. Spirit (supplemented by the name of the fruit, berries or nuts) obtained by maceration and distillation

- (a) Spirit (supplemented by the name of the fruit, berries or nuts) obtained by maceration and distillation is a spirit drink which meets the following requirements:
 - (i) it has been produced by:
 - maceration of fruit, berries or nuts listed under point (ii), whether partially fermented or unfermented, with the possible addition of a maximum of 20 litres of ethyl alcohol of agricultural origin or of a spirit or distillate deriving from the same fruit, berries or nuts, or of a combination thereof, per 100 kg of fermented fruit, berries or nuts,
 - followed by distillation; each and every distillation shall be carried out at less than 86 % vol;
 - (ii) it is produced from the following fruits, berries or nuts:
 - chokeberry (*Aronia Medik. nom cons.*),
 - black chokeberry (*Aronia melanocarpa (Michx.) Elliott*),
 - chestnut (*Castanea sativa Mill.*),
 - citrus fruits (*Citrus spp.*),
 - hazelnut (*Corylus avellana L.*),
 - crowberry (*Empetrum nigrum L.*),
 - strawberry (*Fragaria spp.*),
 - sea-buckthorn (*Hippophae rhamnoides L.*),
 - hollyberry (*Ilex aquifolium* and *Ilex cassine L.*),
 - cornel cherry or cornelian cherry (*Cornus mas*),
 - walnut (*Juglans regia L.*),
 - banana (*Musa spp.*),
 - myrtle (*Myrtus communis L.*),
 - prickly pear (*Opuntia ficus-indica (L.) Mill.*),
 - passion fruit (*Passiflora edulis Sims*),
 - bird cherry (*Prunus padus L.*),
 - sloe (*Prunus spinosa L.*),
 - blackcurrant (*Ribes nigrum L.*),
 - white currant (*Ribes niveum Lindl.*),
 - redcurrant (*Ribes rubrum L.*),

- gooseberry (*Ribes uva-crispa* L. syn. *Ribes grossularia*),
 - rosehip (*Rosa canina* L.),
 - arctic bramble (*Rubus arcticus* L.),
 - cloudberry (*Rubus chamaemorus* L.),
 - blackberry (*Rubus* sect. *Rubus*),
 - raspberry (*Rubus idaeus* L.),
 - elderberry (*Sambucus nigra* L.),
 - rowanberry (*Sorbus aucuparia* L.),
 - sorb apple (*Sorbus domestica* L.),
 - wild service tree (*Sorbus torminalis* (L.) Crantz),
 - ambarella (*Spondias dulcis* Parkinson),
 - hog plum (*Spondias mombin* L.),
 - high bush blueberry (*Vaccinium corymbosum* L.),
 - wild cranberry (*Vaccinium oxycoccos* L.),
 - bilberry/blueberry (*Vaccinium myrtillus* L.),
 - cowberry (*Vaccinium vitis-idaea* L.).
- (b) The minimum alcoholic strength by volume of a spirit (supplemented by the name of the fruit, berries or nuts) obtained by maceration and distillation shall be 37,5 %.
- (c) Spirit (supplemented by the name of the fruit, berries or nuts) obtained by maceration and distillation shall not be flavoured.
- (d) Spirit (supplemented by the name of the fruit, berries or nuts) obtained by maceration and distillation shall not be coloured.
- (e) Notwithstanding point (d) and by way of derogation from food category 14.2.6 of Part E of Annex II to Regulation (EC) No 1333/2008, caramel may be used to adjust the colour of spirit (supplemented by the name of the fruit, berries or nuts) obtained by maceration and distillation that has been aged at least one year in contact with wood.
- (f) Spirit (supplemented by the name of the fruit, berries or nuts) obtained by maceration and distillation may be sweetened in order to round off the final taste. However, the final product may not contain more than 18 grams of sweetening products per litre, expressed as invert sugar.
- (g) As regards the description, presentation and labelling of spirit (supplemented by the name of the fruit, berries or nuts) obtained by maceration and distillation, the wording 'obtained by maceration and distillation' shall appear in the description, presentation or labelling in characters of the same font, size and colour and in the same visual field as the wording 'spirit (supplemented by the name of the fruit, berries or nuts)' and, in the case of bottles, on the front label.

17. **Geist (supplemented by the name of the fruit or the raw materials used)**

- (a) *Geist* (supplemented by the name of the fruit or the raw materials used) is a spirit drink produced by maceration of unfermented fruits and berries listed in point (a)(ii) of category 16 or vegetables, nuts, other plant materials, such as herbs or rose petals, or mushrooms in ethyl alcohol of agricultural origin, followed by distillation at less than 86 % vol.
- (b) The minimum alcoholic strength by volume of *Geist* (supplemented by the name of the fruit or the raw materials used) shall be 37,5 %.
- (c) *Geist* (supplemented by the name of the fruit or the raw materials used) shall not be flavoured.
- (d) *Geist* (supplemented by the name of the fruit or the raw materials used) shall not be coloured.

- (e) *Geist* (supplemented by the name of the fruit or the raw materials used) may be sweetened in order to round off the final taste. However, the final product may not contain more than 10 grams of sweetening products per litre, expressed as invert sugar.
- (f) The term ‘-geist’ preceded by a term other than the name of a fruit, plant or other raw material may supplement the legal name of other spirit drinks and alcoholic beverages, provided that such use does not mislead the consumer.

18. **Gentian**

- (a) Gentian is a spirit drink produced from a distillate of gentian, itself obtained by the fermentation of gentian roots with or without the addition of ethyl alcohol of agricultural origin.
- (b) The minimum alcoholic strength by volume of gentian shall be 37,5 %.
- (c) Gentian shall not be flavoured.

19. **Juniper-flavoured spirit drink**

- (a) A juniper-flavoured spirit drink is a spirit drink produced by flavouring ethyl alcohol of agricultural origin or grain spirit or grain distillate or a combination thereof with juniper (*Juniperus communis* L. or *Juniperus oxicedrus* L.) berries.
- (b) The minimum alcoholic strength by volume of a juniper-flavoured spirit drink shall be 30 %.
- (c) Flavouring substances, flavouring preparations, plants with flavouring properties or parts of plants with flavouring properties or a combination thereof may be used in addition to juniper berries, but the organoleptic characteristics of juniper shall be discernible, even if they are sometimes attenuated.
- (d) A juniper-flavoured spirit drink may bear the legal name ‘Wacholder’ or ‘genebra’.

20. **Gin**

- (a) *Gin* is a juniper-flavoured spirit drink produced by flavouring ethyl alcohol of agricultural origin with juniper berries (*Juniperus communis* L.).
- (b) The minimum alcoholic strength by volume of *gin* shall be 37,5 %.
- (c) Only flavouring substances or flavouring preparations or both shall be used for the production of *gin* so that the taste is predominantly that of juniper.
- (d) The term ‘*gin*’ may be supplemented by the term ‘*dry*’ if it does not contain added sweetening exceeding 0,1 grams of sweetening products per litre of the final product, expressed as invert sugar.

21. **Distilled gin**

- (a) Distilled *gin* is one of the following:
 - (i) a juniper-flavoured spirit drink produced exclusively by distilling ethyl alcohol of agricultural origin with an initial alcoholic strength of at least 96 % vol. in the presence of juniper berries (*Juniperus communis* L.) and of other natural botanicals, provided that the juniper taste is predominant;
 - (ii) the combination of the product of such distillation and ethyl alcohol of agricultural origin with the same composition, purity and alcoholic strength; flavouring substances or flavouring preparations as specified in point (c) of category 20 or both may also be used to flavour distilled *gin*.
- (b) The minimum alcoholic strength by volume of distilled *gin* shall be 37,5 %.
- (c) *Gin* produced simply by adding essences or flavourings to ethyl alcohol of agricultural origin shall not be considered distilled *gin*.
- (d) The term ‘distilled *gin*’ may be supplemented by or incorporate the term ‘*dry*’ if it does not contain added sweetening exceeding 0,1 grams of sweetening products per litre of the final product, expressed as invert sugar.

22. London gin

- (a) *London gin* is distilled *gin* which meets the following requirements:
 - (i) it is produced exclusively from ethyl alcohol of agricultural origin, with a maximum methanol content of 5 grams per hectolitre of 100 % vol. alcohol, the flavour of which is imparted exclusively through the distillation of ethyl alcohol of agricultural origin in the presence of all the natural plant materials used;
 - (ii) the resulting distillate contains at least 70 % alcohol by vol.;
 - (iii) any further ethyl alcohol of agricultural origin that is added shall comply with the requirements laid down in Article 5 but with a maximum methanol content of 5 grams per hectolitre of 100 % vol. alcohol;
 - (iv) it is not coloured;
 - (v) it is not sweetened in excess of 0,1 grams of sweetening products per litre of the final product, expressed as invert sugar;
 - (vi) it does not contain any other ingredients than the ingredients referred to in points (i), (iii) and (v), and water.
- (b) The minimum alcoholic strength by volume of *London gin* shall be 37,5 %.
- (c) The term '*London gin*' may be supplemented by or incorporate the term '*dry*'.

23. Caraway-flavoured spirit drink or Kümmel

- (a) A caraway-flavoured spirit drink or *Kümmel* is a spirit drink produced by flavouring ethyl alcohol of agricultural origin with caraway (*Carum carvi* L.).
- (b) The minimum alcoholic strength by volume of a caraway-flavoured spirit drink or *Kümmel* shall be 30 %.
- (c) Flavouring substances or flavouring preparations or both may additionally be used but there shall be a predominant taste of caraway.

24. Akvavit or aquavit

- (a) *Akvavit* or *aquavit* is a spirit drink flavoured with caraway or dill seeds or both, produced by using ethyl alcohol of agricultural origin flavoured with a distillate of plants or spices.
- (b) The minimum alcoholic strength by volume of *akvavit* or *aquavit* shall be 37,5 %.
- (c) Natural flavouring substances or flavouring preparations or both may additionally be used, but the flavour of these drinks shall be largely attributable to distillates of caraway (*Carum carvi* L.) or dill (*Anethum graveolens* L.) seeds or both, the use of essential oils being prohibited.
- (d) The bitter substances shall not obviously dominate the taste; the dry extract content shall not exceed 1,5 grams per 100 millilitres.

25. Aniseed-flavoured spirit drink

- (a) An aniseed-flavoured spirit drink is a spirit drink produced by flavouring ethyl alcohol of agricultural origin with natural extracts of star anise (*Illicium verum* Hook f.), anise (*Pimpinella anisum* L.), fennel (*Foeniculum vulgare* Mill.), or any other plant which contains the same principal aromatic constituent, using one of the following processes or a combination thereof:
 - (i) maceration or distillation or both;
 - (ii) distillation of the alcohol in the presence of the seeds or other parts of the plants specified above;
 - (iii) addition of natural distilled extracts of aniseed-flavoured plants.
- (b) The minimum alcoholic strength by volume of an aniseed-flavoured spirit drink shall be 15 %.
- (c) An aniseed-flavoured spirit drink may only be flavoured with flavouring preparations and natural flavouring substances.
- (d) Other natural plant extracts or aromatic seed may also be used, but the aniseed taste shall remain predominant.

26. Pastis

- (a) *Pastis* is an aniseed-flavoured spirit drink which also contains natural extracts of liquorice root (*Glycyrrhiza* spp.), which implies the presence of the colorants known as 'chalcones' as well as glycyrrhizic acid, the minimum and maximum levels of which shall be 0,05 and 0,5 grams per litre, respectively.
- (b) The minimum alcoholic strength by volume of *pastis* shall be 40 %.
- (c) *Pastis* may only be flavoured with flavouring preparations and natural flavouring substances.
- (d) *Pastis* shall contain less than 100 grams of sweetening products per litre, expressed as invert sugar, and have a minimum and maximum anethole level of 1,5 and 2 grams per litre, respectively.

27. Pastis de Marseille

- (a) *Pastis de Marseille* is a *pastis* with a pronounced anise taste with an anethole content between 1,9 and 2,1 grams per litre.
- (b) The minimum alcoholic strength by volume of *pastis de Marseille* shall be 45 %.
- (c) *Pastis de Marseille* may only be flavoured with flavouring preparations and natural flavouring substances.

28. Anis or janeževc

- (a) *Anis* or *janeževc* is an aniseed-flavoured spirit drink whose characteristic flavour is derived exclusively from anise (*Pimpinella anisum* L.), star anise (*Illicium verum* Hook f.) or fennel (*Foeniculum vulgare* Mill.) or a combination of them.
- (b) The minimum alcoholic strength by volume of *anis* or *janeževc* shall be 35 %.
- (c) *Anis* or *janeževc* may only be flavoured with flavouring preparations and natural flavouring substances.

29. Distilled anis

- (a) Distilled *anis* is *anis* which contains alcohol distilled in the presence of the seeds referred to in point (a) of category 28 and, in the case of geographical indications, mastic and other aromatic seeds, plants or fruits, provided such alcohol constitutes at least 20 % of the alcoholic strength of the distilled *anis*.
- (b) The minimum alcoholic strength by volume of distilled *anis* shall be 35 %.
- (c) Distilled *anis* may only be flavoured with flavouring preparations and natural flavouring substances.

30. Bitter-tasting spirit drink or bitter

- (a) A bitter-tasting spirit drink or *bitter* is a spirit drink with a predominantly bitter taste produced by flavouring ethyl alcohol of agricultural origin or distillate of agricultural origin or both with flavouring substances or flavouring preparations or both.
- (b) The minimum alcoholic strength by volume of a bitter-tasting spirit drink or *bitter* shall be 15 %.
- (c) Without prejudice to the use of such terms in the presentation and labelling of foodstuffs other than spirit drinks, a bitter-tasting spirit drink or *bitter* may also be placed on the market under the names 'bitter' or '*bitter*' with or without another term.
- (d) Notwithstanding point (c), the term 'bitter' or '*bitter*' may be used in the description, presentation and labelling of bitter-tasting liqueurs.

31. Flavoured vodka

- (a) Flavoured vodka is vodka which has been given a predominant flavour other than that of the raw materials used to produce the vodka.
- (b) The minimum alcoholic strength by volume of flavoured vodka shall be 37,5 %.
- (c) Flavoured vodka may be sweetened, blended, flavoured, matured or coloured.

- (d) When flavoured vodka is sweetened, the final product shall contain less than 100 grams of sweetening products per litre, expressed as invert sugar.
- (e) The legal name of flavoured vodka may also be the name of any predominant flavour combined with the word 'vodka'. The term 'vodka' in any official Union language may be replaced by 'vodka'.

32. Sloe-aromatised spirit drink or *pacharán*

- (a) A sloe-aromatised spirit drink or *pacharán* is a spirit drink which has a predominant sloe taste and is produced by the maceration of sloes (*Prunus spinosa*) in ethyl alcohol of agricultural origin, with the addition of natural extracts of anise or distillates of anise or both.
- (b) The minimum alcoholic strength by volume of a sloe-aromatised spirit drink or *pacharán* shall be 25 %.
- (c) For the production of a sloe-aromatised spirit drink or *pacharán*, a minimum quantity of 125 grams of sloe fruits per litre of the final product shall be used.
- (d) A sloe-aromatised spirit drink or *pacharán* shall have a content of sweetening products, expressed as invert sugar, between 80 and 250 grams per litre of the final product.
- (e) The organoleptic characteristics, colour and taste of a sloe-aromatised spirit drink or *pacharán* shall be provided exclusively by the fruit used and the anise.
- (f) The term '*pacharán*' may be used as a legal name only when the product is produced in Spain. When the product is produced outside Spain, '*pacharán*' may only be used to supplement the legal name 'sloe-aromatised spirit drink', provided that it is accompanied by the words: 'produced in ...', followed by the name of the Member State or third country of production.

33. Liqueur

- (a) Liqueur is a spirit drink:
 - (i) having a minimum content of sweetening products, expressed as invert sugar, of:
 - 70 grams per litre for cherry or sour cherry liqueurs, the ethyl alcohol of which consists exclusively of cherry or sour cherry spirit,
 - 80 grams per litre for liqueurs which are flavoured exclusively with gentian or a similar plant or wormwood,
 - 100 grams per litre in all other cases;
 - (ii) produced using ethyl alcohol of agricultural origin or a distillate of agricultural origin or one or more spirit drinks or a combination thereof, which has been sweetened and to which one or more flavourings, products of agricultural origin or foodstuffs have been added.
- (b) The minimum alcoholic strength by volume of liqueur shall be 15 %.
- (c) Flavouring substances and flavouring preparations may be used in the production of liqueur.

However, the following liqueurs may only be flavoured with flavouring foodstuffs, flavouring preparations and natural flavouring substances:

- (i) fruit liqueurs:
 - pineapple (*Ananas*),
 - citrus fruit (*Citrus* L.),
 - sea buckthorn (*Hippophae rhamnoides* L.),
 - mulberry (*Morus alba*, *Morus rubra*),
 - sour cherry (*Prunus cerasus*),
 - cherry (*Prunus avium*),
 - blackcurrant (*Ribes nigrum* L.),
 - arctic bramble (*Rubus arcticus* L.),

- cloudberry (*Rubus chamaemorus* L.),
 - raspberry (*Rubus idaeus* L.),
 - wild cranberry (*Vaccinium oxycoccos* L.),
 - bilberry/blueberry (*Vaccinium myrtillus* L.),
 - cowberry (*Vaccinium vitis-idaea* L.);
- (ii) plant liqueurs:
- g n pi (*Artemisia genepi*),
 - gentian (*Gentiana* L.),
 - mint (*Mentha* L.),
 - aniseed (*Pimpinella anisum* L.),
- (d) The legal name may be 'liqueur' in any Member State and:
- for liqueurs produced by maceration of sour cherries or cherries (*Prunus cerasus* or *Prunus avium*) in ethyl alcohol of agricultural origin, the legal name may be 'guignolet' or ' e snjevec', with or without the term 'liqueur';
 - for liqueurs produced by maceration of sour cherries (*Prunus cerasus*) in ethyl alcohol of agricultural origin, the legal name may be 'ginja' or 'ginjinha' or 'vi snjevec', with or without the term 'liqueur';
 - for liqueurs for which the alcohol content is provided exclusively by rum, the legal name may be 'punch au rhum', with or without the term 'liqueur';
 - without prejudice to point (2) of Article 3, point (b) of Article 10(5) and Article 11, for liqueurs containing milk or milk products, the legal name may be 'cream' supplemented by the name of the raw material used conferring on the liqueur its predominant flavour, with or without the term 'liqueur'.
- (e) The following compound terms may be used in the description, presentation and labelling of liqueurs produced in the Union, where ethyl alcohol of agricultural origin or distillate of agricultural origin is used to mirror established production methods:
- *prune brandy*;
 - *orange brandy*;
 - *apricot brandy*;
 - *cherry brandy*;
 - *solbaerrom* or blackcurrant rum.

As regards the description, presentation and labelling of the liqueurs referred to in this point, the compound term shall appear in one line in uniform characters of the same font and colour and the word 'liqueur' shall appear in immediate proximity in characters no smaller than that font. If the alcohol does not come from the spirit drink indicated, its origin shall be shown on the label in the same visual field as the compound term and the word 'liqueur' either by stating the type of agricultural alcohol or by the words 'agricultural alcohol' preceded on each occasion by 'made from' or 'made using'.

- (f) Without prejudice to Articles 11 and 12 and Article 13(4), the legal name 'liqueur' may be supplemented by the name of a flavouring or foodstuff that confers the predominant flavour of the spirit drink, provided that the flavour is conferred on the spirit drink by flavouring foodstuffs, flavouring preparations and natural flavouring substances, derived from the raw material referred to in the name of the flavouring or of the foodstuff, supplemented by flavouring substances only where necessary to reinforce the flavour of that raw material.

34. Cr me de (supplemented by the name of a fruit or other raw material used)

- (a) Cr me de (supplemented by the name of a fruit or other raw material used) is a liqueur which has a minimum content of sweetening products of 250 grams per litre expressed as invert sugar.
- (b) The minimum alcoholic strength by volume of cr me de (supplemented by the name of a fruit or other raw material used) shall be 15 %.

- (c) The rules on flavouring substances and flavouring preparations for liqueurs laid down under category 33 shall apply to this spirit drink.
- (d) The raw materials used shall exclude milk products.
- (e) The fruit or any other raw material used in the legal name shall be the fruit or the raw material that confers on that spirit drink its predominant flavour.
- (f) The legal name may be supplemented by the term 'liqueur'.
- (g) The legal name '*crème de cassis*' may only be used for liqueurs produced with blackcurrants, which have a content of sweetening products of more than 400 grams per litre expressed as invert sugar.

35. **Sloe gin**

- (a) *Sloe gin* is a liqueur produced by maceration of sloes in *gin* with the possible addition of sloe juice.
- (b) The minimum alcoholic strength by volume of *sloe gin* shall be 25 %.
- (c) Only natural flavouring substances and flavouring preparations may be used in the production of *sloe gin*.
- (d) The legal name may be supplemented by the term 'liqueur'.

36. **Sambuca**

- (a) *Sambuca* is a colourless aniseed-flavoured liqueur which meets the following requirements:
 - (i) it contains distillates of anise (*Pimpinella anisum* L.), star anise (*Illicium verum* L.) or other aromatic herbs;
 - (ii) it has a minimum content of sweetening products of 350 grams per litre expressed as invert sugar;
 - (iii) it has a natural anethole content of not less than 1 gram and not more than 2 grams per litre.
- (b) The minimum alcoholic strength by volume of *sambuca* shall be 38 %.
- (c) The rules on flavouring substances and flavouring preparations for liqueurs laid down under category 33 shall apply to *sambuca*.
- (d) *Sambuca* shall not be coloured.
- (e) The legal name may be supplemented by the term 'liqueur'.

37. **Maraschino, marrasquino or maraskino**

- (a) *Maraschino*, *marrasquino* or *maraskino* is a colourless liqueur the flavour of which is given mainly by a distillate of marasca cherries or of the product produced by macerating cherries or parts of cherries in ethyl alcohol of agricultural origin or in a distillate of marasca cherries, with a minimum content of sweetening products of 250 grams per litre expressed as invert sugar.
- (b) The minimum alcoholic strength by volume of *maraschino*, *marrasquino* or *maraskino* shall be 24 %.
- (c) The rules on flavouring substances and flavouring preparations for liqueurs laid down under category 33 shall apply to *maraschino*, *marrasquino* or *maraskino*.
- (d) *Maraschino*, *marrasquino* or *maraskino* shall not be coloured.
- (e) The legal name may be supplemented by the term 'liqueur'.

38. **Nocino or orehovec**

- (a) *Nocino* or *orehovec* is a liqueur the flavour of which is given mainly by maceration, or by maceration and distillation, of whole green walnuts (*Juglans regia* L.), with a minimum content of sweetening products of 100 grams per litre expressed as invert sugar.
- (b) The minimum alcoholic strength by volume of *nocino* or *orehovec* shall be 30 %.
- (c) The rules on flavouring substances and flavouring preparations for liqueurs laid down under category 33 shall apply to *nocino* or *orehovec*.
- (d) The legal name may be supplemented by the term 'liqueur'.

39. Egg liqueur or *advocaat* or *avocat* or *advokat*

- (a) Egg liqueur or *advocaat* or *avocat* or *advokat* is a liqueur, whether flavoured or not, produced from ethyl alcohol of agricultural origin, distillate of agricultural origin or spirit drink, or a combination thereof, and the ingredients of which are quality egg yolk, egg white and sugar or honey or both. The minimum sugar or honey content shall be 150 grams per litre expressed as invert sugar. The minimum content of pure egg yolk shall be 140 grams per litre of the final product. Any use of eggs from hens belonging to a species other than *Gallus gallus* shall be indicated on the label.
- (b) The minimum alcoholic strength by volume of egg liqueur or *advocaat* or *avocat* or *advokat* shall be 14 %.
- (c) Only flavouring foodstuffs, flavouring substances and flavouring preparations may be used in the production of egg liqueur or *advocaat* or *avocat* or *advokat*.
- (d) Milk products may be used in the production of egg liqueur or *advocaat* or *avocat* or *advokat*.

40. Liqueur with egg

- (a) Liqueur with egg is a liqueur, whether flavoured or not, produced from ethyl alcohol of agricultural origin, distillate of agricultural origin or spirit drink, or a combination thereof, the characteristic ingredients of which are quality egg yolk, egg white and sugar or honey or both. The minimum sugar or honey content shall be 150 grams per litre expressed as invert sugar. The minimum egg yolk content shall be 70 grams per litre of the final product.
- (b) The minimum alcoholic strength by volume of liqueur with egg shall be 15 %.
- (c) Only flavouring foodstuffs, natural flavouring substances and flavouring preparations may be used in the production of liqueur with egg.
- (d) Milk products may be used in the production of liqueur with egg.

41. *Mistrà*

- (a) *Mistrà* is a colourless spirit drink flavoured with aniseed or natural anethole which meets the following requirements:
 - (i) it has an anethole content of not less than 1 gram and not more than 2 grams per litre;
 - (ii) it may also contain a distillate of aromatic herbs;
 - (iii) it has not been sweetened.
- (b) The minimum alcoholic strength by volume of *mistrà* shall be 40 % and the maximum alcoholic strength by volume shall be 47 %.
- (c) *Mistrà* may only be flavoured with flavouring preparations and natural flavouring substances.
- (d) *Mistrà* shall not be coloured.

42. *Väkevã glögi* or *spritglögg*

- (a) *Väkevã glögi* or *spritglögg* is a spirit drink produced by flavouring wine or wine products and ethyl alcohol of agricultural origin with the flavour of cloves or cinnamon or both, using one of the following processes or a combination thereof:
 - (i) maceration or distillation,
 - (ii) distillation of the alcohol in the presence of parts of the plants specified above,
 - (iii) addition of natural flavouring substances of cloves or cinnamon.
- (b) The minimum alcoholic strength by volume of *väkevã glögi* or *spritglögg* shall be 15 %.
- (c) *Väkevã glögi* or *spritglögg* may only be flavoured with flavouring substances, flavouring preparations or other flavourings but the flavour of the spices specified in point (a) shall be predominant.
- (d) The content of wine or wine products shall not exceed 50 % of the final product.

