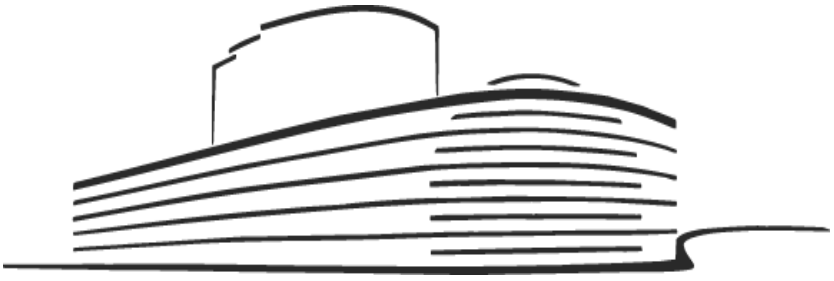
EUROPEAN PARLIAMENT

2014 - 2015

TEXTS ADOPTED
PART V

at the sitting of

Tuesday
15 April 2014



P7_TA-PROV(2014)04-15 PROVISIONAL EDITION PE 531.385

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TEXTS ADOPTED

P7_TA-PROV(2014)0362

Agricultural products on the internal market and in third countries ***I

European Parliament legislative resolution of 15 April 2014 on the proposal for a regulation of the European Parliament and of the Council on information provision and promotion measures for agricultural products on the internal market and in third countries (COM(2013)0812 – C7-0416/2013 – 2013/0398(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2013)0812),

– having regard to Article 294(2) and Articles 42 and 43(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0416/2013),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– after consulting the European Economic and Social Committee,

– having regard to the undertaking given by the Council representative by letter of 2 April 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on Agriculture and Rural Development (A7-0217/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0398

Position of the European Parliament adopted at first reading on 15 April 2014 with a view to the adoption of Regulation (EU) No .../2014 of the European Parliament and of the Council on information provision and promotion measures for agricultural products on the internal market and in third countries[*]

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 42 and 43(2) thereof,

Having regard to the proposal from the European Commission,

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

[*] TEXT HAS NOT YET UNDERGONE LEGAL-LINGUISTIC FINALISATION

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) In accordance with Council Regulation (EC) No 3/2008[4], the Union may implement information provision and promotion measures on the internal market and in third countries for agricultural products and their production methods and for certain food products based on agricultural products.

(2) ***In view of the experience gained and likely trends in the agricultural sector and on markets both inside and outside the Union, the scheme established by Regulation (EC) No 3/2008 should be reviewed and made more coherent and effective. Regulation (EC) No 3/2008 should therefore be repealed and replaced with a new regulation.***

1 OJ C , , p. .

2 OJ C , , p. .

3 Position of the European Parliament of 15 April 2014.

4 Council Regulation (EC) No 3/2008 of 17 December 2007 on information provision and promotion measures for agricultural products on the internal market and in third countries (OJ L 3, 5.1.2008, p. 1).

(3) ***The objective of these measures is to enhance the competitiveness of the European agricultural sector bringing about greater competitive equity in both the internal market and third countries. More specifically, the information provision and promotion measures should aim to increase consumers' awareness about the merits of the Union's agricultural products and production methods and increase the awareness and recognition of EU quality schemes. Moreover, they should increase the competitiveness and consumption of EU agricultural products, raise their profile both within and outside the Union and increase the market share of those products, with a special focus on those markets in third countries with the highest growth potential. In the case of a serious market disturbance, loss of consumer confidence or other specific problems, those measures should help restore normal market conditions. Such information provision and promotion measures should usefully complement and reinforce the measures implemented by the Member States.***

In order to ***achieve their objectives, information provision and promotion measures should continue to take place both within and outside the Union.***

(4) ***In addition to information on the intrinsic features of Union's agricultural and food products, the eligible measures may also communicate consumer-friendly messages, focusing among others on nutrition, taste, tradition, diversity and culture.***

(5) ***Information provision and promotion measures should not be brand or origin-oriented. Nevertheless, in order to improve the quality and effectiveness of demonstrations, tastings and information and promotion material, it should be possible to mention the product brand and origin, provided that the principle of non-discrimination is respected and the measures are not aimed at encouraging the consumption of any product on the sole ground of its origin. Furthermore, such measures should respect general principles of Union law and should not amount to a restriction of the free movement of agricultural and food products in breach of Article 34 TFEU. Specific rules should be laid down on the visibility of brands and origin in relation to the main EU message of a campaign.***

(6) Measures ***should also aim*** to enhance the authenticity of Union products so as to improve consumers' awareness as to the qualities of genuine products as compared to imitations and counterfeit products; this would contribute significantly to awareness in the Union and third countries alike of the symbols, indications and abbreviations demonstrating participation in the European quality schemes established by Regulation (EU) No 1151/2012.

(7) One of the Union's strengths in food production lies in the diversity of its products and in their specific characteristics which are linked to different geographical areas and different traditional methods and which provide unique flavours, offering the variety and authenticity that consumers increasingly look for, both in the Union and outside.

(8) The Union exports mainly final agricultural products, including agricultural products not included in Annex I to the Treaty on the Functioning of the European Union ('the Treaty'). The information ***provision*** and promotion ***measures*** should therefore be opened up to ***include*** certain ▌ products ***outside the scope of Annex I to the Treaty . This would be consistent*** with other schemes ***of*** the Common Agricultural Policy (CAP), such as the European quality schemes, which ***are*** already ▌ open to such products.

(9) The Union's information provision and promotion measures relating to wine are one of the landmarks of the aid programmes available to the wine sector under the CAP. ***Similarly, Regulation (EU) No XXXX/2014 provides for the promotion of fishery and aquaculture products listed in its Annex I.*** Consequently, the eligibility of ***fishery and aquaculture products listed in Annex 1 to Regulation (EU) No 1379/2013,*** for the information provision and promotion measures provided for under this scheme should be limited solely to ***fishery and aquaculture products*** which ***are*** associated with another agricultural or food product.

As regards wine, only wine with designation of origin or protected geographical indication status and wine carrying an indication of the wine grape variety should be the subject of the information provision and promotion measures. In the case of simple programmes, the programme in question should also be associated with another agricultural or food product.

(10) ***Products covered by Union quality schemes and quality schemes recognised by Member States should be eligible for information provision and promotion measures as they provide consumers with assurances on the quality and characteristics of the product or the production process used, achieve added value for the products concerned and enhance their market opportunities. Similarly, the organic production method, as well as the logo for quality agricultural products specific to the outermost regions should be eligible for information provision and promotion measures.***

(11) Over the period 2001-2011, barely 30 % of the budget earmarked for information provision and promotion measures under Regulation (EC) No 3/2008 was spent on measures targeting third-country markets, even though these markets offer major growth potential. ▌ Arrangements are therefore required to encourage a larger number of information provision and promotion measures for Union agricultural products in third countries, in particular through increased financial support.

(12) In order to guarantee the ***effectiveness*** of the information provision and promotion measures that are implemented, these should be developed in the context of information and promotion programmes. Such programmes have hitherto been submitted by professional or inter-professional organisations. In order to increase the number ▌of ▌measures proposed ***and improve their quality***, the range of beneficiaries should be widened to include producer organisations***, groups and bodies of the agrifood sector whose objective and activity is to provide information on and promote agricultural products.***

(13) The information provision and promotion measures co-financed by the Union should ***demonstrate*** a specific ***EU*** dimension. To that end, and in order to avoid a dispersion of resources and ***in order to*** increase Europe's visibility through these information provision and promotion measures for agricultural products ***and certain food products***, it is necessary to establish a work programme which defines the strategic priorities for these measures in terms of populations, products, ***schemes*** or markets to be targeted and the nature of the information and promotion messages to be imparted. ***The programme should be developed on the basis of the general and specific objectives established under this Regulation, and take into account the possibilities offered by the markets and the need to complement and reinforce the actions implemented by Member States and operators, both on the Internal market and in third countries, in order to ensure a cohesive promotion and information policy. To this end, when designing that programme, the Commission should consult Member States and of the relevant stakeholders.***

(14) ***The work programme should provide, among others, for specific arrangements in order to react in the event of a serious market disturbance or loss of consumer confidence. Additionally*** the Commission should take particular account of the predominant position of small and medium-enterprises in the agri-food sector, a sector which benefits from the exceptional measures provided for in ***Articles 219, 220 and 221*** of Regulation (EU) 1308/2013[1] and ***of*** free-trade agreements ***falling within the scope of*** the ***trade*** policy of the European Union for measures targeting third countries. ***When designing that programme, the Commission should also take into account the handicaps of mountain areas, islands and outermost regions.***

(15) In order to ensure that information provision and promotion measures are implemented effectively, they should be entrusted to ▌ implementing bodies ***selected through a competitive procedure. Nevertheless, in duly justified cases proposing organisations should have the possibility to implement directly certain parts of their programme***.

[1] 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).

(16) ***The Commission should be able to carry out information and promotion measures at its own initiative, including high level missions, particularly with a view to contributing to the opening-up of new markets. The Commission should also be able to conduct its own campaigns to provide a prompt and effective response in the event of serious disruption to the market or loss of consumer confidence. If necessary, the Commission should revise its own initiatives planning to implement such campaigns. Appropriations allocated to ongoing information and promotion simple or multi programmes shall not be reduced in the event of action undertaken by the Commission under these circumstances.***

(17) Over and above the information provision and promotion measures, the Commission needs to develop and coordinate technical and support services at ***Union*** level with the aim of helping operators take part in co-financed programmes, conduct effective campaigns or develop their export activities. ***These services should notably include the provision of guidelines to help potential beneficiaries to comply with the rules and procedures related to this policy.***

(18) ***Efforts to promote EU products on third country markets are sometimes prejudiced by the competition they face from imitation and counterfeit products. The technical support services developed by the Commission would include advice for the sector with regard to protecting EU products from imitation and counterfeit practices.***

(19) ***Simplification of*** the regulatory environment of the ***CAP is an important priority for the Union***. This approach should also be applied to the Regulation on information provision and promotion measures for agricultural products. In particular, the principles of administrative management of information and promotion programmes should be reviewed with the aim of simplifying them and enabling the Commission to establish the rules and procedures applicable to the submission***,*** selection ***and evaluation*** of proposals for programmes, ***The Commission should ensure however, that Member States receive timely information on all programmes proposed and selected. That information should include in particular the number of proposals received, the Member States and sectors concerned, and the outcome of the evaluation of those proposals***.

(20) Co-operation between economic operators in different Member States contributes greatly to increasing ***EU*** added value and to highlighting the diversity of EU agricultural products. Despite the priority given to programmes developed jointly by proposing organisations in different Member States, the latter accounted in the period 2001-2011 for only 16 % of the budget earmarked for information provision and promotion measures under Regulation (EC) No 3/2008. ***Consequently,*** new arrangements should ▌ be introduced, particularly as regards the ▌ management ***of multi programmes***, in order to overcome existing obstacles to ***their*** implementation.

(21) Financing rules should be set. As a general rule, ***in order to ensure*** that ***interested*** proposing organisations assume their ***share of the*** responsibilities, the Union should cover only part of the cost of programmes. ***However,*** certain administrative and staff costs***,*** which are not linked to implementation of the CAP***,*** form an integral part of information provision and promotion measures and ***should*** be eligible for Union funding.

(22) Each measure should be subject to monitoring and evaluation in order to improve its quality and demonstrate its achievements. In this context a list of indicators should be determined and the impact of the promotion policy assessed in relation to its strategic objectives. The Commission should establish a monitoring and evaluation framework for this policy which is consistent with the common monitoring and evaluation framework of the CAP.

(23) In order to ***supplement or amend certain non-essential elements*** of ▌ this Regulation***,*** the power to adopt ***delegated*** acts in accordance with Article 290 ***TFEU should be delegated to the Commission. That empowerment should cover supplementing the list in Annex I to this Regulation***, the criteria for determining the eligibility of proposing organisations, the conditions governing ***the*** competitive ***procedure*** between implementing organisations ▌ the specific conditions determining the eligibility of the costs of information provision and promotion measures for simple programmes ***and transitional provisions between Regulation (EC) No 3/2008 and this Regulation***. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including ***at expert level. The Commission,*** when preparing and drawing up delegated acts, ***should*** ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

▌

(24) In order to ensure ▌ uniform ▌ conditions ***for the implementation of*** this Regulation, ▌ implementing powers ***should be conferred on the Commission*** for the purposes of adopting implementing acts concerning ***detailed rules on the visibility of commercial brands during product demonstrations or tastings and on information and promotion material and on the visibility of the origin of products on information and promotion material; the annual*** work programmes ▌ , the selection of simple programmes , ***detailed rules under which a proposing organisation may be authorised to implement certain parts of a simple programme itself, the arrangements for the implementation,*** monitoring and control ▌ of simple programmes***;*** the rules concerning the conclusion of contracts for the implementation of simple programmes selected in accordance with this Regulation***;*** the common impact assessment framework for programmes ***as well as a system of indicators***. ***Those*** powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[1].

▌

[1] 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).

(25) Given the links that exist between the promotion policy and the other instruments of the CAP, ***and taking into account*** to the multiannual guarantee of Union funding and its concentration on clearly defined priorities***, the objectives of this Regulation would be more effectively achieved at Union level. The Union may*** therefore ***adopt measures under this Regulation, in accordance with*** the principle of subsidiarity as set out in ***Article 5*** of the Treaty on European Union ***("TEU")***. ***In accordance with the principle of proportionality as set out in that Article,*** this Regulation ***does not go beyond*** what is necessary in order to achieve ***that objective***.

HAVE ADOPTED THIS REGULATION:

Chapter I
GENERAL PROVISIONS

Article 1
Purpose

Information provision and promotion measures for agricultural products and certain food products based on agricultural products (hereinafter referred to as ‘information provision and promotion measures’) implemented on the internal market or in third countries may be fully or partially financed from the Union budget under the conditions set out in this Regulation.

Article 2
General and specific objectives

The general objective of the information provision and promotion measures is to enhance the competitiveness of the agricultural sector.

The specific objectives of the information provision and promotion measures are:

(a) increasing awareness about the merits of EU agricultural products and the high standards applicable to the production methods in the EU;

(b) increasing the competitiveness and consumption of EU agricultural products and certain food products and raise their profile both within and outside the Union;

(c) increasing awareness and recognition of Union quality schemes;

(d) increasing the market share of EU agricultural products and certain food products, with a specific focus on those markets in third countries with the highest growth potential;

(e) restoring normal market conditions in the event of a serious market disturbance, loss of consumer confidence or other specific problems.

Article 3

Information provision and promotion measures ▌

The information provision and promotion measures referred to in Article 1 shall be aimed at:

a) stressing the specific features of agricultural ***production*** methods in the Union, particularly in terms of food safety, ***traceability,*** authenticity, ***labelling,*** nutritional and health aspects, animal welfare***,*** respect for the environment ***and sustainability, and the characteristics of agricultural and food products, particularly in terms of quality, taste, diversity or traditions***;

b) ***raising awareness about the authenticity of European protected designations of origin, protected geographical indication and traditional specialities guaranteed.***

Those measures shall consist notably in public relation work and information campaigns and may also take the form of participation in events, fairs and exhibitions of national, European and international importance.

▌

Article 4

Characteristics of the measures

1. Information provision and promotion measures shall not be brand-oriented. Nevertheless, product brands may be visible during demonstrations or tastings and on information and promotional material, ***provided that the principle of non-discrimination is respected and that the overall nature of the measures as not being brand-oriented, is not changed. The principle of non-discrimination shall apply in terms of ensuring equal treatment and access for all brands of the proposing organisations and in terms of equality of treatment between Member States. Each brand shall be equally visible and the graphic presentation thereof shall use a smaller format than the main EU message of the campaign. Several brands shall be displayed, except in duly justified circumstances pertaining to the specific situation of the Member States concerned***.

2. Information ***provision and promotion*** measures shall not ***be origin-oriented. Those measures shall not be aimed at encouraging*** the consumption of any product ***on the sole ground*** of its origin. Nevertheless, the origin of products may be visible on information and promotional material***,*** subject to ***the following rules:***

   (a) On the internal market, the mention of the origin shall always be secondary in relation to the main EU message of the campaign.

(b) In third countries, the mention of the origin may be on the same level as the main EU message of the campaign.

(c) For products recognised under the quality schemes referred to in point (a) of Article 5(6), the origin as registered in the denomination may be mentioned without any restriction.

3. The Commission shall, by means of implementing acts, lay down detailed rules concerning:

- ***the visibility of commercial brands during product demonstrations or tastings and on information and promotional material as referred to in paragraph 1, as well as the uniform conditions under which a single brand may be displayed; and,***

- ***the visibility of the origin of products on information and promotional material as referred to in paragraph 2.***

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(2).

Article 5

Eligible products and themes

1. The following products may ***be*** the subject of the information provision and promotion measures referred to in ***Article 1:***

a) the ▌ products listed in Annex I to the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaty'), excluding ▌ tobacco;

b) the ▌ products listed in ▌ Annex I to ***this*** Regulation ▌ ;

c) spirit drinks with a protected geographical indication pursuant to Regulation (EC) No 110/2008 of the European Parliament and of the Council.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 24, supplementing the list in Annex I to this Regulation by adding food products to that list, taking into account market developments.

3. ***By way of derogation from paragraph 1, only wine with designation of origin or protected geographical indication status and wine carrying an indication of the wine grape variety*** may be the subject of ***the*** information provision and promotion measures ▌ referred to in ***Article 1. In the case of simple programmes referred to in Article 6, the*** programme in question ***must also cover other products referred to in points (a) and (b) of paragraph 1***.

4. With regard to spirit drinks as referred to in paragraph 1(c)**,** wine as referred to in paragraph 3 ***and beer***, measures targeting the internal market shall be limited to informing consumers of the ▌ schemes ***set out in paragraph 4 and of the responsible consumption of those beverages***.

5. By way of derogation from paragraph 1, the fishery and aquaculture products listed in Annex I to Regulation (EU) No 1379/2013 of the European Parliament and of the Council[1] may be the subject of information provision and promotion measures provided that other products as referred to in paragraph 1 are also covered by the programme in question.

[1] Regulation (EC) No [COM(2011/416] of ... on the common organisation of the markets in fishery and aquaculture products (OJ ...).

6. The ***following schemes may be the subject of the information provision and promotion measures*** referred to in ***Article 1***:

(a) the quality schemes established by Regulation (EU) No 1151/2012, Regulation (EC) No 110/2008 and ***Article 93*** of Regulation (EU) ***1308/2013*** ;

(b) the organic production method as defined by Council Regulation (EC) No 834/2007;

(c) the logo for quality agricultural products specific to the outermost regions of the Union, as defined by Article 21 of Regulation (EU) No 228/2013 of the European Parliament and of the Council.

(d) the quality schemes as referred to in points (b) and (c) of Article 16(1) of Regulation (EU) No 1305/2013.

Article 6

Types of actions

Information provision and promotion measures shall be implemented in the context of:

(a) information and promotion programmes (hereinafter referred to as "programmes") and

(b) the Commission initiatives referred to in Article 9.

Programmes shall consist of a coherent set of operations and shall be implemented over a period of at least one year but not more than three years.

Simple programmes referred to in Section 2 of this Chapter may be submitted by one or more proposing organisations, as referred to in Article 7(a) (c) or (d), from one and the same Member State.

Multi programmes referred to in Section 3 of this Chapter may be submitted either by several proposing organisations, as referred to in Article 7(a)(c) or (d), from several Member States, or by one or more European organisations, as referred to in Article 7(b).

Chapter II

IMPLEMENTATION OF INFORMATION PROVISION AND PROMOTION MEASURES

SECTION 1

COMMON PROVISIONS

Article 7

Proposing organisations

1. A programme may be proposed by:

(a) ▌ trade or inter-trade organisations ***established in a Member State and representative of the sector(s) concerned in that Member State, including notably the interbranch organisations as defined in Article 157 of Regulation (EU) No 1308/2013 and groups as defined in point 2 of Article 3 of Regulation (EU) No 1151/2012, insofar as they are representative for a name protected under that Regulation and subject of the programmes***;

(b) trade or inter-trade organisations of the Union ***representative of the sector(s) concerned at Union level***;

(c) producer organisations or associations of producer organisations, as defined by Articles ***152*** and ***156*** of Regulation (EU) ***1308/2013*** of the European Parliament and of the Council ***and recognised by Member States***.

(d) bodies of the agrifood sector whose objective and activity is to provide information on and promote agricultural products and who have been entrusted, by the Member State concerned, with a clearly defined public service mission in this area. These bodies must have been legally established in the Member State in question at least 2 years prior to the date of the call for proposals referred to in Article 8(2).

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 24 concerning the specific conditions under which each of the proposing organisations, groups and bodies referred to in paragraph 1 may submit a programme, in particular with a view to guaranteeing that those organisations, groups and bodies are representative and the programme is of significant scale.

Article 8

Annual work programme

1. The Commission shall, by means of an implementing act, adopt ***an annual*** work programme setting out the ***operational*** objectives pursued, the ***operational*** priorities, the expected results, the ***method of implementation*** and the total amount of the financing plan. ***That programme, and its operational priorities, shall comply with the general and specific objectives set out in Article 2. In particular, the programme shall provide for specific temporary arrangements to react in the event of a serious market disturbance, loss of consumer confidence or other specific problems as referred to in point (d) of Article 2.*** It shall also contain the main evaluation criteria, a description of the measures to be financed, an indication of the amounts allocated to each type of measure and an indicative implementation timetable and, in the case of grants, the maximum rate of ***the Union's financial contribution***.

   The implementing act referred to in the first subparagraph shall be adopted in accordance with the ***examination*** procedure referred to in Article 25(2).

2. The work programme referred to in paragraph 1 shall be implemented, ***for simple as well as for multi programmes,*** through the publication by the Commission ▌ of ***calls*** for proposals in accordance with Title VI of Part I of Regulation (EU, Euratom) No 966/2012[1].

▌

Article 9

Measures on the initiative of the Commission

1. The Commission may carry out information and promotion measures as described in ***Article 3 including campaigns in the event of serious disruption to the market, loss of consumer confidence or other specific problems referred to in Article 2***. These measures may in particular take the form of ***high level missions,*** participation in trade fairs and exhibitions of international importance by means of stands or operations aimed at enhancing the image of Union products.

[1] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

2. The Commission shall develop technical support services, in particular with a view to encouraging awareness of different markets, ***including exploratory business meetings,*** maintaining a dynamic professional network around information and promotion policy**,** ***including advice to the sector with regard to the threat of imitation and counterfeit products in third countries*** and improving knowledge of legislative provisions concerning programme development and implementation.

Article 10

No double funding

Information provision and promotion measures receiving ▌Union funding under this Regulation ***shall not be the subject of any other financing under the Union's budget***.

SECTION 2

IMPLEMENTATION AND MANAGEMENT OF SIMPLE PROGRAMMES

Article 11

Selection of simple programmes

1. The Commission shall ***evaluate*** and select proposals for simple programmes further to the call for proposals referred to in ***Article 8(2)***.

2. The Commission shall, by means of implementing acts, decide on the simple programmes selected, on any changes to be made to them, and on the corresponding budgets. Those ***implementing*** acts shall be adopted in accordance with the examination procedure referred to in Article 25(2).

Article 12

Information on the selection of simple programmes

1. The Commission shall provide to the Member States, within the Committee referred to in Article 25, with timely information on all programmes proposed and selected.

2. In accordance with Regulation (EU) No 966/2012, the Commission shall in particular provide the Member States with information concerning:

(a) the number of proposals received, the Member States in which the proposing organisations are established, the sectors involved, as well as the market(s) targeted;

(b) the outcome of the assessment evaluation of the proposals and a summary description thereof.

Article 13

Bodies responsible for implementing simple programmes

1. After ***a*** competitive ***procedure*** has been duly carried out, the proposing organisation shall choose the bodies that will implement simple programmes that have been selected, with a view, in particular, to ensuring that measures are implemented effectively.

2. By way of derogation from paragraph 1, a proposing organisation may implement certain parts of a programme itself, subject to conditions relating to the proposing organisation's experience in implementing such measures, the cost of such measures in relation to normal market rates and the share of the total cost accounted for by the part of the programme implemented by the proposing organisation.

Article 14

Implementation, monitoring and control of simple programmes

1. The Member States concerned shall be responsible for the proper implementation of the simple programmes selected in accordance with Article 11 and for the relevant payments. The Member States shall ensure that information and promotional material produced in the context of these programmes complies with Union rules.

2. The Member States shall implement, monitor and control simple programmes in accordance with Regulation (EU) No 1306/2013 of the European Parliament and of the Council and in line with the implementing rules to be adopted under ***point*** (a) of the first paragraph ***of Article 23***.

Article 15

Financial provisions relating to simple programmes

1. The Union's financial contribution to simple programmes shall ***be 70 %*** of the eligible expenditure ***on the internal market and 80% in third countries***. The remaining expenditure shall be borne exclusively by proposing organisations.

2. The ***percentages*** referred to in paragraph 1 shall be increased to ***85 % in the event of a serious market disturbance, loss of consumer confidence or other specific problems referred to in point (d) of Article 2***.

▌

3. ***By way of derogation from paragraphs 1 and 2, for proposing organisations*** established ***in Member States receiving on 1 January 2014 or thereafter financial assistance in accordance with Article 136 and 143 TFEU, the percentages referred to in paragraphs 1, shall be 75 and 85% respectively, and shall be 90 % for paragraph 2.***

The first subparagraph shall only apply to those programmes decided upon by the Commission ***before the date as of which the Member State concerned no longer receives such financial assistance.***

4. Studies to evaluate the results of promotional and information measures in accordance with Article 27 shall be eligible for Union financing under conditions similar to those governing the simple programme.

5. The Union shall fully finance expert fees linked to the selection of programmes in accordance with ***point (a) of Article 4(1)*** of Regulation (EU) No 1306/2013 of the European Parliament and of the Council.

6. In order to ensure the proper implementation of simple programmes, proposing organisations shall provide guarantees.

7. The Union shall finance information provision and promotion measures implemented on the basis of simple programmes in accordance with ***point (c) of Article 4(2)*** of Regulation (EU) No 1306/2013 of the European Parliament and of the Council.

SECTION 3
IMPLEMENTATION AND MANAGEMENT OF MULTI PROGRAMMES AND MEASURES IMPLEMENTED ON THE INITIATIVE OF THE COMMISSION

Article 16
Types of financing

1. Financing may take one ***or*** more of the forms provided for by Regulation (EU, Euratom) No 966/2012, including:

   (a) grants for multi-programmes;

(b) contracts for the measures implemented on the initiative of the Commission.

2. The Union shall finance information provision and promotion measures implemented on the basis of multi programmes or on the initiative of the Commission in accordance with ***point (a) of Article 4(2)*** of Regulation (EU) No 1306/2013 of the European Parliament and of the Council.

Article 17

Evaluation of multi programmes

The proposals for multi programmes shall be assessed and selected on the basis of the criteria announced in the call for proposals referred to in ***point (b) of Article 8(2)***.

Article 18

Information on the implementation of multi programmes

The Commission shall provide the Committee referred to in Article 25 with timely information on all programmes proposed or selected.

Article 19

Financial provisions relating to multi programmes

1. The ***Union's financial contribution to multi programmes*** shall be ***80 %*** of the ▌ eligible ***expenditure***. The remaining expenditure shall be borne exclusively by proposing organisations.

2. The percentage referred to in paragraph 1 shall be increased to 85 % in the event of a serious market disturbance, loss of consumer confidence or other specific problems referred to in point (d) of Article 2.

3. By way of derogation from paragraphs 1 and 2, for proposing organisations established in Member States ***receiving on 1 January 2014 or thereafter financial assistance in accordance with Article 136 and 143 TFEU, the percentages referred to in paragraphs 1 and 2 shall be 85% , and 90 % respectively.***

The first subparagraph shall only apply to those programmes decided upon by the Commission before the date as of which the Member State concerned no longer receives such financial assistance.

Article 20

Procurement with regard to measures implemented on the initiative of the commission

Any procurement effected by the Commission in its own name or jointly with Member States shall be subject to the procurement rules set out in Regulation (EU) No 966/2012 and Delegated Regulation (EU) No 1268/2012.

Article 21

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures ensuring that, when measures financed under this Section are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.

2. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds.

3. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council and Council Regulation (Euratom, EC) No 2185/96 with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract relating to Union funds.

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and with international organisations, contracts, grant agreements and grant decisions resulting from the implementation of this Programme shall contain provisions expressly empowering the Commission, the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

SECTION 4

DELEGATED POWERS AND IMPLEMENTING POWERS

Article 22

Delegated powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 24 concerning:

▌

(a) the conditions governing ***the*** competitive ***procedure*** on the part of the implementing bodies referred to in ***Article 13(1)***;

(b) the specific conditions of eligibility with regard to simple programmes, the costs of information provision and promotion measures and, where necessary, administrative and staff costs.

Article 23

Implementing powers

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

(a) ***detailed rules under which the proposing organisation may be authorised to implement certain parts of the programme itself as referred to in Article 13(2)***;

(b) the rules relating to the conclusion of contracts for the implementation of the simple programmes selected under this Regulation.

Such implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(2).

Chapter III

DELEGATIONS OF POWERS, IMPLEMENTING PROVISIONS, TRANSITIONAL AND FINAL PROVISIONS

SECTION 1

DELEGATIONS OF POWERS AND IMPLEMENTING PROVISIONS

Article 24

Exercise of the delegation

1. The power to adopt delegated acts ***referred to in Article 22*** shall be conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in ***Article 22*** shall be conferred on the Commission for ***a*** period of ***five years*** from the date of entry into force of this Regulation.

3. The Commission shall draw up a report in respect of the delegation of power no 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 delegation of power referred to in ***Article 22*** 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.

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

Article 25

Committee

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

   That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

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

SECTION 2

CONSULTATION, ASSESSMENT AND REPORTING

Article 26

Consultation

In the context of implementing this Regulation, the Commission may consult the Advisory Group on Promotion of Agricultural Products established by Commission Decision 2004/391/EC.

Article 27

Evaluation of the impact of measures

In accordance with the common monitoring and evaluation framework for the common agricultural policy provided for in Article 110 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council, the Commission, ▌ shall, ***by means of implementing acts, adopt,*** the common framework for assessing the impact of information and promotion programmes financed under this Regulation as well as a system of indicators. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(2).***

All interested parties shall provide the Commission with all the data and information necessary to enable the impact of measures to be assessed.

Article 28

Report

1. By 31 December 2018, the Commission shall submit to the European Parliament and the Council an interim report on the application of this Regulation, including the rate of uptake in different Member States, together with any appropriate proposals.

2. By not later than 31 December [2020], the Commission shall submit to the European Parliament and the Council a report on the application of this Regulation together with any appropriate proposals.

SECTION 3

AMENDING, TRANSITIONAL AND FINAL PROVISIONS

▌

Article 29

State aid

By way of derogation from ***Article 211(1)*** of Regulation (EU) No 1308/2013 of the European Parliament and of the Council and from Article 3 of Council Regulation (EC) No 1184/2006[1], and by virtue of Article 42, first subparagraph, of the Treaty, Articles 107, 108 and 109 of the Treaty shall not apply to payments made by Member States pursuant to this Regulation and in compliance with its provisions, nor to financial contributions coming from Member States' parafiscal charges**,** mandatory contributions ***or other financial instruments,*** in the case of programmes eligible for Union support ▌ which the Commission has selected in accordance with this Regulation.