43. Berenburg or Beerenburg

- (a) *Berenburg* or *Beerenburg* is a spirit drink which meets the following requirements:
- (i) it is produced using ethyl alcohol of agricultural origin;
 - (ii) it is produced by the maceration of fruit or plants or parts thereof;
 - (iii) it contains as a specific flavour distillate of gentian root (*Gentiana lutea* L.), of juniper berries (*Juniperus communis* L.) and of laurel leaves (*Laurus nobilis* L.);
 - (iv) it varies in colour from light to dark brown;
 - (v) it may be sweetened to a maximum of 20 grams of sweetening products per litre expressed as invert sugar.
- (b) The minimum alcoholic strength by volume of *Berenburg* or *Beerenburg* shall be 30 %.
- (c) *Berenburg* or *Beerenburg* may only be flavoured with flavouring preparations and natural flavouring substances.

44. Honey nectar or mead nectar

- (a) Honey nectar or mead nectar is a spirit drink produced by flavouring a mixture of fermented honey mash and honey distillate or ethyl alcohol of agricultural origin or both, which contains at least 30 % vol. of fermented honey mash.
- (b) The minimum alcoholic strength by volume of honey nectar or mead nectar shall be 22 %.
- (c) Honey nectar or mead nectar may only be flavoured with flavouring preparations and natural flavouring substances, provided that the honey taste is predominant.
- (d) Honey nectar or mead nectar may only be sweetened with honey.
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ANNEX II

SPECIFIC RULES CONCERNING CERTAIN SPIRIT DRINKS

1. *Rum-Verschnitt* is produced in Germany and obtained by mixing rum and ethyl alcohol of agricultural origin, in such a manner that a minimum proportion of 5 % of the alcohol contained in the final product shall come from rum. The minimum alcoholic strength by volume of *Rum-Verschnitt* shall be 37,5 %. The word '*Verschnitt*' shall appear in the description, presentation and labelling in characters of the same font, size and colour as, and on the same line as, the word '*Rum*' and, in the case of bottles, on the front label. The legal name of this product shall be 'spirit drink'. Where *Rum-Verschnitt* is placed on the market outside Germany, its alcoholic composition shall appear on the label.
 2. *Slivovice* is produced in Czechia and obtained by the addition to the plum distillate, before the final distillation, of ethyl alcohol of agricultural origin, in such a manner that a minimum proportion of 70 % of the alcohol contained in the final product shall come from plum distillate. The legal name of this product shall be 'spirit drink'. The name '*slivovice*' may be added if it appears in the same visual field on the front label. If *slivovice* is placed on the market outside Czechia, its alcoholic composition shall appear on the label. This provision shall be without prejudice to the use of the legal names for fruit spirits in category 9 of Annex I.
 3. *Guignolet Kirsch* is produced in France and obtained by mixing *guignolet* and *kirsch*, in such a manner that a minimum proportion of 3 % of the total pure alcohol contained in the final product shall come from *kirsch*. The word '*guignolet*' shall appear in the description, presentation and labelling in characters of the same font, size and colour as, and on the same line as, the word '*kirsch*' and, in case of bottles, on the front label. The legal name of this product shall be 'liqueur'. Its alcoholic composition shall indicate the percentage by volume of pure alcohol that *guignolet* and *kirsch* represent in the total pure alcohol content by volume of *guignolet kirsch*.
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ANNEX III

DYNAMIC OR 'CRIADERAS Y SOLERA' OR 'SOLERA E CRIADERAS' AGEING SYSTEM

The dynamic or '*criaderas y solera*' or '*solera e criaderas*' ageing system consists in the execution of periodical extractions of a portion of the *brandy* contained in each of the oak casks and containers that form an ageing scale and the corresponding replenishments with *brandy* extracted from the preceding ageing scale.

Definitions

'Ageing scale' means each group of oak casks and containers with the same level of maturation, through which the *brandy* progresses in the course of its ageing process. Each scale is known as '*criadera*', except the last one, previous to the expedition of the *brandy*, known as the '*solera*'.

'Extraction' means the partial volume of *brandy* drawn from each oak cask and container in an ageing scale, for its incorporation into the oak casks and containers in the next ageing scale or, in the case of the *solera*, for its shipping.

'Replenishment' means the volume of *brandy* from the oak casks and containers of a given ageing scale that is incorporated into and blended with the content of the oak casks and containers of the following scale in terms of age.

'Average age' means the period of time corresponding to the rotation of the total stock of *brandy* that is undergoing the ageing process, calculated by dividing the total volume of *brandy* contained in all the ageing scales by the volume of the extractions made from the last scale – the *solera* – in one year.

The average age of the *brandy* drawn from the *solera* shall be calculated using the following formula: $t = V_t/V_e$, in which:

- t is the average age, expressed in years;
- V_t is the total volume of stocks in the ageing system, expressed in litres of pure alcohol;
- V_e is the total volume of product extracted for shipping during a year, expressed in litres of pure alcohol.

In the case of oak casks and containers of less than 1 000 litres, the number of annual extractions and replenishments shall be equal to or lower than twice the number of scales in the system, in order to guarantee that the youngest component has an age equal to or higher than six months.

In the case of oak casks and containers of 1 000 litres or more, the number of annual extractions and replenishments shall be equal to or lower than the number of scales in the system, in order to guarantee that the youngest component has an age equal to or higher than one year.

ANNEX IV

Correlation table

This Regulation	Regulation (EC) No 110/2008
Article 1(1) and (2)	Article 1(1) and (2)
Article 2, points (a) to (d)	Article 2(1) and (3)
Article 2, point (e)	Article 2(2)
Article 2, point (f)	Annex I, point 6
Article 3(1)	Article 8
Article 3(2) and (3)	Article 10
Article 3(4)	Article 15(1)
Article 3(5)	—
Article 3(6)	—
Article 3(7)	Article 15(3), third subparagraph
Article 3(8)	—
Article 3(9) and (10)	Article 11(2) and Annex I, point 4
Article 3(11) and (12)	Annex I, point (7)
Article 4(1)	Article 7 and Annex I, point (14)
Article 4(2)	Article 7 and Annex I, point (15)
Article 4(3)	Article 7 and Annex I, point (16)
Article 4(4)	—
Article 4(5)	Annex I, point (17)
Article 4(6)	—
Article 4(7)	Annex I, point (2)
Article 4(8)	Annex I, point (3)
Article 4(9)	Annex I, point (3)
Article 4(10)	Annex I, point (5)
Article 4(11)	Annex I, point (8)
Article 4(12)	Annex I, point (9)
Article 4(13)	—
Article 4(14)	—
Article 4(15)	—
Article 4(16)	—
Article 4(17)	—
Article 4(18)	—
Article 4(19) and (20)	Annex I, point (10)
Article 4(21)	—
Article 4(22)	—
Article 4(23)	Annex I, point (11)
Article 4(24)	Annex I, point (12)
Article 5	Annex I, point (1)

This Regulation	Regulation (EC) No 110/2008
Article 6(1)	Article 3(1)
Article 6(2)	Article 3(3)
Article 6(3)	Article 3(4)
Article 7(1)	Article 4
Article 7(2)	Article 5(1)
Article 7(3)	Article 5(2)
Article 7(4)	Article 5(3)
Article 8(1)	Article 26
Article 8(2)	Article 1(3)
Article 8(3)	—
Article 8(4)	—
Article 9	—
Article 10(1)	—
Article 10(2)	Article 9(1)
Article 10(3)	Article 9(2)
Article 10(4)	Article 9(3)
Article 10(5)	Article 9(5) and (6)
Article 10(6), points (a) to (c), (e) and (f)	—
Article 10(6)(d)	Article 12(2)
Article 10(7), first subparagraph	Article 9(4) and (7)
Article 10(7), second subparagraph	—
Article 11(1)	Article 10(1) and (2)
Article 11(2) and (3)	—
Article 12(1)	Article 10(1)
Article 12(2),(3) and (4)	—
Article 13(1)	Article 12(1)
Article 13(2)	Article 9(9)
Article 13(3), first and second subparagraph	Article 11(4)
Article 13(3), third subparagraph	Article 11(5)
Article 13(3), fourth subparagraph	—
Article 13(4), first subparagraph	Article 11(3)
Article 13(4), second subparagraph	Article 11(4)
Article 13(4), third subparagraph	Article 11(5)
Article 13(5)	—
Article 13(6)	Article 12(3)
Article 13(7)	—
Article 14(1)	Annex I, point (13)
Article 14(2)	—
Article 15(1)	Article 14(2)

This Regulation	Regulation (EC) No 110/2008
Article 15(2)	—
Article 16	—
Article 17	Article 13
Article 18	—
Article 19(1)	Article 12(3)
Article 19(2)	—
Article 20, point (a)	—
Article 20, point (b)	Article 28(2)
Article 20, point (c)	—
Article 20, point (d)	—
Article 21(1)	—
Article 21(2)	Article 16
Article 21(3)	Article 15(3), first subparagraph
Article 21(4)	—
Article 22(1), first subparagraph	Article 17(4)
Article 22(1), second subparagraph	—
Article 22(2)	—
Article 23(1), introductory wording and points (a), (b) and (c)	—
Article 23(1), second subparagraph	Article 17(3)
Article 23(2)	Article 17(1), second sentence
Article 24(1) to (4)	—
Article 24(5), (6) and (7)	Article 17(2)
Article 24(8)	Article 17(3)
Article 24(9)	Article 17(1), first sentence
Article 25	—
Article 26(1), first subparagraph	Article 17(5)
Article 26(1), second subparagraph	—
Article 26(2)	Article 17(6)
Article 27(1)	Article 17(7), first sentence
Article 27(2), (3) and (4)	—
Article 27(5)	Article 17(7), second sentence
Article 28	—
Article 29	—
Article 30(1), (2) and (3)	Article 17(8), first sentence
Article 30(4), first subparagraph	Article 17(8), second sentence
Article 30(4), second subparagraph	—
Article 31	Article 21
Article 32	Article 18

This Regulation	Regulation (EC) No 110/2008
Article 33(1)	Article 15(2)
Article 33(2) and (3)	—
Article 34(1), (2) and (3)	Article 19
Article 34(4)	—
Article 35(1), first subparagraph	Article 15(3), second subparagraph
Article 35(1), second subparagraph	—
Article 35(2)	Article 23(3)
Article 35(3)	—
Article 36(1)	Article 23(1)
Article 36(2)	Article 23(2)
Article 37	—
Article 38(1)	—
Article 38(2)	Article 22(1)
Article 38(3)	Article 22(2)
Article 38(4)	—
Article 38(5)	Article 22(3)
Article 38(6)	Article 22(4)
Article 39(1)	—
Article 39(2) and (3)	—
Article 40	—
Article 41	—
Article 42	—
Article 43(1)	Article 24(1)
Article 43(2)	Article 24(3)
Article 44(1)	Article 24(2)
Article 44(2)	—
Article 45	Article 6
Article 46	—
Article 47	Article 25
Article 48	—
Article 49	Article 29
Article 50	Article 28
Article 51	Article 30
Annex I, categories 1 to 31	Annex II, categories 1 to 31
Annex I, category 32	Annex II, category 37a
Annex I, category 33	Annex II, category 32
Annex I, category 34	Annex II, category 33
Annex I, category 35	Annex II, category 37

This Regulation	Regulation (EC) No 110/2008
Annex I, category 36	Annex II, category 38
Annex I, category 37	Annex II, category 39
Annex I, category 38	Annex II, category 40
Annex I, category 39	Annex II, category 41
Annex I, category 40	Annex II, category 42
Annex I, category 41	Annex II, category 43
Annex I, category 42	Annex II, category 44
Annex I, category 43	Annex II, category 45
Annex I, category 44	Annex II, category 46
Annex II	Annex II, part under the Title 'Other spirit drinks'
Annex III	—
Annex IV	—

REGULATION (EU) 2019/788 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 17 April 2019
on the European citizens' initiative
(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 24 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 Treaty on European Union (TEU) establishes the citizenship of the Union. The Union's citizens ('citizens') are granted the right to approach the Commission directly with a request inviting it to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties, similar to the right conferred on the European Parliament under Article 225 of the Treaty on the Functioning of the European Union (TFEU) and on the Council under Article 241 TFEU. The European citizens' initiative thus contributes to enhancing the democratic functioning of the Union through the participation of citizens in its democratic and political life. As is apparent from the structure of Article 11 TEU and Article 24 TFEU, the European citizens' initiative should be considered in the context of other means by which citizens may bring certain issues to the attention of institutions of the Union and which consist notably of dialogue with representative associations and civil society, consultations with parties concerned, petitions and applications to the Ombudsman.
- (2) Regulation (EU) No 211/2011 of the European Parliament and of the Council ⁽⁴⁾ laid down the rules and procedures for the European citizens' initiative and was complemented by Commission Implementing Regulation (EU) No 1179/2011 ⁽⁵⁾.
- (3) In its report on the application of Regulation (EU) No 211/2011 of 31 March 2015, the Commission listed a number of challenges arising in the implementation of that Regulation and made a commitment to analyse further the impact of those issues on the effectiveness of the European citizens' initiative instrument and to improve its functioning.
- (4) The European Parliament, in its resolution of 28 October 2015 on the European citizens' initiative ⁽⁶⁾ and its own-initiative legislative draft report of 26 June 2017 ⁽⁷⁾, called on the Commission to review Regulation (EU) No 211/2011 and Implementing Regulation (EU) No 1179/2011.
- (5) This Regulation aims to make the European citizens' initiative more accessible, less burdensome and easier to use for organisers and supporters, and to strengthen its follow-up in order to achieve its full potential as a tool to foster debate. It should also facilitate the participation of as many citizens as possible in the democratic decision-making process of the Union.

⁽¹⁾ OJ C 237, 6.7.2018, p. 74.

⁽²⁾ OJ C 247, 13.7.2018, p. 62.

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

⁽⁴⁾ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (OJ L 65, 11.3.2011, p. 1).

⁽⁵⁾ Commission Implementing Regulation (EU) No 1179/2011 of 17 November 2011 laying down technical specifications for online collection systems pursuant to Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative (OJ L 301, 18.11.2011, p. 3).

⁽⁶⁾ OJ C 355, 20.10.2017, p. 17.

⁽⁷⁾ 2017/2024 (INL).

- (6) To achieve those objectives, the procedures and conditions required for the European citizens' initiative should be effective, transparent, clear, simple, user-friendly, accessible for persons with disabilities and proportionate to the nature of this instrument. They should strike a judicious balance between rights and obligations and should ensure that valid initiatives receive an appropriate examination and response by the Commission.
- (7) It is appropriate to set a minimum age for supporting an initiative. That minimum age should correspond to the age at which citizens are entitled to vote in elections to the European Parliament. In order to enhance the participation of young citizens in the democratic life of the Union and thus achieve the full potential of the European citizens' initiative as an instrument of participatory democracy, Member States which consider it appropriate should be able to set the minimum age for supporting an initiative at 16 years and should inform the Commission accordingly. The Commission should periodically review the functioning of the European citizens' initiative, including as regards the minimum age to support initiatives. Member States are encouraged to consider setting the minimum age at 16 years in accordance with their national laws.
- (8) In accordance with Article 11(4) TEU, an initiative inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required to implement the Treaties, is to be taken by not less than one million citizens of the Union who are nationals of a significant number of Member States.
- (9) In order to ensure that an initiative is representative of a Union interest while ensuring that the instrument remains easy to use, the minimum number of Member States from which citizens must come should be set at one quarter of Member States.
- (10) In order to ensure that an initiative is representative and that the conditions for citizens to support an initiative are similar, it is also appropriate to establish the minimum number of signatories coming from each of those Member States. Those minimum numbers of signatories required in each Member State should be degressively proportional and correspond to the number of Members of the European Parliament elected in each Member State, multiplied by the total number of the Members of the European Parliament.
- (11) In order to make European citizens' initiatives more inclusive and visible, organisers can use for their own promotion and communication activities languages other than the official languages of the institutions of the Union which, in accordance with the Member States' constitutional order, have official status in all or part of their territory.
- (12) While personal data processed in application of this Regulation might include sensitive data, given the nature of the European citizens' initiative as an instrument of participatory democracy, it is justified to require the provision of personal data to support an initiative and to process such data as far as it is necessary in order to allow statements of support to be verified in accordance with national law and practice.
- (13) In order to make the European citizens' initiative more accessible, the Commission should provide information, assistance and practical support to citizens and groups of organisers, in particular on those aspects of this Regulation within its competence. To reinforce this information and assistance, the Commission should also make an online collaborative platform available that provides a dedicated discussion forum and independent support, information and legal advice about the European citizens' initiative. The platform should be open to citizens, groups of organisers, organisations and external experts with experience in organising European citizens' initiatives. The platform should be accessible for persons with disabilities.
- (14) In order to allow the groups of organisers to manage their initiative throughout the procedure, the Commission should make an online register for the European citizens' initiative ('register') available. To raise awareness and ensure transparency on all the initiatives, the register should comprise a public website providing comprehensive information on the European citizens' initiative in general, as well as up-to-date information on individual initiatives, their status and the declared sources of support and funding on the basis of the information submitted by the group of organisers.
- (15) To ensure proximity to citizens and to raise awareness about the European citizens' initiative, Member States should establish one or more contact points in their respective territories to provide citizens with information and assistance regarding the European citizens' initiative. Such information and assistance should concern, in particular, those aspects of this Regulation whose implementation falls under the competence of national authorities in the Member States, or which concern the applicable national law, and for which those authorities

are therefore best placed to inform and assist citizens and groups of organisers. Where appropriate, Member States should seek synergies with services that provide support for the use of similar national instruments. The Commission, including its representations in the Member States, should ensure close cooperation with the national contact points on those information and assistance activities, including, where appropriate, communication activities at Union level.

- (16) A minimum organised structure is needed in order to launch and manage citizens' initiatives successfully. That structure should take the form of a group of organisers, composed of natural persons resident in at least seven different Member States, in order to encourage the emergence of Union-wide issues and to foster reflection on those issues. For the sake of transparency and smooth and efficient communication, the group of organisers should designate a representative to liaise between the group of organisers and the institutions of the Union throughout the procedure. The group of organisers should have the possibility to create, in accordance with national law, a legal entity to manage an initiative. That legal entity should be considered to be the group of organisers for the purposes of this Regulation.
- (17) While liability and penalties in connection with the processing of personal data will remain regulated under Regulation (EU) 2016/679 of the European Parliament and of the Council⁽⁸⁾, the group of organisers should be jointly and severally liable, in accordance with applicable national law, for any damage that its members cause in the organisation of an initiative by unlawful acts committed intentionally or with serious negligence. Member States should ensure that the group of organisers is subject to appropriate penalties for infringements of this Regulation.
- (18) In order to ensure coherence and transparency in relation to initiatives and to avoid a situation where signatures are collected for an initiative which does not comply with the conditions laid down by the Treaties and this Regulation, initiatives that comply with the conditions laid down in this Regulation should be registered by the Commission before starting to collect statements of support from citizens. The Commission should, when dealing with registration, fully respect the obligation to state reasons under the second paragraph of Article 296 TFEU and the general principle of good administration as set out in Article 41 of the Charter of Fundamental Rights of the European Union.
- (19) In order to make the European citizens' initiative effective and more accessible, taking into account that the procedures and conditions required for the European citizens' initiative need to be clear, simple, user-friendly and proportionate, and in order to ensure that as many initiatives as possible are registered, it is appropriate to partially register an initiative in cases where only part or parts of the initiative meet the requirements for registration under this Regulation. Initiatives should be partially registered provided that a part of the initiative, including its main objectives, does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties and all the other registration requirements are met. Clarity and transparency should be ensured as regards the scope of the partial registration, and potential signatories should be informed of the scope of the registration and of the fact that statements of support are being collected only in relation to the scope of the registration of the initiative. The Commission should inform the group of organisers in a sufficiently detailed manner of the reasons for its decision not to register or to register an initiative only partially, and of all possible judicial and extrajudicial remedies available to it.
- (20) Statements of support for an initiative should be collected within a specific time limit. In order to ensure that an initiative remains relevant, whilst taking into account the complexity of collecting statements of support across the Union, that time limit should not be longer than 12 months from the date of the start of the collection period determined by the group of organisers. The group of organisers should have the possibility to choose the start date of the collection period within six months from the registration of the initiative. The group of organisers should inform the Commission of the date chosen at the latest 10 working days before that date. To ensure coordination with the national authorities, the Commission should inform the Member States of the date communicated by the group of organisers.
- (21) In order to make the European citizens' initiative more accessible, less burdensome and easier to use for organisers and citizens, the Commission should set up and operate a central system for the online collection of statements of support. That system should be made available free of charge to groups of organisers and should comprise the necessary technical features enabling online collection, including the hosting and software, as well as accessibility features ensuring that citizens with disabilities can provide support to the initiatives. That system should be set up and maintained in accordance with Commission Decision (EU, Euratom) 2017/46⁽⁹⁾.

⁽⁸⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽⁹⁾ Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission (OJ L 6, 11.1.2017, p. 40).

- (22) Citizens should have the possibility of supporting initiatives online or in paper form by providing only the personal data set out in Annex III of this Regulation. Member States should inform the Commission as to whether they wish to be included in part A or B, respectively, of Annex III. Citizens using the central online collection system for the European citizens' initiative should be able to support an initiative online by using notified electronic identification means or by signing with an electronic signature within the meaning of Regulation (EU) No 910/2014 of the European Parliament and of the Council⁽¹⁰⁾. To this end, the Commission and the Member States should implement the relevant technical features within the framework of that Regulation. Citizens should sign a statement of support only once.
- (23) To facilitate the transition to the new central online collection system, a group of organisers should continue to have the possibility to set up its own online collection system and to collect statements of support through this system for initiatives registered in accordance with this Regulation by 31 December 2022. The group of organisers should use a single individual online collection system for each initiative. Individual online collection systems set up and operated by a group of organisers should have adequate technical and security features in order to ensure that the data are securely collected, stored and transferred throughout the procedure. For that purpose, the Commission should set out detailed technical specifications for the individual online collection systems, in cooperation with the Member States. It should be possible for the Commission to seek the advice of the European Union Agency for Network and Information Security (ENISA), which assists the Union institutions in developing and implementing policies related to security of network and information systems.
- (24) It is appropriate for Member States to verify the conformity of the individual online collection systems set up by the group of organisers with the requirements of this Regulation and to issue a document certifying such conformity before statements of support are collected. The certification of the individual online collection systems should be carried out by the competent national authority of the Member States in which the data collected through the individual online collection system is stored. Without prejudice to the powers of the national supervisory authorities under Regulation (EU) 2016/679, Member States should designate the competent national authority responsible for the certification of the systems. Member States should mutually recognise the certificates issued by their competent authorities.
- (25) Where an initiative has received the necessary statements of support from signatories, each Member State should be responsible for the verification and certification of statements of support signed by its nationals, in order to assess whether the required minimum numbers of signatories having the right to support a European citizens' initiative have been reached. Taking the need to limit the administrative burden for Member States into account, such verifications should be carried out on the basis of appropriate checks, which may be based on random sampling. Member States should issue a document certifying the number of valid statements of support received.
- (26) In order to promote participation and public debate on the issues raised by the initiatives, where an initiative supported by the required number of signatories and fulfilling the other requirements of this Regulation is submitted to the Commission, the group of organisers should have the right to present that initiative at a public hearing at Union level. The European Parliament should organise the public hearing within three months of the submission of the initiative to the Commission. The European Parliament should ensure a balanced representation of the interests of relevant stakeholders, including civil society, social partners, and experts. The Commission should be represented at an appropriate level. The Council, other institutions and advisory bodies of the Union, as well as interested stakeholders, should have the opportunity to participate in the hearing in order to guarantee its inclusive character and further its public interest.
- (27) The European Parliament, as the institution in which the citizens are directly represented at Union level, should be entitled to assess the support for a valid initiative after its submission and following a public hearing on it. The European Parliament should be also able to assess the actions taken by the Commission in response to the initiative and outlined in a communication.
- (28) To ensure the effective participation of citizens in the democratic life of the Union, the Commission should examine a valid initiative and respond to it. The Commission should therefore set out its legal and political conclusions as well as the action that it intends to take within a period of six months from the receipt of the initiative. The Commission should explain in a clear, comprehensible and detailed manner the reasons for its intended action, including whether it will adopt a proposal for a legal act of the Union in response to the

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

initiative, and should likewise give its reasons if it does not intend to take any action. The Commission should examine initiatives in accordance with the general principles of good administration as set out in Article 41 of the Charter of Fundamental Rights of the European Union.

- (29) In order to ensure transparency of its funding and support, the group of organisers should provide regularly updated and detailed information on the sources of funding and support for its initiatives between the date of registration and the date at which the initiative is submitted to the Commission. This information should be made public in the register and on the public website on the European citizens' initiative. The declaration of sources of funding and support by the group of organisers should include information on financial support exceeding EUR 500 per sponsor, as well as on organisations assisting the group of organisers, on a voluntary basis, where such support is not economically quantifiable. Entities, notably organisations which under the Treaties contribute to forming European political awareness and expressing the will of citizens of the Union, should be able to promote and provide funding and support to initiatives, provided that they do so in accordance with the procedures and conditions laid down by this Regulation.
- (30) To ensure full transparency, the Commission should make a contact form available, in the register and on the public website on the European citizens' initiative, to enable citizens to submit a complaint relating to the completeness and correctness of the information on sources of funding and support as declared by the groups of organisers. The Commission should be entitled to request from the group of organisers any additional information in relation to the complaints and, where necessary, to update the information, in the register, on the declared sources of funding and support.
- (31) Regulation (EU) 2016/679 applies to the processing of personal data carried out under this Regulation. In that respect, for the sake of legal certainty, it is appropriate to clarify that the representative of the group of organisers or, where applicable, the legal entity created for the purpose of managing the initiative, and the competent authorities of the Member States are to be considered to be the data controllers within the meaning of Regulation (EU) 2016/679 in relation to the processing of personal data when collecting statements of support, email addresses and data on the sponsors of the initiatives, and for the purposes of verification and certification of statements of support, and to specify the maximum period within which the personal data collected for the purposes of an initiative can be retained. In their capacity as data controllers, the representative of the group of organisers or, where applicable, the legal entity created for the purpose of managing the initiative, and the competent authorities of the Member States should take all appropriate measures to comply with the obligations imposed by Regulation (EU) 2016/679, in particular those relating to the lawfulness of the processing and the security of the processing activities, the provision of information and the rights of data subjects.
- (32) Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽¹⁾ applies to the processing of personal data carried out by the Commission in application of this Regulation. It is appropriate to clarify that the Commission is to be considered the data controller within the meaning of Regulation (EU) 2018/1725 in relation to the processing of personal data in the register, the online collaborative platform, the central online collection system and the collection of email addresses. The central online collection system allowing the groups of organisers to collect statements of support for their initiatives online should be set up and operated by the Commission in accordance with this Regulation. The Commission and the representative of the group of organisers or, where applicable, the legal entity created for the purpose of managing the initiative should be joint controllers within the meaning of Regulation (EU) 2016/679 in relation to the processing of personal data in the central online collection system.
- (33) In order to contribute to the promotion of active participation of citizens in the political life of the Union, the Commission should raise public awareness about the European citizens' initiative, making particular use of digital technologies and social media, and in the framework of actions to promote Union citizenship and citizens' rights. The European Parliament should contribute to the communication activities of the Commission.
- (34) In order to facilitate communication with the signatories and to inform them about the follow-up actions in response to an initiative, the Commission and the group of organisers should be able to collect, in accordance with data protection rules, email addresses of signatories. The collection of email addresses should be optional and subject to the explicit consent of signatories. Email addresses should not be collected as part of the statements of support forms and potential signatories should be informed that their right to support an initiative is not conditional on giving their consent to collecting their email addresses.