[1] Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products (OJ L 214, 4.8.2006, p. 7).

Article 30

Repeal

Regulation (EC) No 3/2008 is hereby repealed.

References to the repealed Regulation shall be construed as being references to this Regulation and shall be read in accordance with the correlation tables set out in the Annex to this Regulation.

Article 31

Transitional provisions

Regulation (EC) No 3/2008 shall continue to apply to those information and promotion measures for which funding has been decided by the Commission before the date of application of this Regulation.

The Commission shall be empowered to adopt delegated acts in accordance with Article 24 in order to ensure a smooth transition between the application of the provisions of Regulation (EC) No 3/2008 and those of this Regulation.

Article 32

Entry into force and date of application

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

It shall apply from ***1 December 2015***.

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

Done at ,

For the European Parliament *For the Council*

The President *The President*

ANNEX I

PRODUCTS REFERRED TO IN ARTICLE 5(1)(b)

- ***beer,***
- ***chocolate and derived products,***
- ***bread, pastry, cakes, confectionery, biscuits and other baker's wares,***
- ***beverages made from plant extracts,***
- ***pasta,***
- ***salt,***
- ***natural gums and resins,***
- ***mustard paste,***
- ***sweet corn,***
- ***cotton.***

ANNEX II[1]

CORRELATION TABLE as referred to in Article 30

Regulation (EC) No 3/2008	This Regulation
Article 1(1), first subparagraph	Article 1
Article 1(1), second subparagraph	Article 4(3)(a)
Article 1(2)	Article 4(1) and (2)
Article 2	Articles 2 and 3
Articles 3 and 4	Article 5
Article 5	Article 8(2)
Article 6(1)	Article 7
Article 6(2)	---
Article 7	---
Article 8	Articles 12 and 17
Article 9	---
Article 10	Article 10
Article 11	Article 13
Article 12(1)	---
Article 12(2)	Article 14
Article 13(1)	Article 16(1)(b)
Article 13(2), first subparagraph	Article 15(1)
Article 13(2), second subparagraph	Article 15(2)
Article 13(2), third subparagraph	---
Article 13(3), (4) and (5)	---
Article 13(6)	Article 29
Article 14	Article 15(6) and Article 16(2)
Articles 15 and 16	Articles 23 and 24
Article 17	Article 25
Article 18	Article 27
Article 19	Article 30
Article 20	Article 32

1 *Subject to legal-linguistic revision*

Regulation (EC) No 3/2008 as aligned with the provisions of the Treaty of Lisbon further to the proposal for a Regulation (EU) No XXXX/20.. [COM(2011)663]	This Regulation
Article 1(1), first subparagraph	Article 1
Article 1(1), second and third subparagraphs	Article 4(3) and Article 8(2)
Article 1(2)	Article 4(1) and (2)
Article 1(3)	Article 8(2)
Article 1(4)	---
Article 2	Articles 2 and 3
Articles 3 and 4	Article 5
Article 5	Article 8(2)
Article 6(1)	Article 7
Article 6(2)	---
Article 7	---
Article 8	Articles 12, 17 and 18
Article 9	---
Article 10	Article 10
Article 11	Articles 13, 19 and 21(b)
Article 12(1)	---
Article 12(2) and (3)	Article 14
Article 13(1)	Article 16(1)(b)
Article 13(2), first subparagraph	Article 15(1)
Article 13(2), second subparagraph	Article 15(2)
Article 13(2), third subparagraph	---
Article 13(3), (4) and (5)	---
Article 13(6)	Article 29
Article 13(7)	Article 11
Article 13(8)	Article 15(5)
Article 13(9)	Article 22
Article 14	Article 15(6) and Article 16(2)
Article 15 a	---
Article 16 a	Article 23
Article 16 b	Article 24
Article 17	Article 25
Article 18	Article 27
Article 19	Article 30
Article 20	Article 32

P7_TA-PROV(2014)0363

Active and Assisted Living Research and Development Programme ***I

European Parliament legislative resolution of 15 April 2014 on the proposal for a decision of the European Parliament and of the Council on the participation of the Union in the Active and Assisted Living Research and Development Programme jointly undertaken by several Member States (COM(2013)0500 – C7-0219/2013 – 2013/0233(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2013)0500),

– having regard to Article 294(2), Article 185 and the second paragraph of Article 188 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0219/2013),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 10 December 2013[1],

– having regard to the undertaking given by the Council representative by letter of 26 February 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on Women's Rights and Gender Equality (A7-0076/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

[1] Not yet published in the *Official Journal*.

P7_TC1-COD(2013)0233

Position of the European Parliament adopted at first reading on 15 April 2014 with a view to the adoption of Decision No .../2014/EU of the European Parliament and of the Council on the participation of the Union in the Active and Assisted Living Research and Development Programme jointly undertaken by several Member States

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 185, and the second paragraph of Article 188, 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],

1 Opinion of 10 December 2013 (not yet published in the *Official Journal*).
2 Position of the European Parliament of 15 April 2014.

Whereas:

(1) In its Communication of 3 March 2010 entitled ‘Europe 2020 A strategy for smart, sustainable and inclusive growth’ (the "Europe 2020 strategy"), the Commission emphasised the need to develop favourable conditions for investment in knowledge and innovation so as to achieve smart, sustainable and inclusive growth in the Union. Both the European Parliament and the Council have endorsed that strategy.

(2) Regulation (EU) No ***1291***/2013 of the European Parliament and of the Council[1] established Horizon 2020 - The Framework Programme for Research and Innovation (2014-2020) ("Horizon 2020"). Horizon 2020 aims at achieving a greater impact ***on*** research and innovation by contributing to the strengthening of public-public partnerships, including through Union participation in programmes undertaken by several Member States in accordance with Article 185 of the Treaty on the Functioning of the European Union.

[1] Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104)**.**

(3) ***Public-public partnerships should aim to develop closer synergies, increase coordination and avoid unnecessary duplication with Union, international, national and regional research programmes, and should fully respect the Horizon 2020 general principles, in particular those relating to openness and transparency. Moreover, open access to scientific publications should be ensured.***

(4) Decision No 742/2008/EC of the European Parliament and of the Council[1] provides for a Community financial contribution to the Ambient Assisted Living Joint Research and Development Programme ("AAL JP") matching that of the Member States but not exceeding EUR 150 000 000 for the duration of the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) established by Decision No 1982/2006/EC of the European Parliament and of the Council[2].

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1 Decision No 742/2008/EC of the European Parliament and of the Council of 9 July 2008 on the Community's participation in a research and development programme undertaken by several Member States aimed at enhancing the quality of life of older people through the use of new information and communication technologies (OJ L 201, 30.7.2008, p. 49).

2 Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) (OJ L 412, 30.12.2006, p. 1).

(5) In December 2012, the Commission communicated to the European Parliament and the Council a report on the interim evaluation of the AAL JP. That evaluation was carried out by an expert panel. The overall opinion of that expert panel was that the AAL JP had achieved good progress towards its objectives and remarkable results and that it should be continued beyond the current funding period. The expert panel noted however a few shortcomings, in particular the need for stronger user involvement in projects ***from the earliest possible stage*** and further improvements of the operational performance in terms of time-to-contract and time to payment.

(6) The interim evaluation of 2010 and the consultation process of 2012 highlighted the diversity of financial instruments, eligibility rules and reimbursement systems. Participating States, through the Ambient Assisted Living General Assembly, could reflect on this and promote the exchange of good practices.

(7) In its communication of 12 October 2006 entitled ‘The demographic future of Europe — from challenge to opportunity’, the Commission underlined the fact that demographic ageing is one of the main challenges facing all the Member States and that increased use of new technologies could help to control costs, improve well-being and promote the active participation in society of elderly people, as well as improving the competitiveness of Union economy.

(8) Under the flagship initiative ‘Innovation Union’ of the Europe 2020 strategy, the Commission indicated the ageing of the population as one of the societal challenges where innovation breakthroughs can play an important role and boost competitiveness, enable European companies to lead in the development of new technologies, to grow and assume global leadership in new growth markets, improve the quality and efficiency of public services and so contribute to creating large numbers of new quality jobs.

(9) About 20 million people across the Union are employed in "white-coat" jobs in the health sector and social services sector, a figure which is expected to increase in the coming years due to the aging population. Training and life-long learning in this sensitive sector should be a key priority. Therefore, the need for white coat jobs and for investments in modern skills, such as using information technologies, should be assessed more precisely.

(10) In its communication of 19 May 2010 entitled ‘A Digital Agenda for Europe’, the Commission proposed to reinforce the AAL JP in order to help address the challenges of the ageing population.

(11) In its communication of 29 February 2012 entitled ‘Taking forward the Strategic Implementation Plan of the European Innovation Partnership on Active and Healthy Ageing’, the Commission proposed to take account of relevant priorities of the Strategic Implementation Plan for future research and innovation work programmes and instruments which are part of Horizon 2020. The Commission also proposed to take into account the contributions that can be made by the AAL JP to the European Innovation Partnership on Active and Healthy Ageing.

(12) Under the European Innovation Partnership on Active and Healthy Ageing established under the Innovation Union, ***innovative information and communication technologies*** **(**ICT) ***based*** solutions are expected to play an important role in meeting its goals of two additional healthy life years by 2020 as well as improving quality of life for citizens and improving efficiency of care systems in the Union. Its Strategic Implementation Plan sets out priorities for accelerating and scaling up innovation in active and healthy ageing across the Union, in three domains: prevention and health promotion, care and cure, and independent living and social inclusion.

(***13)*** ***Since ICT systems handle a large amount of personal data and profiles, and operate in real-time communication, thus bringing with them a high risk of data security breaches, data protection aspects should be taken into account. Moreover, the right to privacy should be respected.***

(14) The Active and Assisted Living Research and Development Programme ('the AAL Programme') should build on the achievements of the previous programme and address its shortcomings by encouraging ***sufficient*** user participation in projects ***from the initial stage, in order to ensure that solutions developed are acceptable and respond to specific user needs,*** and by ensuring better AAL Programme implementation***.***

(15) ***The implementation of the AAL Programme should take into account a broad definition of innovation including organisational, business, technological, societal and environmental aspects. It should ensure a multidisciplinary approach and the integration of social sciences and humanities within the AAL Programme.***

(16) ***Activities of the AAL Programme should be in line with the objectives and research and innovation priorities of Horizon 2020 and with the general principles and conditions laid down in Article 26 of Regulation (EU) No 1291/2013***.

(17) A ceiling should be established for the Union's financial participation in the AAL Programme for the duration of Horizon 2020. The Union's financial participation in the AAL Programme should not exceed the financial contribution of the Participating States for the duration of Horizon 2020 in order to achieve a high leverage effect and ensure an active involvement of the Participating States in achieving the AAL Programme objectives.

(***18)*** ***In order to take into account the duration of Horizon 2020, calls for proposals under the AAL Programme should be launched at the latest by 31 December 2020. In duly justified cases, calls for proposals may be launched by 31 December 2021.***

(19) In line with the objectives of Regulation (EU) No ***1291/2013,*** any Member State and any country associated to Horizon 2020 should be entitled to participate in the AAL Programme ***at any appropriate time***.

(20) In order to ensure that a financial commitment by the Union will be matched by the Participating States, the financial contribution by the Union should be subject to formal commitments from the Participating States before the launch of the AAL Programme and their fulfilment. The Participating States' contribution to the AAL Programme should include the administrative costs incurred at national level for the effective operation of the AAL Programme.

(21) The joint implementation of the AAL Programme requires an implementation structure. The Participating States have agreed on the implementation structure for the AAL Programme and set up in 2007 the "Ambient Assisted Living" aisbl, an international non-profit association with legal personality established under Belgian law (‘AALA’). Given that, according to the report on the interim evaluation, the existing governance structure of AAL JP has proven to be efficient and of good quality, the AALA should be used as the implementation structure and should take the role as allocation and monitoring body of the AAL Programme. The AALA should manage the Union's financial contribution and should ensure an efficient implementation of the AAL Programme.

(22) In order to achieve the objectives of the AAL Programme, the AALA should provide financial support mainly through grants to participants in actions selected by the AALA. Those actions should be selected following calls for proposals under the responsibility of the AALA, which should be assisted by independent external experts. The ranking list should be binding as regards the selection of proposals and the allocation of funding from the Union's financial contribution and from the national budgets for AAL Programme projects.

(23) The Union's financial contribution should be managed in accordance with the principle of sound financial management and with the rules on indirect management laid down in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[1] and Commission Delegated Regulation (EU) No 1268/2012[2].

(24) In order to protect the financial interests of the Union, the Commission should, ***through proportionate measures,*** have the right to reduce, withhold or terminate the Union's financial contribution where the AAL Programme is implemented inadequately, partially or late, or the Participating States do not contribute, or contribute partially or late, to the financing of the AAL Programme. Those rights should be provided for in the delegation agreement to be concluded between the Union and the AALA.

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1 Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

2 Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 (OJ L 362, 31.12.2012, p. 1).

(***25)*** ***For the purpose of simplification, administrative burdens should be reduced for all parties. Double audits and disproportionate documentation and reporting should be avoided. When audits are conducted, the specificities of the national programmes should be taken into account, as appropriate.***

(26) Participation in indirect actions funded by the AAL Programme is subject to Regulation (EU) No ***1290***/2013 of the European Parliament and of the Council [1]. However, due to specific operating needs of the AAL Programme it is necessary to provide for derogations from that Regulation in accordance with Article 1(3) of that Regulation.

(27) ***Calls for proposals by AALA should also be published on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission.***

[1] Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006 (OJ L ***347, 20.12.2013, p 81).***

(28) Specific derogations from Regulation (EU) No ***1290***/2013 are necessary, as the AAL Programme is intended as a market-***oriented research and*** innovation programme in which many different national funding streams are joined up (such as research innovation, health and industry funding programmes). By their nature, those national programmes have different participation rules and cannot be expected to fully align with Regulation (EU) No ***1290/ 2013.*** In addition, the AAL Programme is targeting in particular small and medium-sized enterprises and user organisations not usually participating in Union research and innovation activities. In order to facilitate the participation of those enterprises and organisations, the Union's financial contribution is provided in accordance with the well-known rules of their national funding programmes and implemented through a single grant combining Union funding with the corresponding national funding.

(29) The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU, Euratom) No 966/2012 ▌ .

(30) The Commission should ***conduct, with the assistance of independent experts,*** an interim evaluation assessing in particular the quality and efficiency of the AAL Programme and progress towards the objectives set, as well as a final evaluation, and prepare a report on those evaluations.

31) The evaluation should be based on precise and up-to-date information. Upon request from the Commission, the AALA and the Participating States should therefore submit any information which the Commission needs to include in the reports on the evaluation of the AAL Programme.

(32) The actions envisaged in the AAL Programme should help underpin European public health and care systems, since they are an essential means of sustaining social welfare and reducing the welfare gap between regions and population sectors that is widening alarmingly owing to the current economic and social crisis.

(33) The AAL Programme should ensure the effective promotion of gender equality ***as set out in Horizon 2020. The AAL*** Programme ***should promote gender equality and the gender dimension in research and innovation content. Particular attention should be paid to gender balance, subject to the situation in the field, in evaluation panels and in bodies such as advisory groups and expert groups. The gender dimension should be adequately integrated in research and innovation content in strategies, programmes and projects and followed through at all stages of the research cycle.***

(34) ***The AAL Programme should*** comply with ethical principles as ***set out*** in Horizon 2020. ***Particular attention should be paid to the principle of proportionality, the right to privacy, the right to the protection of personal data, the right to the physical and mental integrity, the right to non-discrimination and the need to ensure high levels of human health protection.***

(35) Since Participating States have decided to continue the AAL Programme and since the objectives of this Decision, namely to directly support and complement the Union policies in the field of active and healthy ageing, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives ▌**,**

HAVE ADOPTED THIS DECISION:

Article 1

Participation in the AAL Programme

1. The Union shall participate in the Active and Assisted Living Research and Development Programme ("AAL Programme") jointly undertaken by Austria, Belgium, Cyprus, Denmark, France, Hungary, Ireland, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland and the United Kingdom (the "Participating States"), in accordance with the conditions laid down in this Decision.

2. Any Member State other than those listed in paragraph 1 and any other country associated to Horizon 2020 may ***apply to*** join the AAL Programme ***at any time***, provided it fulfils the condition set out in point (c) of Article 3(1) of this Decision. If it fulfils the condition laid down in point (c) of Article 3(1), it shall be regarded as a Participating State for the purposes of this Decision.

Article 2

Union's financial contribution

1. The Union financial contribution to the AAL Programme covering administrative costs and operational costs shall be up to EUR ***175 000 000 .*** The Union's financial contribution shall be paid from appropriations in the general budget of the Union allocated to the relevant parts of the Specific Programme implementing Horizon 2020 , established by ***Council*** Decision ***2013/743/EU***[1] in accordance with point (c)(vi) of Article 58(1) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012.

2. The annual financial commitment of the Union to the AAL Programme shall not exceed the annual financial commitment to the AAL Programme by Participating States.

3. An amount not exceeding 6 % of the Union financial contribution referred to in paragraph 1 shall be used to contribute to the administrative costs of the AAL Programme.

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

Article 3

Conditions for the Union's financial contribution

1. The Union's financial contribution shall be conditional upon the following:

(a) the demonstration by the Participating States that the AAL Programme is set up in accordance with Annexes I and II;

(b) the designation by the Participating States or by organisations designated by the Participating States, of the AALA, as the structure responsible for the implementation of the AAL Programme and for allocating and monitoring the Union's financial contribution;

(c) a commitment by each Participating State to contribute to the financing of the AAL Programme;

(d) demonstration by the AALA of its capacity to implement the AAL Programme, including allocating and monitoring the Union contribution in the framework of indirect management of the Union budget in accordance with Articles 58, 60 and 61 of Regulation (EU, Euratom) No 966/2012; and

(e) the establishment of a governance model for the AAL Programme in accordance with Annex III.

2. During the implementation of the AAL Programme, the Union's financial contribution shall also be conditional upon the following:

(a) the implementation by the AALA of the AAL Programme objectives as set out in Annex I and activities set out in Annex II to this Decision in accordance with Regulation (EU) No ***1290/2013,*** subject to Article 5 of this Decision;

(b) the maintenance of an appropriate and efficient governance model in accordance with Annex III;

(c) compliance by the AALA with the reporting requirements set out in Article 60 (5) of Regulation (EU, Euratom) No 966/2012; and

(d) fulfilment of the commitments by each Participating State referred to in point (c) of paragraph 1 and fulfilment of the annual commitments to contribute to the financing of the AAL Programme.

Article 4

Contributions from Participating States

Contributions from the Participating States shall consist of the following:

(a) financial contributions to the indirect actions supported under the AAL Programme in accordance with Annex II;

(b) in-kind contributions corresponding to the administrative costs incurred by the national administrations for the effective implementation of the AAL Programme in accordance with Annex II.

Article 5

Rules for participation and dissemination

1. For the purposes of Regulation (EU) No ***1290/2013,*** the AALA shall be considered to be a funding body and shall provide financial support to indirect actions in accordance with Annex II to this Decision.

2. By way of derogation from Article ***15(9)*** of Regulation (EU) No ***1290/2013,*** the financial capacity of applicants shall be verified by the designated national programme management organisation in accordance with the rules of participation in the designated national programmes.

3. By way of derogation from Article ***18***(2) of Regulation (EU) No ***1290/2013,*** the grant agreements with participants shall be signed by the designated national programme management agency.~~:~~

4. By way of derogation from Article ***23***(1), (5) to (7)~~]~~ and Articles ***25*** to ***35*** of Regulation (EU) No ***1290/2013,*** the funding rules of the designated national programmes shall apply to the grants administered by the designated national programme management agencies.

5. By way of derogation from Articles ***41*** to ***49*** of Regulation (EU) No ***1290/2013,*** the rules of the designated national programmes governing results, access rights to background and results shall apply***, without prejudice to the principle of open access to scientific publications set out in Article 18 of Regulation (EU) No 1291/2013.***

Article 6

Implementation of the AAL Programme

The AAL Programme shall be implemented on the basis of ***a strategy implemented through*** annual work plans in accordance with Annex II.

Article 7

Agreements between the Union and the AALA

1. Subject to a positive ex-ante assessment of the AALA in accordance with Article 61(1) of Regulation (EU, Euratom) No 966/2012, the Commission, on behalf of the Union, shall conclude a delegation agreement and annual transfer of funds agreements with the AALA.

2. The delegation agreement referred to in paragraph 1 shall be concluded in accordance with Article 58(3) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012 and with Article 40 of Delegated Regulation (EU) No 1268/2012. It shall also set out the following:

(a) the requirements concerning the AALA's contribution regarding relevant indicators from among the performance indicators set out in Annex II to Decision (EU) No ***2013/743/EU***;

(b) the requirements concerning the AALA's contribution to the monitoring referred to in Decision (EU) No ***2013/743/EU***;

(c) the specific performance indicators necessary for monitoring the functioning of the AALA in accordance with Article 3(2);

(d) the arrangements regarding the provision of data and information necessary to ensure that the Commission is able to meet its dissemination and reporting obligations.

(e) provision for the publication of calls for proposals by the AALA in particular on the single portal for participants, as well as through other Horizon 2020 electronic means of dissemination managed by the Commission.

Article 8

Termination, reduction or suspension of the Union's financial contribution

1. Where the AAL Programme is not implemented in accordance with the conditions set out in Article 3, the Commission may terminate, proportionally reduce, or suspend the Union's financial contribution in line with the actual implementation of the AAL Programme.

2. Where the Participating States do not contribute, contribute partially, or late to the financing of the AAL Programme, the Commission may terminate, proportionately reduce, or suspend the Union's financial contribution, taking into account the amount of funding allocated by the Participating States to implement the AAL Programme.

Article 9

Ex-post audits

1. Ex-post audits of expenditure on indirect actions shall be carried out by the designated national programme management agencies in accordance with Article ***29*** of Regulation (EU) No ***1291/2013.***

2. The Commission may decide to carry out itself the audits referred to in paragraph 1. ***In such cases, it shall do so in accordance with the applicable rules, in particular the provisions of Regulations (EU, Euratom) No 966/2012, (EU) No 1290/2013 and (EU) No 1291/2013 .***

Article 10

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Decision are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties ▌ .

2. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Council Regulation (Euratom, EC) No 2185/ 96[1] and Regulation (***EU, Euratom***) No ***883/2013*** of the European Parliament and of the Council[2] ▌, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded in accordance with this Decision.

3. Contracts, grant agreements and grant decisions resulting from the implementation of this Decision shall contain provisions expressly empowering the Commission, AALA, the Court of Auditors and OLAF to conduct audits and investigations, in accordance with their respective competences.

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1 Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

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

4. The AALA shall grant the Commission staff and other persons authorised by the Commission, as well as by the Court of Auditors, access to its sites and premises and to all the information, including information in electronic format, needed in order to conduct the audits referred to in paragraph 3.

5. In implementing the AAL Programme, the Participating States shall take the legislative, regulatory, administrative or other measures necessary for protecting the Union's financial interests, in particular, to ensure the full recovery of any amounts due to the Union in accordance with Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012.

Article 11

Communication of information

1. At the request of the Commission, the AALA shall submit to the Commission any information necessary for the preparation of the reports referred to in Article 12.

2. The Participating States shall submit, through the AALA, any ***relevant*** information requested by the European Parliament or the Council concerning the financial management of the AAL Programme.

3. The Commission shall communicate the information referred to in paragraph 2 of this Article in the reports set out in Article 12.

Article 12

Evaluation

1. By ***30 June*** 2017 the Commission shall ***carry out, with the assistance of independent experts,*** an interim evaluation of the AAL Programme. The Commission shall prepare a report on that evaluation which includes the conclusions of the evaluation and observations by the Commission. The Commission shall send that report to the European Parliament and to the Council by ***31 December 2017. The result of the interim evaluation of AAL Programme shall be taken into account in the interim evaluation of Horizon 2020.***

2. At the end of Union participation in the AAL Programme but no later than 31 December 2022, the Commission shall conduct a final evaluation of the AAL Programme. The Commission shall prepare a report on that evaluation which is to include results of the evaluation. The Commission shall send that report to the European Parliament and to the Council.

Article 13

Entry into force

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

Article 14

Addressees

This Decision is addressed to the Member States.

Done at ...,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

OBJECTIVES OF THE AAL PROGRAMME

1. The AAL Programme shall fulfil the following objectives:

1.1. accelerate the emergence ***and take-up of relevant, affordable and integrated*** innovative ICT-based ***solutions*** for active and healthy ageing at home, in the community, or at work, thus improving the quality of life, autonomy, ***social inclusion,*** participation in social life, skills or employability of older adults and ***contributing to*** increasing the efficiency ***and effectiveness*** of health and social care provision;

1.2. support the development of solutions that contribute to the independence and alleviation of a sense of social isolation of older adults, in such a way that the ICT component does not reduce human contact, but is complementary to it. ICT-based solutions supported under the AAL Programme should integrate non-ICT aspects by design;

1.3. maintain and further develop a critical mass of applied research, development and innovation at Union level in the areas of ICT-based products and services for active and healthy ageing;

1.4. develop cost-effective***, accessible and, where relevant, energy-efficient*** solutions, including establishing relevant interoperability standards and facilitating the localisation and adaptation of common solutions which are compatible with varying social preferences***, socio-economic factors (including energy poverty, social inclusion), gender aspects,*** and regulatory aspects at national or regional level, respect the privacy and dignity of older adults, ***including the protection and security of personal data by applying state-of-the-art privacy-by-design*** and, where applicable, support access to services in rural and outlying areas or benefit other groups of people, such as people with disabilities. ***To improve accessibility, the concept of Design for All will be promoted in the development and deployment of solutions.***

2. The AAL Programme shall establish a favourable environment for the participation of small and medium-sized enterprises.

3. The AAL Programme shall focus on ▌ market-***oriented*** applied research and innovation and shall complement related longer-term research and large scale innovation activities envisaged under Horizon 2020 , and other European and national initiatives ***such as joint programming initiatives and activities undertaken within the European Institute of Innovation and Technology and its relevant Knowledge and Innovation Communities***. It shall also contribute to the implementation of the European Innovation Partnership on Active and Healthy Ageing.

ANNEX II

ACTIVITIES OF THE AAL PROGRAMME

I. Indirect actions

1. The implementation of the AAL Programme shall mainly support market-oriented research and innovation projects for active and healthy ageing, which shall demonstrate the capability to exploit the project results within a realistic time frame; the financing of those indirect actions under the AAL Programme shall mainly take the form of grants. It may also take other forms such as prizes, pre-commercial procurement, and public procurement of innovative solutions.

2. In addition, actions for the purposes of brokerage, programme promotion, ***in particular outreach activities to countries not currently participating in the AAL Programme,*** actions to raise awareness of the current capabilities, foster deployment of innovative solutions and connect supply and demand side organisations and ***facilitating access to finance and*** investors may be supported.

3. Actions aimed at improving the quality of proposals, feasibility studies and workshops may also be supported. Collaboration with the regions of the Union may be envisaged to enlarge the group of stakeholders involved in the AAL Programme.

4. Actions shall aim to consolidate and analyse different methods of end-user involvement in order to develop evidence-based best practice guidelines.

II. Implementation

1. The AAL Programme shall be implemented on the basis of annual work plans identifying ***forms of funding and*** topics for calls for proposals. ***The work plans shall be derived from a published strategy, highlighting challenges and priorities, adopted by the AALA.***

2. The annual work plans shall be agreed with the Commission as a basis for the annual financial contribution from the Union.

3. The implementation of the AAL Programme shall entail consultations***, including on strategy,*** with relevant stakeholders (including decision-makers from public authorities, user representatives, private-sector service providers and insurance providers as well as industry, including small and medium-sized enterprises) concerning the applied research and innovation priorities to be addressed.

4. The implementation of the AAL Programme shall take into account demographic trends and demographic research in order to provide solutions that reflect the social and economic situation across the Union.

5. The implementation of the AAL Programme shall take into account the Union's industrial, climate and energy policies. The AAL Programme shall also promote energy efficiency and reflect the need to tackle energy poverty.

6. Due account shall be taken of ▌ gender, ethical***, social sciences and humanities*** and privacy issues, in line with ***the Horizon 2020 principles and rules. Account shall also be taken of relevant Union and national legislation and*** international guidelines***, in particular regarding the rights to privacy and data protection***.

7. In line with the close-to-market nature of the AAL Programme and in compliance with the rules set out in Regulation (EU, Euratom) No 966/2012, the AALA shall ***ensure*** time-to-grant and time-to-payment in accordance with Regulation (EU) No 1290/2013 and ensure compliance with them by Participating States during the implementation of the AAL Programme.

8. Each Participating State shall ***strongly promote, from the earliest stage of all research and innovation projects,*** the participation of organisations representing demand side actors***, including end users***.

9. Each Participating State shall co-finance ***its national*** participants ***whose proposals are successful*** through ▌national ▌agencies ***that*** shall, in ***addition,*** channel the Union ***co-***funding from the ***dedicated implementation structure,*** on the basis of a common project description, which forms part of an agreement to be concluded between the ***respective*** national programme management agencies and ***their national*** participants for each ▌project.

10. After the closure of a call for project proposals, a central eligibility check shall be carried out by the AALA in cooperation with the designated national programme management agencies. That check shall be performed on the basis of the common eligibility criteria for the AAL Programme which shall be published with the call for project proposals**.**

11. The AALA shall, with the assistance of the national programme management agencies, check the fulfilment of additional national eligibility criteria set out in the calls for project proposals.

12. The national eligibility criteria shall relate only to the legal and financial status of the individual applicants and not to the content of the proposal and shall concern the following aspects:

12.1. applicant type, including legal status and purpose;

12.2. liability and viability, including financial soundness, fulfilment of tax and social obligations.

13. Eligible project proposals shall be evaluated ▌ by the AALA with the assistance of independent experts, on the basis of transparent and common evaluation criteria, as set out in the published call for proposals, ***and a list of projects in order of score shall be produced. Projects shall be selected in accordance with that ranking and taking account of available funding***. That selection, once adopted by the General Assembly of the AALA, shall be binding on the Participating States.

14. If a project participant fails to meet one or more of the national eligibility criteria or if the corresponding national budget for commitment for funding is exhausted, the Executive Board of the AALA may decide that an additional central independent evaluation of the proposal concerned should be carried out with the assistance of independent experts, in order to evaluate the proposal either without the participation of the participant in question or with a replacement participant, as suggested by project participants.

15. Legal and financial issues concerning participants in projects selected for funding shall be handled by the designated national programme management agency. National administrative rules and principles shall be applied.

ANNEX III

GOVERNANCE OF THE AAL PROGRAMME

The organisational structure for the AAL Programme shall be as follows:

1. The AALA shall constitute the dedicated implementation structure created by the Participating States.

2. The AALA shall be responsible for all the activities of the AAL Programme. The AALA's tasks shall include contract and budget management, the development of the annual work plans, organisation of the calls for proposals, handling of the evaluation and ranking of proposals for funding.

3. In addition, the AALA shall supervise and be responsible for project monitoring and shall transfer the associated payments of the Union contributions to designated national programme management agencies. It shall also organise dissemination activities.

4. The AALA shall be governed by the General Assembly. The General Assembly shall be the decision-making body of the AAL Programme. It shall appoint the members of the Executive Board and supervise the implementation of the AAL Programme, including the approval of ***the strategy and*** annual work plans, allocation of national funding to projects and the handling of applications for new membership. It shall work on the basis of a one-country one-vote principle. Decisions shall be taken by simple majority, except for decisions on the succession, admission or exclusion of members or the dissolution of the AALA, for which specific voting requirements may be set out in the statutes of the AALA.

5. The Commission shall have an observer status in the meetings of the AALA General Assembly and shall approve the annual work plan. The Commission shall be invited to all the meetings of the AALA and may take part in the discussions. All the relevant documents circulated in connection with the AALA General Assembly shall be communicated to the Commission.

6. The AALA Executive Board — consisting of at least a president, a vice-president, a treasurer ***and a vice-treasurer*** — shall be elected by the AALA General Assembly to undertake specific management responsibilities such as budget planning, staffing and contracting. It shall legally represent the AALA and report to the AALA General Assembly.

7. The Central Management Unit established as a part of the AALA shall be responsible for the central management of the implementation of the AAL Programme in close coordination and cooperation with the national programme management agencies, which shall be authorised by the Participating States to undertake work associated with project management and administrative and legal aspects for the national project participants as well as to provide support for the evaluation and negotiation of project proposals. The Central Management Unit and national programme management agencies shall work together as the Management Unit under the supervision of the AALA.

8. An Advisory Board ***shall be established by the AALA*** with representatives from industry, users and other ***relevant*** stakeholders, seeking balance between generations and gender***. It*** shall provide recommendations ***to the AALA on the overall programme strategy, concerning*** priorities and topics to be addressed in the calls for proposals and ***regarding*** other ***relevant*** actions of the AAL Programme.

P7_TA-PROV(2014)0364

Research and Development Programme for research performing SMEs ***I

European Parliament legislative resolution of 15 April 2014 on the proposal for a decision of the European Parliament and of the Council on the participation of the Union in a Research and Development Programme jointly undertaken by several Member States aimed at supporting research performing small and medium-sized enterprises (COM(2013)0493 – C7-0220/2013 – 2013/0232(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2013)0493),

– having regard to Article 294(2), Article 185 and the second paragraph of Article 188 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0220/2013),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 10 December 2013[1],

– having regard to the undertaking given by the Council representative by letter of 26 February 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on Industry, Research and Energy (A7-0077/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

[1] Not yet published in the *Official Journal*.

P7_TC1-COD(2013)0232

Position of the European Parliament adopted at first reading on 15 April 2014 with a view to the adoption of Decision No .../2014/EU of the European Parliament and of the Council on the participation of the Union in a Research and Development Programme jointly undertaken by several Member States aimed at supporting research *and development* performing small and medium-sized enterprises

(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 185, and the second paragraph of Article 188, 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],

1 Opinion of 10 December 2013 (not yet published in the *Official Journal*).
2 Position of the European Parliament of 15 April 2014.

Whereas:

(1) In its Communication of 3 March 2010 entitled ‘Europe 2020 A Strategy for smart, sustainable and inclusive growth’ (the "Europe 2020 strategy") the Commission emphasised the need to develop favourable conditions for investment in knowledge and innovation so as to achieve smart, sustainable and inclusive growth in the Union. Both the European Parliament and the Council have endorsed this strategy.

(2) Regulation (EU) No ***1291***/2013 of the European Parliament and of the Council[1] established Horizon 2020 – The Framework Programme for Research and Innovation (2014-2020) ("Horizon 2020 "). Horizon 2020 aims at achieving a greater impact ***with respect to*** research and innovation by contributing to the strengthening of public-public partnerships, including through Union participation in programmes undertaken by several Member States in accordance with Article 185 of the Treaty on the Functioning of the European Union.

(3) Public-public partnerships should aim to develop closer synergies, increase coordination and avoid unnecessary duplication with Union, international, national and regional research programmes, and should fully respect the Horizon 2020 general principles, in particular those relating to openness and transparency. Moreover, open access to scientific publications should be ensured.

[1] Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104)**.**

(4) By Decision No 743/2008/EC of the European Parliament and of the Council[1], the Community decided to make a financial contribution to Eurostars, a joint research and development programme undertaken by all Member States and five participating countries in the framework of Eureka, an intergovernmental initiative established in 1985 with the objective of promoting cooperation in industrial research ("Eurostars").

(5) In April 2012, the Commission communicated to the European Parliament and the Council a report on the interim evaluation of Eurostars carried out by a Group of Independent Experts two years after the beginning of the programme. The overall opinion of the experts was that Eurostars meets its objectives, adds value to European research ***and development*** performing small and medium-sized enterprises ('SMEs') and should be continued after 2013. ***Eurostars is also considered to meet a number of genuine needs of SMEs engaged in research and development; it has attracted a large number of applications, with the budget for projects eligible for funding exceeding the initial budget.*** A number of recommendations for improvement were made, mainly addressing the need of further integration of national programmes and improvements in the operational performance in order to reach shorter time-to-contract and more transparency in the procedures.

[1] Decision No 743/2008/EC of the European Parliament and of the Council of 9 July 2008 on the Community's participation in a research and development programme undertaken by several Member States aimed at supporting research and development performing small and medium-sized enterprises (OJ L 201, 30.7.2008, p. 58).

(6) The definition of SME provided for in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises[1] should apply.

(7) In accordance with Council Decision 2013/***743***/EU[2], support may be provided to an action building on Eurostars and reorienting it along the lines stated in its interim evaluation.

(8) The second Research and Development Programme jointly undertaken by several Member States aimed at supporting research ***and development*** performing small and medium-sized enterprises ("Eurostars-2"), aligned with the Europe 2020 strategy, its flagship initiative 'Innovation Union' and the Commission Communication of 17 July 2012 entitled 'A Reinforced European Research Area Partnership for Excellence and Growth', will aim to supporting research ***and development*** performing SMEs by co-financing their market oriented research projects in any field. As such, and in combination with the activities under the 'Leadership in Enabling and Industrial Technologies' objective set out in Horizon 2020, it will contribute to the goals of the Industrial Leadership part of that programme to speed-up development of the technologies and innovations that will underpin tomorrow's businesses and help innovative European SMEs to grow into world-leading companies. As part of the improvements from the previous Eurostars programme, Eurostars-2 should head towards shorter time-to-grant, stronger integration and lean, transparent and more efficient administration to the ultimate benefit of research ***and development performing SMEs. To keep the bottom-up nature and the business-driven agenda with its main focus on market potential from the previous Eurostars programme is key to the success of Eurostars-2.***

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1 OJ L 124, 20.5.2003, p. 36.

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

(9) In order to take into account the duration of Horizon 2020, calls for proposals under Eurostars-2 should be launched at the latest by 31 December 2020. In duly justified cases calls for proposals may be launched by 31 December 2021.

(10) The Eureka Ministerial Conference on 22 June 2012 in Budapest endorsed a strategic vision for Eurostars-2 ("Budapest Document"). The ministers committed to support the continuation of Eurostars after its termination in 2013 for the period covered by Horizon 2020. This will consist of a reinforced partnership addressing the recommendations of the interim evaluation of Eurostars. The Budapest Document sets out two main objectives for Eurostars-2. Firstly, a structural-oriented objective to deepen the synchronisation and alignment of the national research programmes in the field of funding, which is a central element towards the realisation of the European Research Area by the member countries. Secondly a content-related objective to support research ***and development*** performing SMEs engaging in transnational research and innovation projects. The Budapest Document invites the Union to participate in ***Eurostars-2.***

(11) For the purpose of simplification, administrative burdens should be reduced for all parties. Double audits and disproportionate documentation and reporting should be avoided. When audits are conducted, the specificities of the national programmes should be taken into account, as appropriate.

(12) Audits of recipients of Union funds provided under Eurostars-2 should be carried out in accordance with Regulation (EU) No ***1291***/2013***.***

(13) The Participating States intend to contribute to the implementation of Eurostars-2 during the period covered by Eurostars-2 (2014-2024).

(14) Eurostars-2 activities should be in line with the objectives and bottom-up principles of Horizon 2020 and with the general principles and conditions laid down in Article 26 of Regulation (EU) No 1291/2013.

(15) A ceiling should be established for the Union's financial contribution to Eurostars-2 for the duration of the Horizon 2020. Within the limits of that ceiling, ***there should be flexibility regarding*** the Union's contribution, ***which*** should be ***at least*** one third ***but no more than half*** of the contribution of the Participating States in order to ensure a critical mass necessary to satisfy the demand from projects eligible for financial support, to achieve a high leverage effect and ensure stronger integration of national research programmes of the Participating States.

(16) In accordance with the objectives of Regulation (EU) No ***1291/2013***, any Member State and any country associated to Horizon 2020 should be entitled to participate in Eurostars-2.

(17) Any Eureka Member or country associated to Eureka that is not a Member State or a country associated to Horizon 2020 may become a Eurostars-2 partner country.

(18) The Union’s financial contribution should be subject to formal commitments from the Participating States to contribute to the implementation of Eurostars-2 and to the fulfilment of those commitments. Financial support under Eurostars-2 should mainly take the form of grants to projects selected following calls for proposals launched under Eurostars-2. In order to meet the objectives of Eurostars-2, the Participating States shall ensure sufficient financial contributions to fund a reasonable number of proposals selected through each call.

(19) The joint implementation of Eurostars-2 requires an implementation structure. The Participating States have agreed on designating the Eureka Secretariat (“ESE”) as the implementation structure for Eurostars-2. ESE is an international non-profit association established under Belgian law in 1997 by the Eureka countries and, since 2008, is responsible for the implementation of Eurostars. ESE’s role goes beyond the implementation of Eurostars, being at the same time the secretariat of the Eureka initiative, with its own governance linked to the management of Eureka projects outside of Eurostars. The Union, represented by the Commission, is a founding member of the Eureka initiative and full member of the Eureka Secretariat association.

(20) In order to achieve the objectives of Eurostars-2, ESE should be in charge of the organisation of the calls for proposals, the verification of the eligibility criteria, the peer-review evaluation and the selection and the monitoring of projects, as well as the allocation of the Union contribution. The evaluation of proposals should be performed centrally by independent external experts under the responsibility of ESE following calls for proposals. The projects’ ranking list should be binding for the Participating States as regards the allocation of funding from the Union's financial contribution and from contribution from Participating States.

(21) Overall, Eurostars-2should demonstrate clear progress towards further alignment and synchronisation of the national research and innovation programmes as a truly joint programme featuring stronger scientific, management and financial synchronisation. Stronger scientific integration should be achieved through the common definition and implementation of activities and should ensure the excellence and the high impact of the projects selected. Management integration should ensure further improvement of operational excellence and accountability for the programme. Stronger financial integration should be based on overall and yearly adequate financial contribution by the States participating in Eurostars-2 and a high degree of national synchronisation. This should be achieved through a progressive harmonisation of national funding rules.

(22) The Union's financial contribution should be managed in accordance with the principle of sound financial management and with the rules on indirect management set out in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[1] and Commission Delegated Regulation (EU) No 1268/2012[2].

(23) In order to protect the Union's financial interests, the Commission should have the right to reduce, suspend or terminate the Union's financial contribution if Eurostars-2 is implemented inadequately, partially or late, or if the Participating States do not contribute, or contribute partially or late, to the financing of Eurostars-2. Those rights should be provided for in the delegation agreement to be concluded between the Union and the ESE.

[1] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012, p.1).

[2] Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 (OJ L 362 of 31.12.2012, p. 1).

(24) Participation in indirect actions funded by Eurostars-2 is subject to Regulation (EU) No ***1290***/2013 of the European Parliament and of the Council[1]. However, due to the specific operating needs of Eurostars-2, it is necessary to provide for derogations from that Regulation in accordance with Article 1(3) of that Regulation ▌.

(25) In order to facilitate the participation of SMEs which are more used to national channels and which would otherwise carry out research activities only within their national boundaries, the Eurostars-2 financial contribution should be provided in accordance with the well-known rules of their national programmes and implemented through a funding agreement directly administered by the national authorities, combining Union funding with the corresponding national funding. A derogation should therefore be made from Article ***15***(***9***), Articles ***18***(1), ***23***(1), (5) to (7), 28 ***to 34*** of Regulation (EU) No ***1290/2013.***

(26) Calls for proposals by Eurostars-2 should also be published on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission.

[1] Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006 (OJ ***L 347, 20.12.2013, p.81*****).**

(27) The Union's financial interests should be protected by means of proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU, Euratom) No 966/2012.

(28) The Commission***, in cooperation with the Participating States,*** should conduct an interim evaluation assessing in particular the quality and efficiency of Eurostars-2 and progress towards the objectives set, as well as a final evaluation and prepare a report on those evaluations.

(29) Upon request from the Commission, ESE and the Participating States should submit any information which the Commission needs to include in the reports on the evaluation of Eurostars-2.

(30) Since the objectives of this Decision, namely to support transnational research activities performed by research-intensive SMEs and to contribute to the integration, alignment and synchronisation of national research funding programmes cannot be sufficiently achieved by the Member States due to lack of transnational dimension and of complementarity and interoperability of national programmes but can rather, by reason of the scale and impact of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DECISION:

Article 1

Subject matter

This Decision lays down rules on the participation of the Union in the second Research and Development Programme jointly undertaken by several Member States aimed at supporting research ***and development*** performing small and medium-sized enterprises ("Eurostars-2") and the conditions for its participation.

Article 2

Definitions

For the purpose of this Decision the following definitions apply:

(1) "SME" means a micro-, small- and medium-sized enterprises, as defined in Recommendation 2003/361/EC;

(2) "research ***and development*** performing SME" means an SME which meets at least one of the following conditions:

(a) reinvests at least 10% of its turnover to research and development activities;

(b) dedicates at least 10 % ***of its*** full-time equivalents to research and development activities;

(c) ***has at least five full-time equivalents (for SME with no more than 100 full-time equivalents) for*** research and development activities***; or***

(d) ***has 10 full-time equivalents (for SME with over 100 full-time equivalents) for*** research and development activities.

Article 3

Objectives

Eurostars-2 shall pursue the following objectives:

(1) promote research activities that comply with the following conditions:

(a) the activities are carried out by transnational collaboration of research- ***and development*** performing SMEs among themselves or including other actors of the innovation chain (e.g. universities, research organisations);

(b) results of activities are expected to be introduced into the market within two years of the completion of an activity;

(2) increase the accessibility, efficiency and efficacy of public funding for SMEs in Europe by aligning, harmonising and synchronising the national funding mechanisms of Participating States;

(3) promote ***and increase*** the participation of SMEs without previous experience in transnational research.

Article 4

*Participation in **and partnership with** Eurostars-2*

1. The Union shall participate in Eurostars-2 jointly undertaken by Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom , (the "Participating States"), in accordance with the conditions laid down in this Decision.

2. Any Member State other than those listed in paragraph 1 and any other country associated to Horizon 2020 may participate in Eurostars-2 provided it fulfils the condition laid down in point (c) of Article 6(1) of this Decision. If it fulfils the condition laid down in point (c) of Article 6(1), it shall be regarded as a Participating State for the purposes of this Decision.

3. ***Any Eureka Member or country associated to Eureka that is not a Member State or a country associated to Horizon 2020 may become a Eurostars-2 partner country provided it fulfils the condition set out in*** point (c) of ***Article 6(1). Those Eureka Members or countries associated to Eureka that fulfil the condition*** laid down in point (c) of Article 6(1), ***shall be regarded as partner countries for the purposes of this Decision. Legal entities from those partner countries shall not be eligible for the Union's financial contribution under Eurostars-2.***

Article 5

Union's financial contribution

1. The Union financial contribution, including EFTA appropriations, to Eurostars-2 shall be up to EUR 287 000 000▌. The Union's financial contribution shall be paid from the appropriations in the general budget of the Union allocated to the relevant parts of the Specific Programme, implementing Horizon 2020, established by Decision ***2013***/743/EU, in accordance with point (c)(vi) of Article 58(1), and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012, ***and in particular from appropriations under the heading "Innovation in SMEs" under Part II***.

2. Without exceeding the amount laid down in paragraph 1, the Union's contribution shall be ***at least*** one third of the contributions of the Participating States referred to in point (a) of Article 7(1). It shall cover▌ operational costs***, including the costs of the evaluation of proposals, and administrative costs. Where during the lifetime of*** Eurostars-2 ***the rate of the Union's contribution needs to be adapted, the Union's contribution may go up to a maximum of half of the contributions of the Participating States referred to in point (a) of Article 7(1)***.

3. An amount not exceeding ***4*** % of the Union’s financial contribution referred to in paragraph 1 may be used to contribute to the administrative costs of Eurostars-2. Participating States shall cover ***the national*** administrative costs necessary for the implementation of Eurostars-2.

Article 6

Conditions for the Union's financial contribution

1. The Union's financial contribution shall be conditional upon the following:

(a) the demonstration by the Participating States that they have set up Eurostars-2 in accordance with the objectives laid down in Article 3;

(b) the designation by the Participating States or organisations designated by Participating States, of the ESE, as the structure responsible for implementing Eurostars-2 and for receiving, allocating and monitoring the Union's financial contribution;

(c) the commitment by each Participating State to contribute to the financing of Eurostars-2;

(d) the demonstration by ESE of its capacity to implement Eurostars-2, including receiving, allocating and monitoring the Union's financial contribution, in the framework of indirect management of the Union budget in accordance with Articles 58, 60 and 61 of Regulation (EU, Euratom) No 966/2012; and

(e) the establishment of a governance model for Eurostars-2 in accordance with Annex II.

2. During the implementation of Eurostars-2, the Union’s financial contribution shall also be conditional upon:

(a) the implementation by the ESE of Eurostars-2's objectives set out in Article 3 and activities set out in Annex I, in accordance with the rules for participation and dissemination referred to in Article 8;

(b) the maintenance of an appropriate and efficient governance model in accordance with Annex II;

(c) compliance by ESE with the reporting requirements set out in Article 60(5) of Regulation (EU, Euratom) No 966/2012;

(d) the effective payment by the Participating States of the financial contribution to all participants in Eurostars-2 projects selected for funding following the calls for proposals launched under Eurostars-2, fulfilling the commitments referred to in point (c) of paragraph 1 of this Article;

(e) allocation of the funding from the national budgets for Eurostars-2 projects and the Union's financial contribution in accordance with the ranking lists of the projects; and

(f) the demonstration **of** clear progress in the scientific, managerial and financial ***cooperation*** by the establishment of minimum operational performance targets and milestones for the implementation of Eurostars-2.

Article 7

Contribution from Participating States

1. Contribution from the Participating States shall consist of the following financial contributions:

   (a) co-financing of the selected Eurostars-2 projects ***through relevant national forms of funding***, mainly through grants. ***The Commission may use the established grant equivalence rules for the valuation of the contributions from the Participating States in forms other than grants;***

   (b) financial contribution to the administrative costs of Eurostars-2 not covered by the Union contribution as set out in Article 5(3).

2. Each Participating State shall designate a National Funding Body (NFB) to administer financial support to the national participants in Eurostars-2 in accordance with Article 8.

Article 8

Rules for participation and dissemination

1. For the purposes of Regulation (EU) No ***1290/2013,*** the ESE shall be considered to be a funding body.

2. By way of derogation from Article ***15***(***9***) of Regulation (EU) No ***1290/2013, the NFBs, under the coordination of*** the ESE***,*** shall verify the financial capacity of all applicants for funding under Eurostars-2.

3. By way of derogation from Article ***18***(2) of Regulation (EU) No ***1290/2013,*** grant agreements with beneficiaries of indirect actions under Eurostars-2 shall be signed by the NFBs concerned.

4. By way of derogation from Article ***23***(1), (5), (6) and (7) and Articles 28 ***to 34*** of Regulation (EU) No ***1290/2013,*** the funding rules of the participating national programmes shall apply to Eurostars-2 grants administered by the NFBs.

Article 9

Implementation of Eurostars-2

1. Eurostars-2 shall be implemented on the basis of annual work plans.

2. Eurostars-2 shall provide financial support mainly in the form of grants to participants following calls for proposals.

Article 10

Agreements between the Union and the ESE

1. Subject to a positive ex-ante assessment of the ESE in accordance with Article 61(1) of Regulation (EU, Euratom) No 966/2012, the Commission, on behalf of the Union, shall conclude a delegation agreement and annual transfer of funds agreements with the ESE.

2. The delegation agreement referred to in paragraph 1 shall be concluded in accordance with Article 58(3) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012, and in accordance with Article 40 of Delegated Regulation (EU) No 1268/2012. It shall also set out the following:

   (a) the requirements for the ESE regarding the performance indicators set out in Annex II to Decision (EU) No ***2013/743***;

   (b) the requirements for the ESE's contribution to the monitoring referred to in Annex III to Decision (EU) No ***2013/743***;

   (c) specific performance indicators for the functioning of the ESE in respect of Eurostars-2;

   (d) requirements for the ESE regarding the provision of information on administrative costs and of detailed figures concerning the implementation of Eurostars-2;

(e) arrangements regarding the provision of data necessary to ensure that the Commission is able to meet its dissemination and reporting obligations;

(f) an obligation for the ESE to sign bilateral agreements with the NFBs before any transfers of the Union's financial contribution take place, such bilateral agreements laying down the minimum operational performance targets and milestones for the implementation of Eurostars-2;

(g) provisions for the publication of calls for proposals by Eurostars-2, in particular on the single portal for participants, as well as through other Horizon 2020 electronic means of dissemination managed by the Commission.

Article 11

Termination, reduction or suspension of the Union's financial contribution

1. If Eurostars-2 is not implemented or is implemented inadequately, partially or late, the Commission may terminate, proportionately reduce, or suspend the Union's financial contribution in line with the actual implementation of Eurostars-2.

2. If the Participating States do not contribute, contribute partially or late to the financing of Eurostars-2, the Commission may terminate, proportionately reduce, or suspend the Union's financial contribution, taking into account the amount of funding allocated by the Participating States to implement Eurostars-2.

Article 12

Ex-post audits

1. ESE shall ensure that ex-post audits of expenditure on indirect actions are carried out by the respective NFBs in accordance with Article ***29*** of Regulation (EU) No ***1291/2013.***

2. The Commission may decide to carry out itself the audits referred to in paragraph 1. ***In such cases, it shall do so in accordance with the applicable rules, in particular the provisions of Regulations (EU, Euratom) No 966/2012, (EU) No 1290/ 2013 and (EU) No 1291/2013.***

Article 13

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Decision are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.

2. The ESE shall grant Commission staff and other persons authorised by it, as well as the Court of Auditors, access to its sites and premises and to all the information, including information in electronic format, needed in order to conduct their audits.

3. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Council Regulation (Euratom, EC) No 2185/96[1] and Regulation (***EU, Euratom***) No ***883/2013*** of the European Parliament and of the Council[2] , with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with an agreement or decision or a contract funded under this Decision.

4. Contracts, grant agreements and grant decisions resulting from the implementation of this Decision shall contain provisions expressly empowering the Commission, the Court of Auditors, OLAF and the ESE to conduct such audits and investigations, in accordance with their respective competences.

5. In implementing Eurostars-2, the Participating States shall take the legislative, regulatory, administrative or other measures necessary to protect the Union's financial interests, in particular to ensure full recovery of any amounts due to the Union in accordance with Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012.

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1 Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

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

Article 14

Communication of information

1. At the request of the Commission, the ESE shall send any information necessary for the preparation of the reports referred to in Article 15.

2. The Participating States shall submit to the Commission, through the ESE, any information requested by the European Parliament, the Council or the Court of Auditors concerning the financial management of Eurostars-2.

3. The Commission shall include the information referred to in paragraph 2 of this Article in the reports referred to in Article 15.

Article 15

Evaluation

1. By ***30 June*** 2017, the Commission shall ***carry out, in close cooperation with the Participating States and with the assistance of independent experts,*** an interim evaluation of Eurostars-2. The Commission shall prepare a report on that evaluation which includes the conclusions ***of the evaluation*** and observations by the Commission. The Commission shall send that report to the European Parliament and to the Council by ***31 December 2017. The result of the interim evaluation of Eurostars-2 shall be taken into account in the interim evaluation of Horizon 2020.***

2. At the end of the Union's participation in Eurostars-2, but no later than 31 December 2022, the Commission shall conduct a final evaluation of Eurostars-2. The Commission shall prepare a report on that evaluation which is to include results of that evaluation. The Commission shall send that report to the European Parliament and to the Council.

Article 16

Entry into force

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

Article 17

Addressees

This Decision is addressed to the Member States.

Done at ...,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

Implementation of Eurostars-2

1. The ESE shall organise continuously open calls for proposals, with cut-off dates for the award of financial support to indirect actions.

2. Applicants shall submit project proposals to the ESE as a single entry point.

3. After the closure of a call for proposals, a central eligibility check shall be carried out by the ESE on the basis of the eligibility criteria set out in the annual work plan. No different or further eligibility criteria may be added by the Participating States.

4. The ***NFBs, under the coordination of the ESE,*** shall verify the financial capacity of the participants according to common, clear and transparent rules.

5. Eligible proposals shall be evaluated centrally and ranked by a group of external independent experts in accordance with the criteria set out in Article ***15***(1) of Regulation (EU) No ***1290/2013,*** on the basis of transparent procedures.

6. The ESE shall provide an evaluation review procedure in accordance with Article ***16*** of Regulation (EU) No ***1290/2013.***

7. The ranking list, approved as a whole by the Eurostars-2 high-level group referred to in Annex II, shall be binding for the allocation of funding from the national budgets for Eurostars-2 projects.

8. Once the ranking list is approved, each Participating State shall finance its national participants in those projects selected for funding through the designated NFB, making all possible efforts to ensure that the top-50 ranked projects and at least 50 % to 75 % of the projects above thresholds are funded. The financial contribution to the participants shall be calculated according to the funding rules of the national programme of the relevant Eurostars-2 Participating State. The Union's financial contribution shall be transferred by the ESE to the NFBs provided that the NFBs have paid their financial contribution to the projects.

9. All eligible participants in projects selected centrally shall be funded. The granting of financial support by the NFBs to project participants selected centrally shall be subject to the principles of equal treatment, transparency and co-funding.

10. The ESE shall be responsible for evaluating proposals, informing NFBs, coordinating the synchronisation process, monitoring projects through project reporting and audits carried out by NFBs, and reporting to the Commission ensuring a short time-to-grant. It shall also take appropriate measures to encourage recognition of the Union's contribution to Eurostars-2, both to the programme itself and to individual projects. It shall promote appropriate visibility for the Union's contribution through the use of the Horizon 2020 logo in all published material, including printed and electronic publications, related to Eurostars-2.

11. ESE shall conclude Eurostars-2 bilateral agreements with the NFBs ***of Participating States. Those*** Eurostars-2 bilateral agreements shall set out the responsibilities of the contracting parties in accordance with the Eurostars-2 rules, objectives and implementation modalities. The Eurostars-2 bilateral agreements shall include the rules governing the transfer of the Union's contribution and the minimum operational targets and national progressive milestones for further integration and synchronisation of national programmes, including a shorter time-to-grant in accordance with Regulation (EU, Euratom) No 966/2012 and Regulation (EU) No 1290/2013 . Those targets and milestones shall be agreed by the Eurostars-2 high-level group in consultation with the Commission. The signature of the Eurostars-2 bilateral agreement and compliance with the operational targets and milestones shall be a pre-condition for NFBs to receive the Union's contribution.

12. The ESE may conclude Eurostars-2 bilateral agreements with the NFBs of partner countries. Those Eurostars-2 bilateral agreements shall set out the responsibilities of the contracting parties in accordance with the Eurostars-2 rules, objectives and implementation modalities, specify the conditions under which partnership with Eurostars-2 shall take place, and include the minimum operational targets, including a short time-to-grant.

13. Networking activities and exchange of best practices shall also be organised amongst the Participating States in order to promote stronger integration at scientific, managerial and financial level.

14. Other activities shall also include brokerage, programme promotion and networking activities with other stakeholders (investors, research and innovation providers, intermediaries) mainly to widen participation from beneficiaries in all Participating States and to involve SMEs with no prior experience in transnational research projects.

ANNEX II

Governance of Eurostars-2

1. **The** ESE shall manage Eurostars-2.

The Head of the ESE, as the legal representative of the ESE, shall be in charge of implementing Eurostars-2 by:

(a) preparing the annual budget for the calls, central organisation of joint calls for proposals and reception of the proposals as single entry point; the central organisation of the eligibility and evaluation of proposals, according to common eligibility and evaluation criteria, central organisation of the ***ranking and*** selection of proposals for funding, and project monitoring and follow-up; the receipt, allocation and monitoring of the Union contribution;

(b) collecting the necessary information from the NFBs for the transfer the Union contribution;

(c) promoting Eurostars-2;

(d) reporting to the Eurostars-2 high-level group and the Commission on the Eurostars- ***2 programme***;

(e) informing the Eureka network about the activities of Eurostars-2;

(f) signing the delegation agreement with the Commission, the bilateral agreements with the NFBs and the contracts with the experts assessing Eurostars-2 applications;

(g) adopting the Eurostars-2 annual work plan following the prior agreement of the Eurostars-2 high-level group and of the Commission.

2. The Eurostars-2 high-level group, composed of the national representatives in the ***Eureka*** High Level Group of the Eurostars-2 Participating States, shall supervise the operations of the ESE on Eurostars-2 by:

   (a) supervising the implementation of Eurostars-2;

   (b) appointing the members of the Eurostars-2 Advisory Group ("EAG");

   (c) approving the annual work plan;

   (d) approving the ranking list of Eurostars-2 projects to be funded and taking the award decision.

   The Union, represented by the Commission, shall have the status of observer in the Eurostars-2 high-level group. The Commission shall be invited to participate at the meetings, shall receive all meeting documents and may take part in the discussion**.**

   Any ***partner*** country ▌ shall have the right to send representatives to meetings of the Eurostars-2 high-level group as observers.

3. The EAG shall be composed of ***Eureka*** National Project Coordinators (persons in the national government or agency dealing with the operational level of the management of Eureka/Eurostars programme and in charge of the promotion of Eurostars-2 in the Participating ***States***) from the Participating ***States***. The Commission ***and partner countries*** shall have the right to send representatives to the EAG meetings as observers. The EAG meetings shall be chaired by the ESE.

   The EAG shall advise the ESE and the Eurostars-2 high-level group on the arrangements for the implementation of Eurostars-2.

4. The NFB shall be in charge of the administration of financial support to the national participants.

P7_TA-PROV(2014)0365

European Metrology Programme for Innovation and Research ***I

European Parliament legislative resolution of 15 April 2014 on the proposal for a decision of the European Parliament and of the Council on the participation of the Union in a European Metrology Programme for Innovation and Research jointly undertaken by several Member States (COM(2013)0497 – C7-0221/2013 – 2013/0242(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2013)0497),

– having regard to Article 294(2) and Article 185 and the second paragraph of Article 188 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0221/2013),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 10 December 2013[1],

– having regard to the undertaking given by the Council representative by letter of 26 February 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on Industry, Research and Energy (A7-0063/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

[1] Not yet published in the Official Journal.

P7_TC1-COD(2013)0242

Position of the European Parliament adopted at first reading on 15 April 2014 with a view to the adoption of Decision No .../2014/EU of the European Parliament and of the Council on the participation of the Union in a European Metrology Programme for Innovation and Research (EMPIR) jointly undertaken by several Member States

(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 185, and the second paragraph of Article 188, 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],

[1] Opinion of 10 December 2013 (not yet published in the Official Journal).