⁽¹⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (35) In order to adapt this Regulation to future needs, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the amendment of the Annexes to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽¹²⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (36) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission, in particular for laying down the technical specifications for online collection systems in compliance with this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹³⁾.
- (37) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of enhancing the participation of citizens in the democratic and political life of the Union to lay down rules on the European citizens' initiative. This Regulation does not go beyond what is necessary in order to achieve the objective pursued, in accordance with Article 5(4) TEU.
- (38) This Regulation respects fundamental rights and observes the principles enshrined in the Charter of Fundamental Rights of the European Union.
- (39) For reasons of legal certainty and clarity, Regulation (EU) No 211/2011 should be repealed.
- (40) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁴⁾ and delivered formal comments on 19 December 2017,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes the procedures and conditions required for an initiative inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens of the Union consider that a legal act of the Union is required for the purpose of implementing the Treaties (the 'European citizens' initiative' or 'initiative').

Article 2

Right to support a European citizens' initiative

1. Every citizen of the Union who is at least of the age to be entitled to vote in elections to the European Parliament shall have the right to support an initiative by signing a statement of support, in accordance with this Regulation.

Member States may set the minimum age entitling to support an initiative at 16 years, in accordance with their national laws, and in such a case they shall inform the Commission accordingly.

2. In accordance with the applicable law, Member States and the Commission shall ensure that persons with disabilities can exercise their right to support initiatives and can access all relevant sources of information on initiatives, on an equal basis with other citizens.

⁽¹²⁾ OJ L 123, 12.5.2016, p. 1.

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

⁽¹⁴⁾ 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 (OJ L 8, 12.1.2001, p. 1).

*Article 3***Required number of signatories**

1. An initiative is valid if:
 - (a) it has received the support of at least one million citizens of the Union in accordance with Article 2(1) ('signatories') from at least one quarter of the Member States; and
 - (b) in at least one quarter of the Member States, the number of signatories is at least equal to the minimum number set out in Annex I, corresponding to the number of the Members of the European Parliament elected in each Member State, multiplied by the total number of Members of the European Parliament, at the time of registration of the initiative.
2. For the purposes of paragraph 1, a signatory shall be counted in his or her Member State of nationality, irrespective of the place where the statement of support was signed by the signatory.

*Article 4***Information and assistance by the Commission and by Member States**

1. The Commission shall provide easily accessible and comprehensive information and assistance about the European citizens' initiative to citizens and groups of organisers, including by redirecting them to the relevant sources of information and assistance.

The Commission shall make a guide on the European citizens' initiative publicly available, both online and in paper form and in all the official languages of the institutions of the Union.

2. The Commission shall make an online collaborative platform for the European citizens' initiative available, free of charge.

The platform shall provide practical and legal advice, and a discussion forum about the European citizens' initiative for the exchange of information and best practices among citizens, groups of organisers, stakeholders, non-governmental organisations, experts and other institutions and bodies of the Union wishing to participate.

The platform shall be accessible for persons with disabilities.

The costs of operating and maintaining the platform shall be borne by the general budget of the European Union.

3. The Commission shall make an online register available that allows groups of organisers to manage their initiative throughout the procedure.

The register shall comprise a public website that provides information on the European citizens' initiative in general as well as on specific initiatives and their respective status.

The Commission shall update the register on a regular basis by making the information submitted by the group of organisers available.

4. After the Commission has registered an initiative in accordance with Article 6, it shall provide the translation of the content of that initiative, including its annex, into all the official languages of the institutions of the Union, within the limits set out in Annex II, for its publication in the register and its use for the collection of statements of support in accordance with this Regulation.

The group of organisers may, in addition, provide translations into all the official languages of the institutions of the Union of the additional information on the initiative and, if any, a draft legal act referred to in Annex II, submitted in accordance with Article 6(2). Those translations shall be the responsibility of the group of organisers. The content of the translations provided by the group of organisers shall correspond to the content of the initiative submitted in accordance with Article 6(2).

The Commission shall ensure the publication in the register and on the public website on the European citizens' initiative of the information submitted in accordance with Article 6(2) and the translations submitted in accordance with this paragraph.

5. The Commission shall develop a file exchange service for the transfer of statements of support to the competent authorities of the Member States, in accordance with Article 12, and make it available free of charge to the groups of organisers.

6. Each Member State shall establish one or more contact points to provide, free of charge, information and assistance to groups of organisers, in accordance with applicable Union and national law.

CHAPTER II

PROCEDURAL PROVISIONS

Article 5

Group of organisers

1. An initiative shall be prepared and managed by a group of at least seven natural persons (the 'group of organisers'). Members of the European Parliament shall not be counted for the purpose of that minimum number.

2. The members of the group of organisers shall be citizens of the Union of the age to be entitled to vote in elections to the European Parliament and the group shall include residents of at least seven different Member States, at the time of registration of the initiative.

For each initiative, the Commission shall publish the names of all members of the group of organisers in the register in accordance with Regulation (EU) 2018/1725.

3. The group of organisers shall designate two of its members as representative and substitute, respectively, who shall be responsible for liaising between the group of organisers and the institutions of the Union throughout the procedure and who shall be mandated to act on behalf of the group of organisers (the 'contact persons').

The group of organisers may also designate a maximum of two other natural persons, chosen from among its members or otherwise, who are mandated to act on behalf of the contact persons for the purpose of liaising with the institutions of the Union throughout the procedure.

4. The group of organisers shall inform the Commission of any changes regarding its composition throughout the procedure and shall provide appropriate proof that the requirements laid down in paragraphs 1 and 2 are fulfilled. The changes in the composition of the group of organisers shall be reflected in the statement of support forms and the names of the current and former members of the group of organisers shall remain available in the register throughout the procedure.

5. Without prejudice to the liability of the representative of the group of organisers as data controller under Article 82(2) of Regulation (EU) 2016/679, the members of a group of organisers shall be jointly and severally liable for any damage caused in the organisation of an initiative by unlawful acts committed intentionally, or with serious negligence, under applicable national law.

6. Without prejudice to the penalties under Article 84 of Regulation (EU) 2016/679, Member States shall ensure that the members of a group of organisers are, in accordance with national law, subject to effective, proportionate and dissuasive penalties for infringements of this Regulation and in particular for:

- (a) false declarations;
- (b) the fraudulent use of data.

7. Where a legal entity has been created, in accordance with the national law of a Member State, specifically for the purpose of managing a given initiative, that legal entity shall be considered to be the group of organisers or its members, for the purpose of, as applicable, paragraphs 5 and 6 of this Article, Articles 6(2) and (4) to (7) and Articles 7 to 19 and Annexes II to VII, provided that the member of the group of organisers designated as its representative is given a mandate to act on behalf of the legal entity.

Article 6

Registration

1. Statements of support for an initiative may only be collected after the initiative has been registered by the Commission.

2. The group of organisers shall submit the request for registration to the Commission through the register.

When submitting the request the group of organisers shall also:

- (a) transmit the information referred to in Annex II in one of the official languages of the institutions of the Union;
- (b) indicate the seven members to be taken into account for the purpose of Article 5(1) and (2), where the group of organisers is made up of more than seven members;
- (c) where relevant, indicate that a legal entity has been created pursuant to Article 5(7).

Without prejudice to paragraphs 5 and 6, the Commission shall decide on the request for registration within two months of its submission.

3. The Commission shall register the initiative if:
- (a) the group of organisers has provided appropriate evidence that it fulfils the requirements laid down in Article 5(1) and (2) and has designated the contact persons in accordance with the first subparagraph of Article 5(3);
 - (b) in the situation referred to in Article 5(7), the legal entity has been created specifically for the purpose of managing the initiative and the member of the group of organisers designated as the representative thereof is mandated to act on behalf of the legal entity;
 - (c) none of the parts of the initiative manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties;
 - (d) the initiative is not manifestly abusive, frivolous or vexatious;
 - (e) the initiative is not manifestly contrary to the values of the Union as set out in Article 2 TEU and rights enshrined in the Charter of Fundamental Rights of the European Union.

For the purpose of determining if the requirements set out in points (a) to (e) of the first subparagraph of this paragraph are met, the Commission shall assess the information provided by the group of organisers in accordance with paragraph 2.

If one or more of the requirements set out in points (a) to (e) of the first subparagraph of this paragraph are not met, the Commission shall refuse to register the initiative, without prejudice to paragraphs 4 and 5.

4. Where it considers that the requirements laid down in points (a), (b), (d) and (e) of the first subparagraph of paragraph 3 are met but that the requirement laid down in point (c) of the first subparagraph of paragraph 3 is not met, the Commission shall, within one month of the submission of the request, inform the group of organisers of its assessment and of the reasons thereof.

In such case, the group of organisers may either amend the initiative to take into account the Commission's assessment to ensure that the initiative is in conformity with the requirement laid down in point (c) of the first subparagraph of paragraph 3, or maintain, or withdraw, the initial initiative. The group of organisers shall inform the Commission of its choice within two months of the receipt of the Commission's assessment giving the reasons thereof, and shall submit amendments, if any, to the initial initiative.

Where the group of organisers amends or maintains its initial initiative in accordance with the second subparagraph of this paragraph, the Commission shall:

- (a) register the initiative, if it meets the requirement laid down in point (c) of the first subparagraph of paragraph 3;
- (b) partially register the initiative, if part of the initiative, including its main objectives, does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties;
- (c) otherwise, refuse to register the initiative.

The Commission shall decide on the request within one month of receipt of the information referred to in the second subparagraph of this paragraph from the group of organisers.

5. An initiative that has been registered shall be made public in the register.

Where the Commission partially registers an initiative it shall publish information on the scope of the registration of the initiative in the register.

In such a case, the group of organisers shall ensure that potential signatories are informed of the scope of the registration of the initiative and of the fact that statements of support are collected only in relation to the scope of the registration.

6. The Commission shall register an initiative under a single registration number and inform the group of organisers thereof.

7. Where it refuses to register or only partially registers an initiative in accordance with paragraph 4, the Commission shall state reasons for its decision and inform the group of organisers. It shall also inform the group of organisers about all possible judicial and extrajudicial remedies available to it.

The Commission shall make all decisions on requests for registration it adopts in accordance with this Article publicly available in the register and on the public website on the European citizens' initiative.

8. The Commission shall inform the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of the registration of an initiative.

*Article 7***Withdrawal of an initiative**

At any time before submitting an initiative to the Commission in accordance with Article 13, the group of organisers may withdraw an initiative that has been registered in accordance with Article 6. Such withdrawal shall be published in the register.

*Article 8***Collection period**

1. All statements of support shall be collected within a period not exceeding 12 months from a date chosen by the group of organisers (the 'collection period'), without prejudice to Article 11(6). That date must be not later than six months from the registration of the initiative in accordance with Article 6.

The group of organisers shall inform the Commission of the date chosen at the latest 10 working days before that date.

Where, during the collection period, the group of organisers wishes to terminate the collection of statements of support before the end of the collection period, it shall inform the Commission of that intention at least 10 working days before the new date chosen for the end of the collection period.

The Commission shall inform the Member States of the date referred to in the first subparagraph.

2. The Commission shall indicate the beginning and end dates of the collection period in the register.
3. The Commission shall close the operation of the central online collection system referred to in Article 10, and the group of organisers shall close the operation of an individual online collection system referred to in Article 11, on the date at which the collection period ends.

*Article 9***Procedure for the collection of statements of support**

1. Statements of support may be signed online or in paper form.
2. Only forms which comply with the models set out in Annex III may be used to collect statements of support.

The group of organisers shall complete the forms set out in Annex III prior to initiating the collection of statements of support. The information given in the forms shall correspond to that contained in the register.

Where the group of organisers chooses to collect statements of support online through the central online collection system provided for in Article 10, the Commission shall be responsible for providing the appropriate forms, in accordance with Annex III.

Where an initiative has been partially registered in accordance with Article 6(4), the forms set out in Annex III as well as the central online collection system and an individual online collection system, as applicable, shall reflect the scope of the registration of the initiative. The forms for the statement of support may be adapted for the purpose of the collection online or in paper form.

Annex III shall not apply where the citizens support an initiative online, through the central online collection system referred to in Article 10, using their notified electronic identification means within the meaning of Regulation (EU) No 910/2014 referred to in Article 10(4) of this Regulation. Citizens shall provide their nationality and Member States shall accept the minimum data set for a natural person in accordance with Commission Implementing Regulation (EU) 2015/1501 ⁽¹⁵⁾.

3. A person signing a statement of support shall be required to provide only the personal data set out in Annex III.
4. Member States shall inform the Commission of whether they wish to be included in part A or B, respectively, of Annex III by 30 June 2019. Member States that wish to be included in part B of Annex III, shall indicate the type(s) of personal identification (document) number referred to therein.

⁽¹⁵⁾ Commission Implementing Regulation (EU) 2015/1501 of 8 September 2015 on the interoperability framework pursuant to Article 12(8) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market (OJ L 235, 9.9.2015, p. 1).

By 1 January 2020, the Commission shall publish the forms set out in Annex III in the register.

A Member State included in one part of Annex III may make a request to the Commission to be transferred to the other part of Annex III. It shall make its request to the Commission at least six months before the date from which the new forms will be applicable.

5. The group of organisers shall be responsible for the collection of the statements of support from signatories in paper form.
6. A person may sign a statement of support for a given initiative only once.
7. The group of organisers shall inform the Commission of the number of collected statements of support in each Member State at least every two months during the collection period and of the final number within three months of the end of the collection period for publication in the register.

Where the required number of statements of support has not been reached, or in the absence of a response from the group of organisers within three months of the end of the collection period, the Commission shall close the initiative and publish a notice to that effect in the register.

Article 10

Central online collection system

1. For the purpose of online collection of statements of support, the Commission shall set up, by 1 January 2020, and operate as of that date, a central online collection system, in accordance with Decision (EU, Euratom) 2017/46.

The costs of the setting up and operation of the central online collection system shall be borne by the general budget of the European Union. The use of the central online collection system shall be free of charge.

The central online collection system shall be accessible for persons with disabilities.

The data obtained through the central online collection system shall be stored in the servers made available by the Commission for that purpose.

The central online collection system shall allow for the uploading of statements of support collected in paper form.

2. For each initiative, the Commission shall ensure that statements of support can be collected through the central online collection system during the collection period determined in accordance with Article 8.
3. At the latest 10 working days before the start of the collection period, the group of organisers shall inform the Commission as to whether it wishes to use the central online collection system and whether it wishes to upload the statements of support collected in paper form.

Where a group of organisers wishes to upload the statements of support collected in paper form, it shall upload all statements of support collected in paper form not later than two months after the end of the collection period, and inform the Commission thereof.

4. Member States shall ensure that:
 - (a) citizens can support initiatives online through statements of support by using notified electronic identification means or by signing the statement of support with an electronic signature within the meaning of Regulation (EU) No 910/2014;
 - (b) the Commission e-IDAS node developed within the framework of Regulation (EU) No 910/2014 and Implementing Regulation (EU) 2015/1501 is recognised.
5. The Commission shall consult stakeholders on further developments and improvements of the central online collection system to take into account their suggestions and concerns.

Article 11

Individual online collection systems

1. Where a group of organisers does not use the central online collection system, it may collect online statements of support in several or all Member States through another single online collection system (the 'individual online collection system').

The data collected through the individual online collection system shall be stored in the territory of a Member State.

2. The group of organisers shall ensure that the individual online collection system complies with the requirements laid down in paragraph 4 of this Article and in Article 18(3) throughout the collection period.

3. After the registration of the initiative and before the beginning of the collection period, and without prejudice to the powers of the national supervisory authorities under Chapter VI of Regulation (EU) 2016/679, the group of organisers shall request the competent authority of the Member State in which the data collected through the individual online collection system will be stored to certify that that system complies with the requirements laid down in paragraph 4 of this Article.

Where an individual online collection system complies with the requirements laid down in paragraph 4 of this Article, the competent authority shall issue a certificate to that effect in accordance with the model set out in Annex IV within one month of the request. The group of organisers shall make a copy of that certificate publicly available on the website used for the individual online collection system.

Member States shall recognise the certificates issued by the competent authorities of other Member States.

4. Individual online collection systems shall have the adequate security and technical features to ensure throughout the collection period that:

- (a) only natural persons are able to sign a statement of support;
- (b) the information provided on the initiative corresponds to the information published in the register;
- (c) data are collected from signatories in accordance with Annex III;
- (d) the data provided by signatories are securely collected and stored.

5. By 1 January 2020, the Commission shall adopt implementing acts laying down the technical specifications for the implementation of paragraph 4 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22.

The Commission may seek the advice of the European Union Agency for Network and Information Security (ENISA) in developing the technical specifications referred to in the first subparagraph.

6. Where statements of support are collected through an individual online collection system, the collection period may begin only once the certificate referred to in paragraph 3 has been issued for that system.

7. This Article shall apply only to initiatives registered in accordance with Article 6 by 31 December 2022.

Article 12

Verification and certification of statements of support by the Member States

1. Each Member State shall verify and certify that the statements of support signed by its nationals comply with the provisions of this Regulation (the 'responsible Member State').

2. Within three months of the end of the collection period and without prejudice to paragraph 3 of this Article, the group of organisers shall submit the statements of support, collected online or in paper form, to the competent authorities referred to in Article 20(2) of the responsible Member State.

The group of organisers shall submit the statements of support to the competent authorities only where the minimum numbers of signatories laid down in Article 3 have been reached.

Statements of support shall be submitted to each competent authority in the responsible Member State only once, using the form set out in Annex V.

Statements of support which have been collected online shall be submitted in accordance with an electronic schema made publicly available by the Commission.

Statements of support collected in paper form and those collected online through an individual online collection system shall be submitted separately.

3. The Commission shall submit the statements of support collected online through the central online collection system, as well as those collected in paper form and uploaded pursuant to the second subparagraph of Article 10(3), to the competent authority of the responsible Member State as soon as the group of organisers has submitted the form set out in Annex V to the competent authority of the responsible Member State in accordance with paragraph 2 of this Article.

Where a group of organisers has collected statements of support through an individual online collection system, it may request the Commission to submit these statements of support to the competent authority of the responsible Member State.

The Commission shall submit the statements of support in accordance with the second to fourth subparagraph of paragraph 2 of this Article, using the file exchange service referred to in Article 4(5).

4. Within three months of receiving the statements of support, the competent authorities shall verify them on the basis of appropriate checks, which may be based on random sampling, in accordance with national law and practice.

Where statements of support collected online and in paper form are submitted separately, that period shall start running when the competent authority has received all statements of support.

For the purpose of the verification of statements of support collected in paper form, the authentication of signatures shall not be required.

5. On the basis of the verifications carried out, the competent authority shall certify the number of valid statements of support for the Member State concerned. That certificate shall be delivered, free of charge, to the group of organisers, using the model set out in Annex VI.

The certificate shall specify the number of valid statements of support collected in paper form and online, including those collected in paper form and uploaded pursuant to the second subparagraph of Article 10(3).

Article 13

Submission to the Commission

Within three months of obtaining the last certificate provided for in Article 12(5), the group of organisers shall submit the initiative to the Commission.

The group of organisers shall submit the completed form set out in Annex VII, together with copies, in paper or electronic form, of the certificates referred to in Article 12(5).

The form set out in Annex VII shall be made publicly available by the Commission in the register.

Article 14

Publication and public hearing

1. When the Commission receives a valid initiative in respect of which the statements of support have been collected and certified in accordance with Articles 8 to 12, it shall publish without delay a notice to that effect in the register and transmit the initiative to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions, as well as to the national parliaments.

2. Within three months of the submission of the initiative, the group of organisers shall be given the opportunity to present the initiative at a public hearing held by the European Parliament.

The European Parliament shall organise the public hearing at its premises.

The Commission shall be represented in the hearing at an appropriate level.

The Council, other institutions and advisory bodies of the Union, the national parliaments and civil society shall be given the opportunity to attend the hearing.

The European Parliament shall ensure a balanced representation of relevant public and private interests.

3. Following the public hearing, the European Parliament shall assess the political support for the initiative.

Article 15

Examination by the Commission

1. Within one month of the submission of the initiative in accordance with Article 13, the Commission shall receive the group of organisers at an appropriate level to allow it to explain in detail the objectives of the initiative.

2. Within six months of the publication of the initiative in accordance with Article 14(1), and after the public hearing referred to in Article 14(2), the Commission shall set out in a communication its legal and political conclusions on the initiative, the action it intends to take, if any, and its reasons for taking or not taking action.

Where the Commission intends to take action in response to the initiative, including, where appropriate, the adoption of one or more proposals for a legal act of the Union, the communication shall also set out the envisaged timeline for these actions.

The communication shall be notified to the group of organisers as well as to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions and shall be made public.

3. The Commission and the group of organisers shall inform the signatories on the response to the initiative in accordance with Article 18(2) and (3).

The Commission shall provide, in the register and on the public website on the European citizens' initiative, up-to-date information on the implementation of the actions set out in the communication adopted in response to the initiative.

Article 16

Follow-up to successful citizens' initiatives by the European Parliament

The European Parliament shall assess the measures taken by the Commission as a result of its communication referred to in Article 15(2).

CHAPTER III

OTHER PROVISIONS

Article 17

Transparency

1. The group of organisers shall provide, for the publication in the register and, where appropriate, on its campaign website, clear, accurate and comprehensive information on the sources of funding for the initiative exceeding EUR 500 per sponsor.

The declared sources of funding and support, including the sponsors, and corresponding amounts shall be clearly identifiable.

The group of organisers shall also provide information on the organisations assisting it on a voluntary basis, where such support is not economically quantifiable.

That information shall be updated at least every two months during the period from the date of registration to the date on which the initiative is submitted to the Commission in accordance with Article 13. It shall be made publicly available by the Commission in a clear and accessible manner in the register and on the public website on the European citizens' initiative.

2. The Commission shall be entitled to request that the group of organisers provide any additional information and clarification on the sources of funding and support declared in accordance with this Regulation.

3. The Commission shall enable citizens to submit a complaint relating to the completeness and correctness of the information on the sources of funding and support as declared by the groups of organisers and make a contact form publicly available in the register and on the public website on the European citizens' initiative to that effect.

The Commission may request any additional information in relation to complaints received in accordance with this paragraph from the group of organisers, and, as appropriate, update the information on the declared sources of funding and support in the register.

Article 18

Communication

1. The Commission shall raise public awareness about the existence, objectives and functioning of the European citizens' initiative through communication activities and information campaigns, thereby contributing to promoting the active participation of citizens in the political life of the Union.

The European Parliament shall contribute to the communication activities of the Commission.

2. For the purposes of communication and information activities regarding the initiative concerned and subject to explicit consent by a signatory, his or her email address may be collected by a group of organisers or by the Commission.

Potential signatories shall be informed that their right to support an initiative is not conditional on giving their consent to collecting their email address.

3. Email addresses may not be collected as part of the statement of support forms. However, they may be collected at the same time as statements of support, provided they are processed separately.

Article 19

Protection of personal data

1. The representative of the group of organisers shall be the data controller within the meaning of Regulation (EU) 2016/679 in relation to the processing of personal data when collecting statements of support, email addresses and data on the sponsors of the initiatives. Where the legal entity referred to in Article 5(7) of this Regulation is created, that entity shall be the data controller.

2. The competent authorities designated in accordance with Article 20(2) of this Regulation shall be the data controllers within the meaning of Regulation (EU) 2016/679 in relation to the processing of personal data for the purposes of verification and certification of statements of support.

3. The Commission shall be the data controller within the meaning of Regulation (EU) 2018/1725 in relation to the processing of personal data in the register, the online collaborative platform, the central online collection system referred to in Article 10 of this Regulation, and the collection of email addresses.

4. The personal data provided in the statements of support forms shall be collected for the purpose of the operations required for the secure collection and storage in accordance with Articles 9 to 11, for the submission to the Member States, the verification and certification in accordance with Article 12, and for the necessary quality checks and statistical analysis.

5. The group of organisers and the Commission, as appropriate, shall destroy all statements of support signed for an initiative and any copies thereof not later than one month after the submission of the initiative to the Commission in accordance with Article 13 or not later than 21 months after the beginning of the collection period, whichever is the earlier. However, where an initiative is withdrawn after the beginning of the collection period, the statements of support and any copies thereof shall be destroyed no later than one month after the withdrawal referred to in Article 7.

6. The competent authority shall destroy all statements of support and copies thereof not later than three months after issuing the certificate referred to in Article 12(5).

7. Statements of support for a given initiative and copies thereof may be retained beyond the time limits laid down in paragraphs 5 and 6 if necessary for the purpose of legal or administrative proceedings relating to the initiative concerned. They shall be destroyed not later than one month after the date of conclusion of the said proceedings by a final decision.

8. The Commission and the group of organisers shall destroy records of the email addresses collected in accordance with Article 18(2), not later than one month after the withdrawal of an initiative or 12 months after the end of the collection period or the submission of the initiative to the Commission, respectively. However, where the Commission sets out, by means of a communication, the actions it intends to take in accordance with Article 15(2), records of the email addresses shall be destroyed at the latest three years after the publication of the communication.