[2] Position of the European Parliament of 15 April 2014.

Whereas:

(1) In its Communication of 3 March 2010 entitled “Europe 2020 A strategy for smart, sustainable and inclusive growth” ("the Europe 2020 strategy"), the Commission emphasised the need to develop favourable conditions for investment in knowledge and innovation so as to achieve smart, sustainable and inclusive growth in the Union. Both the European Parliament and the Council have endorsed that strategy.

(2) Regulation (EU) No ***1291***/2013 of the European Parliament and of the Council[1] established Horizon 2020 – The Framework Programme for Research and Innovation (2014-2020) ("Horizon 2020"). Horizon 2020 aims at achieving a greater impact on research and innovation by contributing to the strengthening of public-public partnerships, including through Union participation in programmes undertaken by several Member States in accordance with Article 185 of the Treaty on the Functioning of the European Union.

[1] Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

(***3)*** ***Public-public partnerships should aim to develop closer synergies, increase coordination and avoid unnecessary duplication with Union, international, national and regional research programmes, and should fully respect the Horizon 2020 general principles, in particular those relating to openness and transparency. Moreover, open access to scientific publications should be ensured.***

(4) By Decision No 912/2009/EC of the European Parliament and of the Council[1], the Community decided to make a financial contribution to the European Metrology Research Programme (the "EMRP") matching that of the Participating States but not exceeding EUR 200 000 000, for the duration of the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) established by Decision No 1982/2006/EC of the European Parliament and of the Council[2].

[1] Decision No 912/2009/EC of the European Parliament and of the Council of 16 September 2009 on the participation by the Community in a European metrology research and development programme undertaken by several Member States (OJ L 257, 30.9.2009, p. 12).

[2] Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) (OJ L 412, 30.12.2006, p. 1).

(5) In April 2012, the Commission communicated to the European Parliament and to the Council a report on Interim Evaluation of the European Metrology Research Programme – EMRP . That interim evaluation had been carried out by an expert panel three years after the beginning of the programme. The overall opinion of the expert panel was that EMRP is a well-managed joint European research programme that has already achieved a relatively high level of scientific, management and financial integration. However, the expert panel noted its limited industrial exploitation, limited opening to excellent science outside the metrology institutes and insufficient capacity building. The expert panel was also of the opinion that a more inclusive European metrology research area could be built by implementing the EMRP.

(6) Pursuant to Council Decision ▌ 2013/***743***/EU[1] further support may be provided to EMRP.

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

(7) The European Metrology Programme for Innovation and Research ("EMPIR"), aligned with the Europe 2020 strategy and its flagship initiatives, in particular 'Innovation Union', 'A Digital Agenda for Europe', 'Resource-efficient Europe' and 'An Industrial Policy for the Globalisation Era', will be a more ambitious and inclusive programme, implemented over a period of ten years (2014-2024) by 28 Participating States. As part of the improvement of the previous programme, EMPIR will include activities on innovation and industrial exploitation, on research for norms***, standardisation*** and ***regulatory purposes*** and on capacity building.

(8) The Participating States intend to contribute to implementing EMPIR during the period covered by it, namely 2014-2024. ***In order to take into account the duration of Horizon 2020, calls for proposals under EMPIR should be launched at the latest by 31 December 2020. In duly justified cases, calls for proposals may be launched by 31 December 2021.***

(9) EMPIR's activities should be in line with the objectives and research and innovation priorities of Horizon 2020 and with the general principles and conditions laid down in Article 26 of Regulation (EU) No 1291/2013.

(10) A ceiling should be established for the Union’s financial participation in EMPIR for the duration of Horizon 2020. Within the limits of that ceiling, the Union contribution should be equal to the contribution of the States participating in EMPIR, in order to achieve a high leverage effect and ensure a stronger integration of Participating States' programmes.

(11) In line with the objectives of Regulation (EU) No ***1291***/2013, any Member State and any country associated to Horizon 2020 should be entitled to participate in EMPIR.

(12) The Union’s financial contribution should be subject to formal commitments from the Participating States to contribute to the implementation of EMPIR and to the fulfilment of those commitments. Participating States’ contributions to EMPIR should include a contribution to administrative costs, subject to a ceiling of 5 % of the budget of EMPIR. Participating States should commit to increase, if necessary, their contribution to EMPIR by a reserve funding capability of 50 % of their commitment to ensure that they are able to fund their national entities, National Metrology Institutes ("NMIs") and Designated Institutes ("DIs"), participating in the selected projects.

(13) The joint implementation of EMPIR requires an implementation structure. The Participating States have agreed upon the implementation structure for EMRP, and in 2007 set up EURAMET e.V. ("EURAMET"), the European Regional Metrology Organisation and a non-profit association under German law. EURAMET also has tasks and obligations related to the wider European and global harmonisation of metrology. Membership of EURAMET is open to all European NMIs, as members, and to DIs, as associates. Membership of EURAMET is not conditional upon the existence of national metrology research programmes. Given that, according to the Report on Interim Evaluation of EMRP, the governance structure of EURAMET has proved to be efficient and of high quality for the implementation of the EMRP, EURAMET should also be used for the implementation of EMPIR. EURAMET should, therefore, be the recipient of the Union's financial contribution.

(14) In order to achieve the objectives of EMPIR, EURAMET should provide financial support mainly in the form of grants to participants in actions selected at the level of EURAMET. Those actions should be selected following calls for proposals under the responsibility of EURAMET. The ranking list should be binding as regards the selection of proposals and the allocation of funding from the Union's financial contribution and from the contributions from Participating States for EMPIR projects.

(15) The Union's financial contribution should be managed in accordance with the principle of sound financial management and with the relevant rules on indirect management laid down in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[1] and Commission Delegated Regulation (EU) No 1268/2012[2] .

[1] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012, p.1).

[2] Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 (OJ L 362 of 31.12.2012, p. 1).

(16) In order to protect the Union's financial interests, the Commission should have the right to reduce, suspend or terminate the Union's financial contribution if EMPIR is implemented inadequately, partially or late, or if the Participating States do not contribute, or contribute partially or late, to the financing of EMPIR. Those rights should be provided for in the delegation agreement to be concluded between the Union and EURAMET.

(17) For the purpose of simplification, administrative burdens should be reduced for all parties. Double audits and disproportionate documentation and reporting should be avoided. When audits are conducted, the specificities of the national programmes should be taken into account, as appropriate.

(18) Audits of recipients of Union funds provided in accordance with this Decision should ensure a reduction in the administrative burden, in accordance with Regulation (EU) No 1291/2013.

(19) Participation in indirect actions funded by EMPIR is subject to Regulation (EU) No ***1290***/2013 of the European Parliament and of the Council[1]. However, due to specific operating needs of EMPIR, it is necessary to provide for derogations from that Regulation in accordance with Article 1(3) of that Regulation .

[1] Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006 (OJ L 347, 20.12.2013, p. 81).

(20) The contribution from Participating States mainly represents institutional funding of the NMIs and DIs participating in the selected projects. The contribution from Participating States should also include a cash contribution to the administrative costs of EMPIR. A proportion of the Union's contribution should be allocated to entities other than NMIs and DIs participating in the selected projects. The calculation of the Union's financial contribution for NMIs and DIs participating in EMPIR projects should ensure that the Union's contribution to EMPIR does not exceed the contribution of the Participating States. Considering that the institutional funding of the NMIs and DIs by Participating States corresponds to the overheads allocated to the EMPIR projects not reimbursed by the Union's contribution, the flat rate for the financing of the eligible indirect costs of the NMIs and DIs should be adapted, compared to the flat rate laid down in Regulation (EU) No ***1290/2013.*** The flat rate for the financing of the eligible indirect costs of the NMIs and DIs should be determined on the basis of the full indirect costs declared as eligible by NMIs and DIs participating in EMRP projects, which are stable and constitute a reliable approximation of the indirect costs to be incurred by NMIs and DIs participating in EMPIR projects. Since those indirect costs amount to 140 % of the total direct eligible costs of the NMIs and DIs, excluding direct eligible costs for subcontracting and in-kind contributions free of charge not used on the premises of the beneficiaries, the flat rate for the financing of indirect costs of the NMIs and DIs should be lowered from ***25*** % , as laid down in Regulation (EU) No ***1290***/2013, to 5 %. It is therefore appropriate to provide for a derogation from Article ***29*** of that Regulation for the NMIs and DIs. Other entities participating in EMPIR projects should be funded in accordance with that Regulation.

(21) Calls for proposals by EMPIR should also be published on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission.

(22) The appropriateness of the funding model with regard to the matching principle between Union and non-Union funds should be re-assessed at the time of the interim evaluation of EMPIR.

(23) The Union's financial interests should be protected by means of proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU, Euratom) No 966/2012.

(24) The Commission should conduct an interim evaluation assessing in particular the quality and efficiency of EMPIR, the progress made towards the objectives set and a final evaluation, and should prepare a report on those evaluations.

(25) Upon request from the Commission, EURAMET and the Participating States should submit any information the Commission needs to include in the reports on the evaluation of EMPIR.

(26) The objective of this Decision is the Union's participation in EMPIR, namely to support the provision of appropriate, integrated and fit-for-purpose metrology solutions and the creation of an integrated European Metrology Research system with critical mass and active engagement at regional, national, European and international level that cannot be sufficiently achieved by the Member States alone. The scale and complexity of metrology requirements calls for investments that go beyond the core research budgets of the NMIs and their DIs. The excellence required for research and the development of cutting-edge metrology solutions is spread across national borders and hence cannot be brought together at national level only. Since the objective can therefore be better achieved at Union level by integrating national efforts into a consistent European approach, by bringing together compartmentalised national research programmes, by helping design common research and funding strategies across national borders, and by achieving the critical mass of actors and investments required, 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 Decision does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DECISION:

Article 1

Participation in the European Metrology Programme for Innovation and Research

1. The Union shall participate in the European Metrology Programme for Innovation and Research ("EMPIR") jointly undertaken by Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Norway, Spain, the Netherlands, Poland, Portugal, Romania, Serbia, Slovenia, Slovakia, Sweden, Switzerland, Turkey and the United Kingdom (the "Participating States"), in accordance with the conditions laid down in this Decision.

2. Any Member State other than those listed in paragraph 1 and any other country associated to Horizon 2020 may participate in EMPIR, provided it fulfils the condition laid down in point (c) of Article 3(1) of this Decision. If it fulfils the condition laid down in point (c) of Article 3(1), it shall be regarded as a Participating State for the purposes of this Decision.

Article 2

Union’s financial contribution

1. The Union’s financial contribution, including EFTA appropriations, to EMPIR shall be up to EUR 300 000 000. The Union's financial contribution shall be paid from appropriations in the general budget of the Union allocated to the relevant parts of the Specific Programme, implementing Horizon 2020, established by Decision 2013***/743***/EU, in accordance with point (c)(vi) of Article 58(1) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/***2012, and in particular from Part II “Industrial leadership” and Part III “Societal challenges”.***

2. Without exceeding the amount laid down in paragraph 1, the Union’s financial contribution shall be equal to the contributions of the Participating States to EMPIR, excluding the contributions of the Participating States to administrative costs exceeding 5 % of the EMPIR budget.

3. The Union's financial contribution shall not be used to cover the administrative costs of EMPIR.

Article 3

Conditions for the Union’s financial contribution

1. The Union’s financial contribution shall be conditional upon the following:

(a) the demonstration by the Participating States that EMPIR is set up in accordance with Annexes I and II;

(b) the designation by the Participating States, or NMIs designated by Participating States, of EURAMET e.V. ("EURAMET") as the structure responsible for implementing EMPIR and for receiving, allocating and monitoring the Union’s financial contribution;

(c) the commitment by each Participating State to contribute to the financing of EMPIR and to establish a reserve funding capability of 50 % of the amount of the commitment;

(d) the demonstration by EURAMET of its capacity to implement EMPIR, including receiving, allocating and monitoring the Union’s financial contribution in the framework of indirect management of the Union budget in accordance with Articles 58, 60 and 61 of Regulation (EU, Euratom) No 966/2012; and

(e) the establishment of a governance model for EMPIR in accordance with Annex III.

2. During the implementation of EMPIR, the Union's financial contribution shall also be conditional upon the following:

(a) the implementation by EURAMET of EMPIR's objectives set out in Annex I and activities set out in Annex II, in accordance with the rules for participation and dissemination referred to in Article 5;

(b) the maintenance of an appropriate and efficient governance model in accordance with Annex III;

(c) the compliance by EURAMET with the reporting requirements set out in Article 60(5) of Regulation (EU, Euratom) No 966/2012; and

(d) the fulfilment of the commitments referred to in point (c) of paragraph 1 of this Article.

Article 4

Contributions from Participating States

Contributions from the Participating States shall consist of the following:

(a) contributions through institutional funding of the NMIs and the DIs participating in EMPIR projects;

(b) financial contributions to the administrative costs of EMPIR.

Article 5

Rules for participation and dissemination

1. For the purposes of Regulation (EU) No ***1290/2013,*** EURAMET shall be considered to be a funding body and shall provide financial support to indirect actions in accordance with Annex II to this Decision.

2. By way of derogation from Article ***29***(1) of Regulation (EU) No ***1290/2013,*** indirect eligible costs of NMIs and DIs participating in projects funded by EMPIR shall be determined by applying a flat rate of 5 % of their total direct eligible costs, excluding direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the beneficiary, as well as financial support to third parties.

3. The interim evaluation of EMPIR referred to in Article 12 shall include an assessment of the full indirect costs of the NMIs and the DIs participating in EMPIR projects and of the corresponding institutional funding.

4. On the basis of this assessment and for the purpose of Article 2(2), EURAMET may ***adapt*** the flat rate set out in paragraph 2 of this Article.

5. If insufficient, EURAMET may, by way of derogation from Article ***28***(3) of Regulation (EU) No ***1290/2013,*** apply a lower reimbursement rate to the eligible costs of the NMIs and the DIs participating in projects funded by EMPIR.

Article 6

Implementation of EMPIR

1. EMPIR shall be implemented on the basis of annual work plans.

2. EURAMET shall provide financial support mainly in the form of grants to participants following calls for proposals.

Before identifying the topics of each call for proposals, EURAMET shall invite interested individuals or organisations from the metrology research community and users to suggest potential research topics.

Article 7

Agreements between the Union and EURAMET

1. Subject to a positive ex-ante assessment of EURAMET in accordance with Article 61(1) of Regulation (EU, Euratom) No 966/2012, the Commission, on behalf of the Union, shall conclude a delegation agreement and annual transfer of funds agreements with EURAMET.

2. The delegation agreement referred to in paragraph 1 shall be concluded in accordance with Article 58(3) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012 and with Article 40 of Delegated Regulation (EU) No 1268/2012. It shall also set out the following:

(a) the requirements for EURAMET's contribution regarding the performance indicators set out in Annex II to Decision ***2013/743/EU***;

(b) the requirements for EURAMET's contribution to the monitoring referred to in Annex III to Decision ***2013/743/EU***;

(c) the specific performance indicators related to the functioning of EURAMET;

(d) the requirements for EURAMET regarding the provision of information on administrative costs and on detailed figures concerning the implementation of EMPIR;

(e) the arrangements regarding the provision of data necessary to ensure that the Commission is able to meet its dissemination and reporting obligations;

(f) provisions for the publication of calls for proposals by EMPIR, in particular on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission.

Article 8

Termination, reduction or suspension of the Union's financial contribution

If EMPIR is not implemented or is implemented inadequately, partially or late, the Commission may terminate, proportionately reduce or suspend the Union's financial contribution in line with the actual implementation of EMPIR.

If the Participating States do not contribute, contribute partially or late to the financing of EMPIR, the Commission may terminate, proportionately reduce or suspend the Union's financial contribution, taking into account the amount of funding allocated by the Participating States to implement EMPIR.

Article 9

Ex-post audits

1. Ex-post audits of expenditure on indirect actions shall be carried out by EURAMET in accordance with Article ***29*** of Regulation (EU) No ***1291/2013.***

2. The Commission may decide to carry out itself the audits referred to in paragraph 1. ***In such cases, it shall do so in accordance with the applicable rules, in particular the provisions of Regulations (EU, Euratom) No 966/2012, (EU) No 1290/2013 and (EU) No 1291/2013.***

Article 10

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Decision are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.

2. EURAMET shall grant Commission staff and other persons authorised by it, as well as the Court of Auditors, access to its sites and premises and to all the information, including information in electronic format, needed in order to conduct their audits.

3. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Council Regulation (Euratom, EC) No 2185/96[1] and Regulation (***EU, Euratom***) No ***883/2013*** of the European Parliament and of the Council[2] and, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded in accordance with this Decision.

4. Contracts, grant agreements and grant decisions resulting from the implementation of this Decision shall contain provisions expressly empowering the Commission, EURAMET, the Court of Auditors and OLAF to conduct such audits and investigations, in accordance with their respective competences.

5. In implementing EMPIR, the Participating States shall take the legislative, regulatory, administrative and other measures necessary to protect the Union's financial interests, in particular, to ensure full recovery of any amounts due to the Union in accordance with Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012.

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[1] Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

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

Article 11

Communication of information

1. At the request of the Commission, EURAMET shall send any information necessary for the preparation of the reports referred to in Article 12.

2. The Participating States shall submit to the Commission, through EURAMET, any information requested by the European Parliament, the Council or the Court of Auditors concerning the financial management of EMPIR.

3. The Commission shall include the information referred to in paragraph 2 of this Article in the reports referred to in Article 12.

Article 12

Evaluation

1. By ***30 June*** 2017, the Commission shall ***carry out, with the assistance of independent experts,*** an interim evaluation of EMPIR. The Commission shall prepare a report on that evaluation which includes the conclusions of the evaluation and observations by the Commission. The Commission shall send that report to the European Parliament and to the Council by ***31 December 2017. The result of the interim evaluation of EMPIR shall be taken into account in the interim evaluation of Horizon 2020.***

2. At the end of the Union's participation in EMPIR, but no later than 31 December 2024, the Commission shall conduct a final evaluation of EMPIR. The Commission shall prepare a report on that evaluation which is to include the results of that evaluation. The Commission shall send that report to the European Parliament and to the Council.

Article 13

Entry into force

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

Article 14

Addressees

This Decision is addressed to the Member States.

Done at ...,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

Objectives of EMPIR

EMPIR shall pursue the following general objectives:

(a) provide appropriate, integrated and fit-for-purpose metrology solutions supporting innovation and industrial competitiveness, as well as measurement technologies addressing societal challenges such as health, environment and energy, including support to policy development and implementation;

(b) create an integrated European Metrology Research system with critical mass and active engagement at regional, national, European and international level.

ANNEX II

Indirect actions supported by EMPIR

1. EMPIR may support the following indirect actions in the area of joint research and technological development:

1.1. scientific-technical actions supporting fundamental scientific metrology laying the basis for all successive steps including applied metrology research and development and metrology-related services;

1.2. metrology research to provide solutions for societal challenges focusing on contributions to energy, environment and health;

1.3. research in order to develop novel measurement instrumentation aiming at industrial take-up of metrological technologies to stimulate innovation in industry;

1.4. pre-normative and co-normative metrology research and development for priority documentary standards aiming to use the expertise of metrology institutes of the Participating States to support policy implementation and accelerate innovative products and services to market;

1.5. metrology capacity-building activities on different technological levels aiming to achieve a balanced and integrated metrology system in the Participating States***, and enabling them to develop their scientific and technical capabilities in metrology***.

2. EMPIR may support further actions for the dissemination and exploitation of results of metrology research.

   EMPIR may support other actions specifically addressing metrology institutes which have no or limited scientific capabilities, by supporting them in using other European Union, national or regional programmes for training and mobility, cross-border cooperation or investment in metrology infrastructure.

3. EMPIR may support organisation of networking activities to promote EMPIR and maximise its impact.

4. The indirect actions referred to in point 1 shall be carried out by NMIs and DIs ***according to the designation by the appropriate national authority***. However, EMPIR shall encourage and support the participation of other entities ***in all calls launched by EMPIR***. This approach is expected to result in around 15 % of the budget of EMPIR going to those entities.

ANNEX III

Implementation and governance of EMPIR

I Role of EURAMET

1. EURAMET shall be responsible for implementing EMPIR, subject to Article 3. It shall manage the Union's financial contribution to EMPIR and shall be responsible for preparing and implementing the annual work plan, the organisations of calls for proposals, the handling of proposal evaluation and ranking and any other activities resulting from the annual work plan. EURAMET shall be responsible for grant management including signature of grant agreements, the receipt, allocation and monitoring of the use of the Union's financial contribution and payments to EMPIR participants in the selected projects.

   The monitoring of the Union's financial contribution shall cover all the activities of control and audit, ex-ante and/or ex-post control, necessary to carry out the tasks delegated to EURAMET by the Commission. Those activities shall aim to provide reasonable assurance as to the legality and regularity of the underlying transactions and the eligibility of the costs declared under grant agreements.

2. EURAMET may entrust to the Participating States certain administrative and logistical tasks in implementing EMPIR.

II The organisational structure of EURAMET involved in implementing EMPIR

1. The ***General Assembly is the highest authority with respect to all EURAMET matters. The EMPIR Committee manages the programme within a framework defined by EURAMET, so that EURAMET can ensure that the programme as executed meets its objectives.***

The EMPIR Committee shall be composed of representatives of EURAMET members from the Participating States. The voting weights shall be calculated from the national commitments according to a square root rule.

The EMPIR Committee shall take, in particular, decisions on the strategic research and innovation agenda, the planning of calls for proposals, the evaluation review procedure, the selection of the projects to be funded according to the ranking lists and the monitoring of progress of the funded projects. It shall adopt the annual work plan after obtaining approval from the Commission.

The Commission shall have observer status in the meetings of the EMPIR Committee. However, the adoption of the annual work plan by the EMPIR Committee shall require the prior consent of the Commission. The EMPIR Committee shall invite the Commission to its meetings and shall send the Commission the relevant documents. The Commission may take part in the discussions of the EMPIR Committee.

2. The Chairperson of the EMPIR Committee and his or her deputy shall be elected by the EMPIR Committee. The Chairperson of the EMPIR Committee shall be one of the two Vice-chairpersons of EURAMET. The Chairperson of the EMPIR Committee shall represent EURAMET in matters related to EMPIR.

3. The Research Council shall be composed of high-level experts from industry, research, academia and international stakeholder organisations. It shall provide independent strategic advice on the annual work plan of EMPIR. The members of the Research Council shall be appointed by the EURAMET General Assembly.

4. The Secretariat of EURAMET providing general administrative support for EURAMET shall keep the bank accounts for EMPIR.

5. The Management support unit shall be established as part of the Secretariat of EURAMET and shall be responsible for the implementation and the day-to-day management of EMPIR.

P7_TA-PROV(2014)0366

European and Developing Countries Clinical Trials Partnership Programme ***I

European Parliament legislative resolution of 15 April 2014 on the proposal for a decision of the European Parliament and of the Council on the participation of the Union in a second European and Developing Countries Clinical Trials Partnership Programme jointly undertaken by several Member States (COM(2013)0498 – C7-0222/2013 – 2013/0243(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2013)0498),

– having regard to Article 294(2) and Article 185 and the second paragraph of Article 188 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0222/2013),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 10 December 2013[1],

– having regard to the undertaking given by the Council representative by letter of 26 February 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on Development (A7-0064/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

[1] Not yet published in the Official Journal.

P7_TC1-COD(2013)0243

Position of the European Parliament adopted at first reading on 15 April 2014 with a view to the adoption of Decision No .../2014/EU of the European Parliament and of the Council on the participation of the Union in a second European and Developing Countries Clinical Trials Partnership Programme (EDCTP2) jointly undertaken by several Member States

▌

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 185, and the second paragraph of Article 188, 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],

[1] Opinion of 10 December 2013 (Not yet published in the Official Journal).

[2] Position of the European Parliament of 15 April 2014.

Whereas:

(1) In its Communication of 3 March 2010 entitled ‘Europe 2020 A Strategy for smart, sustainable and inclusive growth’ ("the Europe 2020 strategy"), the Commission emphasised the need to develop favourable conditions for investment in knowledge and innovation so as to achieve smart, sustainable and inclusive growth in the Union. The European Parliament and the Council have endorsed that strategy.

(2) Regulation (EU) No ***1291***/2013 of the European Parliament and of the Council[1] established Horizon 2020 — The Framework Programme for Research and Innovation (2014-2020) (“Horizon 2020”). Horizon 2020 aims at achieving a greater impact on research and innovation by contributing to the strengthening of public-public partnerships, including through Union participation in programmes undertaken by several Member States in accordance with Article 185 of the Treaty on the Functioning of the European Union.

[1] Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

(3) Public-public partnerships should aim to develop closer synergies, increase coordination and avoid unnecessary duplication with Union, international, national and regional research programmes, and should fully respect the Horizon 2020 general principles, in particular those relating to openness and transparency. Moreover, open access to scientific publications should be ensured.

(4) By Decision No 1209/2003/EC of the European Parliament and of the Council1, the Community decided to make a financial contribution to the European and Developing Countries Clinical Trials Partnership ("EDCTP1") matching that of the Participating States but not exceeding EUR 200 000 000, for the duration of the Sixth Framework Programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006) established by Decision No 1513/2002/EC of the European Parliament and of the Council[2] . EDCTP1 was also supported under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 – 2013) established by Decision No 1982/2006/EC of the European Parliament and of the Council[3].

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1 Decision No 1209/2003/EC of the European Parliament and of the Council of 16 June 2003 on Community participation in a research and development programme aimed at developing new clinical interventions to combat HIV/AIDS, malaria and tuberculosis through a long-term partnership between Europe and developing countries, undertaken by several Member States (OJ L 169, 8.7.2003, p. 1).

2 Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006) (OJ L 232, 29.8.2002, p. 1).

3 Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) (OJ L 412 of 30.12.2006, p. 1).

(5) In 2009, independent experts adopted the report of the interim evaluation of EDCTP1. The opinion of the expert panel was that EDCTP1 provided a unique platform for a genuine dialogue with African scientists, and that it has started to bridge the gap between North and South in building research capacities and in providing learning and working opportunities for young African researchers. Following that report, there are fundamental issues to be taken into consideration for a second European and Developing Countries Clinical Trials Partnership Programme ("EDCTP2 Programme"): the current scope of EDCTP1 needs to be amended and extended; the ***capabilities in developing countries for the sound conduct and management of clinical trials should, where necessary, be further developed and strengthened, in particular the role and development of ethical review committees and the corresponding regulatory environment, the coordination, collaboration and, where appropriate,*** integration of European national programmes should be further improved; collaboration with other major public and private ***partners***, including the pharmaceutical industry, ***and public-private partnerships such as the Product Development Partnerships ("PDPs"), civil society, non-governmental organisations and foundations,*** need to be strengthened and extended; ***there should be clear and transparent rules of governance;*** synergies with European external policy actions should be developed ***specifically*** with Union development assistance; co-funding rules should be clarified and simplified; and monitoring tools need to be strengthened.

(6) Pursuant to Council Decision ***2013/743***/EU[1], further support may be provided to the EDCTP2 Programme.

(7) The Union is a major funder of research into poverty-related diseases and neglected infectious diseases. The Commission and Member States contribute nearly one quarter (22 %) of the relevant global investment made by governments. The Union is also a major player in global health. For example, the Commission and the Member States provide approximately half the financing of the Global Fund To Fight AIDS, Tuberculosis and Malaria.

(8) EDCTP1 produced major achievements, and developed eight improved medical treatments, in particular for newborns, children and pregnant or breastfeeding women suffering from HIV/AIDS or malaria. It has resulted in the launch of the first four African Regional Networks of Excellence promoting South-South cooperation on clinical research, and more than 400 African researchers have been trained. It has also contributed to establishing the Pan-African Clinical Trials Registry and the African Vaccine Regulators Forum.

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

(9) Despite the considerable results and achievements of EDCTP1, poverty-related diseases still represent a major obstacle to the sustainable development of developing countries due to their social and economic burden, especially in sub-Saharan Africa. Effective, safe***, suitable*** and affordable medical treatments ***tailored to the specific circumstances of developing countries*** still do not exist for most poverty-related diseases, and investment in clinical research remains inadequate as conducting clinical trials is costly and the return on investment is limited due to market failure. ***It should be underlined that only 10 % of global research funding is allocated to the diseases which account for 90 % of the world's pathologies.*** Moreover, European research activities and programmes are still often fragmented and are therefore either subcritical in scale or overlapping, whereas research capacity and investment in developing countries are inadequate.

(10) Supporting the fight against poverty-related diseases would also help to safeguard Europe's citizens from those diseases as increasing global mobility (including tourism), migratory movements and shifts in the geographic distribution of those diseases mean that Europe may be facing new or returning challenges in connection with those diseases.

(11) On 15 June 2010, the European Parliament adopted a resolution on progress towards achieving the Millennium Development Goals ("MDG") in advance of the UN high-level meeting in September 2010, in which it asked the Commission, the Member States and developing countries to address MDG 5 (on improving maternal health), MDG 4 (on child mortality) and MDG 6 (on HIV/AIDS, malaria and tuberculosis) in a coherent and holistic way.

(12) The Union is committed to the 2012 Rio+20 conference conclusions on developing and achieving internationally-agreed Sustainable Development Goals ("SDG"), following and including the MDG.

(13) In 2000, the Union launched a high-level policy dialogue with Africa leading to the establishment of an Africa-EU Strategic Partnership, following which a Joint Africa-EU Strategy was adopted in 2007 and a high-level policy dialogue on Science, Technology and Innovation was established in 2011.

(14) On 31 March 2010, the Commission presented a communication on the Union's role in global health, which called for a more coordinated approach among Member States and across relevant policies to identify and jointly address shared global priorities for health research. ***In that communication, the Commission also restated the need to promote equitable and universal coverage of quality health services, plus effective and fair financing of research that benefits the health of all people.***

(15) In the Council Conclusions of 10 May 2010 on the EU role in global health, the Council called on the Union to promote effective and fair financing of research that benefits the health of all and ensures that innovations and interventions lead to affordable and accessible solutions. In particular, models that dissociate the costs of Research and Development ("R&D") from the prices of medicines should be explored, including the opportunities for technology transfer to developing countries.

(16) In its Communication of 21 September 2011 on partnering in research and innovation, the Commission put partnerships across institutional, national and continental borders at the centre of the Union's research policy.

(17) ***In its Communication of 27 February 2013 entitled "A decent life for all: ending poverty and giving the world a sustainable future", the Commission reaffirmed its commitment to doing its utmost to help achieve the MDG by 2015, and pointed out that EU-funded research under EDCTP1 had contributed to achieving the MDG.***

(18) In line with the objectives of Horizon 2020, any Member State and any country associated to Horizon 2020 should be entitled to participate in the EDCTP2 Programme.

(19) ***Contribution to the exploration of open innovation models for needs-driven research, and available and affordable outcomes in alignment with other Union commitments in health R&D should be considered.***

(20) The Participating States intend to contribute to implementing the EDCTP2 Programme during the period covered by it, namely 2014 – 2024. ***In order to take into account the duration of Horizon 2020, calls for proposals under the EDCTP2 Programme should be launched at the latest by 31 December 2020. In duly justified cases, calls for proposals may be launched by 31 December 2021.***

(21) A ceiling should be established for the Union's financial participation in EDCTP2 Programme for the duration of Horizon 2020. Within the limits of that ceiling, the Union contribution should be equal to the ▌ contribution ***of the states referred to in this Decision*** in order to achieve a high leverage effect and ensure a stronger integration of ***those states' programmes***.