9. Without prejudice to their rights under Regulation (EU) 2018/1725, the members of the group of organisers have the right to request the removal of their personal data from the register after two years from the date of registration of the initiative concerned.

Article 20

Competent authorities within the Member States

1. For the purpose of Article 11, each Member State shall designate one or more competent authorities responsible for issuing the certificate referred to in Article 11(3).

2. For the purpose of Article 12, each Member State shall designate one competent authority responsible for coordinating the process of verification of statements of support and for issuing the certificates referred to in Article 12(5).

3. By 1 January 2020, Member States shall transmit the names and addresses of the authorities designated pursuant to paragraphs 1 and 2 to the Commission. They shall inform the Commission of any update of that information.

The Commission shall make the names and addresses of the authorities designated pursuant to paragraphs 1 and 2 publicly available in the register.

Article 21

Communication of national provisions

1. By 1 January 2020, Member States shall communicate the specific provisions adopted in order to implement this Regulation to the Commission.

2. The Commission shall make these provisions publicly available in the register in the language of the communication by the Member States in accordance with paragraph 1.

CHAPTER IV

DELEGATED ACTS AND IMPLEMENTING ACTS

Article 22

Committee procedure

1. For the purpose of implementing Article 11(5) of this Regulation, the Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

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

Article 23

Delegated powers

The Commission is empowered to adopt delegated acts in accordance with Article 24 to amend the Annexes to this Regulation within the scope of the provisions of this Regulation relevant to those Annexes.

Article 24

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 the delegated acts referred to in Article 23 shall be conferred on the Commission for a period of five years from 6 June 2019.

3. The delegation of power referred to in Article 23 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

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

6. A delegated act adopted pursuant to Article 23 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

CHAPTER V

FINAL PROVISIONS

Article 25

Review

The Commission shall periodically review the functioning of the European citizens' initiative and present a report to the European Parliament and the Council on the application of this Regulation no later than 1 January 2024, and every four years thereafter. These reports shall cover also the minimum age to support European citizens' initiatives in the Member States. The reports shall be made public.

Article 26

Repeal

Regulation (EU) No 211/2011 is repealed with effect from 1 January 2020.

References to the repealed Regulation shall be construed as references to this Regulation.

Article 27

Transitional provision

Articles 5 to 9 of Regulation (EU) No 211/2011 shall continue to apply after 1 January 2020 to European citizens' initiatives which are registered before 1 January 2020.

Article 28

Entry into force and applicability

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

It shall apply from 1 January 2020.

However Articles 9(4), 10, 11(5) and 20 to 24 shall apply from the entry into force of this Regulation.

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

Done at Strasbourg, 17 April 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

ANNEX I

MINIMUM NUMBER OF SIGNATORIES PER MEMBER STATE

Belgium	15 771
Bulgaria	12 767
Czechia	15 771
Denmark	9 763
Germany	72 096
Estonia	4 506
Ireland	8 261
Greece	15 771
Spain	40 554
France	55 574
Croatia	8 261
Italy	54 823
Cyprus	4 506
Latvia	6 008
Lithuania	8 261
Luxembourg	4 506
Hungary	15 771
Malta	4 506
Netherlands	19 526
Austria	13 518
Poland	38 301
Portugal	15 771
Romania	24 032
Slovenia	6 008
Slovakia	9 763
Finland	9 763
Sweden	15 020
United Kingdom	54 823

ANNEX II

REQUIRED INFORMATION FOR REGISTERING AN INITIATIVE

1. The title of the initiative, in no more than 100 characters; (*);
2. The objectives of the initiative on which the Commission is invited to act, in no more than 1 100 characters without spaces; (adjusted mean per language (*));

The group of organisers may provide an annex on the subject, objectives and background to the initiative, in no more than 5 000 characters without spaces (adjusted mean per language (*));

The group of organisers may provide additional information on the subject, objectives and background to the initiative. It may also, if it wishes, submit a draft legal act;

3. The provisions of the Treaties considered relevant by the group of organisers for the proposed action;
4. The full names, postal addresses, nationalities and dates of birth of seven members of the group of organisers residing in seven different Member States indicating specifically the representative and the substitute as well as their email addresses and telephone numbers (1);

If the representative and/or the substitute are not among the seven members referred to in the first subparagraph, their full names, postal addresses, nationalities, dates of birth, email addresses and telephone numbers;

5. Documents that prove the full names, postal addresses, nationalities and dates of birth of each of the seven members referred to in point 4 and of the representative and the substitute if they are not among those seven members;
6. The names of the other members of the group of organisers;
7. In the situation referred to in Article 5(7) of Regulation (EU) 2019/788, where appropriate, documents that prove the creation of a legal entity in accordance with the national law of a Member State specifically for the purpose of managing a given initiative and that the member of the group of organisers designated as the representative thereof is mandated to act on behalf of the legal entity;
8. All sources of support and funding for the initiative at the time of registration.

(*) The Commission provides the translation into all the official languages of the institutions of the Union of these elements, for all the registered initiatives.

(1) Only the full names of the members of the group of organisers, the country of residence of the representative or, where appropriate, the name and the country of the seat of the legal entity, the email addresses of the contact persons and information relating to the sources of support and funding will be made available to the public in the Commission's online register. Data subjects are entitled to object to the publication of their personal data on compelling legitimate grounds relating to their particular situation.

STATEMENT OF SUPPORT FORM — Part A ⁽¹⁾

(for Member States that do not require the provision of a personal identification number/personal identification document number)

All fields on this form are mandatory.

TO BE PRE-COMPLETED BY THE GROUP OF ORGANISERS:

1. All signatories on this form are citizens of:
Please mark only one Member State per list.
2. European Commission registration number:
3. Dates of start and end of the collection period:
4. Web address of this initiative in the European Commission's register:
5. Title of this initiative:
6. Objectives of the initiative:
7. Names and email addresses of registered contact persons:
[In the situation referred to in Article 5(7) of Regulation (EU) 2019/788, where appropriate, additionally: the name and the country of the seat of the legal entity]:
8. Website of this initiative (if any):

TO BE COMPLETED BY THE SIGNATORIES IN CAPITAL LETTERS:

'I hereby certify that the information that I have provided in this form is correct and that I have not already supported this initiative.'

FULL FIRST NAMES	FAMILY NAMES	RESIDENCE ⁽¹⁾ (street, number, postal code, city, country)	DATE OF BIRTH	DATE	SIGNATURE ⁽²⁾

⁽¹⁾ German nationals residing outside the country only if they have registered their current permanent residence at their responsible German diplomatic representation abroad.⁽²⁾ Signature is not mandatory if the form is submitted online via the central online collection system as referred to in Article 10 of Regulation (EU) 2019/788 or an individual online collection system as referred to in Article 11 of the said Regulation.⁽³⁾ The form shall be printed on one sheet. Group of organisers may use a double-sided sheet. For the purpose of uploading the statements of support collected in paper form to the central online collection system a code made available by the European Commission shall be used.

Privacy statement ^(?) for the statements of support collected on paper or via individual online collection systems:

In accordance with Regulation (EU) 2016/679 (the General Data Protection Regulation), your personal data provided on this form will only be used for the support of the initiative and made available to the competent national authorities for the purpose of verification and certification. You are entitled to request from the group of organisers of this initiative access to, rectification of, erasure and restriction of processing of your personal data.

Your data will be stored by the group of organisers for a maximum retention period of one month after the submission of the initiative to the European Commission or 21 months after the beginning of the collection period, whichever is the earlier. It might be retained beyond these time limits in the case of administrative or legal proceedings, for a maximum of one month after the date of conclusion of these proceedings.

Without prejudice to any other administrative or judicial remedy, you have the right to lodge at any time a complaint with a data protection authority, in particular in the Member State of your habitual residence, place of work or place of the alleged infringement if you consider that your data is unlawfully processed.

The representative of the group of organisers of the initiative or, where appropriate, the legal entity created by it, is the controller within the meaning of the General Data Protection Regulation and can be contacted using the details provided on this form.

The contact details of the data protection officer (if any) are available at the web address of this initiative in the European Commission's register, as provided in point 4 of this form.

The contact details of the national authority which will receive and process your personal data and the contact details of the national data protection authorities can be consulted at: <http://ec.europa.eu/citizens-initiative/public/data-protection>.

Privacy statement for the statements of support collected online via the central online collection system:

In accordance with Regulation (EU) 2018/1725 and Regulation (EU) 2016/679 (the General Data Protection Regulation) your personal data provided on this form will only be used for the support of the initiative and made available to the competent national authorities for the purpose of verification and certification. You are entitled to request from the European Commission and from the representative of the group of organisers of the initiative or, where appropriate, the legal entity created by it, access to, rectification of, erasure and restriction of processing of your personal data.

Your data will be stored by the European Commission for a maximum retention period of one month after the submission of the initiative to the European Commission or 21 months after the beginning of the collection period, whichever is the earlier. It might be retained beyond these time limits in the case of administrative or legal proceedings, for a maximum of one month after the date of conclusion of these proceedings.

Without prejudice to any other administrative or judicial remedy, you have the right to lodge at any time a complaint with the European Data Protection Supervisor or with a data protection authority, in particular in the Member State of your habitual residence, place of work or place of the alleged infringement if you consider that your data is unlawfully processed.

The European Commission and the representative of the group of organisers of the initiative or, where appropriate, the legal entity created by it, are joint controllers within the meaning of Regulation (EU) 2018/1725 and the General Data Protection Regulation and can be contacted using the details provided on this form.

The contact details of the data protection officer of the group of organisers (if any) are available at the web address of this initiative in the European Commission's register, as provided in point 4 of this form.

The contact details of the data protection officer of the European Commission, of the national authority which will receive and process your personal data, of the European Data Protection Supervisor and of the national data protection authorities can be consulted at: <http://ec.europa.eu/citizens-initiative/public/data-protection>.

^(?) Only one of the two proposed versions of the privacy statements is to be used, depending on the mode of collection.

STATEMENT OF SUPPORT FORM — Part B ⁽³⁾

(for Member States that require the provision of a personal identification number/personal identification document number)

All fields on this form are mandatory.

TO BE PRE-COMPLETED BY THE GROUP OF ORGANISERS:

1. All signatories on this form are citizens of:
Please mark only one Member State per list.
See the European Commission's website on the European Citizens' Initiative for personal identification numbers/personal identification document numbers, one of which must be provided.
2. European Commission registration number:
3. Dates of start and end of the collection period:
4. Web address of this initiative in the European Commission's register:
5. Title of this initiative:
6. Objectives of the initiative:
7. Names and email addresses of registered contact persons:
[In the situation referred to in Article 5(7) of Regulation (EU) 2019/788, where appropriate, additionally: the name and the country of the seat of the legal entity]:
8. Website of this initiative (if any):

TO BE COMPLETED BY THE SIGNATORIES IN CAPITAL LETTERS:

'I hereby certify that the information that I have provided in this form is correct and that I have not already supported this initiative.'

FULL FIRST NAMES	FAMILY NAMES	PERSONAL IDENTIFICATION NUMBER/PERSONAL IDENTIFICATION DOCUMENT NUMBER	TYPE OF PERSONAL IDENTIFICATION NUMBER OR DOCUMENT	DATE	SIGNATURE ⁽¹⁾

⁽¹⁾ Signature is not mandatory if the form is submitted online via the central online collection system as referred to in Article 10 of Regulation (EU) 2019/788 or an individual online collection system as referred to in Article 11 of the said Regulation.

⁽³⁾ The form shall be printed on one sheet. Group of organisers may use a double-sided sheet. For the purpose of uploading the statements of support collected in paper form to the central online collection system a code made available by the European Commission shall be used.

Privacy statement (*) for the statements of support collected on paper or via individual online collection systems:

In accordance with Regulation (EU) 2016/679 (the General Data Protection Regulation), your personal data provided on this form will only be used for the support of the initiative and made available to the competent national authorities for the purpose of verification and certification. You are entitled to request from the group of organisers of this initiative access to, rectification of, erasure and restriction of processing of your personal data.

Your data will be stored by the group of organisers for a maximum retention period of one month after the submission of the initiative to the European Commission or 21 months after the beginning of the collection period, whichever is the earlier. It might be retained beyond these time limits in the case of administrative or legal proceedings, for a maximum of one month after the date of conclusion of these proceedings.

Without prejudice to any other administrative or judicial remedy, you have the right to lodge at any time a complaint with a data protection authority, in particular in the Member State of your habitual residence, place of work or place of the alleged infringement if you consider that your data is unlawfully processed.

The representative of the group of organisers of the initiative or, where appropriate, the legal entity created by it, is the controller within the meaning of the General Data Protection Regulation and can be contacted using the details provided on this form.

The contact details of the data protection officer (if any) are available at the web address of this initiative in the European Commission's register, as provided in point 4 of this form.

The contact details of the national authority which will receive and process your personal data and the contact details of the national data protection authorities can be consulted at: <http://ec.europa.eu/citizens-initiative/public/data-protection>.

Privacy statement for the statements of support collected online via the central online collection system:

In accordance with Regulation (EU) 2018/1725 and Regulation (EU) 2016/679 (the General Data Protection Regulation) your personal data provided on this form will only be used for the support of the initiative and made available to the competent national authorities for the purpose of verification and certification. You are entitled to request from the European Commission and from the representative of the group of organisers of the initiative or, where appropriate, the legal entity created by it, access to, rectification of, erasure and restriction of processing of your personal data.

Your data will be stored by the European Commission for a maximum retention period of one month after the submission of the initiative to the European Commission or 21 months after the beginning of the collection period, whichever is the earlier. It might be retained beyond these time limits in the case of administrative or legal proceedings, for a maximum of one month after the date of conclusion of these proceedings.

Without prejudice to any other administrative or judicial remedy, you have the right to lodge at any time a complaint with the European Data Protection Supervisor or with a data protection authority, in particular in the Member State of your habitual residence, place of work or place of the alleged infringement if you consider that your data is unlawfully processed.

The European Commission and the representative of the group of organisers of the initiative or, where appropriate, the legal entity created by it, are joint controllers within the meaning of Regulation (EU) 2018/1725 and the General Data Protection Regulation and can be contacted using the details provided on this form.

The contact details of the data protection officer of the group of organisers (if any) are available at the web address of this initiative in the European Commission's register, as provided in point 4 of this form.

The contact details of the data protection officer of the European Commission, of the national authority which will receive and process your personal data, of the European Data Protection Supervisor and of the national data protection authorities can be consulted at: <http://ec.europa.eu/citizens-initiative/public/data-protection>.

(*) Only one of the two proposed versions of the privacy statements is to be used, depending on the mode of collection.

ANNEX IV

CERTIFICATE CONFIRMING THE CONFORMITY OF AN ONLINE COLLECTION SYSTEM WITH REGULATION (EU) 2019/788 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 17 APRIL 2019 ON THE EUROPEAN CITIZENS' INITIATIVE

... (name of competent authority) of ... (name of Member State) hereby certifies that the individual online collection system ... (website address) used for the collection of statements of support for ... (title of the initiative) having the registration number ... (registration number of the initiative) complies with the relevant provisions of Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative.

Date, signature and official stamp of the competent authority:

ANNEX V

FORM FOR THE SUBMISSION OF STATEMENTS OF SUPPORT TO THE MEMBER STATES' COMPETENT AUTHORITIES

1. Full names, postal addresses and email addresses of the contact persons (representative and substitute of the group of organisers) or of the legal entity managing the initiative and its representative:
2. Title of the initiative:
3. Commission registration number:
4. Date of registration:
5. Number of signatories who are nationals of (name of Member State):
6. Total number of collected statements of support:
7. Number of Member States where the threshold has been reached:
8. Annexes:

(Include all statements of support from signatories who are nationals of the relevant Member State.

If applicable, include the relevant certificate of conformity of the individual online collection system with Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative).

9. I hereby declare that the information provided in this form is correct and that the statements of support have been collected in accordance with Article 9 of Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative.
10. Date and signature of one of the contact persons (representative/substitute ⁽¹⁾) or of the representative of the legal entity:

⁽¹⁾ Delete as appropriate.

ANNEX VI

CERTIFICATE CONFIRMING THE NUMBER OF VALID STATEMENTS OF SUPPORT COLLECTED FOR ... (NAME OF MEMBER STATE)

... (name of competent authority) of ... (name of Member State), having made the necessary verifications required by Article 12 of Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative, hereby certifies that ... (number of valid statements of support) statements of support for the initiative having the registration number ... (registration number of the initiative) are valid in accordance with the provisions of that Regulation.

Date, signature and official stamp

ANNEX VII

FORM FOR THE SUBMISSION OF AN INITIATIVE TO THE EUROPEAN COMMISSION

1. Title of the initiative:
2. Commission registration number:
3. Date of registration:
4. Number of valid statements of support received (must be at least one million):
5. Number of signatories certified by Member States:

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU
Number of signatories																
	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	TOTAL			
Number of signatories																

6. Full names, postal addresses and email addresses of the contact persons (representative and substitute of the group of organisers) ⁽¹⁾ or of the legal entity managing the initiative and its representative.
7. Indicate all sources of support and funding received for the initiative, including the amount of financial support at the time of submission.
8. I hereby declare that the information provided in this form is correct and that all relevant procedures and conditions set out in Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative have been complied with.

Date and signature of one of the contact persons (representative/substitute ⁽²⁾) or of the representative of the legal entity:

9. Annexes: (Include all certificates)

⁽¹⁾ Only the full names of the members of the group of organisers, the country of residence of the representative or, where appropriate, the name and the country of the seat of the legal entity, the email addresses of the contact persons and information relating to the sources of support and funding will be made available to the public on the Commission's online register. Data subjects are entitled to object to the publication of their personal data on compelling legitimate grounds relating to their particular situation.

⁽²⁾ Delete as appropriate.

DIRECTIVES

DIRECTIVE (EU) 2019/789 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2019

laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC

(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 53(1) and Article 62 thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) In order to contribute to the proper functioning of the internal market, it is necessary to provide for wider dissemination in Member States of television and radio programmes that originate in other Member States, for the benefit of users across the Union, by facilitating the licensing of copyright and related rights in works and other protected subject matter contained in broadcasts of certain types of television and radio programmes. Television and radio programmes are important means of promoting cultural and linguistic diversity and social cohesion, and of increasing access to information.
- (2) The development of digital technologies and the internet has transformed the distribution of, and access to, television and radio programmes. Users increasingly expect to have access to television and radio programmes, both live and on-demand, through traditional channels, such as satellite or cable, and also through online services. Broadcasting organisations are therefore increasingly offering, in addition to their own broadcasts of television and radio programmes, online services ancillary to such broadcasts, such as simulcasting and catch-up services. Operators of retransmission services, which aggregate broadcasts of television and radio programmes into packages and provide them to users simultaneously with the initial transmission of those broadcasts, unaltered and unabridged, use various techniques of retransmission, such as cable, satellite, digital terrestrial, and mobile or closed circuit IP-based networks, as well as the open internet. Furthermore, operators that distribute television and radio programmes to users have different ways of obtaining the programme-carrying signals of broadcasting organisations, including by means of direct injection. There is a growing demand, on the part of users, for access to broadcasts of television and radio programmes not only originating in their Member State, but also in other Member States. Such users include members of linguistic minorities in the Union, as well as persons who live in a Member State other than their Member State of origin.

⁽¹⁾ OJ C 125, 21.4.2017, p. 27.

⁽²⁾ Position of the European Parliament of 28 March 2019 (not yet published in the Official Journal) and decision of the Council of 15 April 2019.

- (3) Broadcasting organisations transmit daily many hours of television and radio programmes. Those programmes incorporate a variety of content, such as audiovisual, musical, literary or graphic works, protected under Union law by copyright or related rights or both. That results in a complex process of clearing the rights of a multitude of rightholders, and for various categories of works and other protected subject matter. Often the rights need to be cleared in a short time frame, in particular when preparing programmes such as news or current affairs programmes. In order to make their online services available across borders, broadcasting organisations need to have the required rights to works and other protected subject matter for all the relevant territories, which further increases the complexity of the clearance of such rights.
- (4) Operators of retransmission services typically offer multiple programmes comprising a multitude of works and other protected subject matter and have a very short time frame for obtaining the necessary licences and, hence, face a significant rights clearance burden. Authors, producers and other rightholders also risk having their works and other protected subject matter used without authorisation or payment of appropriate remuneration. Such remuneration for the retransmission of their works and other protected subject matter is important to ensure that there is a diverse content offer, which is also in the interest of consumers.
- (5) The rights in works and other protected subject matter are harmonised, inter alia, through Directive 2001/29/EC of the European Parliament and of the Council ⁽³⁾ and Directive 2006/115/EC of the European Parliament and of the Council ⁽⁴⁾, which provide for a high level of protection for rightholders.
- (6) Council Directive 93/83/EEC ⁽⁵⁾ facilitates cross-border satellite broadcasting and retransmission by cable of television and radio programmes from other Member States. However, the provisions of that Directive on transmissions of broadcasting organisations are limited to satellite transmissions and, therefore, do not apply to online services ancillary to broadcasts. Furthermore, the provisions concerning retransmissions of television and radio programmes from other Member States are limited to simultaneous, unaltered and unabridged retransmission by cable or microwave systems and do not cover retransmissions by means of other technologies.
- (7) Accordingly, cross-border provision of online services that are ancillary to broadcasts, and retransmissions of television and radio programmes originating in other Member States, should be facilitated by adapting the legal framework on the exercise of copyright and related rights relevant for those activities. That adaptation should be done by taking account of the financing and production of creative content, and, in particular, of audiovisual works.
- (8) This Directive should cover ancillary online services offered by a broadcasting organisation, which have a clear and subordinate relationship with the broadcasting organisation's broadcasts. Those services include services that give access to television and radio programmes in a strictly linear manner, simultaneously to the broadcast, and services that give access, within a defined time period after the broadcast, to television and radio programmes which have been previously broadcast by the broadcasting organisation, so-called 'catch-up services'. In addition, the ancillary online services covered by this Directive include services that give access to material that enriches or otherwise expands television and radio programmes broadcast by the broadcasting organisation, including by way of previewing, extending, supplementing or reviewing the relevant programme's content. This Directive should apply to ancillary online services that are provided to users by broadcasting organisations together with the broadcasting service. It should also apply to ancillary online services that, while having a clear and subordinate relationship with the broadcast, can be accessed by users separately from the broadcasting service without there being a precondition for the users to have to obtain access to that broadcasting service, for example via a subscription. This does not affect the freedom of broadcasting organisations to offer such ancillary online services free of charge or against payment. The provision of access to individual works or other protected

⁽³⁾ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

⁽⁴⁾ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28).

⁽⁵⁾ Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 6.10.1993, p. 15).

subject matter that have been incorporated in a television or radio programme, or to works or other protected subject matter that are not related to any programme broadcast by the broadcasting organisation, such as services giving access to individual musical or audiovisual works, music albums or videos, for example video-on-demand services, should not fall within the scope of the services covered by this Directive.

- (9) In order to facilitate the clearance of rights for the provision of ancillary online services across borders, it is necessary to provide for the establishment of the country of origin principle as regards the exercise of copyright and related rights relevant for acts that occur in the course of the provision of, the access to or the use of an ancillary online service. That principle should cover the clearance of all rights that are necessary for a broadcasting organisation to be able to communicate to the public or make available to the public its programmes when providing ancillary online services, including the clearance of any copyright and related rights in the works or other protected subject matter used in the programmes, for example the rights in phonograms or performances. That country of origin principle should apply exclusively to the relationship between rightholders, or entities representing rightholders, such as collective management organisations, and broadcasting organisations, and solely for the purpose of the provision of, the access to or the use of an ancillary online service. The country of origin principle should not apply to any subsequent communication to the public of works or other protected subject matter, by wire or wireless means, or to any subsequent making available to the public of works or other protected subject matter, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, or to any subsequent reproduction of the works or other protected subject matter which are contained in the ancillary online service.
- (10) Given the specificities of the financing and licensing mechanisms for certain audiovisual works, which are often based on exclusive territorial licensing, it is appropriate, as regards television programmes, to limit the scope of application of the country of origin principle set out in this Directive to certain types of programmes. Those types of programmes should include news and current affairs programmes as well as a broadcasting organisation's own productions which are exclusively financed by it, including where the funds for the financing used by the broadcasting organisation for its productions come from public funds. For the purposes of this Directive, broadcasting organisations' own productions should be understood as covering productions carried out by a broadcasting organisation with the use of its own resources, but excluding productions commissioned by the broadcasting organisation to producers that are independent from the broadcasting organisation and co-productions. For the same reasons, the country of origin principle should not apply to television broadcasts of sports events under this Directive. The country of origin principle should apply only when programmes are used by the broadcasting organisation in its own ancillary online services. It should not apply to the licensing of a broadcasting organisation's own productions to third parties, including to other broadcasting organisations. The country of origin principle should not affect the freedom of rightholders and broadcasting organisations to agree, in compliance with Union law, on limitations, including territorial limitations, to the exploitation of their rights.
- (11) The country of origin principle set out in this Directive should not result in any obligation for broadcasting organisations to communicate or make available to the public programmes in their ancillary online services, or to provide such ancillary online services in a Member State other than the Member State of their principal establishment.
- (12) Since the provision of, the access to or the use of an ancillary online service is, under this Directive, deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment, while, *de facto*, the ancillary online service can be provided across borders to other Member States, it is necessary to ensure that in setting the amount of the payment to be made for the rights in question, the parties take into account all aspects of the ancillary online service, such as the features of the service, including the duration of the online availability of programmes included in the service, the audience, including the audience in the Member State in which the broadcasting organisation has its principal establishment and in other Member States in which the ancillary online service is accessed and used, and the language versions provided. It should nevertheless remain possible to use specific methods for calculating the amount of payment for the rights subject to the country of origin principle, such as methods based on the revenues of the broadcasting organisation generated by the online service, which are used, in particular, by radio broadcasting organisations.
- (13) On account of the principle of contractual freedom, it will remain possible to limit the exploitation of the rights affected by the country of origin principle set out in this Directive, provided that any such limitation is in compliance with Union law.

- (14) Operators of retransmission services can use different technologies when they retransmit simultaneously, in an unaltered and unabridged manner, for reception by the public, an initial transmission from another Member State of television or radio programmes. The programme-carrying signals can be obtained by operators of retransmission services from broadcasting organisations, which themselves transmit those signals to the public, in different ways, for example by capturing the signals transmitted by the broadcasting organisations or receiving the signals directly from them through the technical process of direct injection. Such operators' services can be offered on satellite, digital terrestrial, mobile or closed circuit IP-based and similar networks or through internet access services as defined in Regulation (EU) 2015/2120 of the European Parliament and of the Council⁽⁶⁾. Operators of retransmission services using such technologies for their retransmissions should therefore be covered by this Directive and benefit from the mechanism that introduces mandatory collective management of rights. In order to ensure that there are sufficient safeguards against the unauthorised use of works and other protected subject matter, which is particularly important in the case of services that are paid for, retransmission services which are offered through internet access services should be included in the scope of this Directive only where those retransmission services are provided in an environment in which only authorised users can access the retransmissions and the level of content security provided is comparable to the level of security for content transmitted over managed networks, such as cable or closed circuit IP-based networks, in which content that is retransmitted is encrypted. Those requirements should be feasible and adequate.
- (15) To retransmit initial transmissions of television and radio programmes, operators of retransmission services have to obtain an authorisation from the holders of the exclusive right of communication to the public of works or other protected subject matter. In order to provide legal certainty to the operators of retransmission services and to overcome disparities in national law regarding such retransmission services, rules similar to those that apply to cable retransmission as defined in Directive 93/83/EEC should apply. The rules under that Directive include the obligation to exercise the right to grant or refuse authorisation to an operator of a retransmission service through a collective management organisation. Under those rules, the right to grant or refuse authorisation as such remains intact, and only the exercise of that right is regulated to some extent. Rightholders should receive appropriate remuneration for the retransmission of their works and other protected subject matter. When determining reasonable licensing terms, including the license fee, for a retransmission in accordance with Directive 2014/26/EU of the European Parliament and of the Council⁽⁷⁾, the economic value of the use of the rights in trade, including the value allocated to the means of retransmission, should, *inter alia*, be taken into account. This should be without prejudice to the collective exercise of the right to payment of a single equitable remuneration for performers and phonogram producers for the communication to the public of commercial phonograms as provided for in Article 8(2) of Directive 2006/115/EC, and to Directive 2014/26/EU, in particular its provisions concerning the rights of rightholders with regard to the choice of a collective management organisation.
- (16) This Directive should allow agreements concluded between a collective management organisation and operators of retransmission services for rights that are subject to mandatory collective management under this Directive to be extended to apply to the rights of rightholders who are not represented by that collective management organisation, without those rightholders being allowed to exclude their works or other subject matter from the application of that mechanism. In cases where there is more than one collective management organisation that manages the rights of the relevant category for its territory, it should be for the Member State, in respect of the territory of which the operator of a retransmission service seeks to clear the rights for a retransmission, to determine which collective management organisation or organisations have the right to grant or refuse the authorisation for a retransmission.
- (17) Any rights held by broadcasting organisations themselves in respect of their broadcasts, including rights in the content of programmes, should not be subject to the mandatory collective management of rights applicable for retransmissions. Operators of retransmission services and broadcasting organisations generally have ongoing commercial relations, and as a result the identity of broadcasting organisations is known to operators of retransmission services. Accordingly, it is comparatively simple for those operators to clear the rights with broadcasting organisations. As a consequence, to obtain the necessary licences from broadcasting organisations, operators of retransmission services do not face the same burden as they face when seeking to obtain licences from holders of rights in works and other protected subject matter included in the television and radio programmes they retransmit. Therefore, there is no need for simplification of the licensing process with regard to rights held by broadcasting organisations. It is, however, necessary to ensure that where broadcasting organisations and

⁽⁶⁾ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1).

⁽⁷⁾ Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72).

operators of retransmission services enter into negotiations, they negotiate in good faith regarding the licensing of rights for the retransmissions covered by this Directive. Directive 2014/26/EU provides for similar rules applicable to collective management organisations.

- (18) The rules provided for in this Directive concerning the rights in retransmission exercised by broadcasting organisations in respect of their own transmissions should not limit the choice of rightholders to transfer their rights either to a broadcasting organisation or to a collective management organisation, thereby allowing them to have a direct share in the remuneration paid by the operator of a retransmission service.
- (19) Member States should be able to apply the rules on retransmission established in this Directive and in Directive 93/83/EEC to situations where both the initial transmission and the retransmission take place within their territory.
- (20) In order to ensure that there is legal certainty and to maintain a high level of protection for rightholders, it is appropriate to provide that when broadcasting organisations transmit their programme-carrying signals by direct injection only to signal distributors without directly transmitting their programmes to the public, and the signal distributors send those programme-carrying signals to their users to allow them to watch or listen to the programmes, only one single act of communication to the public is deemed to occur in which both the broadcasting organisations and the signal distributors participate with their respective contributions. The broadcasting organisations and the signal distributors should therefore obtain authorisation from the rightholders for their specific contribution to the single act of communication to the public. Participation of a broadcasting organisation and a signal distributor in that single act of communication to the public should not give rise to joint liability on the part of the broadcasting organisation and the signal distributor for that act of communication to the public. Member States should remain free to provide at national level for the arrangements for obtaining authorisation for such a single act of communication to the public, including the relevant payments to be made to the rightholders concerned, taking into account the respective exploitation of the works and other protected subject matter, by the broadcasting organisation and signal distributor, related to the single act of communication to the public. Signal distributors face, in a similar manner to operators of retransmission services, a significant burden for rights clearance, except as regards rights held by broadcasting organisations. Member States should therefore be allowed to provide that signal distributors benefit from a mechanism of mandatory collective management of rights for their transmissions in the same way and to the same extent as operators of retransmission services for retransmissions covered by Directive 93/83/EEC and this Directive. Where signal distributors merely provide broadcasting organisations with 'technical means', within the meaning of the case-law of the Court of Justice of the European Union, to ensure that the broadcast is received or to improve the reception of that broadcast, the signal distributors should not be considered to be participating in an act of communication to the public.
- (21) When broadcasting organisations transmit their programme-carrying signals directly to the public, thereby carrying out an initial act of transmission, and also simultaneously transmit those signals to other organisations through the technical process of direct injection, for example to ensure the quality of the signals for retransmission purposes, the transmissions by those other organisations constitute a separate act of communication to the public from the one carried out by the broadcasting organisation. In those situations, the rules on retransmissions laid down in this Directive and in Directive 93/83/EEC, as amended by this Directive, should apply.
- (22) To ensure the efficient collective management of rights and the accurate distribution of revenues collected under the mandatory collective management mechanism introduced by this Directive, it is important that collective management organisations maintain proper records of membership, licences and the use of works and other protected subject matter, in accordance with the transparency obligations set out in Directive 2014/26/EU.
- (23) In order to prevent circumvention of the application of the country of origin principle through the extension of the duration of existing agreements concerning the exercise of copyright and related rights relevant for the provision of an ancillary online service as well as the access to or the use of that service, it is necessary to apply the country of origin principle also to existing agreements, but with a transitional period. During that transitional period, the principle should not apply to those existing agreements, thus providing time to adapt them, where necessary, in accordance with this Directive. It is also necessary to provide for a transitional period in order to allow broadcasting organisations, signal distributors and rightholders to adapt to the new rules on the exploitation of works and other protected subject matter through direct injection set out in the provisions in this Directive on transmission of programmes through direct injection.

- (24) In line with the principles of better regulation, a review of this Directive, including its provisions on direct injection, should be undertaken after a certain period of time of this Directive being in force, in order to assess, inter alia, its benefits for Union consumers, its impact on the creative industries in the Union, and on the level of investment in new content, and hence also the benefits regarding improved cultural diversity in the Union.
- (25) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. While this Directive may result in an interference with the exercise of the rights of rightholders, insofar as mandatory collective management takes place for the exercise of the right of communication to the public with regard to retransmission services, it is necessary to prescribe the application of mandatory collective management in a targeted manner and to limit it to specific services.
- (26) Since the objectives of this Directive, namely promoting the cross-border provision of ancillary online services for certain types of programmes and facilitating retransmissions of television and radio programmes originating in other Member States, cannot be sufficiently achieved by Member States but can rather, by reason of the scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives. As concerns the cross-border provision of ancillary online services, this Directive does not oblige broadcasting organisations to provide such services across borders. Neither does this Directive oblige operators of retransmission services to include in their services television or radio programmes originating in other Member States. This Directive concerns only the exercise of certain retransmission rights to the extent necessary to simplify the licensing of copyright and related rights for such services and with regard to television and radio programmes originating in other Member States.
- (27) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽⁸⁾, 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,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

Subject matter

This Directive lays down rules that aim to enhance cross-border access to a greater number of television and radio programmes, by facilitating the clearance of rights for the provision of online services that are ancillary to the broadcast of certain types of television and radio programmes, and for the retransmission of television and radio programmes. It also lays down rules for the transmission of television and radio programmes through the process of direct injection.

Article 2

Definitions

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

- (1) ‘ancillary online service’ means an online service consisting in the provision to the public, by or under the control and responsibility of a broadcasting organisation, of television or radio programmes simultaneously with or for a defined period of time after their broadcast by the broadcasting organisation, as well as of any material which is ancillary to such broadcast;

⁽⁸⁾ OJ C 369, 17.12.2011, p. 14.

- (2) 'retransmission' means any simultaneous, unaltered and unabridged retransmission, other than cable retransmission as defined in Directive 93/83/EEC, intended for reception by the public, of an initial transmission from another Member State of television or radio programmes intended for reception by the public, where such initial transmission is by wire or over the air including that by satellite, but is not by online transmission, provided that:
- (a) the retransmission is carried out by a party other than the broadcasting organisation which made the initial transmission or under whose control and responsibility that initial transmission was made, regardless of how the party carrying out the retransmission obtains the programme-carrying signals from the broadcasting organisation for the purpose of retransmission; and
 - (b) where the retransmission is over an internet access service as defined in point (2) of the second paragraph of Article 2 of Regulation (EU) 2015/2120, it is carried out in a managed environment;
- (3) 'managed environment' means an environment in which an operator of a retransmission service provides a secure retransmission to authorised users;
- (4) 'direct injection' means a technical process by which a broadcasting organisation transmits its programme-carrying signals to an organisation other than a broadcasting organisation, in such a way that the programme-carrying signals are not accessible to the public during that transmission.

CHAPTER II

Ancillary online services of broadcasting organisations

Article 3

Application of the country of origin principle to ancillary online services

1. The acts of communication to the public of works or other protected subject matter, by wire or wireless means, and of making available to the public of works or other protected subject matter, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, occurring when providing to the public:

- (a) radio programmes; and
- (b) television programmes which are:
 - (i) news and current affairs programmes; or
 - (ii) fully financed own productions of the broadcasting organisation,

in an ancillary online service by or under the control and responsibility of a broadcasting organisation, as well as the acts of reproduction of such works or other protected subject matter which are necessary for the provision of, the access to or the use of such online service for the same programmes shall, for the purposes of exercising copyright and related rights relevant for those acts, be deemed to occur solely in the Member State in which the broadcasting organisation has its principal establishment.

Point (b) of the first subparagraph shall not apply to the broadcasts of sports events and works and other protected subject matter included in them.

2. Member States shall ensure that, when setting the amount of the payment to be made for the rights to which the country of origin principle, as set out in paragraph 1, applies, the parties take into account all aspects of the ancillary online service, such as features of the service, including the duration of online availability of the programmes provided in that service, the audience, and the language versions provided.

The first subparagraph shall not preclude calculation of the amount of the payment on the basis of the broadcasting organisation's revenues.

3. The country of origin principle set out in paragraph 1 shall be without prejudice to the contractual freedom of the rightholders and broadcasting organisations to agree, in compliance with Union law, to limit the exploitation of such rights, including those under Directive 2001/29/EC.

CHAPTER III

Retransmission of television and radio programmes*Article 4***Exercise of the rights in retransmission by rightholders other than broadcasting organisations**

1. Acts of retransmission of programmes have to be authorised by the holders of the exclusive right of communication to the public.

Member States shall ensure that rightholders may exercise their right to grant or refuse the authorisation for a retransmission only through a collective management organisation.

2. Where a rightholder has not transferred the management of the right referred to in the second subparagraph of paragraph 1 to a collective management organisation, the collective management organisation which manages rights of the same category for the territory of the Member State for which the operator of a retransmission service seeks to clear rights for a retransmission shall be deemed to have the right to grant or refuse the authorisation for a retransmission for that rightholder.

However, where more than one collective management organisation manages rights of that category for the territory of that Member State, it shall be for the Member State for the territory of which the operator of a retransmission service seeks to clear rights for a retransmission to decide which collective management organisation or organisations have the right to grant or refuse the authorisation for a retransmission.

3. Member States shall ensure that a rightholder has the same rights and obligations resulting from an agreement between an operator of a retransmission service and a collective management organisation or organisations that act pursuant to paragraph 2, as rightholders who have mandated that collective management organisation or organisations. Member States shall also ensure that that rightholder is able to claim those rights within a period, to be fixed by the Member State concerned, which shall not be shorter than three years from the date of the retransmission which includes his or her work or other protected subject matter.

*Article 5***Exercise of the rights in retransmission by broadcasting organisations**

1. Member States shall ensure that Article 4 does not apply to the rights in retransmission exercised by a broadcasting organisation in respect of its own transmission, irrespective of whether the rights concerned are its own or have been transferred to it by other rightholders.

2. Member States shall provide that, where broadcasting organisations and the operators of retransmission services enter into negotiations regarding authorisation for retransmission under this Directive, those negotiations are to be conducted in good faith.

*Article 6***Mediation**

Member States shall ensure that it is possible to call upon the assistance of one or more mediators as provided for in Article 11 of Directive 93/83/EEC where no agreement is concluded between the collective management organisation and the operator of a retransmission service, or between the operator of a retransmission service and the broadcasting organisation regarding authorisation for retransmission of broadcasts.

*Article 7***Retransmission of an initial transmission originating in the same Member State**

Member States may provide that the rules in this Chapter and in Chapter III of Directive 93/83/EEC apply to situations where both the initial transmission and the retransmission take place within their territory.

CHAPTER IV

Transmission of programmes through direct injection*Article 8***Transmission of programmes through direct injection**

1. When a broadcasting organisation transmits by direct injection its programme-carrying signals to a signal distributor, without the broadcasting organisation itself simultaneously transmitting those programme-carrying signals directly to the public, and the signal distributor transmits those programme-carrying signals to the public, the broadcasting organisation and the signal distributor shall be deemed to be participating in a single act of communication to the public in respect of which they shall obtain authorisation from rightholders. Member States may provide for arrangements for obtaining authorisation from rightholders.

2. Member States may provide that Articles 4, 5 and 6 of this Directive apply *mutatis mutandis* to the exercise by rightholders of the right to grant or refuse the authorisation to signal distributors for a transmission referred to in paragraph 1, carried out by one of the technical means referred to in Article 1(3) of Directive 93/83/EEC or point (2) of Article 2 of this Directive.

CHAPTER V

Final provisions*Article 9***Amendment to Directive 93/83/EEC**

In Article 1 of Directive 93/83/EEC, paragraph 3 is replaced by the following:

‘3. For the purposes of this Directive, “cable retransmission” means the simultaneous, unaltered and unabridged retransmission by a cable or microwave system for reception by the public of an initial transmission from another Member State, by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public, regardless of how the operator of a cable retransmission service obtains the programme-carrying signals from the broadcasting organisation for the purpose of retransmission.’

*Article 10***Review**

1. By 7 June 2025, the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The report shall be published and made available to the public on the website of the Commission.

2. Member States shall provide the Commission, in a timely manner, with the relevant and necessary information for the preparation of the report referred to in paragraph 1.

*Article 11***Transitional provision**

Agreements on the exercise of copyright and related rights relevant for the acts of communication to the public of works or other protected subject matter, by wire or wireless means, and the making available to the public of works or other protected subject matter, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, occurring in the course of provision of an ancillary online service as well as for the acts of reproduction which are necessary for the provision of, the access to or the use of such online service which are in force on 7 June 2021 shall be subject to Article 3 as from 7 June 2023 if they expire after that date.

Authorisations obtained for the acts of communication to the public falling under Article 8 which are in force on 7 June 2021 shall be subject to Article 8 as from 7 June 2025 if they expire after that date.

*Article 12***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 7 June 2021. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods for making such reference shall be laid down by Member States.

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

*Article 13***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 14***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 17 April 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

DIRECTIVE (EU) 2019/790 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 17 April 2019
on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC
and 2001/29/EC

(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 53(1) and Articles 62 and 114 thereof,

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

- (1) The Treaty on European Union (TEU) provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Further harmonisation of the laws of the Member States on copyright and related rights should contribute to the achievement of those objectives.
- (2) The directives that have been adopted in the area of copyright and related rights contribute to the functioning of the internal market, provide for a high level of protection for rightholders, facilitate the clearance of rights, and create a framework in which the exploitation of works and other protected subject matter can take place. That harmonised legal framework contributes to the proper functioning of the internal market, and stimulates innovation, creativity, investment and production of new content, also in the digital environment, in order to avoid the fragmentation of the internal market. The protection provided by that legal framework also contributes to the Union's objective of respecting and promoting cultural diversity, while at the same time bringing European common cultural heritage to the fore. Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action.
- (3) Rapid technological developments continue to transform the way works and other subject matter are created, produced, distributed and exploited. New business models and new actors continue to emerge. Relevant legislation needs to be future-proof so as not to restrict technological development. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject matter in the digital environment. As stated in the Commission Communication of 9 December 2015 entitled 'Towards a modern, more European copyright framework', in some areas it is necessary to adapt and supplement the existing Union copyright framework, while keeping a high level of protection of copyright and related rights. This Directive provides for rules to adapt certain exceptions and limitations to copyright and related rights to digital and cross-border environments, as well as for measures to facilitate certain licensing practices, in particular, but not only, as regards the dissemination of out-of-commerce works and other subject matter and the online availability of audiovisual works on video-on-demand platforms, with a view to ensuring wider access to content. It also contains rules to facilitate the use of content in the public domain. In order to achieve a well-functioning and fair marketplace for copyright, there should also be rules on rights in publications, on the use of works

⁽¹⁾ OJ C 125, 21.4.2017, p. 27.

⁽²⁾ OJ C 207, 30.6.2017, p. 80.

⁽³⁾ Position of the European Parliament of 26 March 2019 (not yet published in the Official Journal) and decision of the Council of 15 April 2019.

or other subject matter by online service providers storing and giving access to user-uploaded content, on the transparency of authors' and performers' contracts, on authors' and performers' remuneration, as well as a mechanism for the revocation of rights that authors and performers have transferred on an exclusive basis.

- (4) This Directive is based upon, and complements, the rules laid down in the directives currently in force in this area, in particular Directives 96/9/EC ⁽⁴⁾, 2000/31/EC ⁽⁵⁾, 2001/29/EC ⁽⁶⁾, 2006/115/EC ⁽⁷⁾, 2009/24/EC ⁽⁸⁾, 2012/28/EU ⁽⁹⁾ and 2014/26/EU ⁽¹⁰⁾ of the European Parliament and of the Council.
- (5) In the fields of research, innovation, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the existing Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 96/9/EC, 2001/29/EC and 2009/24/EC in those fields could negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for scientific research, innovation, teaching and preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. The existing exceptions and limitations in Union law should continue to apply, including to text and data mining, education, and preservation activities, as long as they do not limit the scope of the mandatory exceptions or limitations provided for in this Directive, which need to be implemented by Member States in their national law. Directives 96/9/EC and 2001/29/EC should, therefore, be amended.
- (6) The exceptions and limitations provided for in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightholders, on the one hand, and of users on the other. They can be applied only in certain special cases that do not conflict with the normal exploitation of the works or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholders.
- (7) The protection of technological measures established in Directive 2001/29/EC remains essential to ensure the protection and the effective exercise of the rights granted to authors and to other rightholders under Union law. Such protection should be maintained while ensuring that the use of technological measures does not prevent the enjoyment of the exceptions and limitations provided for in this Directive. Rightholders should have the opportunity to ensure that through voluntary measures. They should remain free to choose the appropriate means of enabling the beneficiaries of the exceptions and limitations provided for in this Directive to benefit from them. In the absence of voluntary measures, Member States should take appropriate measures in accordance with the first subparagraph of Article 6(4) of Directive 2001/29/EC, including where works and other subject matter are made available to the public through on-demand services.
- (8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Text and data mining makes the processing of large amounts of information with a view to gaining new knowledge and discovering new trends possible. Text and data mining technologies are prevalent across the digital economy; however, there is widespread acknowledgment that text and data mining can, in particular, benefit the research community and, in so doing, support

⁽⁴⁾ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

⁽⁵⁾ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1).

⁽⁶⁾ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

⁽⁷⁾ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28).

⁽⁸⁾ Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16).

⁽⁹⁾ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5).

⁽¹⁰⁾ Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72).

innovation. Such technologies benefit universities and other research organisations, as well as cultural heritage institutions since they could also carry out research in the context of their main activities. However, in the Union, such organisations and institutions are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data mining can involve acts protected by copyright, by the sui generis database right or by both, in particular, the reproduction of works or other subject matter, the extraction of contents from a database or both which occur for example when the data are normalised in the process of text and data mining. Where no exception or limitation applies, an authorisation to undertake such acts is required from rightholders.

- (9) Text and data mining can also be carried out in relation to mere facts or data that are not protected by copyright, and in such instances no authorisation is required under copyright law. There can also be instances of text and data mining that do not involve acts of reproduction or where the reproductions made fall under the mandatory exception for temporary acts of reproduction provided for in Article 5(1) of Directive 2001/29/EC, which should continue to apply to text and data mining techniques that do not involve the making of copies beyond the scope of that exception.
- (10) Union law provides for certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies in scientific research. Moreover, where researchers have lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences could exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area will suffer, unless steps are taken to address the legal uncertainty concerning text and data mining.
- (11) The legal uncertainty concerning text and data mining should be addressed by providing for a mandatory exception for universities and other research organisations, as well as for cultural heritage institutions, to the exclusive right of reproduction and to the right to prevent extraction from a database. In line with the existing Union research policy, which encourages universities and research institutes to collaborate with the private sector, research organisations should also benefit from such an exception when their research activities are carried out in the framework of public-private partnerships. While research organisations and cultural heritage institutions should continue to be the beneficiaries of that exception, they should also be able to rely on their private partners for carrying out text and data mining, including by using their technological tools.
- (12) Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct scientific research or to do so together with the provision of educational services. The term 'scientific research' within the meaning of this Directive should be understood to cover both the natural sciences and the human sciences. Due to the diversity of such entities, it is important to have a common understanding of research organisations. They should for example cover, in addition to universities or other higher education institutions and their libraries, also entities such as research institutes and hospitals that carry out research. Despite different legal forms and structures, research organisations in the Member States generally have in common that they act either on a not-for-profit basis or in the context of a public-interest mission recognised by the State. Such a public-interest mission could, for example, be reflected through public funding or through provisions in national laws or public contracts. Conversely, organisations upon which commercial undertakings have a decisive influence allowing such undertakings to exercise control because of structural situations, such as through their quality of shareholder or member, which could result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive.
- (13) Cultural heritage institutions should be understood as covering publicly accessible libraries and museums regardless of the type of works or other subject matter that they hold in their permanent collections, as well as archives, film or audio heritage institutions. They should also be understood to include, inter alia, national libraries and national archives, and, as far as their archives and publicly accessible libraries are concerned, educational establishments, research organisations and public sector broadcasting organisations.

- (14) Research organisations and cultural heritage institutions, including the persons attached thereto, should be covered by the text and data mining exception with regard to content to which they have lawful access. Lawful access should be understood as covering access to content based on an open access policy or through contractual arrangements between rightholders and research organisations or cultural heritage institutions, such as subscriptions, or through other lawful means. For instance, in the case of subscriptions taken by research organisations or cultural heritage institutions, the persons attached thereto and covered by those subscriptions should be deemed to have lawful access. Lawful access should also cover access to content that is freely available online.
- (15) Research organisations and cultural heritage institutions could in certain cases, for example for subsequent verification of scientific research results, need to retain copies made under the exception for the purposes of carrying out text and data mining. In such cases, the copies should be stored in a secure environment. Member States should be free to decide, at national level and after discussions with relevant stakeholders, on further specific arrangements for retaining the copies, including the ability to appoint trusted bodies for the purpose of storing such copies. In order not to unduly restrict the application of the exception, such arrangements should be proportionate and limited to what is needed for retaining the copies in a safe manner and preventing unauthorised use. Uses for the purpose of scientific research, other than text and data mining, such as scientific peer review and joint research, should remain covered, where applicable, by the exception or limitation provided for in Article 5(3)(a) of Directive 2001/29/EC.
- (16) In view of a potentially high number of access requests to, and downloads of, their works or other subject matter, rightholders should be allowed to apply measures when there is a risk that the security and integrity of their systems or databases could be jeopardised. Such measures could, for example, be used to ensure that only persons having lawful access to their data can access them, including through IP address validation or user authentication. Those measures should remain proportionate to the risks involved, and should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the exception.
- (17) In view of the nature and scope of the exception, which is limited to entities carrying out scientific research, any potential harm created for rightholders through this exception would be minimal. Member States should, therefore, not provide for compensation for rightholders as regards uses under the text and data mining exceptions introduced by this Directive.
- (18) In addition to their significance in the context of scientific research, text and data mining techniques are widely used both by private and public entities to analyse large amounts of data in different areas of life and for various purposes, including for government services, complex business decisions and the development of new applications or technologies. Rightholders should remain able to license the uses of their works or other subject matter falling outside the scope of the mandatory exception provided for in this Directive for text and data mining for the purposes of scientific research and of the existing exceptions and limitations provided for in Directive 2001/29/EC. At the same time, consideration should be given to the fact that users of text and data mining could be faced with legal uncertainty as to whether reproductions and extractions made for the purposes of text and data mining can be carried out on lawfully accessed works or other subject matter, in particular when the reproductions or extractions made for the purposes of the technical process do not fulfil all the conditions of the existing exception for temporary acts of reproduction provided for in Article 5(1) of Directive 2001/29/EC. In order to provide for more legal certainty in such cases and to encourage innovation also in the private sector, this Directive should provide, under certain conditions, for an exception or limitation for reproductions and extractions of works or other subject matter, for the purposes of text and data mining, and allow the copies made to be retained for as long as is necessary for those text and data mining purposes.