(22) The Union’s financial contribution should be subject to formal commitments from the Participating States to contribute to implementing the EDCTP2 Programme and to the fulfilment of those commitments.

(23) The joint implementation of the EDCTP2 Programme requires an implementation structure. The Participating States have agreed on the implementation structure for EDCTP2 Programme and have set up the EDCTP2-Implementation Structure (‘‘EDCTP2-IS’’). The EDCTP2-IS should be the recipient of the Union’s financial contribution and should ensure the efficient implementation of the EDCTP2 Programme.

(24) EDCTP2 activities should be in line with the objectives and research and innovation priorities of Horizon 2020 and with the general principles and conditions laid down in Article 26 of Regulation (EU) No 1291/2013.

(25) Calls for proposals by EDCTP2-IS should also be published on the single portal for participants, as well as through other Horizon 2020 electronic means of dissemination managed by the Commission.

(26) The Union's financial contribution should be managed in compliance with the principle of sound financial management and in accordance with the relevant rules on indirect management laid down in Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council[1] and Commission Delegated Regulation (EU) No 1268/2012 [2].

[1] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012, p. 1).

[2] Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 (OJ L 362 of 31.12.2012, p. 1).

(27) In order to protect the Union's financial interests, the Commission should have the right to reduce, suspend or terminate the Union's financial contribution if the EDCTP2 Programme is implemented inadequately, partially or late, or if the Participating States do not contribute, or contribute partially or late, to the financing of the EDCTP2 Programme. Those rights should be provided for in the delegation agreement to be concluded between the Union and the EDCTP2-IS.

(28) In order to implement the EDCTP2 Programme efficiently , financial support should be provided by the EDCTP2-IS mainly in the form of grants to participants in actions selected at the level of the EDCTP2-IS. The selection of those actions should be made following open and competitive calls for proposals under the responsibility of the EDCTP2-IS.

(29) Participation in indirect actions under the EDCTP2 Programme is subject to Regulation (EU) No ***1290***/2013 of the European Parliament and of the Council[1]. However, due to the specific operating needs of the EDCTP2 Programme, it is necessary to provide for derogations from that Regulation in accordance with Article 1(3) of that Regulation.

[1] Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006 (OJ ***L 347, 20.12.2013, p. 81).***

(30) Derogations from point (b) of Article ***9***(1), point (c) of Article ***10***(1) and Article ***12*** of Regulation (EU) No ***1290***/2013 are necessary in order to require participation and allow funding of African entities, and allow cooperation through joint calls between the EDCTP2 Programme and any other legal entity.

(31) For the purpose of simplification, administrative burdens should be reduced for all parties. Double audits and disproportionate documentation and reporting should be avoided. When audits are conducted, the specificities of the national programmes should be taken into account, as appropriate.

(32) Audits of recipients of Union funds provided in accordance with this Decision should ensure a reduction of the administrative burden, in compliance with Horizon 2020.

(33) The Union's financial interests should be protected by means of proportionate measures throughout the expenditure life-cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU, Euratom) No 966/2012.

(34) The Commission should conduct interim evaluations, assessing in particular the quality and efficiency of the EDCTP2 Programme, the progress made towards the objectives set and a final evaluation, and should prepare reports on those evaluations.

(35) Upon request from the Commission, the EDCTP2-IS and the Participating States should submit any information the Commission needs to include in the reports on the evaluation of the EDCTP2 Programme.

(36) It is essential that the research activities carried out under the EDCTP2 Programme are in full compliance with the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights and its Supplementary Protocols, ethical principles included in the World Medical Association's Declaration of Helsinki of 2008, the standards of good clinical practice adopted by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use, relevant Union legislation and local ethics requirements of the countries where the research activities are to be conducted.

(37) It is essential that informed consent for clinical trials conducted in developing countries should always be obtained in a way that is truly informed and voluntary.

(38) It is also important that the activities conducted under the EDCTP2 Programme should be coherent with the Union's development policy actions. In this context, synergies between EDCTP2 and the European Development Fund should be sought.

(39) ***Within the objective of cooperation with international development assistance initiatives, EDCTP2 funded activities should take into account the recommendations proposed by the relevant World Health Organisation (WHO) initiatives where appropriate, including the consultative Expert Working Group on Research and Development ("CEWG").***

(40) ***The Scientific Panel for Health was set up by Horizon 2020 as a science-led stakeholder platform, in order to elaborate scientific input, to provide a coherent scientific focused analysis of research and innovation bottlenecks and opportunities related to the Horizon 2020 societal challenge on health, demographic change and well-being, to contribute to the definition of its research and innovation priorities and to encourage Union-wide scientific participation. Through active cooperation with stakeholders, it helps to build capabilities and to foster knowledge-sharing and stronger collaboration across the Union in that field. EDCTP2 should, therefore, collaborate and exchange information with the Scientific Panel for Health, where appropriate.***

(41) Since the objectives of this Decision, namely to contribute to the reduction of the social and economic burden of poverty-related diseases in developing countries, and in particular in sub-Saharan Africa, by accelerating the clinical development of effective, safe***, accessible, suitable*** and affordable medical interventions for poverty-related diseases, cannot be sufficiently achieved by the Member States due to the lack of necessary critical mass to be achieved, both in human and financial terms, and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary for those objectives,

HAVE ADOPTED THIS DECISION:

Article 1

Participation in the second European and Developing Countries Clinical Trials Partnership Programme

1. The Union shall participate in the second European and Developing Countries Clinical Trials Partnership Programme (the "EDCTP2 Programme"), jointly undertaken by ▌ Austria, Denmark, ***Finland,*** France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom (the "Participating States") in accordance with the conditions laid down in this Decision.

2. Any Member State other than those listed in paragraph 1 and any other country associated to Horizon 2020 may participate in the EDCTP2 Programme, provided it fulfils the condition set out in point (e) of Article 3(1) of this Decision. If it fulfils the condition set out in point (e) of Article 3(1), it shall be regarded as a Participating State for the purposes of this Decision.

Article 2

Union's financial contribution

1. The Union's financial contribution, including EFTA appropriations, to the EDCTP2 Programme shall be up to EUR 683 000 000 to equal the contributions of Participating States.

2. The Union's financial contribution shall be paid from the appropriations in the general budget of the Union allocated to the relevant parts of the Specific Programme implementing Horizon 2020, established by ***Decision 2013/743/EU, and in particular from the appropriations under the specific objective "Health, demographic change and wellbeing"*** in accordance with point (c)(vi) of Article 58(1) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012.

3. Up to 6 % of the Union’s financial contribution referred to in paragraph 1 may be used by the implementing structure of EDCTP2 (the "EDCTP2-IS") to cover its administrative costs.

Article 3

Conditions for the Union’s financial contribution

1. The Union’s financial contribution shall be conditional upon the following:

(a) the demonstration by the Participating States that the EDCTP2 Programme is set up in accordance with Annexes I, II and III;

(b) the designation by the Participating States or organisations designated by the Participating States of the EDCTP2-IS, an entity with legal personality, as the structure responsible for implementing the EDCTP2 Programme and for receiving, allocating and monitoring the Participating States' contribution, as well as the Union’s financial contribution;

(c) the demonstration by the EDCTP2-IS of its capacity to implement the EDCTP2 Programme, including receiving, allocating and monitoring the Union’s contribution in the framework of indirect management of the Union budget in accordance with Articles 58, 60 and 61 of Regulation (EU, Euratom) No 966/2012;

(d) the establishment of a governance model for the EDCTP2 Programme in accordance with Annex III; and

(e) the commitment by each Participating State to contribute to the financing of the EDCTP2 Programme.

2. During the implementation of the EDCTP2 Programme, the Union's financial contribution shall be conditional upon the following:

(a) the implementation by the EDCTP2-IS of the objectives set out in Annex I, and activities set out in Annex II, to this Decision, in particular the activities and indirect actions that it funds, in compliance with Regulation (EU) No 1290/2013 as referred to in Article 6 of this Decision;

(b) the maintenance of an appropriate and efficient governance model for the EDCTP2 Programme in accordance with Annex III;

(c) the compliance by the EDCTP2-IS with the reporting requirements set out in Article 60(5) of Regulation (EU, Euratom) No 966/2012; and

(d) the fulfilment of the commitments referred to in point (e) of paragraph 1.

Article 4

Activities of the EDCTP2 Programme

1. The activities of the EDCTP2 Programme shall meet the objectives described in Annex I and shall comply with Annex II.

   Activities may include national programme activities of Participating States***, including activities undertaken by public or private not-for-profit research organisations,*** and new activities, including calls for proposals managed by the EDCTP2-IS.

   Activities shall be included in the work plan of the EDCTP2 Programme adopted annually by the EDCTP2-IS ("the EDCTP2 annual work plan"), following the positive outcome of their external evaluation by international peer review ***with regard*** to the objectives of the EDCTP2 Programme.

2. The EDCTP2 annual work plan shall detail the budgeted value of each activity and shall provide for the allocation of the funding managed by the EDCTP2-IS, including the Union's financial contribution.

   The EDCTP2 annual work plan shall differentiate between the activities funded or co-funded by the Union and those funded by Participating States or other revenues.

3. The EDCTP2-IS shall implement the EDCTP2 annual work plan.

The EDCTP2-IS shall monitor and report to the Commission on the implementation of all the activities included therein or selected following calls for proposals managed by the EDCTP2-IS.

4. Activities included in the EDCTP2 annual work plan that are not funded by the EDCTP2-IS shall be implemented in compliance with common principles to be agreed by the Participating States and the Commission, taking into account the principles set out in this Decision, in Title VI of Regulation (EU, Euratom) No 966/2012 and in Regulation (EU) No ***1290/2013,*** in particular the principles of equal treatment, transparency, independent peer review evaluation and selection. The Participating States and the Commission shall also agree on the reporting requirements to the EDCTP2-IS, including with regard to indicators inserted into each of those activities.

Any activity funded by the EDCTP2-IS in accordance with the EDCTP2 annual work plan, or following calls for proposals managed by the EDCTP2-IS, shall be considered to be an indirect action within the meaning of Regulation (EU) No ***1290/2013,*** and shall be implemented in accordance with Article 6 of this Decision.

5. Any communication or publication ***in the area of*** the activities of the EDCTP2 Programme, ***and performed in close collaboration with EDCTP2,*** whether undertaken by the EDCTP2-IS, a Participating State, or participants to an activity, shall be labelled or co-labelled as "[name of the activity] is part of the EDCTP2 programme supported by the European Union".

Article 5

Contributions from Participating States

1. Contributions from the Participating States shall consist of the following:

   (a) financial contributions to the EDCTP2-IS;

   (b) in-kind contributions consisting of the costs incurred by the Participating States in implementing activities included ***and clearly identified*** in the EDCTP2 annual work plan, or in relation to the administrative budget of the EDCTP2-IS.

2. For the purpose of evaluating the contributions referred to in point (b) of paragraph 1, the costs shall be determined in accordance with the usual accounting practices and accounting standards of the Participating State concerned and to the applicable International Accounting Standards / International Financial Reporting Standards.

Article 6

Rules for participation and dissemination

1. Regulation (EU) No ***1290/2013*** shall apply to indirect actions selected and funded by the EDCTP2-IS ***on the basis of*** the EDCTP2 annual work plan or following calls for proposals managed by the EDCTP2-IS. In accordance with that Regulation, the EDCTP2-IS shall be considered to be a funding body and shall provide financial support to indirect actions in accordance with Annex II to this Decision.

2. By way of derogation from point (b) of Article ***9***(1) of Regulation (EU) No ***1290/2013,*** the minimum number of participants shall be two legal entities established in two different Participating States and a third legal entity in a sub-Saharan African country listed in the EDCTP2 annual work plan.

3. By way of derogation from point (c) of Article ***10***(1) of Regulation (EU) No ***1290/2013,*** any legal entity established in a sub-Saharan country listed in the EDCTP2 annual work plan shall be eligible for funding.

4. Where such an activity is included in the EDCTP2 annual work plan, the EDCTP2-IS may launch joint calls with third countries or their scientific and technological organisations and agencies, with international organisations or with other third parties, in particular non-governmental organisations, in accordance with the rules developed based on Article ***12*** of Regulation (EU) ***No 1290/2013.***

Article 7

Agreements between the Union and the EDCTP2-IS

1. Subject to a positive ex-ante assessment of the EDCTP2-IS in accordance with Article 61(1) of Regulation (EU, Euratom) No 966/2012, the Commission, on behalf of the Union, shall conclude a delegation agreement and annual transfer of funds agreements with the EDCTP2-IS.

2. The delegation agreement referred to in paragraph 1 shall be concluded in accordance with Article 58(3) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012 and Article 40 of Delegated Regulation (EU) No 1268/2012. It shall also set out, inter alia, the following:

   (a) the requirements for the EDCTP2-IS contribution regarding the performance indicators set out in Annex II to Decision ***2013/743/EU***;

   (b) the requirements for the EDCTP2-IS contribution in relation to the monitoring referred to in Annex III to Decision ***2013/743/EU***;

   (c) the specific performance indicators related to the functioning of the EDCTP2-IS;

(d) the requirements for the EDCTP2-IS regarding the provision of information on administrative costs and on detailed figures concerning the implementation of the EDCTP2 Programme;

(e) the arrangements regarding the provision of data necessary to ensure that the Commission is able to meet its dissemination and reporting obligations;

(f) the arrangements for the approval or rejection by the Commission of the draft EDCTP2 annual work plan, before it is adopted by the EDCTP2-IS; and

(g) provisions for the publication of calls for proposals by EDCTP2, in particular on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission.

Article 8

Termination, reduction or suspension of the Union's financial contribution

If the EDCTP2 Programme is not implemented or is implemented inadequately, partially or late, the Commission may terminate, proportionately reduce or suspend the Union's financial contribution in line with the actual implementation of the EDCTP2 Programme.

If the Participating States do not contribute, contribute partially or late to the financing of the EDCTP2 Programme, the Commission may terminate, proportionately reduce or suspend the Union's financial contribution, taking into account the amount of funding allocated by the Participating States to implement the EDCTP2 Programme.

Article 9

Ex-post audits

1. Ex-post audits of expenditure on indirect actions shall be carried out by the EDCTP2-IS in accordance with Article ***29*** of Regulation (EU) No ***1291/2013.***

2. The Commission may decide to carry out itself the audits referred to in paragraph 1. ***In such cases, it shall do so in accordance with the applicable rules, in particular the provisions of Regulations (EU, Euratom) No 966/2012, (EU) No 1290/2013 and (EU) No 1291/2013 .***

Article 10

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Decision are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.

2. The EDCTP2-IS shall grant Commission staff and other persons authorised by it, as well as the Court of Auditors, access to its sites and premises and to all the information, including information in electronic format, needed in order to conduct their audits.

3. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with ***the provisions and procedures laid down in Council Regulation (Euratom, EC) No 2185/96[1] and Regulation (EU, Euratom) No 883/2013*** of the European Parliament and of the Council[2] with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded in accordance with this Decision.

4. Contracts, grant agreements and grant decisions resulting from the implementation of this Decision shall contain provisions expressly empowering the Commission, the EDCTP2-IS, the Court of Auditors and OLAF to conduct such audits and investigations, in accordance with their competences.

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1 Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (***OJ L 292, 15.11.1996, p. 2).***

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

5. In implementing the EDCTP2 Programme, the Participating States shall take the legislative, regulatory, administrative and other measures necessary to protect the Union's financial interests, in particular, to ensure full recovery of any amounts due to the Union in accordance with Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012.

Article 11
Communication of information

1. On request, the EDCTP2-IS shall send any information necessary for preparation of the reports referred to in Article 12 to the Commission.

2. The Participating States shall submit to the Commission, through the EDCTP2-IS, any information that is requested by the European Parliament, the Council or the Court of Auditors concerning the financial management of the EDCTP2 Programme.

3. The Commission shall include the information referred to in paragraph 2 of this Article in the reports referred to in Article 12.

Article 12

Evaluation

1. By ***30 June*** 2017 the Commission shall ***carry out , with the assistance of independent experts,*** an interim evaluation of the EDCTP2 Programme. The Commission shall prepare a report on that evaluation which includes conclusions of the evaluation and observations by the Commission. The Commission shall send that report to the European Parliament and to the Council by ***31 December 2017. The result of the interim evaluation of EDCTP2 Programme shall be taken into account in the interim evaluation of Horizon 2020.***

2. At the end of the Union participation in EDCTP2 but not later than 31 December 2023, the Commission shall conduct another interim evaluation of the EDCTP2 Programme. The Commission shall prepare a report on that evaluation which is to include the results of that evaluation. The Commission shall send that report to the European Parliament and to the Council.

3. The Commission shall conduct a final evaluation of the EDCTP2 Programme by 31 December 2026. The Commission shall send the results of that evaluation to the European Parliament and to the Council.

Article 13

Entry into force

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

Article 14

Addressees

This Decision is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President

ANNEX I

OBJECTIVES OF THE EDCTP2 PROGRAMME

EDCTP2 shall contribute to the following objectives:

(1) General Objective

EDCTP2 shall contribute to the reduction of the social and economic burden of poverty-related diseases in developing countries, in particular in sub-Saharan Africa, by accelerating the clinical development of effective, safe***, accessible, suitable*** and affordable medical interventions[1] for poverty-related diseases, in partnership with sub-Saharan Africa.

(2) Specific Objectives

In order to contribute to the general objective, EDCTP2 shall achieve the following specific objectives:

[1] ***For the purpose of this decision, "medical interventions" encompass measures whose purpose is to improve or sustain health or alter the course of a disease, in particular prevention and treatment based on medicinal products such as drugs, microbicides or vaccines, including their delivery modality, follow up of treatment and prevention in the affected population as well as medical diagnostics to detect and monitor disease/health evolution.***

(a) an increased number of new or improved medical interventions for HIV/AIDS, tuberculosis, malaria and other poverty-related diseases, ***including neglected ones,*** and by the end of the programme to have delivered at least one new medical intervention; to have issued ***approximately*** 30 guidelines for improved or extended use of existing medical interventions; and to have progressed the clinical development of ***approximately*** 20 candidate medical interventions;

(b) strengthened cooperation with sub-Saharan African countries, in particular on building their capacity for conducting clinical trials in compliance with fundamental ethical principles and relevant national, Union and international legislation, including the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights and its Supplementary Protocols, the World Medical Association's Declaration of Helsinki of 2008 and the standards on good clinical practice adopted by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH);

(c) better coordination, alignment and***, where appropriate,*** integration of relevant national programmes to increase the cost-effectiveness of European public investments. ***Moreover, the research priorities should be established in an objective-orientated manner in order to accelerate results and contribute to the control and eradication of poverty-related diseases, including neglected ones;***

(d) extended international cooperation with other public and private ***partners to ensure that the impact of all research is maximised and that synergies can be taken into consideration and achieve leveraging of resources and investments***;

(e) an increased impact due to effective cooperation with relevant Union initiatives, including its development assistance.

(3) Operational ***Indicators and*** Objectives

In order to reach the specific objectives set out in point 2, the following ***indicators shall be monitored during the course*** of the EDCTP2 programme ▌:

(a) Support clinical trials on new or improved medical interventions for poverty-related diseases***, including neglected ones,*** through partnerships between European and developing countries, in particular sub-Saharan Africa:

Indicator: increase the number of supported clinical trials to at least 150, compared to 88 under EDCTP1***, that lead to new products, processes, methodologies, diagnostics, treatments or preventions.***

Indicator: sustain or increase the proportion of clinical trials funded by the EDCTP2-IS with African leadership ▌.

Indicator: aim to increase the number of peer-reviewed scientific articles published to ***three times that of EDCTP1.***

(b) Support research capacity-building activities in sub-Saharan Africa enabling clinical trials to be conducted and help to reduce the brain drain:

Indicator: ***aim to*** sustain or increase the ***participation*** of sub-Saharan African countries ***in*** the EDCTP2 Programme***.***

Indicator: increase the number of fellowships to sub-Saharan African researchers and MSc/PhD students ***from*** 400 under EDCTP1, ***strongly encouraging and supporting them to continue*** their research career in sub-Sahara Africa ***following*** their fellowship.

Indicator: increase the number of capacity-building activities supported for conducting clinical trials in sub-Saharan Africa ***from*** 74 under EDCTP1.

(c) Develop a ▌research agenda ***for EDCTP2 based on common*** criteria for priority setting and common evaluation, ***whilst recognising that contributions from national programmes and EDCTP may differ.***

Target: at least 50 % of the public investment by Participating States are integrated, aligned or coordinated through the EDCTP2 Programme.

(d) Ensure efficiency of the implementation of the EDCTP2 Programme:

Target: administrative costs are below 5 % of the EDCTP2-IS budget.

(e) Establish cooperation and launch joint actions with other public and private funders.

Target: increase the contributions received from developing countries to at least EUR 30 000 000 compared to EUR 14 000 000 under EDCTP1.

Target: obtain additional contributions, either public or private, of at least EUR 500 000 000, compared to EUR 71 000 000 under EDCTP1.

(f) Establish cooperation and launch joint actions with Union, national and international development assistance initiatives***, including where appropriate, relevant WHO initiatives,*** in order to ensure complementarity and increase the impact of the results of EDCTP-funded activities.

ANNEX II

ACTIVITIES AND IMPLEMENTATION OF THE EDCTP2 PROGRAMME

(1) Activities

The EDCTP2 Programme shall include the following activities:

(a) promoting networking, coordination, alignment, ***collaboration*** and integration of national research programmes and activities on poverty-related ***diseases, including neglected ones,*** at scientific, management and financial level;

(b) supporting clinical trial research and related activities on poverty-related diseases, in particular HIV/AIDS, malaria, tuberculosis and ***other poverty-related diseases, including neglected ones***;

(c) fostering capacity development for clinical trials and related research in developing countries***, in particular in Sub-Saharan Africa,*** through grants for: career development of junior and senior fellows, promoting mobility, staff exchange grants, research training networks, strengthening ethics and regulatory bodies, mentoring and partnerships at individual or institutional ***or regional*** level;

(d) establishing cooperation and launching joint actions with other public and private funders;

(e) assuring awareness, endorsement and acknowledgment of the EDCTP2 Programme and its activities through advocacy and communication***, not only at Union level and in developing countries, but also at global level***.

(2) Programme definition and implementation

The EDCTP2 Programme shall be implemented by the EDCTP2-IS on the basis of an annual work plan and a multiannual strategic work plan prepared by the EDCTP2-IS***, in consultation with the relevant stakeholders,*** and adopted by the General Assembly of the EDCTP2-IS following international peer-review and subject to the prior approval by the Commission.

The annual work plan shall identify topics and activities to be implemented, including calls for proposals to be launched by EDCTP-IS to select and fund indirect actions, as well as the budgets and EDCTP2 funding for those topics and activities. ***Where appropriate, EDCTP2 may exchange information with other public or private initiatives, including those under Horizon 2020.***

The annual work plan shall differentiate between the activities funded or co-funded by the Union and those funded by Participating States or other revenues.

The multiannual strategic work plan shall set a common strategic research agenda which shall be prepared and updated on an annual basis.

EDCTP2-IS shall monitor the implementation of the activities included in the work plan, including indirect actions selected through calls for proposals it manages. It shall allocate and manage funding to those in accordance with this Decision and the effective implementation of activities selected and identified in the previous work plans.

(3) Deliverables expected from the implementation of the EDCTP2 Programme

An annual report shall be provided by the EDCTP2-IS, which shall give a detailed overview of the implementation of the EDCTP2 Programme. That overview shall provide information on each activity selected in accordance with the work plan, including indirect actions selected through calls for proposals managed by the EDCTP2-IS. Such information shall include a description of each activity, including indirect action, its budget, the value of the funding allocated to it if any, and its status.

With regard to calls managed by the EDCTP2-IS, the annual report shall moreover include information on the number of projects submitted and selected for funding, the detailed use of the Union's financial contribution, the distribution of national and other contributions ***including specification on the type of in kind contributions***, the types of participants, country statistics, brokerage events and dissemination activities. ***The annual report may also include, when appropriate, information on measures taken to facilitate access to products stemming from EDCTP2.***

The annual report shall also include information on the progress towards achieving the EDCTP2 Programme objectives set out in Annex I.

In addition, the EDCTP2-IS shall provide any report and information foreseen by this Decision and the agreement concluded with the Union.

ANNEX III

GOVERNANCE OF THE EDCTP2 PROGRAMME

The organisational structure of the EDCTP2 Programme shall be as follows:

(1) The EDCTP2-IS shall be governed by a general assembly ("GA"), in which all Participating States are represented.

The GA's principal responsibility shall be to ensure that all necessary activities are undertaken to achieve the objectives of the EDCTP2 Programme, and that its resources are properly and efficiently managed. It shall adopt the annual work plan.

The GA shall decide by consensus. Failing consensus, the GA shall take its decisions by a majority of at least 75 % of the votes.

The Union, represented by the Commission, shall be invited to all GA meetings as an observer, and shall receive all necessary documents. It may take part in discussions.

(2) The GA shall appoint a Management Board that shall supervise the secretariat of the EDCTP2-IS ("'SEC") established by the GA as the executive body of the EDCTP2 Programme. ***The Management Board shall consist of such number of Board Members as the GA may determine, but not less than five.***

SEC shall have ***at least*** the following tasks:

▌

(a) execute the annual work plan;

(b) provide support to the GA;

▌

(c) monitor and report on the implementation of the EDCTP2 Programme;

(d) manage the financial contributions from the Participating States, the Union and any third party, and report on their use to the GA and the Union;

(e) increase the visibility of the EDCTP2 Programme through advocacy and communication;

(f) liaise with the Commission in accordance with the delegation agreement referred to in Article 7.

(3) A Scientific Advisory Committee ("SAC") shall advise the GA on the strategic priorities of the EDCTP2 Programme.

The SAC shall be appointed by the GA and consist of European and African independent experts competent in areas relevant to the EDCTP2 Programme***, taking into account gender balance.***

The SAC shall have the following tasks:

(a) advise the GA on priorities and strategic needs regarding clinical trials in Africa;

(b) ▌ advise the GA on the content, scope and dimension of the EDCTP2 draft annual work plan, including diseases covered and approaches to be adopted, from a scientific and technical standpoint;

(c) review the scientific and technical aspects of the implementation of the EDCTP2 Programme and deliver an opinion on its annual report.

In exercising its tasks, the SAC shall monitor and promote high standards of ethical conduct of clinical trials and engage with vaccine regulatory authorities.

The SAC may recommend to the GA the setting up of scientific subcommittees, task forces and working groups.

The GA shall establish the number of SAC members, their voting rights and the arrangements for their appointment in accordance with Article ***40*** of Regulation (EU) No ***1290/2013.*** The GA may set up specialised working groups under the SAC with additional independent experts for specific tasks.

P7_TA-PROV(2014)0367

European Account Preservation Order ***I

European Parliament legislative resolution of 15 April 2014 on the proposal for a regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters (COM(2011)0445 – C7-0211/2011 – 2011/0204(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2011)0445),

– having regard to Article 294(2) and points (a), (e) and (f) of Article 81(2)of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0211/2011),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 26 April 2012[1],

– having regard to the undertaking given by the Council representative by letter of 6 February 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Economic and Monetary Affairs (A7-0227/2013),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

[1] OJ C 191, 29.6.2012, p. 57.

P7_TC1-COD(2011)0204

Position of the European Parliament adopted at first reading on 15 April 2014 with a view to the adoption of Regulation (EU) No .../2014 of the European Parliament and of the Council establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters

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 points (a), (e) and (f) of Article 81(2) thereof,

Having regard to the proposal from the European Commission,

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

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

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

▌

1 OJ C ***191, 29.6.2012,*** p. ***57.***

2 Position of the European Parliament of 15 April 2014.

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union ***is to*** adopt ▌ measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

(2) In accordance with Article 81(2) of the Treaty on the Functioning of the European Union (TFEU), ***such*** measures ***may include measures aimed*** at ensuring, *inter alia*, the mutual recognition and enforcement of judgments between Member States, effective access to justice and the elimination of obstacles to the proper functioning of civil proceedings***, if necessary*** by promoting the compatibility of the rules on civil procedure applicable in the Member States.▌

▌

(3) ***On 24 October 2006, by way of the "***Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts***", the Commission*** launched a consultation on the need for a uniform European procedure for the preservation of bank accounts ***and the possible features of such a procedure***.

(4) ***In the*** Stockholm Programme of December 2009[1], which sets freedom, security and justice priorities for 2010 to 2014, ***the European Council*** invited the Commission to ***assess the need for, and the feasibility of, providing for certain provisional, including protective, measures at Union level, to prevent for example the disappearance of assets before the enforcement of a claim, and to put*** forward appropriate proposals for improving the efficiency of enforcement of ***judgments*** in the Union regarding bank accounts and debtors' assets.

▌

(5) National procedures for obtaining protective measures such as account preservation orders exist in all Member States***,*** but the conditions for the grant of such ***measures*** and the efficiency of ***their*** implementation vary considerably. Moreover, recourse to national protective measures ***may prove*** cumbersome ▌ in cases having cross-border implications, in particular when the creditor seeks to preserve several accounts located in different Member States. ***It therefore seems necessary and appropriate to adopt a binding and directly applicable legal instrument of the Union which establishes a new*** Union procedure allowing, in cross-border ***cases, for the preservation, in an efficient and*** speedy ***way, of funds held in*** bank accounts.

[1] OJ C 115, 4.5.2010, p. 1.

(6) The procedure established by this Regulation should ***serve as*** an ***additional and*** optional means for the ***creditor, who remains free to make use of any other procedure for obtaining an equivalent measure under national law.***

(7) A creditor should be able to obtain a protective measure in the form of a European Account Preservation Order ("Preservation Order" or "Order") preventing the transfer or withdrawal of funds held by his debtor in a bank account maintained in a Member State if there is a risk that, without such a measure, the subsequent enforcement of his claim against the debtor will be impeded or made substantially more difficult. The preservation of funds held in the debtor's account should have the effect of preventing not only the debtor himself, but also persons authorised by him to make payments through that account, for example by way of a standing order or through direct debit or the use of a credit card, from using the funds.

(8) The scope of this Regulation should cover all civil and commercial matters apart from certain well-defined matters. In particular, this Regulation should not apply ***to claims against a debtor*** in ▌ insolvency proceedings. ***This should mean that no Preservation Order can be issued against the debtor once insolvency proceedings as defined in Council Regulation (EC) No 1346/2000[1] have been opened in relation to him. On the other hand, the exclusion should allow the Preservation Order to be used to secure the recovery of detrimental payments made by such a debtor to third parties.***

(9) This Regulation should apply to accounts held with credit institutions whose business is to take deposits or other repayable funds from the public and to grant credits for their own account.

It should thus not apply to financial institutions which do not take such deposits, for instance institutions providing financing for export and investment projects or projects in developing countries or institutions providing financial market services. Furthermore, this Regulation should not apply to accounts held by or with central banks when acting in their capacity as monetary authorities, nor to accounts that cannot be preserved by national orders equivalent to a Preservation Order or which are otherwise immune from seisure under the law of the Member State where the account in question is maintained.

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1 ***Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1).***

(10) ***This Regulation should apply to cross-border cases only and should define what constitutes a cross-border case in this particular context. For the purposes of this Regulation, a cross-border case should be considered to exist when the court dealing with the application for the Preservation Order is located in one Member State and the bank account concerned by the Order is maintained in another Member State. A cross-border case should also be considered to exist when the creditor is domiciled in one Member State and the court and the bank account to be preserved are located in another Member State.***

This Regulation should not apply to the preservation of accounts maintained in the Member State of the court seised of the application for the Preservation Order if the creditor's domicile is also in that Member State, even if the creditor applies at the same time for a Preservation Order which concerns an account or accounts maintained in another Member State. In such a case, the creditor should make two separate applications, one for a Preservation Order and one for a national measure.

(11) The procedure ***for a Preservation Order*** should be available to a ***creditor*** wishing to secure the enforcement of a later judgment on the substance ***of the matter*** prior to initiating proceedings on the substance ***of the matter*** and at any stage during ***such*** proceedings. It should also be available to a ***creditor*** who has already obtained a judgment***, court settlement or authentic instrument requiring the debtor to pay the creditor's claim.***

(12) ***The Preservation Order should be available for the purpose of securing claims that have already fallen due. It should also be available for claims that are not yet due as long as such claims arise from a transaction or an event that has already occurred and their amount can be determined, including claims relating to tort, delict or quasi-delict and civil claims for damages or restitution which are based on an act giving rise to criminal proceedings.***

A creditor should be able to request that the Preservation Order be issued in the amount of the principal claim or in a lower amount. The latter may be in his interest, for instance, where he has already obtained some other security for part of his claim.

(13) In order to ensure ▌ a close link between the ***proceedings for the Preservation Order and the proceedings on the substance of the matter, international jurisdiction to issue the Order*** should lie with the courts ***of the Member State whose courts have*** jurisdiction to rule on the substance of the matter. ***For the purposes of this Regulation, the notion of proceedings on the substance of the matter should cover any proceedings aimed at obtaining an enforceable title on the underlying claim including, for instance, summary proceedings concerning orders to pay and proceedings such as the French "procédure de référé". If the debtor is a consumer domiciled in a Member State, jurisdiction to issue the Order should lie only with the courts of that Member State***.

(14) The conditions for issuing the ***Preservation Order*** should strike an appropriate balance between the ***interest*** of the creditor in obtaining an ***Order*** and the ***interest*** of the debtor in preventing abuse of the Order.

Consequently, ***when the creditor applies for a Preservation Order*** prior to obtaining a judgment ▌, the court ***with which the application is lodged should have to be satisfied on the basis of the evidence submitted by the creditor that the creditor is likely to succeed on the substance of his*** claim against the debtor ▌**.**

Furthermore, the creditor should be required in all situations, including when he has already obtained a judgment, to demonstrate to the satisfaction of the court that his claim is in urgent need of judicial protection and that, without the Order, the enforcement of the existing or a future judgment may **be** ***impeded or made substantially more difficult because there is a real risk that, by the time the creditor is able to have the existing or a future judgment enforced, the debtor may have dissipated, concealed or destroyed his assets or have disposed of them under value, to an unusual extent or through unusual action.***

The court should assess the evidence submitted by the creditor to support the existence of such a risk. This could relate, for instance, to the debtor's conduct in respect of the creditor's claim or in a previous dispute between the parties, to the debtor's credit history, to the nature of the debtor's assets and to any recent action taken by the debtor with regard to his assets. In assessing the evidence, the court may consider that withdrawals from accounts and instances of expenditure by the debtor to sustain the normal course of his business or recurrent family expenses are not, in themselves, unusual. The mere non-payment or contesting of the claim or the mere fact that the debtor has more than one creditor should not, in themselves, be considered sufficient evidence to justify the issuing of an Order. Nor should the mere fact that the financial circumstances of the debtor are poor or deteriorating, in itself, constitute a sufficient ground for the issuing of an Order. However, the court may take these factors into account in the overall assessment of the existence of the risk.

(15) In order to ensure the surprise effect of the ***Preservation Order, and to ensure that it will be a useful tool for a creditor trying to recover debts from a debtor in cross-border cases***, the debtor should not be informed about the ***creditor's*** application ***nor*** be heard prior to ***the*** issue ***of the Order*** or notified of the Order prior to its implementation***. Where, on the basis of the evidence and information provided by the creditor or, if applicable, by his witness(es), the court is not satisfied that the preservation of the account or accounts in question is justified, it should not issue the Order.***

(16) ***In situations where the creditor applies for a Preservation Order before initiating proceedings on the substance of the matter before a court, this Regulation should oblige him to initiate such proceedings within a specified period of time and should also oblige him to provide proof of such initiation to the court with which he lodged his application for an Order. Should the creditor fail to comply with this obligation, the Order should be revoked by the court of its own motion or should terminate automatically.***

(17) ***In view of the absence of a prior hearing of the debtor, this Regulation should provide for specific safeguards in order to prevent abuse of the Order and to protect the debtor's rights.***

(18) ***One such important safeguard should be the possibility of requiring the creditor to provide security so as to ensure that the debtor can be compensated at a later stage for any damage caused to him by the Preservation Order. Depending on national law, such security could be provided in the form of a security deposit or an alternative assurance, such as a bank guarantee or a mortgage. The court should have discretion in determining the amount of security sufficient to prevent abuse of the Order and to ensure compensation to the debtor and it should be open to the court, in the absence of specific evidence as to the amount of the potential damage, to consider the amount in which the Order is to be issued as a guideline for determining the amount of the security.***

In cases where the creditor has not yet obtained a judgment, court settlement or authentic instrument requiring the debtor to pay the creditor's claim, the provision of security should be the rule and the court should dispense with this requirement, or require the provision of security in a lower amount, only exceptionally if it considers that such security is inappropriate, superfluous or disproportionate in the circumstances of the case. Such circumstances could be, for instance, that the creditor has a particularly strong case but does not have sufficient means to provide security, that the claim relates to maintenance or to the payment of wages or that the size of the claim is such that the Order is unlikely to cause any damage to the debtor, for instance a small business debt.

In cases where the creditor has already obtained a judgment, court settlement or authentic instrument, the provision of security should be left to the discretion of the court. The provision of security may, for instance, be appropriate, except in the abovementioned exceptional circumstances, where the judgment the enforcement of which the Preservation Order intends to secure is not yet enforceable or only provisionally enforceable due to a pending appeal.

(19) Another important element for striking an appropriate balance between the creditor's and the debtor's interests should be a rule on the creditor's liability for any damage caused to the debtor by the Preservation Order. This Regulation should therefore, as a minimum standard, provide for the liability of the creditor where the damage caused to the debtor by the Preservation Order is due to fault on the creditor's part. In this context, the burden of proof should lie with the debtor. As regards the grounds for liability specified in this Regulation, provision should be made for a harmonised rule establishing a rebuttable presumption of fault on the part of the creditor.

Furthermore, the Member States should be able to maintain or introduce in their national law grounds for liability other than those specified in this Regulation. For such other grounds of liability, the Member States should also be able to maintain or introduce other types of liability, such as strict liability.

This Regulation should also lay down a conflict-of-laws rule specifying that the law applicable to the creditor's liability should be the law of the Member State of enforcement. Where there are several Member States of enforcement, the law applicable should be the law of the Member State of enforcement in which the debtor is habitually resident. In a case in which the debtor is not habitually resident in any of the Member States of enforcement, the law applicable should be the law of the Member State of enforcement with which the case has the closest connection. In determining the closest connection, the size of the amount preserved in the different Member States of enforcement could be one of the factors to be taken into account by the court.

(20) ***In order to overcome existing practical difficulties in obtaining information about the whereabouts of the debtor's bank account in a cross-border context, this Regulation should set out a mechanism allowing the creditor to request that the information needed to identify the debtor's account be obtained by the court, before a Preservation Order is issued, from the designated information authority of the Member State in which the creditor believes that the debtor holds an account. Given the particular nature of such an intervention by public authorities and of such access to private data, access to account information should, as a rule, be given only in cases where the creditor has already obtained an enforceable judgment, court settlement or authentic instrument. However, by way of exception, it should be possible for the creditor to make a request for account information even though his judgment, court settlement or authentic instrument is not yet enforceable. Such a request should be possible where the amount to be preserved is substantial taking into account the relevant circumstances and the court is satisfied, on the basis of the evidence submitted by the creditor, that there is an urgent need for such account information because there is a risk that, without it, the subsequent enforcement of the creditor's claim against the debtor is likely to be jeopardised and that this could consequently lead to a substantial deterioration of the creditor's financial situation.***

To allow that mechanism to work, the Member States should make available in their national law one or more methods for obtaining such information which are effective and efficient and which are not disproportionately costly or time-consuming. The mechanism should apply only if all the conditions and requirements for issuing the Preservation Order are met and the creditor has duly substantiated in his request why there are reasons to believe that the debtor holds one or more accounts in a specific Member State, for instance because the debtor works or exercises a professional activity in that Member State or has property there.

(21) ***In order to ensure protection of the personal data of the debtor, the information obtained regarding the identification of the debtor's bank account or accounts should not be provided to the creditor. It should be provided only to the requesting court and, exceptionally, to the debtor's bank if the bank or other entity responsible for enforcing the Order in the Member State of enforcement is not able to identify an account of the debtor on the basis of the information provided in the Order, for instance where there are accounts held with the same bank by several persons having the same name and the same address. Where, in such a case, it is indicated in the Order that the number or numbers of the account(s) to be preserved was or were obtained through a request for information, the bank should request that information from the information authority of the Member State of enforcement and should be able to make such a request in an informal and simple manner.***

(22) ***This Regulation should grant the creditor the right to appeal against a refusal to issue the Preservation Order. That right should be without prejudice to the possibility for the creditor to make a new application for a Preservation Order on the basis of new facts or new evidence.***

(23) ***Enforcement structures for preserving bank accounts vary considerably in the Member States. In order to avoid duplication of those structures in the Member States and to respect national procedures to the extent possible, this Regulation should, as regards the enforcement and actual implementation of the Preservation Order, build on the methods and structures in place for the enforcement and implementation of equivalent national orders in the Member State in which the Order is to be enforced.***

(24) ***In order to ensure swift enforcement, this Regulation should provide for transmission of the Order from the Member State of origin to the competent authority of the Member State of enforcement by any appropriate means which ensure that the content of the documents transmitted is true and faithful and easily legible.***

(25) ***Upon receiving the Preservation Order, the competent authority of the Member State of enforcement should take the necessary steps to have the Order enforced in accordance with its national law, either by transmitting the Order received to the bank or other entity responsible for enforcing such orders in that Member State or, where national law so provides, by otherwise instructing the bank to implement the Order.***

(26) ***Depending on the method available under the law of the Member State of enforcement for equivalent national orders, the Preservation Order should be implemented by blocking the preserved amount in the debtor's account or, where national law so provides, by transferring that amount to an account dedicated for preservation purposes, which could be an account held by either the competent enforcement authority, the court, the bank with which the debtor holds his account or a bank designated as coordinating entity for the preservation in a given case.***

(27) ***This Regulation should not prevent the payment of fees for the enforcement of the Preservation Order from being requested in advance. This issue should be left to the national law of the Member State in which the Order is to be enforced.***

(28) ***A Preservation Order should have the same rank, if any, as an equivalent national order in the Member State of enforcement. If, under national law, certain enforcement measures have priority over preservation measures, the same priority should be given to them in relation to Preservation Orders under this Regulation. For the purposes of this Regulation, the in personam orders which exist in some national legal systems should be considered to be equivalent national orders.***

(29) ***This Regulation should provide for the imposition on the bank or other entity responsible for enforcing the Preservation Order in the Member State of enforcement of an obligation to declare whether and, if so, to what extent the Order has led to the preservation of any funds of the debtor, and of an obligation on the creditor to ensure the release of any funds preserved that exceed the amount specified in the Order.***

(30) ***This Regulation should safeguard the debtor's right to a fair trial and his right to an effective remedy and should therefore, having regard to the ex parte nature of the proceedings for the issue of the Preservation Order, enable him to contest the Order or its enforcement on the grounds provided for in this Regulation immediately after the implementation of the Order.***

(31) ***In this context, this Regulation should require that the Preservation Order, all documents submitted by the creditor to the court in the Member State of origin and the necessary translations be served on the debtor promptly after the implementation of the Order. The court should have discretionary powers to append any further documents on which it based its decision and which the debtor might need for his remedy action, such as verbatim transcripts of any oral hearing.***

(32) ***The debtor should be able to request a review of the Preservation Order, in particular if the conditions or requirements set out in this Regulation were not met or if the circumstances that led to the issuing of the Order have changed in such a way that the issuing of the Order would no longer be founded. For instance, a remedy should be available to the debtor if the case did not constitute a cross-border case as defined in this Regulation, if the jurisdiction rules set out in this Regulation were not respected, if the creditor did not initiate proceedings on the substance of the matter within the period of time provided for in this Regulation and the court did not, as a consequence, revoke the Order of its own motion or the Order did not terminate automatically, if the creditor's claim was not in need of urgent protection in the form of a Preservation Order because there was no risk that the subsequent enforcement of that claim would be impeded or made substantially more difficult, or if the provision of security was not in conformity with the requirements set out in this Regulation.***

A remedy should also be available to the debtor if the Order and the declaration on the preservation have not been served on him as provided for in this Regulation or if the documents served on him did not meet the language requirements provided for in this Regulation. However, such a remedy should not be granted if the lack of service or translation is cured within a given period of time. In order to cure the lack of service, the creditor should make a request to the body responsible for service in the Member State of origin to have the relevant documents served by registered post on the debtor or, where the debtor has agreed to collect the documents at the court, should provide the necessary translations of the documents to the court. Such a request should not be required if the lack of service has already been cured by other means, for instance if, in accordance with national law, the court initiated the service of its own motion.

(33) ***The question as to who has to provide any translations required under this Regulation and who has to bear the costs for such translations is left to national law.***

(34) ***Jurisdiction to grant the remedies against the issue of the Preservation Order should lie with the courts of the Member State in which the Order was issued. Jurisdiction to grant the remedies against the enforcement of the Order should lie with the courts or, where applicable, with the competent enforcement authorities in the Member State of enforcement.***

(35) ***The debtor should have the right to apply for the release of the preserved funds if he provides appropriate alternative security. Such alternative security could be provided in the form of a security deposit or an alternative assurance, such as a bank guarantee or a mortgage.***

(36) ***This Regulation should ensure that the preservation of the debtor's account does not affect amounts which are exempt from seizure under the law of the Member State of enforcement, for example amounts necessary to ensure the livelihood of the debtor and his family. Depending on the procedural system applicable in that Member State, the relevant amount should either be exempted ex officio by the body responsible, which could be the court, the bank or the competent enforcement authority, before the Order is implemented, or be exempted at the request of the debtor after the implementation of the Order. Where accounts in several Member States are preserved and the exemption has been applied more than once, the creditor should be able to apply to the competent court of any of the Member States of enforcement or, where the national law of the Member State of enforcement concerned so provides, to the competent enforcement authority in that Member State, for an adjustment of the exemption applied in that Member State.***

▌

(37) In order to ensure that the ***Preservation Order*** is issued and enforced swiftly and without delay, ***this*** Regulation should establish ▌ time-limits by which the different steps in the procedure must be completed. ***Courts or authorities involved in the procedure should only be allowed to derogate from those time-limits in exceptional circumstances, for instance in cases which are legally or factually complex.***

(38) For the purposes of calculating the periods and time-limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council[1] should apply.

(39) In order to facilitate the application of this Regulation, provision should be made for an obligation on the Member States to communicate certain information regarding their legislation and procedures relating to Preservation Orders and equivalent national orders to the Commission.

(40) In order to facilitate the application of this Regulation in practice, standard forms should be established, in particular, for the application for an Order, for the Order itself, for the declaration concerning the preservation of funds and for the application for a remedy or appeal under this Regulation.

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1 ***Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits*** (OJ L 124, 8.6.1971, p. 1).

(41) ***To increase the efficiency of proceedings, this Regulation should allow for the greatest possible use of modern communication technologies accepted under the procedural rules of the Member States concerned, particularly for the purposes of filling in the standard forms provided for in this Regulation and of communication between the authorities involved in the proceedings. Furthermore, the methods for signing the Preservation Order and other documents under this Regulation should be technologically neutral in order to allow for the application of existing methods, such as digital certification or secure authentication, and for future technical developments in this field.***

(42) ***In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the standard forms provided for in this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[1].***

(43) ***The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the standard forms provided for in this Regulation in accordance with Article 4 of Regulation (EU) No 182/2011.***

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1 ***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).***

(44) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, ***it*** seeks to ensure respect for private and family life, the protection of personal data, the right to property, and the right to an effective remedy and to a fair trial ***as established in Articles 7, 8, 17 and 47 thereof respectively***.

(45) ***In the context of access to personal data and the use and transmission of such data under this Regulation, the requirements of*** Directive 95/46/EC of the European Parliament and of the Council[1]***, as transposed into the national law of the Member States, should be complied with***.

(46) For the purposes of the application of this Regulation, it is however necessary to lay down certain specific conditions for access to personal data and for the use and transmission of such data. In this context, the opinion of the European Data Protection Supervisor[2] has been taken into account. Notification of the data subject should take place in accordance with national law. However, the notification of the debtor about the disclosure of information relating to his account or accounts should be deferred for 30 days, in order to prevent an early notification from jeopardising the effect of the Preservation Order.

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1 ***Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).***

2 ***OJ C 373, 21.12.2011, p. 4.***

(47) ***Since the objective of this Regulation, namely to establish a Union procedure for a protective measure which enables a creditor to obtain a Preservation Order preventing the subsequent enforcement of the creditor's claim from being jeopardised through the transfer or withdrawal of funds held by the debtor in a bank account within the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.***

(48) ***This Regulation should apply only to those Member States which are bound by it in accordance with the Treaties. The procedure for obtaining a Preservation Order provided for in this Regulation should therefore be available only to creditors who are domiciled in a Member State bound by this Regulation and Orders issued under this Regulation should relate only to the preservation of bank accounts which are maintained in such a Member State.***

▌

(49) In accordance with ***Article 3*** of Protocol ***No 21*** on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice**,** annexed to the TEU and to the ***TFEU,*** Ireland ***has*** notified ***its*** wish to take part in the adoption and application of this Regulation ▌**.**

(50) ***In accordance with Articles 1 and 2 of Protocol No 21*** on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice**,** annexed to the TEU and to the ***TFEU,*** and without prejudice to Article 4 of that Protocol, ***the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.***

(51) In accordance with Articles 1 and 2 of Protocol ***No 22*** on the position of Denmark, annexed to the TEU and to the ***TFEU***, Denmark ***is*** not ***taking part*** in the adoption of this Regulation and is not ▌bound by it or ***subject*** **to** ***its application***,

HAVE ADOPTED THIS REGULATION:

Chapter 1

Subject matter, scope and definitions

Article 1

Subject matter

1. This Regulation establishes a Union procedure ***enabling*** a creditor to obtain a European Account Preservation Order ("***Preservation Order" or "Order") which prevents the subsequent enforcement of the creditor's claim from being jeopardised through the transfer or withdrawal*** **of** funds ***up to the amount specified in the Order which are*** held by **the debtor** ***or on his behalf*** in a bank account ***maintained in a Member State***.

2. The ***Preservation Order*** shall be available to the creditor as an alternative to ***preservation*** measures ***under national law***.

Article 2

Scope

1. This Regulation applies to pecuniary claims in civil and commercial matters **in** cross-border **cases** as defined in Article 3**,** whatever the nature of the court or tribunal concerned (the "court") . It does not extend, in particular, to revenue, customs or administrative matters ***or to the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii")***.

2. This Regulation does not apply to***:***

   (a) rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;

   (b) wills and succession, including maintenance obligations arising by reason of death;

   (c) ***claims against a debtor in relation to whom*** bankruptcy ***proceedings***, proceedings ***for*** the winding-up of insolvent companies or other legal persons**,** judicial arrangements, ***compositions, or*** analogous proceedings ***have been opened***;

   (d) social security;

   (e) arbitration.

3. This Regulation does not apply to bank accounts which ***are immune from seizure*** under the law ▌ of the Member State ***in which the account is maintained nor to accounts maintained in connection with the operation of any system as defined in point (a) of Article 2 of Directive 98/26/EC*** of the European Parliament and of the Council[1]**.**

▌

4. This Regulation does not apply to bank accounts held by or with central banks when acting in their capacity as monetary authorities.

Article 3

Cross-border cases

1. For the purposes of this Regulation, a ***cross-border case is one in which the bank account or*** **accounts** to be preserved by the ***Preservation Order are maintained in a*** Member State ***other than:***

(a) the Member State of the court seised of the application for the Preservation Order pursuant to Article 6; or

(b) the Member State in which the creditor is domiciled.

2. The relevant moment for determining whether a case is a cross-border case is the date on which the application for the Preservation Order is lodged with the court having jurisdiction to issue the Preservation Order.

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1 ***Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (***OJ L 166, 11.6.1998, p. ***45).***

Article 4

Definitions

For the purposes of this Regulation:

(1) ***"bank account" or "account"*** means any account containing ***funds*** which is held with a bank in the name of the ***debtor*** or in the name of a third party on behalf of the ***debtor***;

(2) ***"bank" means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013*** of the European Parliament and of the Council[1]***, including branches, within the meaning of point (17) of Article 4(1) of that Regulation, of credit institutions having their head offices inside or, in accordance with Article 47 of Directive 2013/36/EU*** of the European Parliament and of the Council[2]***, outside the Union where such branches are located in the Union;***

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

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

(3) "***funds" means money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits;***

▌

(4) "Member State ***in which*** the bank account is ***maintained***" means:

(a) the Member State indicated in the account's IBAN ***(International Bank Account Number)***; or

(b) for a bank account ***which does not have an IBAN***, the Member State ***in which*** the bank ***with which the account is held has its head office or, where the account is held with a branch, the Member State in which the branch is located***;

(5) "claim" means ***a*** claim for payment of a specific ***amount of money that has fallen due or a claim for payment of a determinable amount of money arising from a transaction or an event that has already occurred, provided that such a claim can be brought before a court;***

(6) ***"creditor" means a natural person domiciled in a Member State or a legal person domiciled in a Member State or any other entity domiciled in a Member State having legal capacity to sue or be sued under the law of a Member State, who or which applies for, or has already obtained, a Preservation Order relating to a claim ;***

(7) ***"debtor" means a natural person or a legal person or any other entity having legal capacity to sue or be sued under the law of a Member State, against whom or which the creditor seeks to obtain, or has already obtained, a Preservation Order relating to a claim;***

(8) "judgment" means any judgment given by a court of ***a*** Member ***State***, whatever the judgment may be called, including ***a decision on*** the determination of costs or expenses by an officer of the court;

▌

(9) "court settlement" means a settlement which has been approved by a court ***of a Member State*** or concluded before a court ***of a Member State*** in the course of proceedings;

(10) "authentic instrument" means a document which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:

(a) relates to the signature and the content of the instrument, and

(b) has been established by a public authority or other authority empowered for that purpose;

(11) "Member State of origin" means the Member State in which the ***Preservation Order was*** issued;

(12) "Member State of enforcement" means the Member State in which the bank account to be preserved is ***maintained***;

(13) ***"information*** authority" means the authority which ***a*** Member State ▌ has designated as competent for ***the purposes of obtaining*** the ▌ necessary information on the ***debtor's*** account or accounts pursuant to Article 14 ▌ ;

(14) "competent authority" means the authority or authorities which a Member State has designated as competent for receipt, transmission or service pursuant to Article 10(2), Article 23(3), (5) and (6), Articles 25(3), 27(2) and 28(3) and the second subparagraph of Article 36(5);

(15) "domicile" means domicile as determined in accordance with ***Articles 62*** and ***63*** of Regulation (***EU***) No ***1215/2012*** of the European Parliament and of the Council [1].

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

Chapter 2

Procedure for obtaining *a Preservation Order*

Article 5

Availability

The Preservation Order shall be available to the creditor in the following situations:

(a) ***before the creditor initiates*** proceedings ***in a Member State against the debtor*** on the substance of the matter ▌**,** or at any stage during such proceedings ***up until the issuing of the judgment or the approval or conclusion of a court settlement***;

▌

(b) after the creditor has obtained in a Member State a judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim.

▌

Article 6

Jurisdiction

▌

1. ***Where the creditor has not yet obtained a judgment, court settlement or authentic instrument, jurisdiction to issue a Preservation Order*** shall lie with the courts of the Member State ***which have jurisdiction to rule*** on the substance of the matter ▌ in accordance with the ***relevant rules of jurisdiction applicable.***

▌

2. Notwithstanding paragraph 1, where the debtor is a consumer who has concluded a contract with the creditor for a purpose which can be regarded as being outside the debtor's trade or profession, jurisdiction to issue a Preservation Order intended to secure a claim relating to that contract shall lie only with the courts of the Member State in which the debtor is domiciled.

3. Where the creditor has already obtained a judgment or court settlement, jurisdiction to issue a Preservation Order for the claim specified in the judgment or court settlement shall lie with the courts of the Member State in which the judgment was issued or the court settlement was approved or concluded.

4. ***Where the creditor has obtained an authentic instrument, jurisdiction to issue a Preservation Order for the claim specified in that instrument shall lie with the courts designated for that purpose in the Member State in which that instrument was drawn up.***

Article 7

Conditions for issuing ***a Preservation Order***

1. ***The court shall issue the Preservation Order when the creditor has submitted sufficient evidence*** to satisfy the court ***that there is an urgent need for a protective measure in the form of a Preservation Order because there is a real risk that, without such a measure,*** the subsequent enforcement of ***the creditor's claim*** against the ***debtor will*** be impeded or made substantially more difficult ▌**.**

▌

2. ***Where the creditor has not yet obtained in a Member State a judgment, court settlement or authentic instrument requiring the debtor to pay the creditor's claim, the creditor shall also submit sufficient evidence to satisfy the court that he is likely to succeed on the substance of his claim against the debtor.***

Article 8

Application for a ***Preservation Order***

1. Applications for ***a Preservation Order*** shall be ***lodged*** using the form ***established in accordance with the advisory procedure referred to in Article 52(2)***.

2. The application ▌ shall include ▌ the following ***information***:

   (a) the name and address of the court with which the application is lodged;

   (b) details concerning the creditor: name and contact details and, where applicable, name and contact details of the creditor's representative, and:

      (i) where the creditor is a natural person, his date of birth and, if applicable and available, his identification or passport number; or

      (ii) where the creditor is a legal person or any other entity having legal capacity to sue or be sued under the law of a Member State, the State of its incorporation, formation or registration and its identification or registration number or, where no such number exists, the date and place of its incorporation, formation or registration;

(c) details concerning the debtor: name and contact details and, where applicable, name and contact details of the debtor's representative and, if available:

(i) where the debtor is a natural person, his date of birth and identification or passport number; or

(ii) where the debtor is a legal person or any other entity having legal capacity to sue or be sued under the law of a Member State, the State of its incorporation, formation or registration and its identification or registration number or, where no such number exists, the date and place of its incorporation, formation or registration;

(***d***) ***a number enabling the identification of the bank, such as the IBAN or BIC and/or the name and address of the bank, with which the debtor holds one or more accounts to be preserved;***

(e) if available, the number of the account or accounts to be preserved and, in such a case, an indication as to whether any other accounts held by the debtor with the same bank should be preserved;

(f) where none of the information required under point (d) can be provided, a statement that a request is made for the obtaining of account information pursuant to Article 14, where such a request is possible, and a substantiation as to why the creditor believes that the debtor holds one or more accounts with a bank in a specific Member State;

(g) the amount for which the Preservation Order is sought:

(i) where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the amount of the principal claim or part thereof and of any interest recoverable pursuant to Article 15;

(ii) where the creditor has already obtained a judgment, court settlement or authentic instrument, the amount of the principal claim as specified in the judgment, court settlement or authentic instrument or part thereof and of any interest and costs recoverable pursuant to Article 15;

(***h) where the creditor has not yet obtained a judgment, court settlement or authentic instrument:***

(i) a description of all relevant elements supporting the jurisdiction of the court with which the application for the Preservation Order is lodged;

(ii*) *a description of all relevant circumstances invoked as the basis of the claim, and, where applicable, of the interest claimed;

(iii) a statement indicating whether the creditor has already initiated proceedings against the debtor on the substance of the matter;

(i) where the creditor has already obtained a judgment, court settlement or authentic instrument, a declaration that the judgment, court settlement or authentic instrument has not yet been complied with or, where it has been complied with in part, an indication of the extent of non-compliance;

(j) a description of all relevant circumstances justifying ***the issuing*** of the ***Preservation Order*** as required by Article 7(1) ;

(k) where applicable, an indication of the reasons why the creditor believes he should be exempted from providing security pursuant to Article 12;

(l) a list of the evidence provided ▌ by the ***creditor***;

▌

(***m)*** ***a declaration as provided for in Article 16 as to whether the creditor has lodged with other courts or authorities an application for an equivalent national order or whether such an order has already been obtained or refused and, if obtained, the extent to which it has been implemented;***

(n) ***an optional indication of the creditor's bank account to be used for any voluntary payment of the claim by the debtor;***

(o) ***a declaration that the information provided by the creditor in the application is true and complete to the best of his knowledge and that the creditor is aware that any deliberately false or incomplete statements may lead to legal consequences under the law of the Member State in which the application is lodged or to liability pursuant to Article 13.***

3. ***The application shall be accompanied by all relevant supporting documents and, where the creditor has already obtained a judgment, court settlement or authentic instrument, by a copy of the judgment, court settlement or authentic instrument which satisfies the conditions necessary to establish its authenticity.***

4. The application ***and supporting documents*** may be submitted by any means of communication, including electronic***, which are accepted under the procedural rules of the Member State in which the application is lodged***.

Article 9

Taking of evidence

1. ***The court shall take its decision by means of a written procedure on the basis of the information and evidence provided by the creditor in or with his application. If the*** court considers that ***the evidence provided is insufficient,*** it may***, where national law so allows, request the creditor to provide additional documentary*** evidence***.***

2. ***Notwithstanding paragraph 1 and subject to Article 11, the court may, provided that this does not delay the proceedings unduly, also use any other appropriate method of taking evidence available under its national law, such as an oral hearing of the creditor or of his witness(es) including through videoconference or other communication technology.***

Article 10

Initiation of proceedings on the substance of the matter

1. Where ***the creditor has applied*** for ***a Preservation Order before initiating*** proceedings on the substance ***of the matter, he*** shall initiate such proceedings ***and provide proof of such initiation to the court with which the application for the Preservation Order was lodged within*** 30 days of the date ***on which he lodged the application or within 14 days of the date of the issue of the Order, whichever date is the later. The court may also, at the request of the debtor, extend that time period, for example in order to allow the parties to settle the claim, and shall inform the two parties accordingly.***

2. ***If the court has not received proof of the initiation of proceedings within the time period referred to in paragraph 1, the Preservation Order shall be revoked or shall terminate and the parties shall be informed accordingly.***

Where the court that issued the Order is located in the Member State of enforcement, the revocation or termination of the Order in that Member State shall be done in accordance with the law of that Member State.

Where the revocation or termination needs to be implemented in a Member State other than the Member State of origin, the court shall revoke the Preservation Order by using the revocation form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2), and shall transmit the revocation form in accordance with Article 29 to the competent authority of the Member State of enforcement. That authority shall take the necessary steps by applying Article 23 as appropriate to have the revocation or termination implemented.