This exception or limitation should only apply where the work or other subject matter is accessed lawfully by the beneficiary, including when it has been made available to the public online, and insofar as the rightholders have not reserved in an appropriate manner the rights to make reproductions and extractions for text and data mining. In the case of content that has been made publicly available online, it should only be considered

appropriate to reserve those rights by the use of machine-readable means, including metadata and terms and conditions of a website or a service. Other uses should not be affected by the reservation of rights for the purposes of text and data mining. In other cases, it can be appropriate to reserve the rights by other means, such as contractual agreements or a unilateral declaration. Rightholders should be able to apply measures to ensure that their reservations in this regard are respected. This exception or limitation should leave intact the mandatory exception for text and data mining for scientific research purposes provided for in this Directive, as well as the existing exception for temporary acts of reproduction provided for in Article 5(1) of Directive 2001/29/EC.

- (19) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public of works or other subject matter in such a way that members of the public may access them from a place and a time individually chosen by them, for the sole purpose of illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction of a substantial part of its contents for the purpose of illustration for teaching. The scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and at a distance. Moreover, the existing legal framework does not provide for a cross-border effect. This situation could hamper the development of digitally supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject matter in digital teaching activities, including online and across borders.
- (20) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should, therefore, benefit all educational establishments recognised by a Member State, including those involved in primary, secondary, vocational and higher education. It should apply only to the extent that the uses are justified by the non-commercial purpose of the particular teaching activity. The organisational structure and the means of funding of an educational establishment should not be the decisive factors in determining whether the activity is non-commercial in nature.
- (21) The exception or limitation provided for in this Directive for the sole purpose of illustration for teaching should be understood as covering digital uses of works or other subject matter to support, enrich or complement the teaching, including learning activities. The distribution of software allowed under that exception or limitation should be limited to digital transmission of software. In most cases, the concept of illustration would, therefore, imply the use only of parts or extracts of works, which should not substitute for the purchase of materials primarily intended for the educational market. When implementing the exception or limitation, Member States should remain free to specify, for the different types of works or other subject matter, in a balanced manner, the proportion of a work or other subject matter that can be used for the sole purpose of illustration for teaching. Uses allowed under the exception or limitation should be understood to cover the specific accessibility needs of persons with a disability in the context of illustration for teaching.
- (22) The use of works or other subject matter under the exception or limitation for the sole purpose of illustration for teaching provided for in this Directive should only take place in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations or teaching activities that take place outside the premises of educational establishments, for example in a museum, library or another cultural heritage institution, and should be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses of works or other subject matter made in the classroom or in other venues through digital means, for example electronic whiteboards or digital devices which might be connected to the internet, as well as uses made at a distance through secure electronic environments, such as in the context of online courses or access to teaching material complementing a given course. Secure electronic environments should be understood as digital teaching and learning environments access to which is limited to an educational establishment's teaching staff and to pupils or students enrolled in a study programme, in particular through appropriate authentication procedures including password-based authentication.

- (23) Different arrangements, based on the implementation of the exception or limitation provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject matter. Such arrangements have usually been developed taking account of the needs of educational establishments and of different levels of education. While it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital uses and cross-border teaching activities, the arrangements for implementation can vary from one Member State to another, to the extent that they do not hamper the effective application of the exception or limitation or cross-border uses. Member States should, for example, remain free to require that the use of works or other subject matter respect the moral rights of authors and performers. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of suitable licences, covering at least the same uses as those allowed under the exception or limitation. Member States should ensure that where licences cover only partially the uses allowed under the exception or limitation, all the other uses remain subject to the exception or limitation.

Member States could, for example, use this mechanism to give precedence to licences for material that is primarily intended for the educational market or licences for sheet music. In order to avoid that subjecting the application of the exception to the availability of licences results in legal uncertainty or an administrative burden for educational establishments, Member States adopting such an approach should take concrete measures to ensure that licensing schemes allowing digital uses of works or other subject matter for the purpose of illustration for teaching are easily available, and that educational establishments are aware of the existence of such licensing schemes. Such licensing schemes should meet the needs of educational establishments. Information tools aimed at ensuring that existing licensing schemes are visible could also be developed. Such schemes could, for example, be based on collective licensing or on extended collective licensing, in order to avoid educational establishments having to negotiate individually with rightholders. In order to guarantee legal certainty, Member States should specify under which conditions an educational establishment can use protected works or other subject matter under that exception and, conversely, when it should act under a licensing scheme.

- (24) Member States should remain free to provide that rightholders receive fair compensation for the digital uses of their works or other subject matter under the exception or limitation provided for in this Directive for illustration for teaching. In setting the level of fair compensation, due account should be taken, inter alia, of Member States' educational objectives and of the harm to rightholders. Member States that decide to provide for fair compensation should encourage the use of systems that do not create an administrative burden for educational establishments.
- (25) Cultural heritage institutions are engaged in the preservation of their collections for future generations. An act of preservation of a work or other subject matter in the collection of a cultural heritage institution might require a reproduction and consequently require the authorisation of the relevant rightholders. Digital technologies offer new ways of preserving the heritage contained in those collections but they also create new challenges. In view of those new challenges, it is necessary to adapt the existing legal framework by providing for a mandatory exception to the right of reproduction in order to allow such acts of preservation by such institutions.
- (26) The existence of different approaches in the Member States with regard to acts of reproduction for preservation by cultural heritage institutions hampers cross-border cooperation, the sharing of means of preservation and the establishment of cross-border preservation networks in the internal market by such institutions, leading to an inefficient use of resources. That can have a negative impact on the preservation of cultural heritage.
- (27) Member States should, therefore, be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports or to insure such works and other subject matter. Such an exception should allow the making of copies by the appropriate preservation tool, means or technology, in any format or medium, in the required number, at any point in the life of a work or other subject matter and to the extent required for preservation purposes. Acts of reproduction undertaken by

cultural heritage institutions for purposes other than the preservation of works and other subject matter in their permanent collections should remain subject to the authorisation of rightholders, unless permitted by other exceptions or limitations provided for in Union law.

- (28) Cultural heritage institutions do not necessarily have the technical means or expertise to undertake the acts required to preserve their collections themselves, particularly in the digital environment, and might, therefore, have recourse to the assistance of other cultural institutions and other third parties for that purpose. Under the exception for preservation purposes provided for by this Directive, cultural heritage institutions should be allowed to rely on third parties acting on their behalf and under their responsibility, including those that are based in other Member States, for the making of copies.
- (29) For the purposes of this Directive, works and other subject matter should be considered to be permanently in the collection of a cultural heritage institution when copies of such works or other subject matter are owned or permanently held by that institution, for example as a result of a transfer of ownership or a licence agreement, legal deposit obligations or permanent custody arrangements.
- (30) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of works or other subject matter that are considered to be out of commerce for the purposes of this Directive. However, the particular characteristics of the collections of out-of-commerce works or other subject matter, together with the amount of works and other subject matter involved in mass digitisation projects, mean that obtaining the prior authorisation of the individual rightholders can be very difficult. This can be due, for example, to the age of the works or other subject matter, their limited commercial value or the fact that they were never intended for commercial use or that they have never been exploited commercially. It is therefore necessary to provide for measures to facilitate certain uses of out-of-commerce works or other subject matter that are permanently in the collections of cultural heritage institutions.
- (31) All Member States should have legal mechanisms in place allowing licences issued by relevant and sufficiently representative collective management organisations to cultural heritage institutions, for certain uses of out-of-commerce works or other subject matter, to also apply to the rights of rightholders that have not mandated a representative collective management organisation in that regard. It should be possible, pursuant to this Directive, for such licences to cover all Member States.
- (32) The provisions on collective licensing of out-of-commerce works or other subject matter introduced by this Directive might not provide a solution for all cases in which cultural heritage institutions encounter difficulties in obtaining all the necessary authorisations from rightholders for the use of such out-of-commerce works or other subject matter. That could be the case for example, where there is no practice of collective management of rights for a certain type of work or other subject matter or where the relevant collective management organisation is not sufficiently representative for the category of the rightholders and of the rights concerned. In such particular instances, it should be possible for cultural heritage institutions to make out-of-commerce works or other subject matter that are permanently in their collection available online in all Member States under a harmonised exception or limitation to copyright and related rights. It is important that uses under such exception or limitation only take place when certain conditions, in particular as regards the availability of licensing solutions, are fulfilled. A lack of agreement on the conditions of the licence should not be interpreted as a lack of availability of licensing solutions.
- (33) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of licensing mechanism, such as extended collective licensing or presumptions of representation, that they put in place for the use of out-of-commerce works or other subject matter by cultural heritage institutions, in accordance with their legal traditions, practices or circumstances. Member States should also have flexibility in determining what the requirements for collective management organisations to be sufficiently representative are, as long as that determination is based on a significant number of rightholders in the relevant type of works or other subject matter having given a mandate allowing the licensing of the relevant type of use.

Member States should be free to establish specific rules applicable to cases in which more than one collective management organisation is representative for the relevant works or other subject matter, requiring for example joint licences or an agreement between the relevant organisations.

- (34) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system is important. Directive 2014/26/EU provides for such a system and that system includes in particular rules on good governance, transparency and reporting, as well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders.
- (35) Appropriate safeguards should be available for all rightholders, who should be given the opportunity of excluding the application of the licensing mechanisms and of the exception or limitation, introduced by this Directive for the use of out-of-commerce works or other subject matter, in relation to all their works or other subject matter, in relation to all licences or all uses under the exception or limitation, in relation to particular works or other subject matter, or in relation to particular licences or uses under the exception or limitation, at any time before or during the term of the licence or before or during the use under the exception or limitation. Conditions governing those licensing mechanisms should not affect their practical relevance for cultural heritage institutions. It is important that, where a rightholder excludes the application of such mechanisms or of such exception or limitation to one or more works or other subject matter, any ongoing uses are terminated within a reasonable period, and, where they take place under a collective licence, that the collective management organisation once informed ceases to issue licences covering the uses concerned. Such exclusion by rightholders should not affect their claims to remuneration for the actual use of the work or other subject matter under the licence.
- (36) This Directive does not affect the ability of Member States to decide who is to have legal responsibility as regards the compliance of the licensing of out-of-commerce works or other subject matter, and of their use, with the conditions set out in this Directive, and as regards the compliance of the parties concerned with the terms of those licences.
- (37) Considering the variety of works and other subject matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms and the exception or limitation provided for by this Directive are available and can be used in practice for different types of works and other subject matter, including photographs, software, phonograms, audiovisual works and unique works of art, including where they have never been commercially available. Never-in-commerce works can include posters, leaflets, trench journals or amateur audiovisual works, but also unpublished works or other subject matter, without prejudice to other applicable legal constraints, such as national rules on moral rights. When a work or other subject matter is available in any of its different versions, such as subsequent editions of literary works and alternate cuts of cinematographic works, or in any of its different manifestations, such as digital and printed formats of the same work, that work or other subject matter should not be considered out of commerce. Conversely, the commercial availability of adaptations, including other language versions or audiovisual adaptations of a literary work, should not preclude a work or other subject matter from being deemed to be out of commerce in a given language. In order to reflect the specificities of different types of works and other subject matter as regards modes of publication and distribution, and to facilitate the usability of those mechanisms, specific requirements and procedures might have to be established for the practical application of those licensing mechanisms, such as a requirement for a certain time period to have elapsed since the work or other subject matter was first commercially available. It is appropriate that Member States consult rightholders, cultural heritage institutions and collective management organisations when establishing such requirements and procedures.
- (38) When determining whether works or other subject matter are out of commerce, a reasonable effort should be required to assess their availability to the public in the customary channels of commerce, taking into account the characteristics of the particular work or other subject matter or of the particular set of works or other subject matter. Member States should be free to determine the allocation of responsibilities for making that reasonable effort. The reasonable effort should not have to involve repeated action over time but it should nevertheless involve taking account of any easily accessible evidence of upcoming availability of works or other subject matter in the customary channels of commerce. A work-by-work assessment should only be required where that is considered reasonable in view of the availability of relevant information, the likelihood of commercial availability

and the expected transaction cost. Verification of availability of a work or other subject matter should normally take place in the Member State where the cultural heritage institution is established, unless verification across borders is considered reasonable, for example in cases where there is easily available information that a literary work was first published in a given language version in another Member State. In many cases, the out-of-commerce status of a set of works or other subject matter could be determined through a proportionate mechanism, such as sampling. The limited availability of a work or other subject matter, such as its availability in second-hand shops, or the theoretical possibility that a licence for a work or other subject matter could be obtained should not be considered as availability to the public in the customary channels of commerce.

- (39) For reasons of international comity, the licensing mechanism and the exception or limitation provided for in this Directive for the digitisation and dissemination of out-of-commerce works or other subject matter should not apply to sets of out-of-commerce works or other subject matter where there is evidence available to presume that they predominantly consist of works or other subject matter of third countries, unless the collective management organisation concerned is sufficiently representative for that third country, for example via a representation agreement. That assessment could be based on the evidence available following the making of the reasonable effort to determine whether the works or other subject matter are out of commerce, without the need to search for further evidence. A work-by-work assessment of the origin of out-of-commerce works or other subject matter should only be required insofar as it is also required for making the reasonable effort to determine whether they are commercially available.
- (40) Contracting cultural heritage institutions and collective management organisations should remain free to agree on the territorial scope of licences, including the option of covering all Member States, the licence fee and the uses allowed. Uses covered by such licences should not be for profit-making purposes, including where copies are distributed by the cultural heritage institution, such as in the case of promotional material about an exhibition. At the same time, given that the digitisation of the collections of cultural heritage institutions can entail significant investments, any licences granted under the mechanism provided for in this Directive should not prevent cultural heritage institutions from covering the costs of the licence and the costs of digitising and disseminating the works or other subject matter covered by the licence.
- (41) Information regarding the ongoing and future use of out-of-commerce works and other subject matter by cultural heritage institutions on the basis of this Directive and the arrangements in place for all rightholders to exclude the application of licences or of the exception or limitation to their works or other subject matter should be adequately publicised both before and during the use under a licence or under the exception or limitation, as appropriate. Such publicising is particularly important when uses take place across borders in the internal market. It is therefore appropriate to provide for the creation of a single publicly accessible online portal for the Union in order to make such information available to the public for a reasonable period of time before the use takes place. Such portal should make it easier for rightholders to exclude the application of licences or of the exception or limitation to their works or other subject matter. Under Regulation (EU) No 386/2012 of the European Parliament and of the Council⁽¹⁾, the European Union Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary means and aimed at facilitating and supporting the activities of national authorities, the private sector and Union institutions in the fight against, including the prevention of, infringement of intellectual property rights. It is therefore appropriate to rely on that Office to establish and manage the portal making such information available.

In addition to making the information available through the portal, further appropriate publicity measures might need to be taken on a case-by-case basis in order to increase the awareness in that regard of the rightholders concerned, for example through the use of additional channels of communication to reach a wider public. The necessity, the nature and the geographic scope of the additional publicity measures should depend on the characteristics of the relevant out-of-commerce works or other subject matter, the terms of the licences or the type of use under the exception or limitation, and the existing practices in Member States. Publicity measures should be effective without the need to inform each rightholder individually.

⁽¹⁾ Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ L 129, 16.5.2012, p. 1).

- (42) In order to ensure that the licensing mechanisms established by this Directive for out-of-commerce works or other subject matter are relevant and function properly, that rightholders are adequately protected, that licences are properly publicised and that legal certainty is provided with regard to the representativeness of collective management organisations and the categorisation of works, Member States should foster sector-specific stakeholder dialogue.
- (43) The measures provided for in this Directive to facilitate the collective licensing of rights in out-of-commerce works or other subject matter that are permanently in the collections of cultural heritage institutions should be without prejudice to the use of such works or other subject matter under exceptions or limitations provided for in Union law, or under other licences with an extended effect, where such licensing is not based on the out-of-commerce status of the covered works or other subject matter. Those measures should also be without prejudice to national mechanisms for the use of out-of-commerce works or other subject matter based on licences between collective management organisations and users other than cultural heritage institutions.
- (44) Mechanisms of collective licensing with an extended effect allow a collective management organisation to offer licences as a collective licensing body on behalf of rightholders, irrespective of whether they have authorised the organisation to do so. Systems built on mechanisms such as extended collective licensing, legal mandates or presumptions of representation, are a well-established practice in several Member States and can be used in different areas. A functioning copyright framework that works for all parties requires the availability of proportionate, legal mechanisms for the licensing of works or other subject matter. Member States should, therefore, be able to rely on solutions allowing collective management organisations to offer licences covering a potentially large number of works or other subject matter for certain types of use, and to distribute the revenue resulting from such licences to rightholders, in accordance with Directive 2014/26/EU.
- (45) Given the nature of some uses, together with the usually large amount of works or other subject matter involved, the transaction cost of individual rights clearance with every rightholder concerned is prohibitively high. As a result, it is unlikely that, without effective collective licensing mechanisms, all the transactions in the areas concerned that are required to enable the use of such works or other subject matter would take place. Extended collective licensing by collective management organisations and similar mechanisms can make it possible to conclude agreements in those areas where collective licensing based on an authorisation by rightholders does not provide an exhaustive solution for covering all works or other subject matter to be used. Such mechanisms complement collective management of rights based on individual authorisation by rightholders, by providing full legal certainty to users in certain cases. At the same time, they provide an opportunity to rightholders to benefit from the legitimate use of their works.
- (46) Given the increasing importance of the ability to offer flexible licensing schemes in the digital age, and the increasing use of such schemes, Member States should be able to provide for licensing mechanisms which permit collective management organisations to conclude licences, on a voluntary basis, irrespective of whether all rightholders have authorised the organisation concerned to do so. Member States should have the ability to maintain and introduce such mechanisms in accordance with their national traditions, practices or circumstances, subject to the safeguards provided for in this Directive and in compliance with Union law and the international obligations of the Union. Such mechanisms should only have effect in the territory of the Member State concerned, unless otherwise provided for in Union law. Member States should have flexibility in choosing the specific type of mechanism allowing licences for works or other subject matter to extend to the rights of rightholders that have not authorised the organisation that concludes the agreement, provided that such mechanism is in compliance with Union law, including with the rules on collective management of rights provided for in Directive 2014/26/EU. In particular, such mechanisms should also ensure that Article 7 of Directive 2014/26/EU applies to rightholders that are not members of the organisation that concludes the agreement. Such mechanisms could include extended collective licensing, legal mandates and presumptions of representation. The provisions of this Directive concerning collective licensing should not affect the existing ability of Member States to apply mandatory collective management of rights or other collective licensing mechanisms with an extended effect, such as that included in Article 3 of Council Directive 93/83/EEC ⁽¹²⁾.

⁽¹²⁾ Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 6.10.1993, p. 15).

- (47) It is important that mechanisms of collective licensing with an extended effect are only applied in well-defined areas of use, in which obtaining authorisation from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction, namely one involving a licence that covers all rightholders concerned, unlikely to occur due to the nature of the use or of the types of works or other subject matter concerned. Such mechanisms should be based on objective, transparent and non-discriminatory criteria as regards the treatment of rightholders, including rightholders who are not members of the collective management organisation. In particular, the mere fact that the rightholders affected are not nationals or residents of, or established in, the Member State of the user who is seeking a licence, should not be in itself a reason to consider the clearance of rights to be so onerous and impractical as to justify the use of such mechanisms. It is equally important that the licensed use neither affect adversely the economic value of the relevant rights nor deprive rightholders of significant commercial benefits.
- (48) Member States should ensure that appropriate safeguards are in place to protect the legitimate interests of rightholders that have not mandated the organisation offering the licence and that those safeguards apply in a non-discriminatory manner. Specifically, in order to justify the extended effect of the mechanisms, such an organisation should be, on the basis of authorisations from rightholders, sufficiently representative of the types of works or other subject matter and of the rights which are the subject of the licence. Member States should determine the requirements to be satisfied for those organisations to be considered sufficiently representative, taking into account the category of rights managed by the organisation, the ability of the organisation to manage the rights effectively, the creative sector in which it operates, and whether the organisation covers a significant number of rightholders in the relevant type of works or other subject matter who have given a mandate allowing the licensing of the relevant type of use, in accordance with Directive 2014/26/EU. To provide legal certainty and ensure that there is confidence in the mechanisms, Member States should be allowed to decide who is to have legal responsibility as regards uses authorised by the licence agreement. Equal treatment should be guaranteed to all rightholders whose works are exploited under the licence, including in particular as regards access to information on the licensing and the distribution of remuneration. Publicity measures should be effective throughout the duration of the licence and should not involve imposing a disproportionate administrative burden on users, collective management organisations or rightholders, and without the need to inform each rightholder individually.

In order to ensure that rightholders can easily regain control of their works, and prevent any uses of their works that would be prejudicial to their interests, it is essential that rightholders be given an effective opportunity to exclude the application of such mechanisms to their works or other subject matter for all uses and works or other subject matter, or for specific uses and works or other subject matter, including before the conclusion of a licence and during the term of the licence. In such cases, any ongoing use should be terminated within a reasonable period. Such exclusion by rightholders should not affect their claims for remuneration for the actual use of the work or other subject matter under the licence. Member States should also be able to decide that additional measures are appropriate to protect rightholders. Such additional measures could include, for example, encouraging the exchange of information among collective management organisations and other interested parties across the Union to raise awareness about such mechanisms and the option available to rightholders to exclude their works or other subject matter from those mechanisms.

- (49) Member States should ensure that the purpose and scope of any licence granted as a result of mechanisms of collective licensing with an extended effect, as well as the possible uses, should always be carefully and clearly defined in law or, if the underlying law is a general provision, in the licensing practices applied as a result of such general provisions, or in the licences granted. The ability to operate a licence under such mechanisms should also be limited to collective management organisations that are subject to national law implementing Directive 2014/26/EU.
- (50) Given the different traditions and experiences in relation to mechanisms of collective licensing with an extended effect across Member States, and their applicability to rightholders irrespective of their nationality or their Member State of residence, it is important to ensure that there is transparency and dialogue at Union level about the practical functioning of such mechanisms, including as regards the effectiveness of safeguards for rightholders, the usability of such mechanisms, their effect on rightholders who are not members of the collective management organisation, or on rightholders who are nationals of, or resident in, another Member State, and the

impact on the cross-border provision of services, including the potential need to lay down rules to give such mechanisms cross-border effect within the internal market. To ensure transparency, information about the use of such mechanisms under this Directive should be regularly published by the Commission. Member States that have introduced such mechanisms should, therefore, inform the Commission about relevant national provisions and their application in practice, including the scope and types of licensing introduced on the basis of general provisions, the scale of licensing and the collective management organisations involved. Such information should be discussed with Member States in the contact committee established in Article 12(3) of Directive 2001/29/EC. The Commission should publish a report on the use of such mechanisms in the Union and their impact on licensing and rightholders, on the dissemination of cultural content and on the cross-border provision of services in the area of collective management of copyright and related rights, as well as on the impact on competition.

- (51) Video-on-demand services have the potential to play a decisive role in the dissemination of audiovisual works across the Union. However, the availability of such works, in particular European works, on video-on-demand services remains limited. Agreements on the online exploitation of such works can be difficult to conclude due to issues related to the licensing of rights. Such issues could, for instance, arise when the holder of the rights for a given territory has a low economic incentive to exploit a work online and does not license or holds back the online rights, which can lead to audiovisual works being unavailable on video-on-demand services. Other issues could relate to windows of exploitation.
- (52) To facilitate the licensing of rights in audiovisual works to video-on-demand services, Member States should be required to provide for a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body or of one or more mediators. For that purpose, Member States should be allowed either to establish a new body or rely on an existing one that fulfils the conditions established by this Directive. Member States should be able to designate one or more competent bodies or mediators. The body or the mediators should meet with the parties and help with the negotiations by providing professional, impartial and external advice. Where a negotiation involves parties from different Member States and where those parties decide to rely on the negotiation mechanism, the parties should agree beforehand on the competent Member State. The body or the mediators could meet with the parties to facilitate the start of negotiations or in the course of the negotiations to facilitate the conclusion of an agreement. Participation in that negotiation mechanism and the subsequent conclusion of agreements should be voluntary and should not affect the parties' contractual freedom. Member States should be free to decide on the specific functioning of the negotiation mechanism, including the timing and duration of the assistance to negotiations and the bearing of the costs. Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation mechanism. Without it being an obligation for them, Member States should encourage dialogue between representative organisations.
- (53) The expiry of the term of protection of a work entails the entry of that work into the public domain and the expiry of the rights that Union copyright law provides in relation to that work. In the field of visual arts, the circulation of faithful reproductions of works in the public domain contributes to the access to and promotion of culture, and the access to cultural heritage. In the digital environment, the protection of such reproductions through copyright or related rights is inconsistent with the expiry of the copyright protection of works. In addition, differences between the national copyright laws governing the protection of such reproductions give rise to legal uncertainty and affect the cross-border dissemination of works of visual arts in the public domain. Certain reproductions of works of visual arts in the public domain should, therefore, not be protected by copyright or related rights. All of that should not prevent cultural heritage institutions from selling reproductions, such as postcards.
- (54) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. The wide availability of press publications online has given rise to the emergence of new online services, such as news aggregators or media monitoring services, for which the reuse of press publications constitutes an important part of their business models and a source of revenue. Publishers of press publications are facing problems in

licensing the online use of their publications to the providers of those kinds of services, making it more difficult for them to recoup their investments. In the absence of recognition of publishers of press publications as rightholders, the licensing and enforcement of rights in press publications regarding online uses by information society service providers in the digital environment are often complex and inefficient.

- (55) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry and thereby foster the availability of reliable information. It is therefore necessary to provide at Union level for harmonised legal protection for press publications in respect of online uses by information society service providers, which leaves the existing copyright rules in Union law applicable to private or non-commercial uses of press publications by individual users unaffected, including where such users share press publications online. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications of publishers established in a Member State in respect of online uses by information society service providers within the meaning of Directive (EU) 2015/1535 of the European Parliament and of the Council⁽¹³⁾. The legal protection for press publications provided for by this Directive should benefit publishers that are established in a Member State and have their registered office, central administration or principal place of business within the Union.

The concept of publisher of press publications should be understood as covering service providers, such as news publishers or news agencies, when they publish press publications within the meaning of this Directive.