3. ***For the purposes of paragraph 1, proceedings on the substance of the matter shall be deemed to have been initiated:***

(a) ***at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the creditor has not subsequently failed to take the steps he was required to take to have service effected on the debtor; or***

(b) ***if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the creditor has not subsequently failed to take the steps he was required to take to have the document lodged with the court.***

The authority responsible for service referred to in point (b) of the first subparagraph shall be the first authority receiving the documents to be served.

Article 11

Ex parte procedure

The debtor shall not be notified of the application for a Preservation Order or be heard prior to the issuing of the Order.

Article 12

Security to be provided by the creditor

1. ***Before issuing a Preservation Order in a case where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the court shall require the creditor to provide security for an amount sufficient to prevent abuse of the procedure provided for by this Regulation and to ensure compensation for any damage suffered by the debtor as a result of the Order to the extent that the creditor is liable for such damage pursuant to Article 13.***

By way of exception, the court may dispense with the requirement set out in the first subparagraph if it considers that the provision of security referred to in that subparagraph is inappropriate in the circumstances of the case.

2. Where the creditor has already obtained a judgment, court settlement or authentic instrument, the court may, before issuing the Order, require the creditor to provide security as referred to in the first subparagraph of paragraph 1 if it considers this necessary and appropriate in the circumstances of the case.

3. If the court requires security to be provided pursuant to this Article, it shall inform the creditor of the amount required and of the forms of security acceptable under the law of the Member State in which the court is located. It shall indicate to the creditor that it will issue the Preservation Order once security in accordance with those requirements has been provided.

Article 13

Liability of the creditor

1. The creditor shall be liable for any damage caused to the debtor by the Preservation Order due to fault on the creditor's part. The burden of proof shall lie with the debtor.

2. In the following cases, the fault of the creditor shall be presumed unless he proves otherwise:

(a) if the Order is revoked because the creditor has failed to initiate proceedings on the substance of the matter, unless that omission was a consequence of the debtor's payment of the claim or another form for settlement between the parties;

(b) if the creditor has failed to request the release of over-preserved amounts as provided for in Article 27;

(c) if it is subsequently found that the issue of the Order was not appropriate or appropriate only in a lower amount due to a failure on the part of the creditor to comply with his obligations under Article 16; or

(d) if the Order is revoked or its enforcement terminated because the creditor has failed to comply with his obligations under this Regulation with regard to service or translation of documents or with regard to curing the lack of service or the lack of translation.

3. Notwithstanding paragraph 1, Member States may maintain or introduce in their national law other grounds or types of liability or rules on the burden of proof. All other aspects relating to the creditor's liability towards the debtor not specifically addressed in paragraph 1 or 2 shall be governed by national law.

4. ***The law applicable to the liability of the creditor shall be the law of the Member State of enforcement.***

If accounts are preserved in more than one Member State, the law applicable to the liability of the creditor shall be the law of the Member State of enforcement:

(a) ***in which the debtor has his habitual residence as defined in Article 23 of Regulation (EC) No 864/2007 of the European Parliament and of the Council*** [1]***, or, failing that,***

(b) ***which has the closest connection with the case.***

5. ***This Article does not deal with the question of possible liability of the creditor towards the bank or any third party.***

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[1] ***Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ L 199, 31.7.2007, p. 40).***

Article 14

Request for the obtaining of account information

1. Where the ***creditor has obtained in a Member State an enforceable judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim and the creditor has reasons to believe that the debtor holds one or more accounts with a bank in a specific Member State, but knows neither the name and/or address of the bank nor the IBAN, BIC or another bank number allowing the bank to be identified, he may request the court with which the application for the Preservation Order is lodged to request that the information authority of the Member State of enforcement obtain the information necessary to allow the bank or banks and the debtor's account or accounts to be identified.***

Notwithstanding the first subparagraph, the creditor may make the request referred to in that subparagraph where the judgment, court settlement or authentic instrument obtained by the creditor is not yet enforceable and the amount to be preserved is substantial taking into account the relevant circumstances, and the creditor has submitted sufficient evidence to satisfy the court that there is an urgent need for account information because there is a risk that, without such information, the subsequent enforcement of the creditor's claim against the debtor is likely to be jeopardised and that this could consequently lead to a substantial deterioration of the creditor's financial situation.

2. **The** ***creditor shall make the request referred to in paragraph 1 in the application for the Preservation Order. The creditor shall substantiate why he believes that the debtor holds one or more accounts with a bank in the specific Member State and shall provide all relevant*** information available to ***him*** about the ***debtor and the account or accounts to be preserved. If the court with which the application for a Preservation Order is lodged considers that the creditor's request is not sufficiently substantiated, it shall reject it.***

3. ***When the court is satisfied that the creditor's request is well substantiated and that all the conditions and requirements for issuing the Preservation Order are met, except for the information requirement set out in point (d) of Article 8(2) and, where applicable, the security requirement pursuant to Article 12, the court shall transmit the request for information*** to the ***information*** authority ***of the Member State of enforcement*** in accordance with Article ***29.***

4. ***To obtain the information referred to in paragraph 1, the information authority in the Member State of enforcement shall use one of the methods available in that Member State pursuant to paragraph 5.***

5. ***Each Member State shall make available in its national law at least one of the following*** methods of obtaining ***the*** information ***referred to in paragraph 1***:

   (a) ***an obligation on*** all banks in ***its*** territory to disclose***, upon request by the information authority,*** whether the ***debtor*** holds an account with them;

(b) access ***for*** the ***information*** authority to the ***relevant*** information ▌ where that information is held by public authorities or administrations in registers or otherwise;

(c) the possibility for its courts to oblige the debtor to disclose with which bank or banks in its territory he holds one or more accounts where such an obligation is accompanied by an in personam order by the court prohibiting the withdrawal or transfer by him of funds held in his account or accounts up to the amount to be preserved by the Preservation Order; or

(d) any other methods which are effective and efficient for the purposes of obtaining the relevant information, provided that they are not disproportionately costly or time-consuming.

Irrespective of the method or methods made available by a Member State, all authorities involved in obtaining the information shall act expeditiously.

6. As soon as the information authority of the Member State of enforcement has obtained the account information, it shall transmit it to the requesting court in accordance with Article 29.

7. ***If the information authority is unable to obtain the information referred to in paragraph 1, it shall inform the requesting court accordingly. Where, as a result of the unavailability of account information, the application for a Preservation Order is rejected in full, the requesting court shall without delay release any security that the creditor may have provided pursuant to Article 12.***

8. ***Where under this Article the information authority is provided with information by a bank or is granted access to account information held by public authorities or administrations in registers, the notification of the debtor of the disclosure of his personal data shall be deferred for 30 days, in order to prevent an early notification from jeopardising the effect of the Preservation Order.***

Article 15

Interest and costs

1. ***At the request of the creditor, the Preservation Order shall include any interest accrued under the law applicable to the claim up to the date when the Order is issued, provided that the amount or type of interest is not such that its inclusion constitutes a violation of overriding mandatory provisions in the law of the Member State of origin.***

2. ***Where the creditor has already obtained a judgment, court settlement or authentic instrument, the Preservation Order shall, at the request of the creditor, also include the costs of obtaining such judgment, settlement or instrument, to the extent that a determination has been made that those costs must be borne by the debtor.***

▌

Article 16

Parallel applications

1. The creditor may not submit to several courts at the same time parallel applications for a Preservation Order against the same debtor aimed at securing the same claim.

2. In his application for a Preservation Order, the creditor shall declare whether he has lodged with any other court or authority an application for an equivalent national order against the same debtor and aimed at securing the same claim or has already obtained such an order. He shall also indicate any applications for such an order which have been rejected as inadmissible or unfounded.

3. ***If the creditor obtains an equivalent national order against the same debtor and aimed at securing the same claim during the proceedings for the issuing of a Preservation Order, he shall without delay inform the court thereof and of any subsequent implementation of the national order granted. He shall also inform the court of any applications for an equivalent national order which have been rejected as inadmissible or unfounded.***

4. ***Where the court is informed that the creditor has already obtained an equivalent national order, it shall consider, having regard to all the circumstances of the case, whether it is still appropriate to issue the Preservation Order, in full or in part.***

▌

Article 17

Decision on the application for the Preservation Order

1. ***The court seised of an application for a Preservation Order shall examine whether the conditions and*** requirements ***set out in this Regulation are met.***

2. ***The court shall decide on the application without delay, but no later than by the expiry of the time-limits set out in Article 18.***

3. Where the creditor has not provided all the information required by Article 8, the court may, unless the application is clearly inadmissible or unfounded, give the creditor the opportunity to complete or rectify the application within a period of time to be specified by the court. If the creditor fails to complete or rectify the application within that period, the application shall be rejected.

4. The Preservation Order shall be issued in the amount justified by the evidence referred to in Article 9 and as determined by the law applicable to the underlying claim, and shall include, where appropriate, interest and/or costs pursuant to Article 15.

The Order may not under any circumstances be issued in an amount exceeding the amount indicated by the creditor in his application.

5. The decision on the application shall be brought to the notice of the creditor in accordance with the procedure provided for by the law of the Member State of origin for equivalent national orders.

Article 18

Time-limits for the decision on the application for a Preservation Order

1. ***Where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the court shall issue its decision by the end of the tenth working day after the creditor lodged or, where applicable, completed his application.***

2. ***Where the creditor has already obtained a judgment, court settlement or authentic instrument, the court shall issue its decision by the end of the fifth working day after the creditor lodged or, where applicable, completed his application.***

3. ***Where the court determines pursuant to Article 9(2) that an oral hearing of the creditor and, as the case may be, his witness(es) is necessary, the court shall hold the hearing without delay and shall issue its decision by the end of the fifth working day after the hearing has taken place.***

4. ***In the situations referred to in Article 12, the time-limits set out in paragraphs 1, 2 and 3 of this Article shall apply to the decision requiring the creditor to provide security. The court shall issue its decision on the application for a Preservation Order without delay once the creditor has provided the security required.***

5. Notwithstanding paragraphs 1, 2 and 3 of this Article, in situations referred to in Article 14, the court shall issue its decision without delay once it has received the information referred to in Article 14(6) or (7), provided that any security required has been provided by the creditor by that time.

Article 19
Form and content of the Preservation Order

1. The Preservation Order shall be issued using the form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2) and shall bear a stamp, a signature and/or any other authentication of the court. The form shall consist of two parts:

(a) part A, containing the information set out in paragraph 2 to be provided to the bank, the creditor and the debtor; and

(b) part B, containing the information set out in paragraph 3 to be provided to the creditor and the debtor in addition to the information pursuant to paragraph 2.

2. Part A shall include the following information:

(a) the name and address of the court and the file number of the case;

(b) details of the creditor as indicated in point (b) of Article 8(2);

(c) details of the debtor as indicated in point (c) of Article 8(2);

(d) the name and address of the bank concerned by the Order;

(e) if the creditor has provided the account number of the debtor in the application, the number of the account or accounts to be preserved, and, where applicable, an indication as to whether any other accounts held by the debtor with the same bank also have to be preserved;

(f) where applicable, an indication that the number of any account to be preserved was obtained by means of a request pursuant to Article 14 and that the bank, where necessary pursuant to the second subparagraph of Article 24(4), is to obtain the number or numbers concerned from the information authority of the Member State of enforcement;

(g) the amount to be preserved by the Order;

(h) an instruction to the bank to implement the Order in accordance with Article 24;

(i) the date of issue of the Order;

(j) if the creditor has indicated an account in his application pursuant to point (n) of Article 8(2), an authorisation to the bank pursuant to Article 24(3) to release and transfer, if so requested by the debtor and if allowed by the law of the Member State of enforcement, funds up to the amount specified in the Order from the preserved account to the account that the creditor has indicated in his application;

(k) information on where to find the electronic version of the form to be used for the declaration pursuant to Article 25.

3. Part B shall include the following information:

(a) a description of the subject matter of the case and the court's reasoning for issuing the Order;

(b) the amount of the security provided by the creditor, if any;

(c) where applicable, the time-limit for initiating the proceedings on the substance of the matter and for proving such initiation to the issuing court;

(d) where applicable, an indication as to which documents must be translated pursuant to the second sentence of Article 49(1);

(e) where applicable, an indication that the creditor is responsible for initiating the enforcement of the Order and consequently, where applicable, an indication that the creditor is responsible for transmitting it to the competent authority of the Member State of enforcement pursuant to Article 23(3) and for initiating service on the debtor pursuant to Article 28(2), (3) and (4); and

(f) information about the remedies available to the debtor.

4. Where the Preservation Order concerns accounts in different banks, a separate form (part A pursuant to paragraph 2) shall be filled in for each bank. In such a case, the form provided to the creditor and the debtor (parts A and B pursuant to paragraphs 2 and 3 respectively) shall contain a list of all banks concerned.

Article 20

Duration of the preservation

The funds preserved by the Preservation Order shall remain preserved as provided for in the Order or in any subsequent modification or limitation of that Order pursuant to Chapter 4:

(a) until the Order is revoked;

(b) until the enforcement of the Order is terminated; or

(c) until a measure to enforce a judgment, court settlement or authentic instrument obtained by the creditor relating to the claim which the Preservation Order was aimed at securing has taken effect with respect to the funds preserved by the Order.

Article 21

*Appeal against **a** refusal to issue the **Preservation Order***

1. The ***creditor shall have the right to*** appeal against any decision of the court ***rejecting, wholly or in part, his application for a Preservation Order.***

2. ***Such an*** appeal ***shall*** be lodged within 30 days **of** ***the date on which*** the decision referred to in paragraph ***1 was brought to the notice of the creditor. It shall be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (d) of Article 50(1).***

3. Where the application for the Preservation Order was rejected in whole, the appeal shall be dealt with in ex parte proceedings as provided for in Article 11.

Chapter 3

Recognition, enforceability and enforcement of the *Preservation Order*

Article 22

Recognition and enforceability

A Preservation Order issued in ***a*** Member State ***in accordance with this Regulation*** shall be recognised ***in the*** other Member States ***without any special procedure being required and shall be enforceable in the other Member States*** without the need for a declaration of enforceability ▌.

▌

Article 23

Enforcement of the Preservation Order

1. Subject to the provisions of this Chapter, the Preservation Order shall be enforced in accordance with the procedures applicable to the enforcement of equivalent national orders in the Member State of enforcement.

2. All authorities involved in the enforcement of the Order shall act without delay.

3. Where the Preservation Order was issued in a Member State other than the Member State of enforcement, part A of the Order as indicated in Article 19(2) and a blank standard form for the declaration pursuant to Article 25 shall, for the purposes of paragraph 1 of this Article, be transmitted in accordance with Article 29 to the competent authority of the Member State of enforcement.

The transmission shall be done by the issuing court or the creditor, depending on who is responsible under the law of the Member State of origin for initiating the enforcement procedure.

4. The Order shall be accompanied, where necessary, by a translation or transliteration into the official language of the Member State of enforcement or, where there are several official languages in that Member State, the official language or one of the official languages of the place where the Order is to be implemented. Such translation or transliteration shall be provided by the issuing court by making use of the appropriate language version of the standard form referred to in Article 19.

5. The competent authority of the Member State of enforcement shall take the necessary steps to have the Order enforced in accordance with its national law.

6. ***Where the Preservation Order concerns more than one bank in the same Member State or in different Member States, a separate form for each bank as indicated in Article 19(2) and (4) shall be transmitted to the competent authority in the relevant Member State of enforcement.***

▌

Article 24

Implementation of the ***Preservation Order***

1. ***A bank to which a Preservation Order is addressed shall implement it without delay following receipt of the Order or, where the law of the Member State of enforcement so provides, of a corresponding instruction to implement the Order.***

2. ***To implement the Preservation Order, the bank shall, subject to the provisions of Article 31, preserve the amount specified in the Order either:***

(a) ***by ensuring that that amount is not transferred or withdrawn from the account or accounts indicated in the Order or identified pursuant to paragraph 4; or***

(b) ***where national law so provides, by transferring that amount to an account dedicated for preservation purposes.***

The final amount preserved may be subject to the settlement of transactions which are already pending at the moment when the Order or a corresponding instruction is received by the bank. However, such pending transactions may only be taken into account when they are settled before the bank issues the declaration pursuant to Article 25 by the time-limits set out in Article 25(1).

3. Notwithstanding point (a) of paragraph 2, the bank shall be authorised, at the request of the debtor, to release funds preserved and to transfer those funds to the account of the creditor indicated in the Order for the purposes of paying the creditor's claim, if all the following conditions are met:

(a) such authorisation of the bank is specifically indicated in the Order in accordance with point (j) of Article 19(2);

(b) the law of the Member State of enforcement allows for such release and transfer; and

(c) there are no competing Orders with regard to the account concerned.

4. Where the Preservation Order does not specify the number or numbers of the account or accounts of the debtor but provides only the name and other details regarding the debtor, the bank or other entity responsible for enforcing the Order shall identify the account or accounts held by the debtor with the bank indicated in the Order.

If, on the basis of the information provided in the Order, it is not possible for the bank or other entity to identify with certainty an account of the debtor, the bank shall:

(a) where, in accordance with point (f) of Article 19(2), it is indicated in the Order that the number or numbers of the account or accounts to be preserved was or were obtained by means of a request pursuant to Article 14, obtain that number or those numbers from the information authority of the Member State of enforcement; and

(b) in all other cases, not implement the Order.

5. Any funds held in the account or accounts referred to in point (a) of paragraph 2 which exceed the amount specified in the Preservation Order shall remain unaffected by the implementation of the Order.

6. Where, at the time of the implementation of the Preservation Order, the funds held in the account or accounts referred to in point (a) of paragraph 2 are insufficient to preserve the full amount specified in the Order, the Order shall be implemented only in the amount available in the account or accounts.

7. ***Where the Preservation Order covers several accounts held by the debtor with the same bank and those accounts contain funds that exceed the amount specified in the Order, the Order shall be implemented in the following order of priority:***

(a) savings accounts in the sole name of the debtor;

(b) current accounts in the sole name of the debtor;

(c) savings accounts in joint names, subject to Article 30;

(d) current accounts in joint names, subject to Article 30.

8. Where the currency of the funds held in the account ***or accounts referred to in point (a) of paragraph 2*** is not the same as that in which the ***Preservation Order*** was issued, the bank shall convert the amount ***specified in the Order into the currency of the funds*** by reference to the ***foreign exchange reference rate of the European Central Bank or the exchange rate of the central bank of the Member State of enforcement for sale of that currency on the day and at the time of the*** implementation ***of the Order, and shall preserve the corresponding amount in the currency of the funds***.

Article 25

Declaration ***concerning the preservation of funds***

1. ***By the end of the third working day following the implementation of the Preservation Order, the bank or other entity responsible for enforcing the Order in the Member State of enforcement shall issue a declaration using the declaration form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2), indicating*** whether and to what extent funds in the ***debtor*'s** account ***or accounts*** have been preserved ***and, if so, on which date the Order was implemented. If, in exceptional circumstances, it is not possible for the bank or other entity to issue the declaration within three working days, it shall issue it as soon as possible but by no later than the end of the eighth working day following the implementation of the Order.***

   The declaration shall be transmitted, without delay, in accordance with paragraphs 2 and 3.

2. ***Where the Order was issued in the Member State of enforcement, the bank or other entity responsible for enforcing the Order shall transmit the declaration in accordance with Article 29 to the issuing court and by registered post attested by an acknowledgment of receipt, or by equivalent electronic means, to the creditor.***

3. ***Where the Order was issued in a Member State other than the Member State of enforcement, the declaration shall be transmitted in accordance with Article 29 to the competent authority of the Member State of enforcement, unless it was issued by that same authority.***

By the end of the first working day following the receipt or issue of the declaration, that authority shall transmit the declaration in accordance with Article 29 to the issuing court and by registered post attested by an acknowledgment of receipt, or by equivalent electronic means, to the creditor.

4. ***The bank or other entity responsible for enforcing the Preservation Order shall, upon request by the debtor, disclose to the debtor the details of the Order. The bank or entity may also do so in the absence of such a request.***

Article 26

Liability of the bank

***Any liability of the bank for failure to comply with its obligations under this Regulation shall be governed by the law of the Member State of enforcement**.*

Article 27

Duty of the creditor to request the release of over-preserved amounts

***1.** The creditor shall be under a duty to take the necessary steps to ensure the release of any amount which, following the implementation of the Preservation Order, exceeds the amount specified in the Preservation Order:*

***(a)** where the Order covers several accounts in the same Member State or in different Member States; or*

***(b)** where the Order was issued after the implementation of one or more equivalent national orders against the same debtor and aimed at securing the same claim.*

2. By the end of the third working day following receipt of any declaration pursuant to Article 25 showing such over-preservation, the creditor shall, by the swiftest possible means and using the form for requesting the release of over-preserved amounts, established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2), submit a request for the release to the competent authority of the Member State of enforcement in which the over-preservation has occurred.

That authority shall, upon receipt of the request, promptly instruct the bank concerned to effect the release of the over-preserved amounts. Article 24(7) shall apply, as appropriate, in the reverse order of priority.

3. This Article shall not preclude a Member State from providing in its national law that the release of over-preserved funds from any account maintained in its territory is to be initiated by the competent enforcement authority of that Member State of its own motion.

▌

Article 28

Service on the debtor

1. ***The Preservation Order, the other documents referred to in paragraph 5 of this Article and the declaration pursuant to Article 25 shall be served on the debtor in accordance with this Article.***

2. ***Where the debtor is domiciled in the Member State of origin, service shall be effected in accordance with the law of that Member State. Service shall be initiated by the issuing court or the creditor, depending on who is responsible for initiating service in the Member State of origin, by the end of the third working day following the day of receipt of the declaration pursuant to Article 25 showing that amounts have been preserved.***

3. ***Where the debtor is domiciled in a Member State other than the Member State of origin, the issuing court or the creditor, depending on who is responsible for initiating service in the Member State of origin, shall, by the end of the third working day following the day of receipt of the declaration pursuant to Article 25 showing that amounts have been preserved, transmit the documents referred to in paragraph 1 of this Article in accordance with Article 29 to the competent authority of the Member State in which the debtor is domiciled. That authority shall, without delay, take the necessary steps to have service effected on the debtor in accordance with the law of the Member State in which the debtor is domiciled.***

Where the Member State in which the debtor is domiciled is the only Member State of enforcement, the documents referred to in paragraph 5 of this Article shall be transmitted to the competent authority of that Member State at the time of transmission of the Order in accordance with Article 23(3). In such a case, that competent authority shall initiate the service of all documents referred to in paragraph 1 of this Article by the end of the third working day following the day of receipt or issue of the declaration pursuant to Article 25 showing that amounts have been preserved.

The competent authority shall inform the issuing court or the creditor, depending on who transmitted the documents to be served, of the result of the service on the debtor.

4. ***Where the debtor is domiciled in a third State, service shall be effected in accordance with the rules on international service applicable in the Member State of origin.***

5. ***The following documents shall be served on the debtor and shall, where necessary, be accompanied by a translation or transliteration as provided for in Article 49(1):***

(a) ***the Preservation Order using parts A and B of the form referred to in Article 19(2) and (3);***

(b) the application for the Preservation Order submitted by the creditor to the court;

(c) copies of all documents submitted by the creditor to the court in order to obtain the Order.

6. Where the Preservation Order concerns more than one bank, only the first declaration pursuant to Article 25 showing that amounts have been preserved shall be served on the debtor in accordance with this Article. Any subsequent declarations pursuant to Article 25 shall be brought to the notice of the debtor without delay.

Article 29

Transmission of documents

1. Where this Regulation provides for transmission of documents in accordance with this Article, such transmission may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document transmitted and that all information contained in it is easily legible.

2. The court or authority that received documents in accordance with paragraph 1 of this Article shall, by the end of the working day following the day of receipt, send to the authority, creditor or bank that transmitted the documents an acknowledgment of receipt, employing the swiftest possible means of transmission and using the standard form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2).

Article 30

Preservation of joint and nominee accounts

Funds held in accounts which, according to the bank's records, are not exclusively held by the ***debtor or are held by a third party on behalf of the debtor or by the debtor on behalf of a third party, may be preserved under this Regulation only to the extent to which they may be subject to preservation under the law of the Member State of enforcement.***

Article 31

Amounts exempt from ***preservation***

1. Amounts ***that are exempt from seizure under the law of the Member State of enforcement*** shall be exempt from ***preservation under this Regulation***.

▌

2. ***Where, under the law of the Member State of enforcement,*** the amounts referred to in paragraph 1 ***are exempted from seizure*** without ***any request from the debtor, the body responsible for exempting such amounts in that Member State shall, of its own motion, exempt the relevant amounts from preservation.***

3. Where, under the law of the Member State of enforcement, the amounts referred to in paragraph 1 of this Article are exempted from seizure at the request of the debtor, such amounts shall be exempted from preservation upon application by the debtor as provided for by point (a) of Article 34(1).

▌

Article 32

Ranking of ***the Preservation Order***

The ***Preservation Order shall have*** the same rank***, if any, as an equivalent national order in*** the Member State ***of enforcement.***

Chapter 4

Remedies

I

Article 33

Remedies of the debtor against the Preservation Order

1. ***Upon application by the debtor to the competent court of the Member State of origin, the Preservation Order shall be revoked or, where applicable, modified on the ground that:***

(a) the conditions or requirements set out in this Regulation were not met;

(b) the Order, the declaration pursuant to Article 25 and/or the other documents referred to in Article 28(5) were not served on the debtor within 14 days of the preservation of his account or accounts ;

(c) the documents served on the debtor in accordance with Article 28 did not meet the language requirements set out in Article 49(1);

(d) preserved amounts exceeding the amount of the Order were not released in accordance with Article 27;

(e) the claim the enforcement of which the creditor was seeking to secure by means of the Order has been paid in full or in part;

(f) a judgment on the substance of the matter has dismissed the claim the enforcement of which the creditor was seeking to secure by means of the Order; or

(g) the judgment on the substance of the matter, or the court settlement or authentic instrument, the enforcement of which the creditor was seeking to secure by means of the Order has been set aside or, as the case may be, annulled.

2. ***Upon application by the debtor to the competent court of the Member State of origin, the decision concerning the security pursuant to Article 12 shall be reviewed on the ground that the conditions or requirements of that Article were not met.***

Where, on the basis of such a remedy, the court requires the creditor to provide security or additional security, the first sentence of Article 12(3) shall apply as appropriate and the court shall indicate that the Preservation Order will be revoked or modified if the (additional) security required is not provided by the time-limit specified by the court.

3. ***The remedy applied for under point (b) of paragraph 1 shall be granted unless the lack of service is cured within 14 days of the creditor being informed of the debtor´s application for a remedy pursuant to point (b) of paragraph 1.***

Unless the lack of service was already cured by other means, the lack of service shall, for the purposes of assessing whether or not the remedy pursuant to point (b) of paragraph 1 is to be granted, be deemed to be cured:

(a) if the creditor requests the body responsible for service under the law of the Member State of origin to serve the documents on the debtor; or

(b) where the debtor has indicated in his application for a remedy that he agrees to collect the documents at the court of the Member State of origin and where the creditor was responsible for providing translations, if the creditor transmits to that court any translations required pursuant to Article 49(1).

The body responsible for service under the law of the Member State of origin shall, at the request of the creditor pursuant to point (a) of this paragraph, without delay serve the documents on the debtor by registered post attested by an acknowledgment of receipt at the address indicated by the debtor in accordance with paragraph 5 of this Article.

Where the creditor was responsible for initiating the service of the documents referred to in Article 28, a lack of service may only be cured if the creditor demonstrates that he had taken all the steps he was required to take to have the initial service of the documents effected.

4. ***The remedy applied for under point (c) of paragraph 1 shall be granted unless the creditor provides to the debtor the translations required pursuant to this Regulation within 14 days of the creditor being informed of the application by the debtor for a remedy pursuant to point (c) of paragraph 1.***

The second and third subparagraphs of paragraph 3 shall apply as appropriate.

5. ***In his application for a remedy under points (b) and (c) of paragraph 1, the debtor shall indicate an address to which the documents and the translations referred to in Article 28 can be sent in accordance with paragraphs 3 and 4 of this Article or, alternatively, shall indicate that he agrees to collect those documents at the court of the Member State of origin.***

Article 34

Remedies of the ***debtor against enforcement of the Preservation Order***

1. ***Notwithstanding Articles 33 and 35, upon application by the debtor to the competent court or, where national law so provides, to the competent enforcement authority in the Member State of enforcement, the enforcement of the Preservation Order in that Member State shall be:***

   (a) limited on the ***ground*** that certain amounts ***held*** in the account ***should be exempt from seizure in accordance with Article 31(3), or that amounts exempt from seizure have not or not correctly been taken into account in the implementation of the Order in accordance with Article 31(2)***; ***or***

(b) terminated on the ***ground*** that:

▌

(***i***) the account preserved is ***excluded*** from ***the scope of this Regulation pursuant to Article 2(3) and (4);***

(***ii***) ***enforcement of the judgment, court settlement or authentic instrument which the creditor was seeking to secure by means of the Order has been refused in the Member State of enforcement;***

(*iii*) ***the enforceability of the judgment the enforcement of which the creditor was seeking to secure by means of the Order has been suspended in the Member State of origin; or***

(iv) ***point (b), (c), (d), (e), (f) or (g) of Article 33(1) applies. Article 33(3), (4) and (5) shall apply as appropriate.***

▌

2. Upon application by the debtor to the competent court in the Member State of enforcement, the enforcement of the Preservation Order in that Member State shall be terminated if it is manifestly contrary to the public policy (ordre public) of the Member State of enforcement.

▌

Article 35

Other remedies available to the debtor and the creditor

1. The debtor or the creditor may apply to the court that issued the Preservation Order for a modification or a revocation of the Order on the ground that the circumstances on the basis of which the Order was issued have changed.

2. The court that issued the Preservation Order may also, where the law of the Member State of origin so permits, of its own motion modify or revoke the Order due to changed circumstances.

3. The debtor and the creditor may, on the ground that they have agreed to settle the claim, apply jointly to the court that issued the Preservation Order for revocation or modification of the Order or to the competent court of the Member State of enforcement or, where national law so provides, to the competent enforcement authority in that Member State, for termination or limitation of the enforcement of the Order.

4. The creditor may apply to the competent court of the Member State of enforcement or, where national law so provides, to the competent enforcement authority in that Member State, for modification of the enforcement of the Preservation Order, consisting of an adjustment to the exemption applied in that Member State pursuant to Article 31, on the ground that other exemptions have already been applied in a sufficiently high amount in relation to one or several accounts maintained in one or more other Member States and that an adjustment is therefore appropriate.

Article 36

Procedure for the remedies pursuant to Articles 33, 34 and 35

1. *The application for a remedy pursuant to Article 33, 34 or 35 shall be made using the remedy form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2). The application may be made at any time and may be submitted by any means of communication, including electronic means, which are accepted under the procedural rules of the Member State in which the application is lodged.*

2. *The application shall be brought to the notice of the other party.*

3. *Except where the application was submitted by the debtor pursuant to point (a) of Article 34(1) or pursuant to Article 35(3), the decision on the application shall be issued after both parties have been given the opportunity to present their case, including by such appropriate means of communication technology as are available and accepted under the national law of each of the Member States involved.*

4. *The decision shall be issued without delay, but no later than 21 days after the court or, where national law so provides, the competent enforcement authority has received all the information necessary for its decision. The decision shall be brought to the notice of the parties.*

5. ***The decision revoking or modifying the Preservation Order and the decision limiting or terminating the enforcement of the Preservation Order shall be enforceable immediately.***

Where the remedy was applied for in the Member State of origin, the court shall, in accordance with Article 29, transmit the decision on the remedy without delay to the competent authority of the Member State of enforcement, using the form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2). That authority shall, immediately upon receipt, ensure that the decision on the remedy is implemented.

Where the decision on the remedy relates to a bank account maintained in the Member State of origin, it shall be implemented with respect to that bank account in accordance with the law of the Member State of origin.

Where the remedy was applied for in the Member State of enforcement, the decision on the remedy shall be implemented in accordance with the law of the Member State of enforcement.

Article 37

Right to appeal

Either party shall have the right to appeal against a decision issued pursuant to ***Article 33***, 34 **or** 35***. Such an appeal shall be submitted using the appeal form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2)***.

Article 38

Right to provide security ***in lieu of preservation***

1. Upon application by the debtor:

(a) ***the court that issued the Preservation Order may order the release of the funds preserved*** if the ***debtor*** provides to that ***court*** security ***in*** the amount ***of the Order, or an alternative*** assurance ***in a form acceptable under the law of the Member State in which the court is located and of a value at least equivalent to that amount.***

(b) ***the*** competent ***court or, where national law so provides, the competent enforcement*** authority of the Member State of enforcement ***may*** terminate the enforcement of the ***Preservation Order in the Member State of enforcement*** if the ***debtor*** provides to that ***court or authority security in the amount preserved in that Member State, or an alternative assurance in a form acceptable under the law of the Member State in which the court is located and of a value at least equivalent to that amount.***

2. Articles 23 and 24 shall apply as appropriate to the release of the funds preserved. The provision of the security in lieu of preservation shall be brought to the notice of the creditor in accordance with national law.

Article 39

Right of third parties

1. The right of a third party ***to contest a Preservation Order shall be governed by the law*** of the Member State of origin.

2. The right of a third party to contest the enforcement of a Preservation Order shall be governed by the law of the Member State of enforcement.

3. Without prejudice to other rules of jurisdiction laid down in Union law or national law, jurisdiction in respect of any action brought by a third party:

(a) to contest a Preservation Order shall lie with the courts of the Member State of origin, and

(b) to contest the enforcement of the Preservation Order in the Member State of enforcement shall lie with the courts of the Member State of enforcement or, where the national law of that Member State so provides, with the competent enforcement authority.

Chapter 5
General provisions

Article 40

Legalisation or other similar formality

No legalisation or other similar formality shall be required in the context of this Regulation.

Article 41

Legal representation

Representation by a lawyer or other legal professional shall not be mandatory in proceedings ***to obtain a Preservation Order. In proceedings pursuant to Chapter 4, representation by a lawyer or another legal professional shall not be mandatory unless, under the law of the Member State of the court or authority with which the application for a remedy is lodged, such representation is mandatory irrespective of the nationality or domicile of the parties.***

Article 42

Court fees

The court fees ***in proceedings to obtain a Preservation Order or a remedy against an Order*** shall not be higher than the fees for obtaining an equivalent ***national order or a remedy against such a national order.***

Article 43

Costs incurred by the banks

1. ***A bank shall be entitled to seek payment or reimbursement from the creditor or the debtor of the costs incurred in implementing a Preservation Order only where, under the law of the Member State of enforcement, the bank is entitled to such payment or reimbursement in relation to equivalent national orders.***

2. ***Fees charged by a bank to cover the costs referred to in paragraph 1 shall be determined taking into account the complexity of the implementation of the Preservation Order, and may not be higher than the fees charged for the implementation of equivalent national orders.***

3. ***Fees charged by a bank to cover the costs of providing account information pursuant to Article 14 may not be higher than the costs actually incurred and, where applicable, not higher than the fees charged for the provision of account information in the context of equivalent national orders.***

Article 44

Fees charged by authorities

Fees charged by any authority or other body in the Member State of enforcement which is involved in the processing or enforcement of a Preservation Order, or in providing account information pursuant to Article 14, shall be determined on the basis of a scale of fees or other set of rules established in advance by each Member State and transparently setting out the applicable fees. In establishing that scale or other set of rules, a Member State may take into account the amount of the Order and the complexity involved in processing it. Where applicable, the fees may not be higher than the fees charged in connection with equivalent national orders.

Article 45

Time ***frames***

Where, in exceptional circumstances, it is not possible for the court ▌ or the ▌ authority ***involved*** to respect the time ***frames*** provided for in ***Article 14(7), Article 18, Article 23(2), the second subparagraph of Article 25(3), Article 28(2), (3) and (6), Article 33(3) and*** Article 36***(4) and (5)***, the court or authority shall take the steps required by those provisions as soon as possible. ▌

Article 46

Relationship with national procedural law

1. All procedural issues not specifically dealt with in this Regulation shall be governed by ***the law of the Member State in which the procedure takes place***.

2. ***The effects of the opening of insolvency proceedings on individual enforcement actions, such as the enforcement of a Preservation Order, shall be governed by the law of the Member State in which the insolvency proceedings have been opened.***

Article 47

Data protection

1. ***Personal data which are obtained, processed or transmitted under this Regulation shall be adequate, relevant and not excessive in relation to the purpose for which they were obtained, processed or transmitted, and shall be used only for that purpose.***

2. ***The competent authority, the information authority and any other entity responsible for enforcing the Preservation Order may not store the data referred to in paragraph 1 beyond the period necessary for the purpose for which they were obtained, processed or transmitted, which in any event shall not be longer than six months after the proceedings have ended, and shall, during that period, ensure the appropriate protection of those data. This paragraph does not apply to data processed or stored by courts in the exercise of their judicial functions.***

Article 48

Relationship with other instruments

This Regulation is ***without*** prejudice ***to:***

▌

(a) ***Regulation (EC) No 1393/2007*** of the European Parliament and of the Council[1]***, except as provided for in Article 10(2), Article 14(3) and (6), Article 17(5), Article 23(3) and (6), Article 25(2) and (3), Article 28(1), (3), (5) and (6), Article 29, Article 33(3), Article 36(2) and (4), and Article 49(1) of this Regulation;***

(b) ***Regulation (EU) No 1215/2012;***

[1] ***Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).***

(c) Regulation (EC) No 1346/2000;

(d) Directive 95/46/EC, except as provided for in Articles 14(8) and 47 of this Regulation;

(e) Regulation (EC) No 1206/2001 of the European Parliament and of the Council[1]***;***

(f) Regulation (EC) No 864/2007, except as provided for in Article 13(4) of this Regulation.

[1] ***Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.06.2001, p. 1).***

Article 49

Languages

▌

1. ***Any documents listed in points (a) and (b) of Article 28(5) to be served on the debtor which are not in the official language of the Member State in which the debtor is domiciled or, where there are several official languages in that Member State, the official language or one of the official languages of the place where the debtor is domiciled or another language which he understands, shall be accompanied by a translation or transliteration into one of those languages. Documents listed in point (c) of Article 28(5) shall not be translated unless the court decides, exceptionally, that specific documents need to be translated or transliterated in order to enable the debtor to assert his rights.***

2. ***Any documents to be addressed under this Regulation to a court or competent authority may also be in*** any other official language ▌ of the institutions of the Union ▌ ***, if*** the Member State concerned has indicated that it can accept ***such other language***.

3. Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States.

Article 50

Information to be provided by Member States

1. By **…**[*]**,** the Member States shall communicate the following information to the Commission:

(a) the ***courts designated as*** competent to issue ***a Preservation Order (***Article ***6(4)***);

(b) the authority designated as competent to obtain account information (Article 14);

(c) the methods of obtaining ***account*** information available under ▌ their national law ▌ ***(***Article 14***(5))***;

(d) the ***courts*** with which an appeal ▌ is to be lodged ▌ ***(***Article 21***)***;

(e) the authority or authorities designated as competent to receive, transmit and serve the Preservation Order and other documents under this Regulation (point (14) of Article 4);

[*] OJ: insert please the date: ***24 months after the date of entry into force of this Regulation.***

(f) the authority competent to enforce the ***Preservation Order*** in accordance with Chapter 3;

(g) the extent to which joint and nominee accounts can be preserved under ▌ their national law ▌ ***(***Article 30***)***;

(h) the rules applicable to amounts exempt from ***seizure*** under national law ▌ ***(***Article 31***)***;

(i) whether, under their national law, banks are entitled to charge fees for the implementation of equivalent national orders or for providing account information and, if so, which party is liable, provisionally and finally, to pay those fees (Article 43);

▌

(j) the scale of fees or other set of rules setting out the applicable fees charged by any authority or other body involved in the processing or enforcement of the Preservation Order (Article 44);

(k) ***whether any ranking is*** conferred ***on*** equivalent ***national orders*** under national law ▌***(***Article 32***)***;

(l) the courts ***or, where applicable, the enforcement authority, competent to grant a remedy (Article 33(1), Article 34(1) or (2))***;

(m) the courts with which an appeal is to be lodged, the period of time, if prescribed, within which such an appeal must be lodged under national law and the event marking the start of that period (Article 37);

(n) ***an indication of*** court fees ▌***(***Article ***42)***; ***and***

(o) the languages accepted for translations of the documents ▌***(***Article ***49(2)).***

▌

The Member States shall apprise the Commission of any subsequent changes to that information.

2. The Commission shall make the information ▌ publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters ▌ .

▌

Article 51

Establishment and subsequent amendment of the forms

The Commission shall adopt implementing acts establishing and subsequently amending the forms referred to in Articles 8(1), 10(2), 19(1), 25(1), 27(2), 29(2) and 36(1), the second and third subparagraphs of Article 36(5) and Article 37. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 52(2).

▌

Article 52

Committee procedure

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

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 53

Monitoring and ***review***

1. By ***…***[*], the Commission shall ***submit*** to the European Parliament, ***to*** the Council and ***to*** the European Economic and Social Committee ***a report on the application of this Regulation, including an evaluation as to whether:***

   (a) financial instruments should be included in the scope of this Regulation, and

   (b) amounts credited to the debtor's account after the implementation of the Preservation Order could be made subject to preservation under the Order.

   The report shall be accompanied, if appropriate, by ***a proposal to amend*** this Regulation ***and an assessment of the impact of the amendments to be introduced***.

[*] OJ: insert please the date: ***90 months after the date of entry into force of this Regulation.***

2. ***For the purposes of paragraph 1, the*** Member States shall collect and make available to the Commission ***upon request*** information on***:***

(a) the number of applications for ***a Preservation Order and*** the number of cases in which the ***Order*** was issued ***;***

(b) the number of applications for a ***remedy pursuant to*** Articles ***33 and*** 34 and***, if possible, the number of cases in which the remedy was granted; and***

(c) the number of appeals lodged pursuant to Article 37 and, if possible, the number of cases in which such an appeal was successful.

Chapter 6
Final provisions

Article 54

Entry into force

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

It shall apply from **…**[*], with the exception of Article 50, which shall apply from **…**[**].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at

For the European Parliament	*For the Council*
The President	*The President*

[*] OJ: insert please the date: ***30 months after the date of entry into force of this Regulation.***

[**] OJ: insert please the date: ***24 months after the date of entry into force of this Regulation.***

P7_TA-PROV(2014)0368

Disclosure of non-financial and diversity information by certain large companies and groups ***I

European Parliament legislative resolution of 15 April 2014 on the proposal for a directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups (COM(2013)0207 – C7-0103/2013 – 2013/0110(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2013)0207),

– having regard to Article 294(2) and Article 50(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0103/2013),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Estonian Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,

– having regard to the opinion of the European Economic and Social Committee of 11 July 2013[1],

– having regard to the undertaking given by the Council representative by letter of 26 February 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Foreign Affairs, the Committee on Development, the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection and the Committee on Women's Rights and Gender Equality (A7-0006/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

[1] OJ C 327, 12.11.2013, p. 47.

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0110

Position of the European Parliament adopted at first reading on 15 April 2014 with a view to the adoption of Directive 2014/.../EU of the European Parliament and of the Council amending *Directive 2013/34/EU* as regards disclosure of non-financial and diversity information by certain large *undertakings* and groups[*]

(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 50(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:

[*] TEXT HAS NOT YET UNDERGONE LEGAL-LINGUISTIC FINALISATION.

[1] OJ C 327, 12.11.2013, p. 47.

[2] Position of the European Parliament of 15 April 2014.

(1) In its Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘Single Market Act –Twelve levers to boost growth and strengthen confidence – “Working together to create new growth”’, adopted on 13 April 2011, the Commission identifies the need to ***raise to a similarly high level*** the transparency of the social and environmental information provided by ***undertakings*** in all sectors, ***across all Member States. This is fully consistent with the possibility for Member States to require, as appropriate, further improvements to the transparency of undertakings' non-financial information, which is by its nature a continuous endeavour.***

(2) The need to improve ***undertakings’*** disclosure of social and environmental information, by presenting a legislative proposal in this field, was reiterated in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘A renewed EU strategy 2011-14 for Corporate Social Responsibility’, adopted on 25 October 2011.

(3) The European Parliament ▌, in its resolutions of 6 February 2013 on, respectively, 'Corporate Social Responsibility: accountable, transparent and responsible business behaviour and sustainable growth' and 'Corporate Social Responsibility: promoting society's interests and a ***route*** to sustainable and inclusive recovery', acknowledged the importance of businesses divulging information on sustainability such as social and environmental factors, with a view to identifying sustainability risks and increasing investor and consumer trust ▌. ***Indeed, non-financial reporting is vital for managing change towards a sustainable global economy by combining long-term profitability with social justice and environmental protection. In this context, non-financial reporting helps the measuring, monitoring and managing of undertakings' performance and their impact on society. Thus, the European Parliament*** called ***on*** the Commission to bring forward a ***legislative*** proposal on ***the*** disclosure ***of non-financial information by undertakings allowing for high flexibility of action, in order to take account of the multi-dimensional nature of corporate social responsibility (CSR) and the diversity of the CSR policies implemented by businesses matched by a sufficient level of comparability to meet the needs of investors and other stakeholders as well as the need to provide consumers with easy access to information on businesses' impact on society***.

(4) The coordination of national provisions concerning the disclosure of non-financial information in respect of ***certain*** large undertakings ▌ is of importance for the interests of ***undertakings***, shareholders and other stakeholders alike. Coordination is necessary in those fields because most of those undertakings operate in more than one Member State.

(5) It is also necessary to establish a certain minimum legal requirement as regards the extent of the information that should be made available to the public ***and authorities*** by undertakings across the Union. ***The*** undertakings ***subject to this Directive*** should give a fair and comprehensive view of ***their*** policies, ***outcomes***, and risks.

(6) In order to enhance the consistency and comparability of non-financial information disclosed throughout the Union, ***certain large undertakings*** should ***prepare*** a non-financial statement containing information relating to at least environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters. Such statement should include a description of the policies, ***outcomes*** and risks related to those matters ***and should be included in the management report of the undertaking concerned. The non-financial statement should also include information on the due diligence processes implemented by the undertaking, also regarding, where relevant and proportionate, its supply and subcontracting chains, in order to identify, prevent and mitigate existing and potential adverse impacts. It should be possible for Member States to exempt undertakings subject to this Directive from the obligation to prepare a non-financial statement when a separate report corresponding to the same financial year and covering the same content is provided by the undertaking.***

(7) ***Where undertakings are required to prepare a non-financial statement, that statement should contain, as regards environmental matters, details of the current and foreseeable impacts of the undertaking's operations on the environment, and, as appropriate, health and safety, the use of renewable and/or non-renewable energy, greenhouse gas emissions, water use and air pollution. As regards social and employee-related matters, the information provided in the statement may concern the actions taken to ensure gender equality, implementation of fundamental conventions of the International Labour Organisation, working conditions, social dialogue, respect for the right of workers to be informed and consulted, respect for trade union rights, health and safety at work and the dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities. With regard to human rights, anti-corruption and bribery, the non-financial statement could include information on the prevention of human rights abuses and/or on instruments in place to fight corruption and bribery.***

(8) ***The undertakings subject to this Directive should provide adequate information in relation to matters that stand out as being most likely to bring about the materialisation of principal risks of severe impacts, along with those that have already materialised. The severity of such impacts should be judged by their scale and gravity. The risks of adverse impact may stem from the undertaking's own activities or may be linked to its operations, and, where relevant and proportionate, its products, services and business relationships, including its supply and subcontracting chains. This should not lead to undue additional administrative burdens for small and medium sized enterprises.***

(9) In providing this information, ***undertakings*** subject to ***this Directive*** may rely on national frameworks, Union-based frameworks such as the Eco-Management and Audit Scheme (EMAS), and international frameworks such as the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN 'Protect, Respect and Remedy' Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation's ISO 26000, the International Labour Organisation's Tripartite Declaration of principles concerning multinational enterprises and social policy, ▌ the Global Reporting Initiative***, or other recognised international frameworks***.

(10) ***Member States should ensure that adequate and effective means exist to guarantee disclosure of non-financial information by undertakings in compliance with this Directive. To that end, Member States should ensure that effective national procedures are in place to enforce compliance with the obligations laid down by this Directive, and that those procedures are available for all persons and legal entities having a legitimate interest, in accordance with national law, in ensuring that the provisions of this Directive are respected.***

(11) Paragraph 47 of the outcome document of the United Nations Rio+20 conference, entitled 'The Future We Want', recognises the importance of corporate sustainability reporting and encourages ***undertakings***, where appropriate, to consider integrating sustainability information into their reporting cycle. It also encourages industry, interested governments and relevant stakeholders with the support of the United Nations system, as appropriate, to develop models for best practice, and facilitate action for the integration of financial and non-financial information, taking into account experiences from already existing frameworks.

(12) Investors' access to non-financial information is a step towards reaching the milestone of having in place by 2020 market and policy incentives rewarding business investments in efficiency under the Roadmap to a Resource Efficient Europe.

(13) The European Council, in its conclusions of 24 and 25 March 2011, called for the overall regulatory burden, in particular for small and medium-sized enterprises ('SMEs'), to be reduced at both European and national levels, and suggested measures to increase productivity, and the Europe 2020 Strategy for smart, sustainable and inclusive growth aims to improve the business environment for SMEs and to promote their internationalisation. Thus, in accordance with the 'think small first' principle, the disclosure requirements under Directive ***2013/34/EU*** of the European Parliament and of the Council[1] should apply only to certain large undertakings and groups.

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

(14) The scope of those non-financial disclosure requirements should be defined by reference to the average number of employees, ***balance-sheet*** total ▌ and ***net*** turnover. SMEs should be exempted from additional requirements, and the obligation to disclose a non-financial statement ▌ should apply only to those ***large undertakings which are public-interest entities and to those public-interest entities which are parent undertakings of a large group,*** in each case having an average number of employees ***in*** excess of 500, on a consolidated basis for groups ▌ . ***This should not prevent Member States from requiring disclosure of non-financial information from undertakings and groups other than undertakings which are large public-interest entities, and from public-interest entities which are parent undertakings*** of ***a large group.***

▌

(15) Many of the undertakings which fall within the scope of Directive ***2013/34/EU*** are members of groups of undertakings. Consolidated ***management*** reports should be drawn up so that the information concerning such groups of undertakings may be conveyed to members and third parties. National law governing consolidated ***management*** reports should therefore be coordinated in order to achieve the objectives of comparability and consistency of the information which undertakings should publish within the Union.

(16) ***Statutory auditors and audit firms should only check that the non-financial statement or the separate report has been provided. In addition, it should be possible for Member States to require that the information included in the non-financial statement or in the separate report be verified by an independent assurance services provider.***

(17) With a view to facilitating the disclosure of non-financial information by Union undertakings, the Commission should prepare non-binding guidelines, including general and sectoral non-financial key performance indicators. The Commission should take into account current best practices, international developments and the results of related Union initiatives. The Commission should carry out appropriate consultations, including with relevant stakeholders. When referring to environmental aspects, the Commission should cover at least land use, water use, greenhouse gas emissions and the use of materials.

(18) Diversity of competences and views of the members of administrative, management and supervisory bodies of ***undertakings*** facilitates a good understanding of the business organisation and affairs of the undertaking concerned. It enables members of those bodies to constructively challenge the management decisions and to be more open to innovative ideas, addressing the similarity of views of members, also known as the 'group-think' phenomenon. It contributes thus to effective oversight of the management and to successful governance of the ***undertaking***. It is therefore important to enhance transparency regarding the diversity policy ***applied***. This would inform the market of corporate governance practices and thus put indirect pressure on ***undertakings*** to have more diversified boards.

(19) The obligation to disclose their diversity policies in relation to the administrative, management and supervisory bodies with regard to aspects such as, ***for instance,*** age, gender and ▌ educational and professional backgrounds should apply only to ***certain large undertakings***. ▌ Disclosure of the diversity policy should be part of the corporate governance statement, as laid down by Article ***20 of*** Directive ***2013/34/EU***. ***If no*** diversity policy ***is applied there*** should not be ***any obligation*** to put one in place, but ***the corporate governance statement*** should ***include a clear explanation*** as to why this is the case.

(20) Initiatives at Union level, including country-by-country reporting for several sectors, as well as the references made by the European Council, in its conclusions of 22 May 2013 and 20 December 2013, to country-by-country reporting by large companies and groups, similar provisions in Directive 2013/36/EU of the European Parliament and of the Council[1], and international efforts to improve transparency in financial reporting have been noted. Within the context of the G8 and the G20, the OECD has been asked to draw up a standardised reporting template for multinational undertakings to report to tax authorities where they make their profits and pay taxes around the world. Such developments complement the proposals contained in this Directive, as appropriate measures for their respective purposes.

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

(21) Since the objective of this Directive, namely to increase the relevance, consistency and comparability of information disclosed by certain large ***undertakings*** and groups across the Union, cannot be sufficiently achieved by the Member States but can rather**,** by reason of its effect, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

(22) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including freedom to conduct a business, respect for private life and the protection of personal data. This Directive has to be implemented in accordance with these rights and principles.

(23) ***Directive 2013/34/EU*** should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive ***2013/34/EU***

Directive ***2013/34/EU*** is amended as follows:

(1) The following Article is inserted:

'Article 19a

Non-financial statement

1. ***Large undertakings which are public-interest entities exceeding on their balance-sheet dates the criterion of*** average number of employees during the financial year ***of*** 500 shall ▌ include ***in the management report*** a non-financial statement containing information ***to the extent necessary for an understanding of the undertaking's development, performance and position and of the impact of its activity,*** relating to, ***as a minimum,*** environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:

(a) ***a brief description of the undertaking's business model;***

(b) a description of the policy pursued by the ***undertaking*** in relation to those matters***, including due diligence processes implemented****;*

(c) the ***outcome*** of those policies;

(d) the ***principal*** risks related to those matters ***linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas,*** and how the ***undertaking*** manages those risks;

(e) non-financial key performance indicators relevant to the particular business.

Where ***the undertaking*** does not pursue policies in relation to one or more of those matters, ***the non-financial statement*** shall provide ***a clear and reasoned*** explanation for not doing so.

The non-financial statement referred to in the first subparagraph shall ***also***, where appropriate, include references to, and additional explanations of, amounts reported in the annual ***financial statements***.

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

In requiring ***the*** disclosure of the information ***referred to in the first subparagraph, Member States shall provide that undertakings*** may rely on national, Union-based or international frameworks, and if they do so, ***undertakings*** shall specify which frameworks ***they have*** relied upon.

▌

2. Undertakings fulfilling the obligation set out in paragraph 1 shall be deemed to have fulfilled the obligation relating to the analysis of non-financial information set out in the third subparagraph of Article 19(1).

3. ***An undertaking*** which is a subsidiary ***undertaking*** shall be ***exempted*** from the obligation set out in ***paragraph 1*** if the ***undertaking*** and its ***subsidiary undertakings are included in the*** consolidated ***management report or the separate*** report of another ***undertaking,*** drawn up in accordance with ***Article 29 and this Article***.

4. Where ***an undertaking*** prepares a ***separate*** report corresponding to the same financial year ***whether or not*** relying on national, Union-based or international frameworks and ***covering*** the information ***required for the non-financial statement as*** provided for in paragraph ***1***, ***Member States may*** exempt ***that undertaking*** from the obligation to prepare the non-financial statement laid down in ***paragraph 1***, provided that such ***separate*** report **:**

(a) is published together with the management report in accordance with Article 30; or

(b) is made publicly available within a reasonable period of time, not exceeding six months after the balance-sheet date, on the undertaking's website, to which reference shall be made in the management report.

5. Member States shall ensure that the statutory auditor or audit firm checks whether the non-financial statement referred to in paragraph 1 or the separate report referred to in paragraph 4 has been provided.

6. Member States may require that the information in the non-financial statement referred to in paragraph 1 or in the separate report referred to in paragraph 4 be verified by an independent assurance services provider.

7. Member States may exempt small and medium-sized undertakings from the obligation set out in paragraph 1 in so far as it relates to non-financial information.'.

(2) Article ***20*** is amended as follows:

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

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

(b) ***paragraph 3 is replaced by the following:***

‘3. The statutory auditor or audit firm shall express an opinion in accordance with the second subparagraph of Article 34(1) regarding information prepared under points (c) and (d) of paragraph 1 of this Article and shall check that the information referred to in points (a), (b), (e), (f) and (g) of paragraph 1 of this Article has been provided.’;

(c) paragraph 4 is replaced by the following:

'4. Member States ***may exempt undertakings referred to in paragraph 1 which have only issued securities other than shares*** admitted to trading on a regulated market, within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC***, from the application of points (a), (b), (e), (f) and (g) of paragraph 1 of this Article, unless such undertakings have issued shares which are traded in a multilateral trading facility, within the meaning of point (15) of Article 4(1) of Directive 2004/39/EC.';***

(d) the following paragraph is added:

'***5. Notwithstanding Article 40,*** point (g) of paragraph 1 ***shall*** not apply ***to small and medium-sized undertakings***.'.

(3) The following Article is inserted:

'Article 29a

Consolidated non-financial statement

1. Public-interest entities which are parent undertakings ***of a large group exceeding on its*** balance-sheet ***dates, on a*** consolidated ***basis, the criterion of*** average number of employees during the financial year ***of*** 500 shall ▌include ***in the consolidated management report*** a ***consolidated*** non-financial statement containing information ***to the extent necessary for an understanding of the group's development, performance and position and of the impact of its activity,*** relating to, ***as a minimum,*** environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:

(a) ***a brief description of the group's business model;***

(b) a description of the policy pursued by the ***group*** in relation to those matters***,*** ***including due diligence processes implemented***;

(c) the ***outcome*** of those policies;

(d) the ***principal*** risks related to those matters ***linked to the group's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas,*** and how the ***group*** manages those risks;

(e) non-financial key performance indicators relevant to the particular business.

Where the group does not pursue policies in relation to one or more of those matters***,*** ***the consolidated non-financial statement*** shall provide ***a clear and reasoned*** explanation for not doing so.

The consolidated non-financial statement referred to in the first subparagraph shall ***also***, where appropriate, include references to, and additional explanations of, amounts reported in the consolidated ***financial statements***.

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

In requiring ***the*** disclosure of the information ***referred to in the first subparagraph, Member States shall provide that the parent undertaking*** may rely on national, Union-based or international frameworks, and if it does so, ***the parent undertaking*** shall specify which frameworks ***it has*** relied upon.

▌

2. Parent undertakings fulfilling the obligation set out in paragraph 1 shall be deemed to have fulfilled the obligation relating to the analysis of non-financial information set out in the third subparagraph of Article 19(1) and in Article 29.

3. A parent undertaking which is also a subsidiary undertaking shall be ***exempted*** from the obligation set out in ▌ paragraph 1 if the exempted ***parent*** undertaking and its subsidiaries are ***included in the*** consolidated ***management report or the separate*** report ***of another undertaking,*** drawn up in accordance with ***Article 29 and this Article.***

4. ▌Where a parent undertaking prepares a ***separate*** report corresponding to the same financial year, referring to the whole group, ***whether or not*** relying on national, Union-based or international frameworks and covering the information ***required for the consolidated non-financial statement*** provided for in ▌paragraph 1, ***Member States may exempt that*** parent undertaking ▌ from the obligation to prepare the ***consolidated*** non-financial statement laid down in ▌paragraph 1, provided that such ***separate report:***

(a) is published together with the consolidated management report in accordance with Article 30; or

(b) is made publicly available within a reasonable period of time, not exceeding six months after the balance-sheet date, on the parent undertaking's website, to which reference shall be made in the consolidated management report.

5. Member States shall ensure that the statutory auditor or audit firm checks whether the consolidated non-financial statement referred to in paragraph 1 or the separate report referred to in paragraph 4 has been provided.

6. Member States may require that the information in the consolidated ***non-financial statement referred to in paragraph 1 or in the separate report referred to in paragraph 4 is verified by an independent assurance services provider.***

7. Member States may exempt parent undertakings of small and medium-sized groups from the obligation set out in paragraph 1 in so far as it relates to non-financial information.'.

(4) In Article 33, paragraph 1 is replaced by the following:

'1. Member States shall ensure that the members of the administrative, management and supervisory bodies of an undertaking, acting within the competences assigned to them by national law, have collective responsibility for ensuring that:

(a) the annual financial statements, the management report, the corporate governance statement when provided separately and the report referred to in Article 19a(4); and

(b) the consolidated financial statements, the consolidated management reports, the consolidated corporate governance statement when provided separately and the report referred to in Article 29a(4),

are drawn up and published in accordance with the requirements of this Directive and, where applicable, with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002.'.

(5) In Article 34, the following paragraph is added:

'3. This Article shall not apply to the non-financial statement referred to in Article 19a(1) and the consolidated non-financial statement referred to in Article 29a(1) or to the separate reports referred to in Articles 19a(4) and 29a(4).'.

(6) In Article 48, the following paragraph is inserted before the last paragraph:

'The report shall also consider, taking into account developments in the OECD and the results of related European initiatives, the possibility of introducing an obligation requiring large undertakings to produce on an annual basis a country-by-country report for each Member State and third country in which they operate, containing information on, as a minimum, profits made, taxes paid on profits and public subsidies received.'.

Article 2

Guidance on reporting

The Commission shall prepare non-binding guidelines on methodology for reporting non-financial information, including non-financial key performance indicators, general and sectoral, with a view to facilitating relevant, useful and comparable disclosure of non-financial information by Union undertakings. In doing so, the Commission shall consult relevant stakeholders.

The Commission shall publish the guidelines no later than 24 months after the entry into force of this Directive.

Article 3

Review

The Commission shall submit a report to the European Parliament and the Council on the implementation of this Directive, including, among other aspects, its scope, particularly as regards large non-listed undertakings, its effectiveness and the level of guidance and methods provided. The report shall be published at the latest four years after the entry into force of this Directive, and shall be accompanied, if appropriate, by legislative proposals.

Article ***4***

Transposition

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

[1] OJ: please insert the date: two years after the entry into force of this Directive.

Member States ***shall*** provide that the provisions referred to in the first subparagraph are to ▌ apply ▌ to all ▌ undertakings within the scope of Article 1 ▌ for the financial year starting on 1 January 201_[1] ***or during the calendar year 201_[2]***.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such 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 ***5***

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*.

[1] ***First*** year after the transposition deadline.

[2] ***First*** year after the transposition deadline.

Article ***6***

Addressees

This Directive is addressed to the Member States.

Done at […],

For the European Parliament	*For the Council*
The President	*The President*