- (56) For the purposes of this Directive, it is necessary to define the concept of 'press publication' so that it only covers journalistic publications, published in any media, including on paper, in the context of an economic activity that constitutes a provision of services under Union law. The press publications that should be covered include, for instance, daily newspapers, weekly or monthly magazines of general or special interest, including subscription-based magazines, and news websites. Press publications contain mostly literary works, but increasingly include other types of works and other subject matter, in particular photographs and videos. Periodical publications published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. Neither should that protection apply to websites, such as blogs, that provide information as part of an activity that is not carried out under the initiative, editorial responsibility and control of a service provider, such as a news publisher.
- (57) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as online uses by information society service providers are concerned. The rights granted to publishers of press publications should not extend to acts of hyperlinking. They should also not extend to mere facts reported in press publications. The rights granted to publishers of press publications under this Directive should also be subject to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC, including the exception in the case of quotations for purposes such as criticism or review provided for in Article 5(3)(d) of that Directive.
- (58) The use of press publications by information society service providers can consist of the use of entire publications or articles but also of parts of press publications. Such uses of parts of press publications have also gained economic relevance. At the same time, the use of individual words or very short extracts of press publications by information society service providers may not undermine the investments made by publishers of press publications in the production of content. Therefore, it is appropriate to provide that the use of individual words or very short extracts of press publications should not fall within the scope of the rights provided for in this Directive. Taking into account the massive aggregation and use of press publications by information society service providers, it is important that the exclusion of very short extracts be interpreted in such a way as not to affect the effectiveness of the rights provided for in this Directive.

⁽¹³⁾ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

- (59) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject matter independently from the press publication in which they are incorporated. Publishers of press publications should, therefore, not be able to invoke the protection granted to them under this Directive against authors and other rightholders or against other authorised users of the same works or other subject matter. That should be without prejudice to contractual arrangements concluded between the publishers of press publications, on the one hand, and authors and other rightholders, on the other. Authors whose works are incorporated in a press publication should be entitled to an appropriate share of the revenues that press publishers receive for the use of their press publications by information society service providers. That should be without prejudice to national laws on ownership or exercise of rights in the context of employment contracts, provided that such laws are in compliance with Union law.
- (60) Publishers, including those of press publications, books or scientific publications and music publications, often operate on the basis of the transfer of authors' rights by means of contractual agreements or statutory provisions. In that context, publishers make an investment with a view to the exploitation of the works contained in their publications and can in some instances be deprived of revenues where such works are used under exceptions or limitations such as those for private copying and reprography, including the corresponding existing national schemes for reprography in the Member States, or under public lending schemes. In several Member States, compensation for uses under those exceptions or limitations is shared between authors and publishers. In order to take account of this situation and to improve legal certainty for all parties concerned, this Directive allows Member States that have existing schemes for the sharing of compensation between authors and publishers to maintain them. That is particularly important for Member States that had such compensation-sharing mechanisms before 12 November 2015, although in other Member States compensation is not shared and is due solely to authors in accordance with national cultural policies. While this Directive should apply in a non-discriminatory way to all Member States, it should respect the traditions in this area and not oblige Member States that do not currently have such compensation-sharing schemes to introduce them. It should not affect existing or future arrangements in Member States regarding remuneration in the context of public lending.

It should also leave national arrangements relating to the management of rights and to remuneration rights unaffected, provided that they are in compliance with Union law. All Member States should be allowed but not obliged to provide that, where authors have transferred or licensed their rights to a publisher or otherwise contribute with their works to a publication, and there are systems in place to compensate for the harm caused to them by an exception or limitation, including through collective management organisations that jointly represent authors and publishers, publishers are entitled to a share of such compensation. Member States should remain free to determine how publishers are to substantiate their claims for compensation or remuneration, and to lay down the conditions for the sharing of such compensation or remuneration between authors and publishers in accordance with their national systems.

- (61) In recent years, the functioning of the online content market has gained in complexity. Online content-sharing services providing access to a large amount of copyright-protected content uploaded by their users have become a main source of access to content online. Online services are a means of providing wider access to cultural and creative works and offer great opportunities for cultural and creative industries to develop new business models. However, although they enable diversity and ease of access to content, they also generate challenges when copyright-protected content is uploaded without prior authorisation from rightholders. Legal uncertainty exists as to whether the providers of such services engage in copyright-relevant acts, and need to obtain authorisation from rightholders for content uploaded by their users who do not hold the relevant rights in the uploaded content, without prejudice to the application of exceptions and limitations provided for in Union law. That uncertainty affects the ability of rightholders to determine whether, and under which conditions, their works and other subject matter are used, as well as their ability to obtain appropriate remuneration for such use. It is therefore important to foster the development of the licensing market between rightholders and online content-sharing service providers. Those licensing agreements should be fair and keep a reasonable balance

between both parties. Rightholders should receive appropriate remuneration for the use of their works or other subject matter. However, as contractual freedom should not be affected by those provisions, rightholders should not be obliged to give an authorisation or to conclude licensing agreements.

- (62) Certain information society services, as part of their normal use, are designed to give access to the public to copyright-protected content or other subject matter uploaded by their users. The definition of an online content-sharing service provider laid down in this Directive should target only online services that play an important role on the online content market by competing with other online content services, such as online audio and video streaming services, for the same audiences. The services covered by this Directive are services, the main or one of the main purposes of which is to store and enable users to upload and share a large amount of copyright-protected content with the purpose of obtaining profit therefrom, either directly or indirectly, by organising it and promoting it in order to attract a larger audience, including by categorising it and using targeted promotion within it. Such services should not include services that have a main purpose other than that of enabling users to upload and share a large amount of copyright-protected content with the purpose of obtaining profit from that activity. The latter services include, for instance, electronic communication services within the meaning of Directive (EU) 2018/1972 of the European Parliament and of the Council ⁽¹⁴⁾, as well as providers of business-to-business cloud services and cloud services, which allow users to upload content for their own use, such as cyberlockers, or online marketplaces the main activity of which is online retail, and not giving access to copyright-protected content.

Providers of services such as open source software development and sharing platforms, not-for-profit scientific or educational repositories as well as not-for-profit online encyclopedias should also be excluded from the definition of online content-sharing service provider. Finally, in order to ensure a high level of copyright protection, the liability exemption mechanism provided for in this Directive should not apply to service providers the main purpose of which is to engage in or to facilitate copyright piracy.

- (63) The assessment of whether an online content-sharing service provider stores and gives access to a large amount of copyright-protected content should be made on a case-by-case basis and should take account of a combination of elements, such as the audience of the service and the number of files of copyright-protected content uploaded by the users of the service.
- (64) It is appropriate to clarify in this Directive that online content-sharing service providers perform an act of communication to the public or of making available to the public when they give the public access to copyright-protected works or other protected subject matter uploaded by their users. Consequently, online content-sharing service providers should obtain an authorisation, including via a licensing agreement, from the relevant rightholders. This does not affect the concept of communication to the public or of making available to the public elsewhere under Union law, nor does it affect the possible application of Article 3(1) and (2) of Directive 2001/29/EC to other service providers using copyright-protected content.
- (65) When online content-sharing service providers are liable for acts of communication to the public or making available to the public under the conditions laid down in this Directive, Article 14(1) of Directive 2000/31/EC should not apply to the liability arising from the provision of this Directive on the use of protected content by online content-sharing service providers. That should not affect the application of Article 14(1) of Directive 2000/31/EC to such service providers for purposes falling outside the scope of this Directive.
- (66) Taking into account the fact that online content-sharing service providers give access to content which is not uploaded by them but by their users, it is appropriate to provide for a specific liability mechanism for the purposes of this Directive for cases in which no authorisation has been granted. That should be without prejudice

⁽¹⁴⁾ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

to remedies under national law for cases other than liability for copyright infringements and to national courts or administrative authorities being able to issue injunctions in compliance with Union law. In particular, the specific regime applicable to new online content-sharing service providers with an annual turnover below EUR 10 million, of which the average number of monthly unique visitors in the Union does not exceed 5 million, should not affect the availability of remedies under Union and national law. Where no authorisation has been granted to service providers, they should make their best efforts in accordance with high industry standards of professional diligence to avoid the availability on their services of unauthorised works and other subject matter, as identified by the relevant rightholders. For that purpose, rightholders should provide the service providers with relevant and necessary information taking into account, among other factors, the size of rightholders and the type of their works and other subject matter. The steps taken by online content-sharing service providers in cooperation with rightholders should not lead to the prevention of the availability of non-infringing content, including works or other protected subject matter the use of which is covered by a licensing agreement, or an exception or limitation to copyright and related rights. Steps taken by such service providers should, therefore, not affect users who are using the online content-sharing services in order to lawfully upload and access information on such services.

In addition, the obligations established in this Directive should not lead to Member States imposing a general monitoring obligation. When assessing whether an online content-sharing service provider has made its best efforts in accordance with the high industry standards of professional diligence, account should be taken of whether the service provider has taken all the steps that would be taken by a diligent operator to achieve the result of preventing the availability of unauthorised works or other subject matter on its website, taking into account best industry practices and the effectiveness of the steps taken in light of all relevant factors and developments, as well as the principle of proportionality. For the purposes of that assessment, a number of elements should be considered, such as the size of the service, the evolving state of the art as regards existing means, including potential future developments, to avoid the availability of different types of content and the cost of such means for the services. Different means to avoid the availability of unauthorised copyright-protected content could be appropriate and proportionate depending on the type of content, and, therefore, it cannot be excluded that in some cases availability of unauthorised content can only be avoided upon notification of rightholders. Any steps taken by service providers should be effective with regard to the objectives pursued but should not go beyond what is necessary to achieve the objective of avoiding and discontinuing the availability of unauthorised works and other subject matter.

If unauthorised works and other subject matter become available despite the best efforts made in cooperation with rightholders, as required by this Directive, the online content-sharing service providers should be liable in relation to the specific works and other subject matter for which they have received the relevant and necessary information from rightholders, unless those providers demonstrate that they have made their best efforts in accordance with high industry standards of professional diligence.

In addition, where specific unauthorised works or other subject matter have become available on online content-sharing services, including irrespective of whether the best efforts were made and regardless of whether rightholders have made available the relevant and necessary information in advance, the online content-sharing service providers should be liable for unauthorised acts of communication to the public of works or other subject matter, when, upon receiving a sufficiently substantiated notice, they fail to act expeditiously to disable access to, or to remove from their websites, the notified works or other subject matter. Additionally, such online content-sharing service providers should also be liable if they fail to demonstrate that they have made their best efforts to prevent the future uploading of specific unauthorised works, based on relevant and necessary information provided by rightholders for that purpose.

Where rightholders do not provide online content-sharing service providers with the relevant and necessary information on their specific works or other subject matter, or where no notification concerning the disabling of access to, or the removal of, specific unauthorised works or other subject matter has been provided by rightholders, and, as a result, those service providers cannot make their best efforts to avoid the availability of

unauthorised content on their services, in accordance with high industry standards of professional diligence, such service providers should not be liable for unauthorised acts of communication to the public or of making available to the public of such unidentified works or other subject matter.

- (67) Similar to Article 16(2) of Directive 2014/26/EU, this Directive provides for rules as regards new online services. The rules provided for in this Directive are intended to take into account the specific case of start-up companies working with user uploads to develop new business models. The specific regime applicable to new service providers with a small turnover and audience should benefit genuinely new businesses, and should therefore cease to apply three years after their services first became available online in the Union. That regime should not be abused by arrangements aimed at extending its benefits beyond the first three years. In particular, it should not apply to newly created services or to services provided under a new name but which pursue the activity of an already existing online content-sharing service provider which could not benefit or no longer benefits from that regime.
- (68) Online content-sharing service providers should be transparent with rightholders with regard to the steps taken in the context of cooperation. As various actions could be undertaken by online content-sharing service providers, they should provide rightholders, at the request of rightholders, with adequate information on the type of actions undertaken and the way in which they are undertaken. Such information should be sufficiently specific to provide enough transparency to rightholders, without affecting business secrets of online content-sharing service providers. Service providers should, however, not be required to provide rightholders with detailed and individualised information for each work or other subject matter identified. That should be without prejudice to contractual arrangements, which could contain more specific provisions on the information to be provided where agreements are concluded between service providers and rightholders.
- (69) Where online content-sharing service providers obtain authorisations, including through licensing agreements, for the use on their service of content uploaded by the users of the service, those authorisations should also cover the copyright relevant acts in respect of uploads by users within the scope of the authorisation granted to the service providers, but only in cases where those users act for non-commercial purposes, such as sharing their content without any profit-making purpose, or where the revenue generated by their uploads is not significant in relation to the copyright relevant acts of the users covered by such authorisations. Where rightholders have explicitly authorised users to upload and make available works or other subject matter on an online content-sharing service, the act of communication to the public of the service provider is authorised within the scope of the authorisation granted by the rightholder. However, there should be no presumption in favour of online content-sharing service providers that their users have cleared all relevant rights.
- (70) The steps taken by online content-sharing service providers in cooperation with rightholders should be without prejudice to the application of exceptions or limitations to copyright, including, in particular, those which guarantee the freedom of expression of users. Users should be allowed to upload and make available content generated by users for the specific purposes of quotation, criticism, review, caricature, parody or pastiche. That is particularly important for the purposes of striking a balance between the fundamental rights laid down in the Charter of Fundamental Rights of the European Union ('the Charter'), in particular the freedom of expression and the freedom of the arts, and the right to property, including intellectual property. Those exceptions and limitations should, therefore, be made mandatory in order to ensure that users receive uniform protection across the Union. It is important to ensure that online content-sharing service providers operate an effective complaint and redress mechanism to support use for such specific purposes.

Online content-sharing service providers should also put in place effective and expeditious complaint and redress mechanisms allowing users to complain about the steps taken with regard to their uploads, in particular where they could benefit from an exception or limitation to copyright in relation to an upload to which access has been disabled or that has been removed. Any complaint filed under such mechanisms should be processed without

undue delay and be subject to human review. When rightholders request the service providers to take action against uploads by users, such as disabling access to or removing content uploaded, such rightholders should duly justify their requests. Moreover, cooperation should not lead to any identification of individual users nor to the processing of personal data, except in accordance with Directive 2002/58/EC of the European Parliament and of the Council ⁽¹⁵⁾ and Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹⁶⁾. Member States should also ensure that users have access to out-of-court redress mechanisms for the settlement of disputes. Such mechanisms should allow disputes to be settled impartially. Users should also have access to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright and related rights.

- (71) As soon as possible after the date of entry into force of this Directive, the Commission, in cooperation with Member States, should organise dialogues between stakeholders to ensure uniform application of the obligation of cooperation between online content-sharing service providers and rightholders and to establish best practices with regard to the appropriate industry standards of professional diligence. For that purpose, the Commission should consult relevant stakeholders, including users' organisations and technology providers, and take into account developments on the market. Users' organisations should also have access to information on actions carried out by online content-sharing service providers to manage content online.
- (72) Authors and performers tend to be in the weaker contractual position when they grant a licence or transfer their rights, including through their own companies, for the purposes of exploitation in return for remuneration, and those natural persons need the protection provided for by this Directive to be able to fully benefit from the rights harmonised under Union law. That need for protection does not arise where the contractual counterpart acts as an end user and does not exploit the work or performance itself, which could, for instance, be the case in some employment contracts.
- (73) The remuneration of authors and performers should be appropriate and proportionate to the actual or potential economic value of the licensed or transferred rights, taking into account the author's or performer's contribution to the overall work or other subject matter and all other circumstances of the case, such as market practices or the actual exploitation of the work. A lump sum payment can also constitute proportionate remuneration but it should not be the rule. Member States should have the freedom to define specific cases for the application of lump sums, taking into account the specificities of each sector. Member States should be free to implement the principle of appropriate and proportionate remuneration through different existing or newly introduced mechanisms, which could include collective bargaining and other mechanisms, provided that such mechanisms are in conformity with applicable Union law.
- (74) Authors and performers need information to assess the economic value of rights of theirs that are harmonised under Union law. This is especially the case where natural persons grant a licence or a transfer of rights for the purposes of exploitation in return for remuneration. That need does not arise where the exploitation has ceased, or where the author or performer has granted a licence to the general public without remuneration.
- (75) As authors and performers tend to be in the weaker contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of adequate and accurate information by their contractual counterparts or their successors in title is important for the transparency and balance in the system governing the remuneration of authors and

⁽¹⁵⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

⁽¹⁶⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

performers. That information should be up-to-date to allow access to recent data, relevant to the exploitation of the work or performance, and comprehensive in a way that it covers all sources of revenues relevant to the case, including, where applicable, merchandising revenues. As long as exploitation is ongoing, contractual counterparts of authors and performers should provide information available to them on all modes of exploitation and on all relevant revenues worldwide with a regularity that is appropriate in the relevant sector, but at least annually. The information should be provided in a manner that is comprehensible to the author or performer and it should allow the effective assessment of the economic value of the rights in question. The transparency obligation should nevertheless apply only where copyright relevant rights are concerned. The processing of personal data, such as contact details and information on remuneration, that are necessary to keep authors and performers informed in relation to the exploitation of their works and performances, should be carried out in accordance with Article 6(1)(c) of Regulation (EU) 2016/679.

- (76) In order to ensure that exploitation-related information is duly provided to authors and performers also in cases where the rights have been sub-licensed to other parties who exploit the rights, this Directive entitles authors and performers to request additional relevant information on the exploitation of the rights, in cases where the first contractual counterpart has provided the information available to them, but that information is not sufficient to assess the economic value of their rights. That request should be made either directly to sub-licensees or through the contractual counterparts of authors and performers. Authors and performers, and their contractual counterparts, should be able to agree to keep the shared information confidential, but authors and performers should always be able to use the shared information for the purpose of exercising their rights under this Directive. Member States should have the option, in compliance with Union law, to provide for further measures to ensure transparency for authors and performers.
- (77) When implementing the transparency obligation provided for in this Directive, Member States should take into account the specificities of different content sectors, such as those of the music sector, the audiovisual sector and the publishing sector, and all relevant stakeholders should be involved when deciding on such sector-specific obligations. Where relevant, the significance of the contribution of authors and performers to the overall work or performance should also be considered. Collective bargaining should be considered as an option for the relevant stakeholders to reach an agreement regarding transparency. Such agreements should ensure that authors and performers have the same level of transparency as or a higher level of transparency than the minimum requirements provided for in this Directive. To enable the adaptation of existing reporting practices to the transparency obligation, a transitional period should be provided for. It should not be necessary to apply the transparency obligation in respect of agreements concluded between rightholders and collective management organisations, independent management entities or other entities subject to the national rules implementing Directive 2014/26/EU, as those organisations or entities are already subject to transparency obligations under Article 18 of Directive 2014/26/EU. Article 18 of Directive 2014/26/EU applies to organisations that manage copyright or related rights on behalf of more than one rightholder for the collective benefit of those rightholders. However, individually negotiated agreements concluded between rightholders and those of their contractual counterparts who act in their own interest should be subject to the transparency obligation provided for in this Directive.
- (78) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few opportunities for authors and performers to renegotiate them with their contractual counterparts or their successors in title in the event that the economic value of the rights turns out to be significantly higher than initially estimated. Accordingly, without prejudice to the law applicable to contracts in Member States, a remuneration adjustment mechanism should be provided for as regards cases where the remuneration originally agreed under a licence or a transfer of rights clearly becomes disproportionately low compared to the relevant revenues derived from the subsequent exploitation of the work or fixation of the performance by the contractual counterpart of the author or performer. All revenues relevant to the case in question, including, where applicable, merchandising revenues, should be taken into account for the assessment of whether the remuneration is disproportionately low. The assessment of the situation should take account of the specific circumstances of each case, including the contribution of the author or performer, as well as of the specificities and remuneration practices in the different content sectors, and whether the contract is based on a collective bargaining agreement. Representatives of authors and performers duly mandated in accordance with national law in compliance with Union law, should be able to provide assistance to one or more authors or performers in relation to requests for the adjustment of the contracts, also taking into account the interests of other authors or performers where relevant.

Those representatives should protect the identity of the represented authors and performers for as long as that is possible. Where the parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority. Such mechanism should not apply to contracts concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to national rules implementing Directive 2014/26/EU.

- (79) Authors and performers are often reluctant to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an alternative dispute resolution procedure that addresses claims by authors and performers, or by their representatives on their behalf, related to obligations of transparency and the contract adjustment mechanism. For that purpose, Member States should be able to either establish a new body or mechanism, or rely on an existing one that fulfils the conditions established by this Directive, irrespective of whether those bodies or mechanisms are industry-led or public, including when part of the national judiciary system. Member States should have flexibility in deciding how the costs of the dispute resolution procedure are to be allocated. Such alternative dispute resolution procedure should be without prejudice to the right of parties to assert and defend their rights by bringing an action before a court.
- (80) When authors and performers license or transfer their rights, they expect their work or performance to be exploited. However, it could be the case that works or performances that have been licensed or transferred are not exploited at all. Where those rights have been transferred on an exclusive basis, authors and performers cannot turn to another partner to exploit their works or performances. In such a case, and after a reasonable period of time has elapsed, authors and performers should be able to benefit from a mechanism for the revocation of rights allowing them to transfer or license their rights to another person. As exploitation of works or performances can vary depending on the sectors, specific provisions could be laid down at national level in order to take into account the specificities of the sectors, such as the audiovisual sector, or of the works or performances, in particular providing for time frames for the right of revocation. In order to protect the legitimate interests of licensees and transferees of rights and to prevent abuses, and taking into account that a certain amount of time is needed before a work or performance is actually exploited, authors and performers should be able to exercise the right of revocation in accordance with certain procedural requirements and only after a certain period of time following the conclusion of the licence or of the transfer agreement. Member States should be allowed to regulate the exercise of the right of revocation in the case of works or performances involving more than one author or performer, taking into account the relative importance of the individual contributions.
- (81) The provisions regarding transparency, contract adjustment mechanisms and alternative dispute resolution procedures laid down in this Directive should be of a mandatory nature, and parties should not be able to derogate from those provisions, whether in contracts between authors, performers and their contractual counterparts, or in agreements between those counterparts and third parties, such as non-disclosure agreements. As a consequence, Article 3(4) of Regulation (EC) No 593/2008 of the European Parliament and of the Council ⁽¹⁷⁾ should apply to the effect that, where all other elements relevant to the situation at the time of the choice of applicable law are located in one or more Member States, the parties' choice of applicable law other than that of a Member State does not prejudice the application of the provisions regarding transparency, contract adjustment mechanisms and alternative dispute resolution procedures laid down in this Directive, as implemented in the Member State of the forum.
- (82) Nothing in this Directive should be interpreted as preventing holders of exclusive rights under Union copyright law from authorising the use of their works or other subject matter for free, including through non-exclusive free licences for the benefit of any users.
- (83) Since the objective of this Directive, namely the modernisation of certain aspects of the Union copyright framework to take account of technological developments and new channels of distribution of protected content in the internal market, cannot be sufficiently achieved by Member States but can rather, by reason of their scale, effects and cross-border dimension, be better achieved at Union level, the Union may adopt measures in

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

accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (84) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles.
- (85) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data set out in Articles 7 and 8, respectively, of the Charter and must be in compliance with Directive 2002/58/EC and Regulation (EU) 2016/679.
- (86) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽¹⁸⁾, 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,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Directive lays down rules which aim to harmonise further Union law applicable to copyright and related rights in the framework of the internal market, taking into account, in particular, digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations to copyright and related rights, on the facilitation of licences, as well as rules which aim to ensure a well-functioning marketplace for the exploitation of works and other subject matter.

2. Except in the cases referred to in Article 24, this Directive shall leave intact and shall in no way affect existing rules laid down in the directives currently in force in this area, in particular Directives 96/9/EC, 2000/31/EC, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.

Article 2

Definitions

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

(1) 'research organisation' means a university, including its libraries, a research institute or any other entity, the primary goal of which is to conduct scientific research or to carry out educational activities involving also the conduct of scientific research:

(a) on a not-for-profit basis or by reinvesting all the profits in its scientific research; or

(b) pursuant to a public interest mission recognised by a Member State;

in such a way that the access to the results generated by such scientific research cannot be enjoyed on a preferential basis by an undertaking that exercises a decisive influence upon such organisation;

(2) 'text and data mining' means any automated analytical technique aimed at analysing text and data in digital form in order to generate information which includes but is not limited to patterns, trends and correlations;

(3) 'cultural heritage institution' means a publicly accessible library or museum, an archive or a film or audio heritage institution;

⁽¹⁸⁾ OJ C 369, 17.12.2011, p. 14.

- (4) 'press publication' means a collection composed mainly of literary works of a journalistic nature, but which can also include other works or other subject matter, and which:
- (a) constitutes an individual item within a periodical or regularly updated publication under a single title, such as a newspaper or a general or special interest magazine;
 - (b) has the purpose of providing the general public with information related to news or other topics; and
 - (c) is published in any media under the initiative, editorial responsibility and control of a service provider.

Periodicals that are published for scientific or academic purposes, such as scientific journals, are not press publications for the purposes of this Directive;

- (5) 'information society service' means a service within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535;
- (6) 'online content-sharing service provider' means a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes.

Providers of services, such as not-for-profit online encyclopedias, not-for-profit educational and scientific repositories, open source software-developing and-sharing platforms, providers of electronic communications services as defined in Directive (EU) 2018/1972, online marketplaces, business-to-business cloud services and cloud services that allow users to upload content for their own use, are not 'online content-sharing service providers' within the meaning of this Directive.

TITLE II

MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-BORDER ENVIRONMENT

Article 3

Text and data mining for the purposes of scientific research

1. Member States shall provide for an exception to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, and Article 15(1) of this Directive for reproductions and extractions made by research organisations and cultural heritage institutions in order to carry out, for the purposes of scientific research, text and data mining of works or other subject matter to which they have lawful access.
2. Copies of works or other subject matter made in compliance with paragraph 1 shall be stored with an appropriate level of security and may be retained for the purposes of scientific research, including for the verification of research results.
3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.
4. Member States shall encourage rightholders, research organisations and cultural heritage institutions to define commonly agreed best practices concerning the application of the obligation and of the measures referred to in paragraphs 2 and 3 respectively.

Article 4

Exception or limitation for text and data mining

1. Member States shall provide for an exception or limitation to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, Article 4(1)(a) and (b) of Directive 2009/24/EC and Article 15(1) of this Directive for reproductions and extractions of lawfully accessible works and other subject matter for the purposes of text and data mining.

2. Reproductions and extractions made pursuant to paragraph 1 may be retained for as long as is necessary for the purposes of text and data mining.
3. The exception or limitation provided for in paragraph 1 shall apply on condition that the use of works and other subject matter referred to in that paragraph has not been expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online.
4. This Article shall not affect the application of Article 3 of this Directive.

Article 5

Use of works and other subject matter in digital and cross-border teaching activities

1. Member States shall provide for an exception or limitation to the rights provided for in Article 5(a), (b), (d) and (e) and Article 7(1) of Directive 96/9/EC, Articles 2 and 3 of Directive 2001/29/EC, Article 4(1) of Directive 2009/24/EC and Article 15(1) of this Directive in order to allow the digital use of works and other subject matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, on condition that such use:
 - (a) takes place under the responsibility of an educational establishment, on its premises or at other venues, or through a secure electronic environment accessible only by the educational establishment's pupils or students and teaching staff; and
 - (b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.
2. Notwithstanding Article 7(1), Member States may provide that the exception or limitation adopted pursuant to paragraph 1 does not apply or does not apply as regards specific uses or types of works or other subject matter, such as material that is primarily intended for the educational market or sheet music, to the extent that suitable licences authorising the acts referred to in paragraph 1 of this Article and covering the needs and specificities of educational establishments are easily available on the market.

Member States that decide to avail of the first subparagraph of this paragraph shall take the necessary measures to ensure that the licences authorising the acts referred to in paragraph 1 of this Article are available and visible in an appropriate manner for educational establishments.

3. The use of works and other subject matter for the sole purpose of illustration for teaching through secure electronic environments undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.
4. Member States may provide for fair compensation for rightholders for the use of their works or other subject matter pursuant to paragraph 1.

Article 6

Preservation of cultural heritage

Member States shall provide for an exception to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 15(1) of this Directive, in order to allow cultural heritage institutions to make copies of any works or other subject matter that are permanently in their collections, in any format or medium, for purposes of preservation of such works or other subject matter and to the extent necessary for such preservation.

Article 7

Common provisions

1. Any contractual provision contrary to the exceptions provided for in Articles 3, 5 and 6 shall be unenforceable.
2. Article 5(5) of Directive 2001/29/EC shall apply to the exceptions and limitations provided for under this Title. The first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to Articles 3 to 6 of this Directive.

TITLE III

MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT

CHAPTER 1

Out-of-commerce works and other subject matter

Article 8

Use of out-of-commerce works and other subject matter by cultural heritage institutions

1. Member States shall provide that a collective management organisation, in accordance with its mandates from rightholders, may conclude a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the reproduction, distribution, communication to the public or making available to the public of out-of-commerce works or other subject matter that are permanently in the collection of the institution, irrespective of whether all rightholders covered by the licence have mandated the collective management organisation, on condition that:

- (a) the collective management organisation is, on the basis of its mandates, sufficiently representative of rightholders in the relevant type of works or other subject matter and of the rights that are the subject of the licence; and
- (b) all rightholders are guaranteed equal treatment in relation to the terms of the licence.

2. Member States shall provide for an exception or limitation to the rights provided for in Article 5(a), (b), (d) and (e) and Article 7(1) of Directive 96/9/EC, Articles 2 and 3 of Directive 2001/29/EC, Article 4(1) of Directive 2009/24/EC, and Article 15(1) of this Directive, in order to allow cultural heritage institutions to make available, for non-commercial purposes, out-of-commerce works or other subject matter that are permanently in their collections, on condition that:

- (a) the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible; and
- (b) such works or other subject matter are made available on non-commercial websites.

3. Member States shall provide that the exception or limitation provided for in paragraph 2 only applies to types of works or other subject matter for which no collective management organisation that fulfils the condition set out in point (a) of paragraph 1 exists.

4. Member States shall provide that all rightholders may, at any time, easily and effectively, exclude their works or other subject matter from the licensing mechanism set out in paragraph 1 or from the application of the exception or limitation provided for in paragraph 2, either in general or in specific cases, including after the conclusion of a licence or after the beginning of the use concerned.

5. A work or other subject matter shall be deemed to be out of commerce when it can be presumed in good faith that the whole work or other subject matter is not available to the public through customary channels of commerce, after a reasonable effort has been made to determine whether it is available to the public.

Member States may provide for specific requirements, such as a cut-off date, to determine whether works and other subject matter can be licensed in accordance with paragraph 1 or used under the exception or limitation provided for in paragraph 2. Such requirements shall not extend beyond what is necessary and reasonable, and shall not preclude being able to determine that a set of works or other subject matter as a whole is out of commerce, when it is reasonable to presume that all works or other subject matter are out of commerce.

6. Member States shall provide that the licences referred to in paragraph 1 are to be sought from a collective management organisation that is representative for the Member State where the cultural heritage institution is established.

7. This Article shall not apply to sets of out-of-commerce works or other subject matter if, on the basis of the reasonable effort referred to in paragraph 5, there is evidence that such sets predominantly consist of:

- (a) works or other subject matter, other than cinematographic or audiovisual works, first published or, in the absence of publication, first broadcast in a third country;

- (b) cinematographic or audiovisual works, of which the producers have their headquarters or habitual residence in a third country; or
- (c) works or other subject matter of third country nationals, where after a reasonable effort no Member State or third country could be determined pursuant to points (a) and (b).

By way of derogation from the first subparagraph, this Article shall apply where the collective management organisation is sufficiently representative, within the meaning of point (a) of paragraph 1, of rightholders of the relevant third country.

Article 9

Cross-border uses

1. Member States shall ensure that licences granted in accordance with Article 8 may allow the use of out-of-commerce works or other subject matter by cultural heritage institutions in any Member State.
2. The uses of works and other subject matter under the exception or limitation provided for in Article 8(2) shall be deemed to occur solely in the Member State where the cultural heritage institution undertaking that use is established.

Article 10

Publicity measures

1. Member States shall ensure that information from cultural heritage institutions, collective management organisations or relevant public authorities, for the purposes of the identification of the out-of-commerce works or other subject matter, covered by a licence granted in accordance with Article 8(1), or used under the exception or limitation provided for in Article 8(2), as well as information about the options available to rightholders as referred to in Article 8(4), and, as soon as it is available and where relevant, information on the parties to the licence, the territories covered and the uses, is made permanently, easily and effectively accessible on a public single online portal from at least six months before the works or other subject matter are distributed, communicated to the public or made available to the public in accordance with the licence or under the exception or limitation.

The portal shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.

2. Member States shall provide that, if necessary for the general awareness of rightholders, additional appropriate publicity measures are taken regarding the ability of collective management organisations to license works or other subject matter in accordance with Article 8, the licences granted, the uses under the exception or limitation provided for in Article 8(2) and the options available to rightholders as referred to in Article 8(4).

The appropriate publicity measures referred to in the first subparagraph of this paragraph shall be taken in the Member State where the licence is sought in accordance with Article 8(1) or, for uses under the exception or limitation provided for in Article 8(2), in the Member State where the cultural heritage institution is established. If there is evidence, such as the origin of the works or other subject matter, to suggest that the awareness of rightholders could be more efficiently raised in other Member States or third countries, such publicity measures shall also cover those Member States and third countries.

Article 11

Stakeholder dialogue

Member States shall consult rightholders, collective management organisations and cultural heritage institutions in each sector before establishing specific requirements pursuant to Article 8(5), and shall encourage regular dialogue between representative users' and rightholders' organisations, including collective management organisations, and any other relevant stakeholder organisations, on a sector-specific basis, to foster the relevance and usability of the licensing mechanisms set out in Article 8(1) and to ensure that the safeguards for rightholders referred to in this Chapter are effective.

CHAPTER 2

Measures to facilitate collective licensing

Article 12

Collective licensing with an extended effect

1. Member States may provide, as far as the use on their territory is concerned and subject to the safeguards provided for in this Article, that where a collective management organisation that is subject to the national rules implementing Directive 2014/26/EU, in accordance with its mandates from rightholders, enters into a licensing agreement for the exploitation of works or other subject matter:

- (a) such an agreement can be extended to apply to the rights of rightholders who have not authorised that collective management organisation to represent them by way of assignment, licence or any other contractual arrangement; or
- (b) with respect to such an agreement, the organisation has a legal mandate or is presumed to represent rightholders who have not authorised the organisation accordingly.

2. Member States shall ensure that the licensing mechanism referred to in paragraph 1 is only applied within well-defined areas of use, where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely, due to the nature of the use or of the types of works or other subject matter concerned, and shall ensure that such licensing mechanism safeguards the legitimate interests of rightholders.

3. For the purposes of paragraph 1, Member States shall provide for the following safeguards:

- (a) the collective management organisation is, on the basis of its mandates, sufficiently representative of rightholders in the relevant type of works or other subject matter and of the rights which are the subject of the licence, for the relevant Member State;
- (b) all rightholders are guaranteed equal treatment, including in relation to the terms of the licence;
- (c) rightholders who have not authorised the organisation granting the licence may at any time easily and effectively exclude their works or other subject matter from the licensing mechanism established in accordance with this Article; and
- (d) appropriate publicity measures are taken, starting from a reasonable period before the works or other subject matter are used under the licence, to inform rightholders about the ability of the collective management organisation to license works or other subject matter, about the licensing taking place in accordance with this Article and about the options available to rightholders as referred to in point (c). Publicity measures shall be effective without the need to inform each rightholder individually.

4. This Article does not affect the application of collective licensing mechanisms with an extended effect in accordance with other provisions of Union law, including provisions that allow exceptions or limitations.

This Article shall not apply to mandatory collective management of rights.

Article 7 of Directive 2014/26/EU shall apply to the licensing mechanism provided for in this Article.

5. Where a Member State provides in its national law for a licensing mechanism in accordance with this Article, that Member State shall inform the Commission about the scope of the corresponding national provisions, about the purposes and types of licences that may be introduced under those provisions, about the contact details of organisations issuing licences in accordance with that licensing mechanism, and about the means by which information on the licensing and on the options available to rightholders as referred to in point (c) of paragraph 3 can be obtained. The Commission shall publish that information.

6. Based on the information received pursuant to paragraph 5 of this Article and on the discussions within the contact committee established in Article 12(3) of Directive 2001/29/EC, the Commission shall, by 10 April 2021, submit to the European Parliament and to the Council a report on the use in the Union of the licensing mechanisms referred to in paragraph 1 of this Article, their impact on licensing and rightholders, including rightholders who are not members of the organisation granting the licences or who are nationals of, or resident in, another Member State, their effectiveness in facilitating the dissemination of cultural content, and their impact on the internal market, including the cross-border provision of services and competition. That report shall be accompanied, if appropriate, by a legislative proposal, including as regards the cross-border effect of such national mechanisms.

CHAPTER 3

Access to and availability of audiovisual works on video-on-demand platforms

Article 13

Negotiation mechanism

Member States shall ensure that parties facing difficulties related to the licensing of rights when seeking to conclude an agreement for the purpose of making available audiovisual works on video-on-demand services may rely on the assistance of an impartial body or of mediators. The impartial body established or designated by a Member State for the purpose of this Article and mediators shall provide assistance to the parties with their negotiations and help the parties reach agreements, including, where appropriate, by submitting proposals to them.

Member States shall notify the Commission of the body or mediators referred to in the first paragraph no later than 7 June 2021. Where Member States have chosen to rely on mediation, the notification to the Commission shall at least include, when available, the source where relevant information on the mediators entrusted can be found.

CHAPTER 4

Works of visual art in the public domain

Article 14

Works of visual art in the public domain

Member States shall provide that, when the term of protection of a work of visual art has expired, any material resulting from an act of reproduction of that work is not subject to copyright or related rights, unless the material resulting from that act of reproduction is original in the sense that it is the author's own intellectual creation.

TITLE IV

MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT

CHAPTER 1

Rights in publications

Article 15

Protection of press publications concerning online uses

1. Member States shall provide publishers of press publications established in a Member State with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the online use of their press publications by information society service providers.

The rights provided for in the first subparagraph shall not apply to private or non-commercial uses of press publications by individual users.

The protection granted under the first subparagraph shall not apply to acts of hyperlinking.

The rights provided for in the first subparagraph shall not apply in respect of the use of individual words or very short extracts of a press publication.

2. The rights provided for in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject matter incorporated in a press publication. The rights provided for in paragraph 1 shall not be invoked against those authors and other rightholders and, in particular, shall not deprive them of their right to exploit their works and other subject matter independently from the press publication in which they are incorporated.

When a work or other subject matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights provided for in paragraph 1 shall not be invoked to prohibit the use by other authorised users. The rights provided for in paragraph 1 shall not be invoked to prohibit the use of works or other subject matter for which protection has expired.

3. Articles 5 to 8 of Directive 2001/29/EC, Directive 2012/28/EU and Directive (EU) 2017/1564 of the European Parliament of the Council ⁽¹⁹⁾ shall apply *mutatis mutandis* in respect of the rights provided for in paragraph 1 of this Article.

4. The rights provided for in paragraph 1 shall expire two years after the press publication is published. That term shall be calculated from 1 January of the year following the date on which that press publication is published.

Paragraph 1 shall not apply to press publications first published before 6 June 2019.

5. Member States shall provide that authors of works incorporated in a press publication receive an appropriate share of the revenues that press publishers receive for the use of their press publications by information society service providers.

Article 16

Claims to fair compensation

Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or licence constitutes a sufficient legal basis for the publisher to be entitled to a share of the compensation for the use of the work made under an exception or limitation to the transferred or licensed right.

The first paragraph shall be without prejudice to existing and future arrangements in Member States concerning public lending rights.

CHAPTER 2

Certain uses of protected content by online services

Article 17

Use of protected content by online content-sharing service providers

1. Member States shall provide that an online content-sharing service provider performs an act of communication to the public or an act of making available to the public for the purposes of this Directive when it gives the public access to copyright-protected works or other protected subject matter uploaded by its users.

An online content-sharing service provider shall therefore obtain an authorisation from the rightholders referred to in Article 3(1) and (2) of Directive 2001/29/EC, for instance by concluding a licensing agreement, in order to communicate to the public or make available to the public works or other subject matter.

2. Member States shall provide that, where an online content-sharing service provider obtains an authorisation, for instance by concluding a licensing agreement, that authorisation shall also cover acts carried out by users of the services falling within the scope of Article 3 of Directive 2001/29/EC when they are not acting on a commercial basis or where their activity does not generate significant revenues.

3. When an online content-sharing service provider performs an act of communication to the public or an act of making available to the public under the conditions laid down in this Directive, the limitation of liability established in Article 14(1) of Directive 2000/31/EC shall not apply to the situations covered by this Article.

⁽¹⁹⁾ Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 242, 20.9.2017, p. 6).

The first subparagraph of this paragraph shall not affect the possible application of Article 14(1) of Directive 2000/31/EC to those service providers for purposes falling outside the scope of this Directive.

4. If no authorisation is granted, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter, unless the service providers demonstrate that they have:

- (a) made best efforts to obtain an authorisation, and
- (b) made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information; and in any event
- (c) acted expeditiously, upon receiving a sufficiently substantiated notice from the rightholders, to disable access to, or to remove from their websites, the notified works or other subject matter, and made best efforts to prevent their future uploads in accordance with point (b).

5. In determining whether the service provider has complied with its obligations under paragraph 4, and in light of the principle of proportionality, the following elements, among others, shall be taken into account:

- (a) the type, the audience and the size of the service and the type of works or other subject matter uploaded by the users of the service; and
- (b) the availability of suitable and effective means and their cost for service providers.

6. Member States shall provide that, in respect of new online content-sharing service providers the services of which have been available to the public in the Union for less than three years and which have an annual turnover below EUR 10 million, calculated in accordance with Commission Recommendation 2003/361/EC ⁽²⁰⁾, the conditions under the liability regime set out in paragraph 4 are limited to compliance with point (a) of paragraph 4 and to acting expeditiously, upon receiving a sufficiently substantiated notice, to disable access to the notified works or other subject matter or to remove those works or other subject matter from their websites.

Where the average number of monthly unique visitors of such service providers exceeds 5 million, calculated on the basis of the previous calendar year, they shall also demonstrate that they have made best efforts to prevent further uploads of the notified works and other subject matter for which the rightholders have provided relevant and necessary information.

7. The cooperation between online content-sharing service providers and rightholders shall not result in the prevention of the availability of works or other subject matter uploaded by users, which do not infringe copyright and related rights, including where such works or other subject matter are covered by an exception or limitation.

Member States shall ensure that users in each Member State are able to rely on any of the following existing exceptions or limitations when uploading and making available content generated by users on online content-sharing services:

- (a) quotation, criticism, review;
- (b) use for the purpose of caricature, parody or pastiche.

8. The application of this Article shall not lead to any general monitoring obligation.

Member States shall provide that online content-sharing service providers provide rightholders, at their request, with adequate information on the functioning of their practices with regard to the cooperation referred to in paragraph 4 and, where licensing agreements are concluded between service providers and rightholders, information on the use of content covered by the agreements.

9. Member States shall provide that online content-sharing service providers put in place an effective and expeditious complaint and redress mechanism that is available to users of their services in the event of disputes over the disabling of access to, or the removal of, works or other subject matter uploaded by them.

⁽²⁰⁾ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

Where rightholders request to have access to their specific works or other subject matter disabled or to have those works or other subject matter removed, they shall duly justify the reasons for their requests. Complaints submitted under the mechanism provided for in the first subparagraph shall be processed without undue delay, and decisions to disable access to or remove uploaded content shall be subject to human review. Member States shall also ensure that out-of-court redress mechanisms are available for the settlement of disputes. Such mechanisms shall enable disputes to be settled impartially and shall not deprive the user of the legal protection afforded by national law, without prejudice to the rights of users to have recourse to efficient judicial remedies. In particular, Member States shall ensure that users have access to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright and related rights.

This Directive shall in no way affect legitimate uses, such as uses under exceptions or limitations provided for in Union law, and shall not lead to any identification of individual users nor to the processing of personal data, except in accordance with Directive 2002/58/EC and Regulation (EU) 2016/679.

Online content-sharing service providers shall inform their users in their terms and conditions that they can use works and other subject matter under exceptions or limitations to copyright and related rights provided for in Union law.

10. As of 6 June 2019 the Commission, in cooperation with the Member States, shall organise stakeholder dialogues to discuss best practices for cooperation between online content-sharing service providers and rightholders. The Commission shall, in consultation with online content-sharing service providers, rightholders, users' organisations and other relevant stakeholders, and taking into account the results of the stakeholder dialogues, issue guidance on the application of this Article, in particular regarding the cooperation referred to in paragraph 4. When discussing best practices, special account shall be taken, among other things, of the need to balance fundamental rights and of the use of exceptions and limitations. For the purpose of the stakeholder dialogues, users' organisations shall have access to adequate information from online content-sharing service providers on the functioning of their practices with regard to paragraph 4.

CHAPTER 3

Fair remuneration in exploitation contracts of authors and performers

Article 18

Principle of appropriate and proportionate remuneration

1. Member States shall ensure that where authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject matter, they are entitled to receive appropriate and proportionate remuneration.
2. In the implementation in national law of the principle set out in paragraph 1, Member States shall be free to use different mechanisms and take into account the principle of contractual freedom and a fair balance of rights and interests.

Article 19

Transparency obligation

1. Member States shall ensure that authors and performers receive on a regular basis, at least once a year, and taking into account the specificities of each sector, up to date, relevant and comprehensive information on the exploitation of their works and performances from the parties to whom they have licensed or transferred their rights, or their successors in title, in particular as regards modes of exploitation, all revenues generated and remuneration due.
2. Member States shall ensure that, where the rights referred to in paragraph 1 have subsequently been licensed, authors and performers or their representatives shall, at their request, receive from sub-licensees additional information, in the event that their first contractual counterpart does not hold all the information that would be necessary for the purposes of paragraph 1.

Where that additional information is requested, the first contractual counterpart of authors and performers shall provide information on the identity of those sub-licensees.

Member States may provide that any request to sub-licensees pursuant to the first subparagraph is made directly or indirectly through the contractual counterpart of the author or the performer.

3. The obligation set out in paragraph 1 shall be proportionate and effective in ensuring a high level of transparency in every sector. Member States may provide that in duly justified cases where the administrative burden resulting from the obligation set out in paragraph 1 would become disproportionate in the light of the revenues generated by the exploitation of the work or performance, the obligation is limited to the types and level of information that can reasonably be expected in such cases.

4. Member States may decide that the obligation set out in paragraph 1 of this Article does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance, unless the author or performer demonstrates that he or she requires the information for the exercise of his or her rights under Article 20(1) and requests the information for that purpose.

5. Member States may provide that, for agreements subject to or based on collective bargaining agreements, the transparency rules of the relevant collective bargaining agreement are applicable, on condition that those rules meet the criteria provided for in paragraphs 1 to 4.

6. Where Article 18 of Directive 2014/26/EU is applicable, the obligation laid down in paragraph 1 of this Article shall not apply in respect of agreements concluded by entities defined in Article 3(a) and (b) of that Directive or by other entities subject to the national rules implementing that Directive.

Article 20

Contract adjustment mechanism

1. Member States shall ensure that, in the absence of an applicable collective bargaining agreement providing for a mechanism comparable to that set out in this Article, authors and performers or their representatives are entitled to claim additional, appropriate and fair remuneration from the party with whom they entered into a contract for the exploitation of their rights, or from the successors in title of such party, when the remuneration originally agreed turns out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of the works or performances.

2. Paragraph 1 of this Article shall not apply to agreements concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities that are already subject to the national rules implementing that Directive.

Article 21

Alternative dispute resolution procedure

Member States shall provide that disputes concerning the transparency obligation under Article 19 and the contract adjustment mechanism under Article 20 may be submitted to a voluntary, alternative dispute resolution procedure. Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the specific request of one or more authors or performers.

Article 22

Right of revocation

1. Member States shall ensure that where an author or a performer has licensed or transferred his or her rights in a work or other protected subject matter on an exclusive basis, the author or performer may revoke in whole or in part the licence or the transfer of rights where there is a lack of exploitation of that work or other protected subject matter.

2. Specific provisions for the revocation mechanism provided for in paragraph 1 may be provided for in national law, taking into account the following:

(a) the specificities of the different sectors and the different types of works and performances; and

(b) where a work or other subject matter contains the contribution of more than one author or performer, the relative importance of the individual contributions, and the legitimate interests of all authors and performers affected by the application of the revocation mechanism by an individual author or performer.

Member States may exclude works or other subject matter from the application of the revocation mechanism if such works or other subject matter usually contain contributions of a plurality of authors or performers.

Member States may provide that the revocation mechanism can only apply within a specific time frame, where such restriction is duly justified by the specificities of the sector or of the type of work or other subject matter concerned.

Member States may provide that authors or performers can choose to terminate the exclusivity of the contract instead of revoking the licence or transfer of the rights.

3. Member States shall provide that the revocation provided for in paragraph 1 may only be exercised after a reasonable time following the conclusion of the licence or the transfer of the rights. The author or performer shall notify the person to whom the rights have been licensed or transferred and set an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiry of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of revoking the licence or the transfer of the rights.

4. Paragraph 1 shall not apply if the lack of exploitation is predominantly due to circumstances that the author or the performer can reasonably be expected to remedy.

5. Member States may provide that any contractual provision derogating from the revocation mechanism provided for in paragraph 1 is enforceable only if it is based on a collective bargaining agreement.

Article 23

Common provisions

1. Member States shall ensure that any contractual provision that prevents compliance with Articles 19, 20 and 21 shall be unenforceable in relation to authors and performers.

2. Member States shall provide that Articles 18 to 22 of this Directive do not apply to authors of a computer program within the meaning of Article 2 of Directive 2009/24/EC.

TITLE V

FINAL PROVISIONS

Article 24

Amendments to Directives 96/9/EC and 2001/29/EC

1. Directive 96/9/EC is amended as follows:

(a) In Article 6(2), point (b) is replaced by the following:

‘(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and limitations provided for in Directive (EU) 2019/790 of the European Parliament and of the Council (*);

(*) Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ L 130, 17.5.2019, p. 92).’

(b) In Article 9, point (b) is replaced by the following:

‘(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and limitations provided for in Directive (EU) 2019/790;’.

2. Directive 2001/29/EC is amended as follows:

(a) In Article 5(2), point (c) is replaced by the following:

‘(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage, without prejudice to the exceptions and limitations provided for in Directive (EU) 2019/790 of the European Parliament and of the Council (*);

(*) Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ L 130, 17.5.2019, p. 92).’.

(b) In Article 5(3), point (a) is replaced by the following:

‘(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author’s name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and limitations provided for in Directive (EU) 2019/790;’.

(c) In Article 12(4), the following points are added:

‘(e) to examine the impact of the transposition of Directive (EU) 2019/790 on the functioning of the internal market and to highlight any transposition difficulties;

(f) to facilitate the exchange of information on relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to implement Directive (EU) 2019/790;

(g) to discuss any other questions arising from the application of Directive (EU) 2019/790.’.

Article 25

Relationship with exceptions and limitations provided for in other directives

Member States may adopt or maintain in force broader provisions, compatible with the exceptions and limitations provided for in Directives 96/9/EC and 2001/29/EC, for uses or fields covered by the exceptions or limitations provided for in this Directive.

Article 26

Application in time

1. This Directive shall apply in respect of all works and other subject matter that are protected by national law in the field of copyright on or after 7 June 2021.

2. This Directive shall apply without prejudice to any acts concluded and rights acquired before 7 June 2021.

Article 27

Transitional provision

Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation set out in Article 19 as from 7 June 2022.

Article 28

Protection of personal data

The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directive 2002/58/EC and Regulation (EU) 2016/679.

*Article 29***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 7 June 2021. They shall immediately inform the Commission thereof.

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. The methods of making such reference shall be laid down by Member States.

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 30***Review**

1. No sooner than 7 June 2026, the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.

The Commission shall, by 7 June 2024, assess the impact of the specific liability regime set out in Article 17 applicable to online content-sharing service providers that have an annual turnover of less than EUR 10 million and the services of which have been available to the public in the Union for less than three years under Article 17(6) and, if appropriate, take action in accordance with the conclusions of its assessment.

2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.

*Article 31***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 32***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 17 April 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN