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Contents

[1] Text with EEA relevance.

EN

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

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

Corrigenda

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1497

of 15 October 2020

concerning the authorisation of L-methionine produced by *Corynebacterium glutamicum* KCCM 80 184 and *Escherichia coli* KCCM 80 096 as a feed additive for all animal species

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ([1]), and in particular Article 9(2) thereof,

Whereas:

(1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition.

(2) In accordance with Article 7 of Regulation (EC) No 1831/2003 an application was submitted for the authorisation of L-methionine produced by *Corynebacterium glutamicum* KCCM 80 184 and *Escherichia coli* KCCM 80 096 as a feed additive for use in feed for all animal species. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.

(3) The application concerns the authorisation of L-methionine produced by *Corynebacterium glutamicum* KCCM 80 184 and *Escherichia coli* KCCM 80 096 as a feed additive for all animal species to be classified in the additive category 'nutritional additives'.

(4) The European Food Safety Authority ('the Authority') concluded in its opinion of 12 November 2019 ([2]) that, under the proposed conditions of use, L-methionine produced by *Corynebacterium glutamicum* KCCM 80 184 and *Escherichia coli* KCCM 80 096 does not have an adverse effect on animal health, human health or the environment.

(5) The Authority also concluded that L-methionine produced by *Corynebacterium glutamicum* KCCM 80 184 and *Escherichia coli* KCCM 80 096 is an effective source of methionine for all animal species and that in order to be as efficacious in ruminants as in non-ruminant species, the additive should be protected against degradation in the rumen.

(6) The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.

(7) The assessment of this additive shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of this additive should be authorised as specified in the Annex to this Regulation.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

([1]) OJ L 268, 18.10.2003, p. 29.
([2]) *EFSA Journal* 2019;17(12):5917.

HAS ADOPTED THIS REGULATION:

Article 1

The substance specified in the Annex, belonging to the additive category 'nutritional additives' and to the functional group 'amino acids, their salts and analogues' is authorised as a feed additive in animal nutrition subject to the conditions laid down in that Annex.

Article 2

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

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

Done at Brussels, 15 October 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method.	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						mg/kg of complete feed with a moisture content of 12 %			
Category: nutritional additives. Functional group: amino acids, their salts and analogues									
3c305	-	L-methionine	*Additive composition* Powder with a minimum of 98,5 % L-methionine and a maximum moisture content of 0,5 % ——— *Characterisation of the active substance* L-methionine produced by fermentation with *Corynebacterium glutamicum* KCCM 80 184 and *Escherichia coli* KCCM 80 096 Chemical formula: $C_5H_{11}NO_2S$ CAS Number: 63-68-3. ——— *Analytical methods* (1) For the determination of L-methionine in the feed additive: — Food Chemical Codex 'L-methionine monograph' (identification) and — Ion-exchange chromatography coupled with post-column derivatisation and optical detection (IEC-VIS/FLD) – EN ISO 17 180 (quantification) For the determination of methionine in premixtures — Ion-exchange chromatography coupled with post-column derivatisation and optical detection (IEC-VIS/FLD) – EN ISO 17 180 and — Ion-exchange chromatography coupled with post-column derivatisation and photometric detection (IEC-VIS), Commission Regulation (EC) No 152/2009 (Annex III, F)	All species	-	-	-	1. L-methionine may be placed on the market and used as an additive consisting of a preparation. 2. L-methionine may be used via water for drinking. 3. The labelling of the additive and premixtures shall indicate the following: 'The supplementation with L-methionine, in particular via water for drinking, shall take into account all essential and conditionally essential amino acids in order to avoid imbalances.'	5.11.2030

			For the determination of methionine in compound feed and feed materials: — Ion-exchange chromatography coupled with post-column derivatisation and photometric detection (IEC-VIS), Commission Regulation (EC) No 152/2009 (Annex III, F) For the determination of methionine in water: — Ion-exchange chromatography coupled with post-column derivatisation and photometric detection (IEC-VIS)						

([1]) Details of the analytical methods are available at the following address of the Reference Laboratory: https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1498

of 15 October 2020

concerning the non-renewal of approval of the active substance thiophanate-methyl, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ([1]), and in particular Articles 20(1) and 78(2) thereof,

Whereas:

(1) Commission Directive 2005/53/EC ([2]) included thiophanate-methyl as an active substance in Annex I to Directive 91/414/EEC ([3]).

(2) Active substances included in Annex I to Directive 91/414/EEC are deemed to have been approved under Regulation (EC) No 1107/2009 and are listed in Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 ([4]).

(3) The approval of the active substance thiophanate-methyl, as set out in Part A of the Annex to Implementing Regulation (EU) No 540/2011, expires on 31 October 2020.

(4) An application for the renewal of the approval of thiophanate-methyl was submitted in accordance with Article 1 of Commission Implementing Regulation (EU) No 844/2012 ([5]) within the time period provided for in that Article.

(5) The applicant submitted the supplementary dossiers required in accordance with Article 6 of Implementing Regulation (EU) No 844/2012. The application was found to be complete by the rapporteur Member State.

(6) The rapporteur Member State prepared a renewal assessment report in consultation with the co-rapporteur Member State and submitted it to the European Food Safety Authority ('the Authority') and the Commission on 1 November 2016.

(7) The Authority made the supplementary summary dossier available to the public. The Authority also circulated the renewal assessment report to the applicants and to the Member States for comments and launched a public consultation on it. The Authority forwarded the comments received to the Commission.

([1]) OJ L 309, 24.11.2009, p. 1.

([2]) Commission Directive 2005/53/EC of 16 September 2005 amending Council Directive 91/414/EEC to include chlorothalonil, chlorotoluron, cypermethrin, daminozide and thiophanate-methyl as active substances (OJ L 241, 17.9.2005, p. 51).

([3]) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

([4]) Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

([5]) Commission Implementing Regulation (EU) No 844/2012 of 18 September 2012 setting out the provisions necessary for the implementation of the renewal procedure for active substances, as provided for in Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ L 252, 19.9.2012, p. 26).

(8) On 17 January 2018, the Authority communicated to the Commission its conclusion ([6]) on whether thiophanate-methyl can be expected to meet the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009. The conclusion identified a number of concerns and data gaps.

(9) On 24 October 2018, the Commission presented the draft renewal report for thiophanate-methyl to the Standing Committee on Plants, Animal, Food and Feed, which discussed it during several meetings.

(10) By letter of 10 July 2020, the applicant informed the Commission of its decision to withdraw the application for the renewal of approval of thiophanate-methyl.

(11) The approval of thiophanate-methyl therefore should not be renewed.

(12) Implementing Regulation (EU) No 540/2011 should therefore be amended accordingly.

(13) Member States should be given sufficient time to withdraw authorisations for plant protection products containing thiophanate-methyl.

(14) For plant protection products containing thiophanate-methyl, where Member States grant any grace period in accordance with Article 46 of Regulation (EC) No 1107/2009, that period should not exceed 12 months from the date of entry into force of this Regulation.

(15) This Regulation does not prevent the submission of a further application for the active substance thiophanate-methyl pursuant to Article 7 of Regulation (EC) No 1107/2009.

(16) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Non-renewal of approval of active substance

The approval of the active substance thiophanate-methyl is not renewed.

Article 2

Amendment to Implementing Regulation (EU) No 540/2011

In Part A of the Annex to Implementing Regulation (EU) No 540/2011, row 105, on thiophanate-methyl, is deleted.

Article 3

Transitional measures

Member States shall withdraw authorisations for plant protection products containing thiophanate-methyl as active substance by 19 April 2021 at the latest.

Article 4

Grace period

Any grace period granted by Member States in accordance with Article 46 of Regulation (EC) No 1107/2009 shall expire by 19 October 2021 at the latest.

([6]) EFSA (European Food Safety Authority), 2018. Conclusion on the peer review of the pesticide risk assessment of the active substance thiophanate-methyl EFSA Journal 2018;16(1):5133. https://www.efsa.europa.eu/en/efsajournal/pub/5133

Article 5

Entry into force

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

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

Done at Brussels, 15 October 2020.

For the Commission
The President
Ursula VON DER LEYEN

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2020/1499

of 28 July 2020

on the applicability of Directive 2014/25/EU of the European Parliament and of the Council to production and wholesale of electricity from renewable sources in Italy

(notified under document C(2020) 5026)

(Only the Italian text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC ([1]), and in particular Article 35(3) thereof,

After consulting the Advisory Committee for Public Contracts,

Whereas:

1. FACTS

(1) On 3 December 2019, Enel Green Power ('the Applicant'), submitted to the Commission a request pursuant to Article 35(1) of Directive 2014/25/EU ('the Request'). The Request complies with Article 1(1) of Commission Implementing Decision (EU) 2016/1804 ([2]).

(2) The Request concerns production and wholesale of electricity from renewable sources, as referred to in Article 9 of Directive 2014/25/EU, provided by the Applicant in Italy. The services concerned are described as follows in the request: solar, wind, mini-hydro and geothermal energy. The applicant does not include biomass and biogas in the request as it argues that, based on the Commission's practice, the incentive schemes currently supporting these technologies must lead to the conclusion that the related markets are not directly exposed to competition yet.

(3) The Request was not accompanied by a reasoned and substantiated position adopted by an independent national authority. Consequently, in accordance with point 1 of Annex IV to Directive 2014/25/EU, the Commission is to adopt an implementing act on the Request within 105 working days. The initial deadline was suspended in accordance with point 2 of Annex IV to Directive 2014/25/EU. The deadline agreed between the Applicant and the Commission for adopting the implementing act expires on 31 July 2020.

2. LEGAL FRAMEWORK

(4) Directive 2014/25/EU applies to the award of contracts for the pursuit of activities related to, among others, the production and wholesale of electricity within the meaning of Directive 2014/25/EU, unless the activity is exempted pursuant to Article 34 of that Directive.

(5) Under Directive 2014/25/EU, contracts intended to enable the performance of one of the activities to which Directive 2014/25/EU applies are not to be subject to that Directive if, in the Member State in which the activity is carried out, it is directly exposed to competition on markets to which access is unrestricted. Direct exposure to competition is assessed on the basis of objective criteria, which may include the characteristics of the products or services concerned, the existence of alternative products or services considered to be substitutable on the supply side or demand side, the prices and the actual or potential presence of more than one supplier of the products or provider of the services in question.

([1]) OJ L 94, 28.3.2014, p. 243.

([2]) Commission Implementing Decision (EU) 2016/1804 of 10 October 2016 on the detailed rules for the application of Article 34 and 35 of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 275, 12.10.2016, p. 39).

3. **ASSESSMENT**

3.1. **Unrestricted access to the market**

(6) Access to a market is deemed to be unrestricted if the Member State concerned has implemented and applied the relevant Union legislation opening a given sector or a part of it to competition. That legislation is listed in Annex III to Directive 2014/25/EU, which includes, as regards production and wholesale of electricity from renewable sources, Directive 2009/72/EC of the European Parliament and of the Council ([3]).

(7) On the basis of the information available to the Commission, Italy has transposed Directive 2009/72/EC into national law by means of Legislative Decree No 93/2011, later amended by Art. 26 of Law No 115/2015 and Art. 33 of Law No 122/2016. Access to the relevant market is therefore deemed not to be restricted in accordance with Article 34(3) of Directive 2014/25/EU.

3.2. **Direct exposure to competition**

(8) Direct exposure to competition should be evaluated based on various indicators, none of which is, *per se*, decisive. In respect of the markets concerned by this Decision, the market share of the main players on a given market constitutes one criterion, which should be taken into account. As the conditions vary for the different activities that are covered by the Request, the examination of the competitive situation should take into account the different situations in the relevant markets.

(9) This Decision is without prejudice to the application of the rules on competition and state aid and to other fields of Union law. In particular, the criteria and the methodology used to assess direct exposure to competition under Article 34 of Directive 2014/25/EU are not necessarily identical to those used to perform an assessment under Article 101 or 102 of the Treaty on the Functioning of the European Union or under Council Regulation (EC) No 139/2004 ([4]) as confirmed by the General Court ([5]).

(10) The aim of this Decision is to establish whether the activities concerned by the Request are exposed to a level of competition, on markets to which access is not restricted within the meaning of Article 34 of Directive 2014/25/EU, which will ensure that, also in the absence of the discipline brought about by the detailed procurement rules set out in Directive 2014/25/EU, procurement for the pursuit of the activities concerned by the Request will be carried out in a transparent, non-discriminatory manner based on criteria allowing purchasers to identify the solution which overall is the economically most advantageous one.

3.3. **Definition of the relevant market(s)**

(11) In 2012, the Commission defined in its Implementing Decision 2012/539/EU ([6]) that the production and wholesale of electricity generated from renewable sources as a separate market.

(12) In 2017, the Commission adopted Implementing Decision (EU) 2018/71 ([7]) in relation to the Netherlands electricity market. For the Netherlands, the Commission considered that there was no need to define separate markets for electricity depending on its source. The main reasons for departing from Implementing Decision 2012/539/EU in relation to Italy, were the following: the fact that renewable electricity was sold directly on the wholesale market and

([3]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

([4]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

([5]) Judgment of 27 April 2016, *Österreichische Post AG v. Commission*, T-463/14, ECLI:EU:T:2016:243, paragraph 28.

([6]) Commission Implementing Decision 2012/539/EU of 26 September 2012 exempting the production and wholesale of electricity produced from conventional sources in macro-zone north and macro-zone south in Italy from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector and amending Commission Decision 2010/403/EU (OJ L 271, 5.10.2012, p. 4).

([7]) Commission Implementing Decision (EU) 2018/71 of 12 December 2017 exempting the production and wholesale of electricity in the Netherlands from the application of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sector and repealing Directive 2004/17/EC (OJ L 12, 17.1.2018, p. 53).

not to a non-market entity, which is Transmission system Operator in Germany and Gestore dei Servizi Energetici (GSE) in Italy, the absence of priority feed in for renewable electricity, the fact that the statutory rate of remuneration applicable to renewable electricity was in the form of a feed in premium (as opposed to fixed rate as in the German and Italian precedents) and the fact that subsidies for renewables were subject to a bidding process at the onset, where different technologies were competing for a predefined amount of subsidies.

(13) In the present Request, the Applicant takes the view that, in Italy, wholesale electricity from renewable energy sources and from conventional sources are part of the same market.

(14) In its submission of 6 March 2020, the Italian competition authority Autorita' Garante della Concorrenza e del Mercato ('AGCM') takes the view that it is not possible to identify a separate market for the production of energy from renewable sources distinct from that of energy production from conventional sources. The authority notes that renewable and conventional production are perfectly substitutable from the point of view of satisfying electricity demand and that the share of renewable energy sold under market conditions is high (more than 50 % of the total). In this context, AGCM argues that incentives granted to production from renewable sources have been significantly reduced since 2012, and in time their level has tended to ensure a mere compensation of the costs incurred by electricity producers.

(15) The Commission notes that electricity generation from renewable sources in Italy is supported by a number of schemes with different characteristics.

(16) The Commission had analysed the features of four schemes supporting electricity production from renewable sources in its Implementing Decision 2012/539/EU in relation to Italy. Given the different characteristics of the schemes introduced in Italy to support electricity production from renewable sources after that Decision, the market will, for the purpose of the analysis in these recitals, be split between, on the one hand, schemes introduced in Italy to support electricity production from renewable sources analysed in Implementing Decision 2012/539/EU and, on the other hand, schemes introduced in Italy to support electricity production from renewable sources after that Decision.

(17) In this context, it is important to mention that, in the markets concerned, not all market players are subject to public procurement rules. Therefore, the companies, which are not subject to those rules, when acting on those markets, would normally have the possibility to exert competitive pressure on the market players subject to public procurement rules.

3.4. **Definition of the relevant geographic market**

(18) In the electricity sector, the relevant geographic market is often considered national in scope. However, the relevant geographic area may also depend on bidding zone configuration reflecting network constraints.

(19) In its Implementing Decision 2012/539/EU, the Commission found that due to the presence of network constraints, for the purposes of evaluating whether the conditions laid down in Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council ([8]) were fulfilled, and without prejudice to competition law, the relevant geographic markets for production and wholesale of electricity generated from conventional sources were considered to be the Macro-zone North and the Macro-zone South.

(20) As regards the geographic market, the Applicant takes the view that it is national.

(21) In their submission of 6 March 2020, the Italian authorities indicate that the price difference between the Macro-zone South and Sardinia has been almost reduced to 0, while the price difference between the Macro-zone South and the Macro-zone Sicily has been reduced. AGCM underlines the deconcentration process that affected the market in Italy, as shown by the steady decline in the Herfindahl-Hirschman index (HHI) at national level (549 in 2018, 686 in 2017, 713 in 2016 and 884 in 2012). The HHI calculation was provided by the Applicant in its submission of 19 September 2019. However, AGCM points out that at least for one Macro-zone (Sicily) the zonal price still appears to remain permanently and significantly different from that of the rest of the country.

([8]) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1).

(22) The Commission agrees that the developments in price differences over the past eight years have shown a very significant convergence between the Macro-zones. However, the persistence of a price premium for the market in the Macro-zone Sicily appears to warrant a separation of this zone from the rest of the Italian market.

(23) For the purposes of the assessment under this Decision and without prejudice to competition law and state aid rules, the Commission considers two relevant geographic markets: on the one hand, the Macro-zones North, South and Sardinia, and on the other, the Macro-zone Sicily.

3.5. **Market analysis**

(24) The Commission had concluded, in its Implementing Decision 2012/539/EU, that only production and wholesale of electricity from conventional sources could be exempted from public procurement rules. The Decision stated that the condition of direct exposure to competition laid down in Article 30(1) of Directive 2004/17/EC should be considered to be met with respect to the production and wholesale supply of electricity from conventional sources within the territory of Italy, with the exception of Sardinia and Sicily. The Decision analysed the features of four renewables incentives schemes.

(25) The Comitato Interministeriale Prezzi del 29 aprile 1992 (CIP6) mechanism consists in a statutory feed-in tariff for electricity produced from renewable sources and from sources similar to renewables, notably electricity produced in combined heat and power generation plants. This mechanism covers the operational costs, the capital cost, the fuel cost and includes an incentive component applicable in the first eight years of life.

(26) Omni-comprehensive tariff ('TO') applies to plants with installed capacity of less than 200 kW for wind farms and less than 1 MW for other types of renewables. This system is guaranteed for 15 years, is voluntary and alternative to the system of Green Certificates. The omni-comprehensive tariff includes the price of the energy and an incentive.

(27) The mechanism of Green Certificates ('CV') is based on the imposition of mandatory quotas for producers and importers of electricity produced from conventional sources, which are to submit yearly a number of Green Certificates. The Green Certificates are then allocated to renewable energy installations depending on the source of the energy produced and may be exchanged in a separate market, distinct from that for energy. Renewable electricity producers receive revenue from the sale of the renewable energy and, as an incentive, revenue from the sale of the Green Certificates. The value of the Green Certificates is determined by the relationship between demand (by the producers and importers of electricity from conventional sources) and supply (by producers of electricity from renewable sources). Green certificates schemes apply to installations above 1 MW (except photovoltaic installations) and for wind power above 200 kW.

(28) The Green Certificates were modified in January 2016 and renamed GRIN. It works via a quarterly premium paid on top of the electricity price to the beneficiaries of the scheme. The amounts paid and their duration under GRIN are exactly the same as what beneficiaries would have received under the older Green Certificates.

(29) The Energy Accounts ('CE') system incentivises the production of electricity from photovoltaic sources and represents a feed in premium whereby the producers receive the market price on the Day Ahead Market and an incentive fee. This incentive system is guaranteed for 20 years.

(30) Based on the features of these schemes, and the specificities of production and wholesale of electricity generated, the Commission had concluded in its Implementing Decision 2012/539/EU that the condition of direct exposure to competition was not met with respect to the production and wholesale supply of electricity generated through renewable sources. As the conditions for these schemes are largely unchanged, the Commission sees no reason to change its assessment.

(31) For the schemes introduced after Implementing Decision 2012/539/EU, the most important ones were notified to the Commission and were authorised under the state aid rules by Commission Decision C(2016) 2726 ([9]) and Commission Decision C(2019) 4498 ([10]). This implies that these schemes include an adequate remuneration in the light of the costs incurred, and that the aid granted does not distort the Single Market.

([9]) Commission Decision C(2016) 2726 of 28 April 2016 on support to electricity from renewable sources.

([10]) Commission Decision C(2019) 4498 of 14 June 2019 on support to electricity from renewable sources 2019–2021.

(32) Concerning the scheme established by Ministerial Decree of 23 June 2016, it was open to all renewable energy sources except for solar photovoltaic energy. Beneficiaries were divided in three categories depending on the plant power: new large generators (i.e., with installed capacity greater than 5 MW), new middle size generators (e.g., with installed capacity between 500 kW2 and 5 MW this category also includes repowering of generators of any size) and smaller generators (i.e., with installed capacity no larger than 500 kW). The Commission remarked that, for the technologies eligible under the scheme, the Levelized Cost of Energy ('LCOE') would be higher than the expected electricity market price and that, without the aid and under normal market conditions, the Net Present Value ('NPV') for renewable energy projects would be negative.

(33) Concerning the scheme established by Ministerial Decree of 4 July 2019, it consists in operating aid for the production of electricity from installations using the following renewables technologies: onshore wind, solar photovoltaic, hydroelectric, and sewage gases. As was the case in Decision C(2016) 2726, the Commission noted that for the technologies eligible under the scheme the LCOE would be higher than the expected electricity market price. Without the aid and under normal market conditions, the NPV for renewable energy projects would therefore be negative. The Commission concluded that without the aid the projects benefitting from the scheme would not be financially viable.

(34) A specific scheme was introduced by Ministerial Decree of 14 February 2017 for small islands. These are 20 islands, 14 of which are in Sicily, that are not interconnected to the mainland's electricity network. They have an area of more than a square kilometre, are located more than 1 km from the mainland and with a resident population of at least 50. For each island, specific electricity and thermal targets for the energy transition were identified for 2030. Access is granted for the new construction, enhancement and reactivation of electricity production installations of not less than 0,5 kW, entered into operation since 15 November 2018, connected to the island's electricity grid and powered by locally available renewable sources. Beneficiaries receive a feed-in tariff for the electricity sold onto the grid and a feed-in premium for the electricity produced and instantly consumed on the site.

(35) Ritiro Dedicato ('RID') is a mechanism for manufacturers to be placed on the market for electricity fed into the grid. It consists of the sale to GSE of electricity and replaces any other contractual obligation relating (among others) to dispatching and transport services of the energy. Installations with less than 10 MW power are eligible for RID, along with installations with any power if they are supplied with [solar, wind, tidal, wave, geothermal energy or by hydraulic sources limited to water-flow plants or by] other renewable sources provided they are owned by a self-producer. RID is an alternative to the incentives granted under the other schemes established by Ministerial Decrees of 5 July 2012, 6 July 2012, 23 June 2016 and 4 July 2019.

(36) Scambio sul Posto ('SSP') allows an economic compensation between the value associated with the electricity fed into the grid and the value associated with the electricity taken and consumed in a different period from that in which the electricity is produced. It applies to installations, which have entered into operation by 31 December 2014 at the latest if supplied from renewable sources or from High Efficiency Combined Heat and Power (HE CHP) with a maximum power not exceeding 200 kW, or plants with a capacity of up to 500 kW if powered from renewable sources and having entered into service from 1 January 2015. SSP is an alternative to the incentives granted under the other schemes established by Ministerial Decrees of 5 July 2012, 6 July 2012, 23 June 2016 and 4 July 2019.

(37) The Commission notes that the schemes established by Ministerial Decrees of 23 June 2016 and 4 July 2019 include a bidding process to benefit from the incentives.

(38) The Commission notes that the level of competition to benefit from the schemes established by Ministerial Decrees of 23 June 2016 and 4 July 2019 has increased, with a high number of applicants and bids for renewable electricity generation. Consequently, the Commission considers that the renewables generation installation benefitting from the more recent schemes operate in a competitive environment.

(39) Concerning the other three schemes, the scheme established by Ministerial Decree of 14 February 2017, RID and SSP, the Commission has no basis to conclude that beneficiaries are subject to competitive pressure. Some of their features, such as a feed-in tariff or the fact that the energy produced is bought by the GSE, are similar to the ones of other schemes analysed in the 2012 decision.

4. **CONCLUSIONS**

(40) In view of the factors examined above, the condition of direct exposure to competition laid down in Article 34 of Directive 2014/25/EU should be considered to be met in view of contracting entities with respect of the production and wholesale of electricity produced from renewable sources based on the schemes introduced by Ministerial Decrees of 23 June 2016 and of 4 July 2019 in Italy.

(41) Furthermore, since the condition of unrestricted access to the market is deemed to be met, Directive 2014/25/EU should not apply when contracting entities award contracts intended to enable production and wholesale of electricity produced from renewable sources based on the schemes introduced by Ministerial Decrees of 23 June 2016 and 4 July 2019 in Italy nor when they organise design contests for the pursuit of such an activity in that geographical area.

(42) In view of the factors examined above, the condition of direct exposure to competition laid down in Article 34 of Directive 2014/25/EU should be considered not to be met in view of contracting entities with respect to the production and wholesale of electricity produced from renewable sources based on the schemes introduced by CIP6, CV/GRIN, CE, TO, Ministerial Decree of 14 February 2017, RID and SSP. Consequently, Directive 2014/25/EU should continue to apply when contracting entities award contracts intended to enable the pursuit of that activity to be carried out in Italy and when they organise design contests for the pursuit of such an activity in that geographical area.

(43) In view of the factors examined above, the condition of direct exposure to competition laid down in Article 34 of Directive 2014/25/EU should be considered to be met with respect to the production and wholesale of electricity produced from renewable sources in Italy, except for Sicily.

(44) Since the production of electricity from renewable sources covered by the CIP6, CV/GRIN, CE, TO, DM 14 February 2017, RID and SSP schemes should continue to be subject to Directive 2014/25/EU, it is recalled that procurement contracts covering several activities are to be treated in accordance with Article 6 of that Directive. This means that, where a contracting entity is engaged in 'mixed' procurement, that is procurement used to support the performance of both activities exempted from the application of Directive 2014/25/EU and activities not exempted therefrom, regard is to be had to the activities for which the contract is principally intended. In the event of such mixed procurement, where the purpose is principally to support activities, which are not exempted, the provisions of Directive 2014/25/EU are to be applied. Where it is objectively impossible to determine for which activity the contract is principally intended, the contract is to be awarded in accordance with the rules laid down in Article 6(3) of Directive 2014/25/EU.

(45) It is recalled that Article 16 of Directive 2014/23/EU of the European Parliament and of the Council ([11]) on the award of concession contracts provides for an exemption from the application of that Directive for concessions awarded by contracting entities where, for the Member State in which the concessions are to be performed, it has been established pursuant to Article 35 of Directive 2014/25/EU that the activity is directly exposed to competition in accordance with Article 34 of that Directive. Since it was concluded that the activity of production and wholesale of electricity from renewable sources based on the schemes introduced by Ministerial Decrees DM 23 June 2016 and DM 4 July 2019 in Italy is directly exposed to competition, concession contracts intended to enable the performance of those activities in Italy (except Sicily) will be excluded from the scope of application of Directive 2014/23/EU.

(46) When installations cease to receive support from CIP6, CV/GRIN, CE, TO, Ministerial Decree of 14 February 2017, RID and SSP, the provisions of Directive 2014/25/EU should not apply to them anymore, as they will be deemed to be exposed to competition.

(47) This Decision is based on the legal and factual situation as of April 2017 to May 2020 as it appears from the information submitted by the Applicant, by the Italian Authorities and from publicly available information. It may be reviewed, should the conditions for the applicability of Article 34 of Directive 2014/25/EU be no longer met, following significant changes in the legal or factual situation,

([11]) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

Directive 2014/25/EU shall not apply to contracts awarded by contracting entities and intended to enable the production and wholesale of electricity produced from renewable sources based on the schemes introduced by Ministerial Decrees of 23 June 2016 and of 4 July 2019 to be carried out in Italy.

Article 2

Directive 2014/25/EU shall continue to apply to contracts awarded by contracting entities and intended to enable production of electricity from renewable sources, which receives support from any of the following support schemes, to be carried out in Italy:

(a) the Comitato Interministeriale Prezzi del 29 aprile 1992 (CIP6);

(b) mechanism of Green Certificates or GRIN;

(c) Energy Accounts system;

(d) Omni-comprehensive tariff;

(e) Ministerial Decree of 14 February 2017;

(f) Ritiro Dedicato mechanism;

(g) Scambio sul Posto.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 28 July 2020.

For the Commission
Thierry BRETON
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2020/1500

of 28 July 2020

on the applicability of Directive 2014/25/EU of the European Parliament and of the Council to contracts awarded for activities related to production and wholesale of electricity in Lithuania

(notified under document C(2020) 5031)

(Only the Lithuanian text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC ([1]), and in particular Article 35(3) thereof,

After consulting the Advisory Committee for Public Contracts,

Whereas:

1. FACTS

(1) On 8 April 2019, Lietuvos energija UAB ('the Applicant') submitted to the Commission a request pursuant to Article 35(1) of Directive 2014/25/EU ('the Request').

(2) The Request concerns electricity generation and wholesale activities that are not regulated by the national authority ([2]). In its email of 18 June 2019 the Applicant confirmed that trading in balancing power, regulation power, the provision of reserve capacities and the provision of public service obligations are not covered by the Request.

(3) The Request was not accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activities concerned, which thoroughly analyses the condition for the applicability of Article 34(1) of Directive 2014/25/EU to the activities concerned, in accordance with paragraphs 2 and 3 of that Article. Consequently, in accordance with point 1 of Annex IV to Directive 2014/25/EU, the Commission is to adopt an implementing act on the Request within 105 working days. The initial deadline was suspended in accordance with point 2 of Annex IV to Directive 2014/25/EU. The deadline agreed between the Applicant and the Commission for adopting the implementing act expires on 31 July 2020.

(4) In accordance with Article 35(2) of Directive 2014/25/EU, the Commission informed the Lithuanian authorities of the Request, and requested additional information on 14 May 2019 and 24 May 2019. The Lithuanian authorities replied on 18 September and 23 September 2019. The Commission requested further clarifications on 7 October 2019, 30 January and 17 March 2020 and the Lithuanian Authorities replied on 22 January, 5 March and 19 March 2020. In the context of the consultation of the Advisory Committee for Public Contracts, the Lithuanian authorities provided further information on 9 July 2020.

(5) The Commission requested additional information from the Applicant on 3 May, 27 May and 14 June 2019 and the Applicant's responses were received on 17 May 2019, 12 June and 18 June 2019.

2. LEGAL FRAMEWORK

(6) Directive 2014/25/EU applies to the award of contracts for the pursuit of activities related to, among others, the production and wholesale of electricity, unless this activity is exempted pursuant to Article 34 of that Directive. Directive 2014/25/EU does not apply to certain types of that activity where not considered as relevant activity under Article 9(2) of that Directive.

([1]) OJ L 94, 28.3.2014, p. 243.

([2]) Such activity can be subject to EU and national law that grants free access to the market, see Section 3.1 of this Decision

(7) Under Articles 34 and 35 of Directive 2014/25/EU, contracts intended to enable the performance of one of the activities to which that Directive applies are, upon request by a Member State or a contracting entity, not to be subject to the Directive. This exemption may be granted if, in the Member State in which the activity is carried out, the activity is directly exposed to competition on markets to which access is not restricted. Direct exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned.

3. **ASSESSMENT**

3.1. **Unrestricted access to the market**

(8) Access to a market is deemed to be unrestricted if the Member State concerned has implemented and applied the relevant Union legislation opening a given sector or a part of it. That legislation is listed in Annex III to Directive 2014/25/EU, which includes, as regards the electricity sector, Directive 2009/72/EC of the European Parliament and of the Council ([3]).

(9) As confirmed by the Applicant, and on the basis of the information available to the Commission, Lithuania has transposed ([4]) and applies Directive 2009/72/EC. Access to the relevant market is therefore deemed not to be restricted in accordance with Article 34(3) of Directive 2014/25/EU.

3.2. **Direct exposure to competition**

(10) Direct exposure to competition should be evaluated on the basis of various indicators, none of which are, *per se*, decisive. In respect of the markets concerned by this Decision, the market share of the main players on a given market constitutes one criterion, which should be taken into account. Given the characteristics of the markets concerned, further criteria should also be taken into account.

(11) This Decision is without prejudice to the application of the rules on competition and State aid rules and other fields of Union law. In particular, the criteria and the methodology used to assess direct exposure to competition under Article 34 of Directive 2014/25/EU are not necessarily identical to those used to perform an assessment under Article 101 or 102 TFEU or Council Regulation (EC) No 139/2004 ([5]), as confirmed by the General Court ([6]).

(12) It should be kept in mind that the aim of this Decision is to establish whether the activities concerned by the Request are directly exposed to competition, in markets to which access is not restricted within the meaning of Article 34 of Directive 2014/25/EU. This will ensure that, in the absence of the discipline brought about by the detailed procurement rules set out in Directive 2014/25/EU, procurement for the pursuit of the activities concerned will be carried out in a transparent, non-discriminatory manner based on criteria allowing purchasers to identify the solution which overall is the economically most advantageous one.

3.2.1. *Product market definition*

(13) The Request pertains to electricity generation and wholesale.

(14) In its decision in Case COMP M.4110 E.ON – ENDESA ([7]), the Commission identified the following relevant product markets in the electricity sector: generation and wholesale supply; transmission; distribution, and retail supply. While some of these markets may be further subdivided, to date, previous Commission practice ([8]) rejected a distinction between an electricity generation market and a wholesale supply market since generation as such is only a first step in the value chain, but electricity volumes generated are marketed via the wholesale market.

([3]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

([4]) National transposition act: Lietuvos Republikos Elektros Energetikos Įstatymas, 2000 m. liepos 20 d. Nr. VIII-1881.

([5]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

([6]) Judgment of 27 April 2016, Österreichische Post AG v. Commission, T-463/14, ECLI:EU:T:2016:243, paragraph 28.

([7]) Case COMP/M. No 4110 E.ON – ENDESA, of 25.4.2006, paragraphs 10 and 11.

([8]) Case COMP/M. No 3696 E.ON – MOL of 21.1.2005, paragraph 223, Case COMP/M. No 5467, RWE- ESSENT of 23.6.2009, paragraph 23.

(15) In 2012, the Commission adopted Implementing Decision 2012/218/EU ([9]) and Implementing Decision 2012/539/EU ([10]) in relation to respectively the German and the Italian electricity markets. For Germany, the Commission considered that the production and marketing of electricity regulated by Renewable Energy Sources Act is not part of the market for generation and first sale of electricity produced from conventional sources because electricity generated from renewable sources is normally not directly sold on the wholesale market but first bought by the transmission grid operators for a statutory rate of remuneration. Similarly, for Italy, the Commission considered that the market for production and wholesale of electricity generated from renewable sources is separate from the market for production and wholesale of electricity generated from conventional sources because the sale of the electricity generated from renewable sources which are subject to the Comitato Interministeriale Prezzi del 29 aprile 1992 (CIP6) and Feed-in Tariffs (FIT) mechanisms mostly takes place via the energy service operator. Key reasons for the Commission to make such a distinction relate, essentially, to the sale by renewable electricity producers of their production to a non-market entity which is the Transmission system Operator in Germany and Gestore dei Servizi Energetici in Italy. Additional considerations put forward in these two precedents were: priority feed-in for renewables and a statutory rate of remuneration. The Commission concluded that in Germany and in Italy renewable generation and first sale was therefore not subject to market forces.

(16) In 2017, the Commission adopted Implementing Decision (EU) 2018/71 ([11]) in relation to the Netherlands electricity market. For the Netherlands, the Commission considered that there was no need to define separate markets for electricity depending on its source. The main differences from Implementing Decisions 2012/218/EU and 2012/539/EU in relation to Germany and Italy were the following: the fact that renewable electricity was sold directly on the wholesale market and not to a non-market entity, the absence of priority feed in for renewable electricity, the fact that the statutory rate of remuneration applicable to renewable electricity was in the form of a feed in premium (as opposed to fixed rate as in Implementing Decisions 2012/218/EU and 2012/539/EU in relation to Germany and Italy) and the fact that subsidies for renewables were subject to a bidding process at the onset, where different technologies were competing for a predefined amount of subsidies.

(17) In view of Implementing Decisions 2012/218/EU, 2012/539/EU and (EU) 2018/71, it is necessary to examine in the present case, based on the same criteria, the pertinence of a distinction between electricity produced from renewable sources and the electricity produced from conventional sources.

(18) In reply of 18 September 2019 to the request for information from the Commission of 14 May 2019 the Lithuanian authorities informed that there are currently three support schemes for electricity produced from renewable sources.

(19) The **first support scheme** applies to producers generating electricity from renewable energy sources ('RES') that obtained the right to benefit from the incentives of the scheme between 1 January 2002 and 23 May 2011. The main elements of the first scheme are: compulsory purchase of RES electricity by a company designated by the Ministry of Energy or by the distribution network, priority feed in; remuneration at a fixed rate set by the energy regulator, exemption from grid balancing responsibility and compensation of the producer for the cost of connecting to the grid. Depending on the capacity of the installation, the first scheme is subject to a competitive process for the building permits.

(20) The installed capacity that could benefit from the incentive under the first support scheme was 237 MW and the incentive period applied until end of 2020 or, if the period between the date of issuance of the generation permit and 2020 was less than 12 years, for 12 years following the date the generation permit was issued.

(21) The **second support scheme** applies to producers generating electricity from RES that obtained the right to benefit from the incentives of the scheme between 24 May 2011 and 30 April 2019. The main elements of the second scheme are: compulsory purchase of RES electricity by a company designated by the Ministry of Energy or by the distribution network; priority feed in; remuneration at a fixed rate awarded following an tender or set by the energy regulator; exemption from grid balancing responsibility and compensation of the producer for the cost of connecting to the grid.

([9]) Implementing Decision 2012/218/EU of 24 April 2012 concerning the production and wholesale of electricity produced from conventional sources in Germany (OJ L 114, 26.4.2012, p. 21).

([10]) Implementing Decision 2012/539/EU of 26 September 2012 concerning the production and wholesale of electricity produced from conventional sources Macro-zone North and Macro-zone South in Italy (OJ L 271, 5.10.2012, p. 4).

([11]) Commission Implementing Decision (EU) 2018/71 of 12 December 2017 exempting the production and wholesale of electricity in the Netherlands from the application of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sector and repealing Directive 2004/17/EC (OJ L 12, 17.1.2018, p. 53).

(22) Depending on the capacity of the installation, under the second support scheme, the allocation of the fixed rate support is established through a competitive bidding procedure.

(23) The installed capacity that could benefit from is 464 MW and the incentive period applies, for 12 years following the date the generation permit was issued, and payments will continue until 2029.

(24) The **third support scheme** was approved by the Commission ([12]) and entered into force on 1 May 2019. The main elements of the third scheme are: priority feed in; remuneration is based on a price premium established following a tender process (no payment is made in case of zero or negative pries for six hours or more; no payment is made for quantities produced over the electricity production allocated at tender); exemption from grid balancing responsibility for plants with capacity of less than 500 KW or less and for pilot projects.

(25) Under the third support scheme, premium-based support is to be established through a competitive bidding procedure for all types of installations without differentiation based on size and technology.

(26) The size of the incentive under the third support scheme is of around 2,9 TWh and the incentive period applies, for 12 years following the date the generation permit was issued.

(27) According to the Applicant, the third support scheme for electricity produced from renewable sources in Lithuania is similar to the respective measures adopted in the Netherlands. This would therefore justify defining one product market comprising electricity produces from conventional sources and renewable sources. However, the Commission notes that the third scheme has only been introduced very recently.

(28) According to the Lithuanian authorities, production and wholesale should be defined as a single market regardless of the source of electricity. Alternatively, if two markets were to be defined, the Lithuanian authorities propose the following delineation: a market for electricity from conventional sources and from renewable sources ([13]) with the exception of electricity from renewable sources covered by the first and second support scheme and a market for electricity from renewable sources covered by the first and second support scheme.

(29) The electricity produced under the third scheme receives premium-based support established through a competitive bidding procedure for all types of installations without differentiation based on size and technology. The support period per installation is 12 years. Beneficiaries receive a maximum premium, set as a difference between a maximum price (cost of the most cost-efficient RES electricity technology available in Lithuania – onshore wind) and a reference price. In April 2019, the Commission by Decision C(2019) 3122 ([14]) found that the financial support for the scheme was compatible with the internal market pursuant to Article 107(3)(c) TFEU.

(30) The electricity produced under the third scheme receives premium-based support established through a competitive bidding procedure. This is significantly different from the situation of electricity produced from renewable sources, which receive a statutory payment, independently of market conditions.

(31) Taking into account the above specificities of the Lithuanian electricity market, for the purposes of evaluating the conditions laid down in Article 34(1) of Directive 2014/25/EU, and without prejudice to competition law and state aid rules, the relevant product market is hereby defined as the market for generation and wholesale of electricity produced from conventional sources and from renewable sources except electricity produced from renewable sources subject to the first and second support scheme.

(32) As regards first and second support scheme, under both schemes, electricity producers benefit from a fixed rate for the electricity they generate, independently from market conditions.

(33) They are exempt from grid balancing responsibilities: it is the transmission or distribution network operator that manages balancing, depending on which network the producer is connected to.

(34) They benefitted from a compensation for the cost of connecting electricity generation facilities. When the facilities of the producers were connected to the electricity network, they were reimbursed part of the connection cost incurred by the electricity network operator.

([12]) State Aid SA.50199 (2019/N) of 23 April 2019 on Lithuania Support to power plants producing electricity from renewable energy sources.

([13])

([14]) [Commission Decision C(2019) 3122 of … April 2020 on Lithuania Support to power plants producing electricity from renewable energy sources.?]

(35) They are entitled to a compulsory purchase of generated electricity. Producers can sell their electricity on the market, but, if they choose not to do so, are entitled to sell all the electricity generated and supplied to the grid to the designated company when the electricity generation facilities are connected to the transmission network, or to a distribution network operator serving more than 100 000 users where the electricity generation facilities of the producers are connected to the distribution network.

(36) They benefit from priority feed-in. Under the priority right, the electricity network operator must accept, transfer or distribute – at transparent, non-discriminatory rates – all the electricity offered by the producer, and this priority right is guaranteed to the producer in respect of other producers of non-RES electricity.

(37) Electricity produced from renewable sources which is subject to the first and second support scheme therefore forms a separate market.

3.2.2. *Geographic market definition*

(38) In 2012, Lithuania joined the NordPool energy trading exchange and thus the Lithuanian electricity producers competed to sell their electricity to suppliers on the market. In 2013, the Lithuanian electricity system was already connected to the systems of other Member States such as Latvia and from December 2015 also Sweden and Poland. However, Lithuania remains a single bidding zone.

(39) According to the Applicant, the Request pertains to activities on the territory of Lithuania.

(40) In its Implementing Decisions 2012/218/EU and (EU) 2018/71 with respect to electricity markets, the Commission took the view that the geographic scope of the market was national.

(41) In the absence of any indication of a different scope of the geographic market, for the purposes of the assessment under this Decision and without prejudice to competition law and state aid rules, the Commission considers that the geographic scope of production and wholesale electricity market, both for electricity generation from conventional and renewable (subject to all schemes) sources, is the territory of Lithuania.

3.2.3. *Market analysis*

(42) It is important to mention that, in the Lithuanian electricity production and wholesale markets, not all market players are subject to the public procurement rules. Therefore, the companies, which are not subject to those rules, when acting on those markets, would normally have the possibility to exert competitive pressure on the market players, which are subject to the public procurement rules. According to the Lithuanian authorities, in the markets covered by the Request, apart from the Applicant, the following entities are subject to the public procurement rules: UAB Vilniaus energija, AB Panevėžio energija, VšĮ Alantos technologijos ir verslo mokykla, AB Vilniaus šilumos tinklai, AB Klaipėdos energija and AB Šiaulių energija.

3.2.3.1. Production and wholesale of electricity produced from conventional sources and from renewable sources except electricity produced from renewable sources subject to the first and second support scheme

(43) In its Implementing Decisions 2012/218/EU and 2012/539/EU, the Commission considered that, as regards production and wholesale market, the cumulated market share of the largest three undertakings is relevant. However, given that not all market players are subject to the public procurement rules, the analysis focuses on the market position and competitive constraints on the individual market players subject to the public procurement rules. Other measures of concentration may also be considered relevant.

(44) On the Lithuanian electricity generation market, according to the reply by the Lithuanian authorities of 5 March 2020 to the Commission's request for information of 30 January 2020, the Applicant is the biggest market player, and its market share has fluctuated over the 2015-2019 period, between a highest share of 60,8 % in 2018 and a lowest of 53,9 % in 2019. The second market player is AB ACHEMA, which managed to increase its market shares over the same period, from 10,3 % in 2015 to 23 % in 2019. The next two larger market players have market shares between 5 % and 10 % each. The Commission notes that apart from the Applicant, the other major active market players are not subject to the public procurement rules. UAB Vilniaus Energija is subject to the public procurement rules, but since 2016 is no longer active on the relevant market.

(45) According to the national legislation, wholesale electricity market consist of trading on the power exchange, on bilateral agreements and trading of balancing and regulation power.

(46) According to table 14 of reply by the Applicant of 17 May 2019 to the request for information by the Commission of 3 May 2019 out of the total volumes traded in Lithuania, more than 75 % of electricity is traded through the NordPool power exchange. Nord Pool is the biggest European power exchange. Nord Pool delivers power trading across Europe. Nord Pool offers day-ahead and intraday trading, clearing and settlement, data and compliance, as well as consultancy services. Nord Pool operates power trading markets in Norway, Denmark, Sweden, Finland, Estonia, Latvia, Lithuania, Germany, the Netherlands, Belgium, Austria, Luxembourg, France and the United Kingdom. In 2019 Nord Pool had a total turnover of 494 TWh traded power, this includes more than 90 % of total power consumption in the Nordic and Baltic market.

(47) The liquidity of the wholesale market is a relevant indicator for competition, as sufficient volumes on both the supply and the demand side for the relevant wholesale products (for example, baseload, peak load, hourly blocs for different timeframes) provide sourcing and hedging opportunities to traders and suppliers.

(48) The degree of liquidity on the NordPool wholesale market reinforces the conclusion that contracting entities operating on the Lithuanian production and wholesale market are exposed to competition.

(49) The interconnection capacity is sufficient to enable significant imports or exports to or from Lithuania. In addition, Lithuania is part of the NordPool energy trading exchange, where a number of electricity generators from participating countries (Norway, Sweden, Finland, Denmark, Estonia, Latvia and Lithuania) compete. A significant part of Lithuanian electricity imports come from Russia and Belarus.

(50) The increase in interconnection capacity between Lithuania and other countries is likely to have had a favourable impact on competition in the Lithuanian electricity generation market.

(51) According to the Request, imports covered 80 % of Lithuanian electricity demand in 2018. Net imports increased from 7208 TWh in 2015 to 9632 TWh in 2018, while electricity generated in Lithuania dropped from 4598 TWh to 3220 TWh. The Applicant explains that, while the total installed capacity in Lithuania would be sufficient to satisfy demand, the imported electricity is cheaper than the one locally produced. As a result, some of its facilities were mothballed and are kept as reserve capacity.

(52) The magnitude of imports in the Lithuanian market leads to the conclusion that contracting entities operating on the Lithuanian market for electricity generation from conventional and renewable sources except electricity produced from renewable sources subject to the first and second support scheme are exposed to competition.

3.2.3.2. Production and wholesale of electricity from renewable sources which is subject to the first and second support scheme

(53) Based on the characteristics of the support schemes, the Commission notes that the first and second support schemes have similar features to the schemes analysed in Implementing Decisions 2012/218/EU and 2012/539/EU in relation to Italy and Germany. In both cases, the Commission had distinguished particularly important specific features. First, electricity production from RES benefits from priority connection to the grid, and has priority over conventional electricity for grid feed-in, which means that it is virtually independent from demand. Second, the production and feed-in are completely independent of the prices as the RES electricity producers are entitled to a statutory payment.

(54) Given the similarity of the features of the first and second scheme in Lithuania with the RES electricity production analysed in the 2012 Decisions, the Commission concludes that these activities are not exposed to competition.

4. **CONCLUSIONS**

(55) In view of the factors examined above the condition of direct exposure to competition laid down in Article 34 of Directive 2014/25/EU should be considered to be met with regard to the production and wholesale of electricity produced from conventional sources and from renewable sources except electricity produced from renewable sources subject to the first and second support scheme in Lithuania.

(56) Furthermore, since the condition of unrestricted access to the market is deemed to be met, Directive 2014/25/EU should not apply when contracting entities award contracts intended to enable production and wholesale of electricity produced from conventional sources and from renewable sources except electricity produced from renewable sources subject to the first and second support scheme to be carried out in Lithuania nor when they organise design contests for the pursuit of such an activity in that geographical area.

(57) In view of the factors examined above the condition of direct exposure to competition laid down in Article 34 of Directive 2014/25/EU should not be considered to be met with respect to the production and wholesale of electricity produced from renewable sources subject to the first and second support scheme in Lithuania. Consequently, Directive 2014/25/EU should continue to apply when contracting entities award contracts intended to enable the pursuit of that activity to be carried out in Lithuania and when they organise design contests for the pursuit of such an activity in that geographical area.

(58) Since the production of electricity from renewable sources subject to the first and second support schemes should continue to be subject to Directive 2014/25/EU, it is recalled that procurement contracts covering several activities are to be treated in accordance with Article 6 of that Directive. This means that, where a contracting entity is engaged in 'mixed' procurement, that is procurement used to support the performance of both activities exempted from the application of Directive 2014/25/EU and activities not exempted therefrom, regard is to be had to the activities for which the contract is principally intended. In the event of such mixed procurement, where the purpose is principally to support activities, which are not exempted, the provisions of Directive 2014/25/EU are to be applied. Where it is objectively impossible to determine for which activity the contract is principally intended, the contract is to be awarded in accordance with the rules laid down in Article 6(3) of Directive 2014/25/EU.

(59) It is recalled that Article 16 of Directive 2014/23/EU of the European Parliament and of the Council ([15]) on the award of concession contracts provides for an exemption from the application of that Directive for concessions awarded by contracting entities where, for the Member State in which the concessions are to be performed, it has been established pursuant to Article 35 of Directive 2014/25/EU that the activity is directly exposed to competition in accordance with Article 34 of that Directive. Since it was concluded that the activity of production and wholesale of electricity from conventional sources and from renewable sources except electricity produced from renewable sources subject to the first and second support scheme is subject to competition, concession contracts intended to enable the performance of those activities in Lithuania will be excluded from the scope of application of Directive 2014/23/EU.

(60) This Decision is based on the legal and factual situation as of April 2019 to May 2020 as it appears from the information submitted by the Applicant, by the Lithuanian authorities and from publicly available information. It may be reviewed, should the conditions for the applicability of Article 34 of Directive 2014/25/EU be no longer met, following significant changes in the legal or factual situation,

HAS ADOPTED THIS DECISION:

Article 1

Directive 2014/25/EU shall not apply to contracts awarded by contracting entities and intended to enable the production and wholesale of electricity produced from conventional sources and from renewable sources except production and wholesale of electricity from renewable sources subject to the first and second support scheme, to be carried out in Lithuania.

Article 2

Directive 2014/25/EU shall continue to apply to contracts awarded by contracting entities and intended to enable production and wholesale of electricity from renewable sources which is subject to the first and second support scheme to be carried out in Lithuania.

([15]) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

Article 3

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 28 July 2020.

For the Commission
Thierry BRETON
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2020/1501

of 14 October 2020

on the assessment made pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council as regards a temporary exemption from certain provisions of Commission Regulation (EU) No 1321/2014 granted by Germany

(notified under document C(2020) 6891)

(Only the German text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 ([1]), and in particular Article 71(2) thereof,

Whereas:

(1) On 25 February 2020, the competent authority Luftfahrt-Bundesamt ('LBA'), on behalf of Germany, notified the Commission, the European Union Aviation Safety Agency ('the Agency' or 'EASA')) and the other Member States that it had granted an exemption to Lufthansa Technik AG from compliance with point 145.A.42 of Annex II (Part-145) to Commission Regulation (EU) No 1321/2014 ([2]). Under that point an organisation approved under Part-145 is to ensure that only components which are in a satisfactory condition and released on an EASA Form 1 or equivalent are installed on aircraft or another component and the applicable maintenance data specifies the particular component, standard part or material.

(2) The exemption was granted by the LBA in the context of future Supplemental Type Certificate ('STC') projects and allows Lufthansa Technik AG not to comply, in certain instances, with point 145.A.42 of Annex II (Part-145) to Commission Regulation (EU) No 1321/2014 for certain components that are to be installed by Lufthansa Technik AG and which had been manufactured as a prototype component.

(3) The LBA explains that in the past some of the prototype components, which were installed by Lufthansa Technik AG on aircraft, could not have been subsequently re-certified by their manufacturer as conforming with the design data of the modification once the modification was approved with the issuance of an STC. The LBA refers to cases where the manufacturer was based in the United States and a re-certification was not possible after the component had left the manufacturer and to cases where the manufacturer became insolvent before the design data were approved. The LBA explains that in those cases the re-certification of those components was either not possible or created an administrative burden which delayed the return of aircraft into service, thus not allowing Lufthansa Technik AG to fulfil customer orders and creating a financial and economic risk.

(4) The exemption granted by the LBA does not specify the products or the projects in respect of which Lufthansa Technik AG has been exempted from compliance with point 145.A.42 of Annex II (Part-145) to Commission Regulation (EU) No 1321/2014 and for which it may accept the installation of non-compliant components. The LBA explains that Lufthansa Technik AG has a small number of upcoming STC projects, where such problems may occur and where Lufthansa Technik AG may not be able to comply with point 145.A.42 of Annex II (Part-145) to Commission Regulation (EU) No 1321/2014. The exemption was granted in anticipation of those possible problems to avoid delays to the return into service of modified aircraft in the future. The exemption is valid from 13 February 2020 to 31 December 2021 and thus exceeds a period of eight consecutive months.

([1]) OJ L 212, 22.8.2018, p. 1.

([2]) Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (OJ L 362, 17.12.2014, p. 1).

(5) As a mitigation for the non-compliance with point 145.A.42 of Annex II (Part-145) to Commission Regulation (EU) No 1321/2014, the exemption provides that Lufthansa Technik AG is permitted to release aircraft with prototype components based on an alternative procedure involving a comparison of the certification status of each such component with the approved design data obtained after the corresponding STC approval process was completed.

(6) Following an assessment, the Agency issued on 16 July 2020 a negative recommendation on the exemption granted by the LBA.

(7) The Commission agrees with the Agency's recommendation.

(8) Pursuant to Article 71(1) of Regulation (EU) 2018/1139, a Member State is allowed to grant an exemption to any natural or legal person subject to that Regulation in the event of urgent unforeseeable circumstances affecting those persons or urgent operational needs of those persons and provided that all the conditions stipulated in points (a) to (d) of that Article are met.

(9) As regards 'urgent unforeseeable circumstances' or 'urgent operational needs', the Commission considers that the exemption is not justified by urgent unforeseeable circumstances affecting Lufthansa Technik AG or urgent operational needs of Lufthansa Technik AG as required by Article 71(1) of Regulation (EU) 2018/1139. The exemption is granted in anticipation of possible, future issues with re-certification of prototype components. While some of those issues may have indeed an unforeseeable character, such as supplier bankruptcy, or result in an operational need of putting an aircraft in service, those issues have neither materialized nor were about to materialize at the moment of the issuance of the exemption. In particular, Germany did not provide any evidence suggesting that certain manufacturers have indicated to *Lufthansa Technik AG* that they will not be in a position to provide components with the required certifying statements with respect to certain projects. As a result the Commission considers that the requirement of urgency is not in met in this case.

(10) Moreover, the Commission considers that the exemption does not meet the required limitations to its scope and duration as set out in point (d) of Article 71(1) of Regulation (EU) 2018/1139. While the exemption is issued only for the cases where the re-certification of a prototype component is not possible, the exemption effectively applies to any STC project carried out during its period of applicability and for an unlimited number of possible components to be installed in support of such STC project(s). Furthermore, the Commission notes that LBA has not demonstrated that the exemption is limited in duration to what is strictly necessary. While the exemption is due to expire on 31 December 2021, the LBA did not convincingly justified how this expiry date is linked to the circumstances or needs requiring this exemption.

(11) As a consequence, the exemption granted by the LBA does not meet the conditions set out in Article 71(1) of Regulation (EU) 2018/1139,

HAS ADOPTED THIS DECISION:

Article 1

The exemption from the requirements laid down in point 145.A.42 of Annex II (Part-145) to Regulation (EU) No 1321/2014, granted by Germany, and notified to the Commission, the European Union Aviation Safety Agency and the other Member States on 25 February 2020, which allows Lufthansa Technik AG not to comply, in certain instances, with point 145.A.42 for certain components that are to be installed by Lufthansa Technik AG and which had been manufactured as a prototype component, does not meet the conditions set out in Article 71(1) of Regulation (EU) 2018/1139.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 October 2020.

For the Commission
Adina VĂLEAN
Member of the Commission

COMMISSION DECISION (EU) 2020/1502

of 15 October 2020

laying down internal rules concerning the provision of information to data subjects and the restriction of certain of their rights in the context of the processing of personal data by the Commission in the cooperation mechanism established by Regulation (EU) 2019/452 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 249(1) thereof,

Whereas:

(1) Regulation (EU) 2019/452 of the European Parliament and of the Council ([1]) established a cooperation mechanism between the Commission and the Member States on foreign direct investments. That mechanism is based on an exchange of information that may include personal data within the meaning of Article 3(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council ([2]). The purpose of the cooperation mechanism is to allow each Member State to examine whether a foreign direct investment in another Member State is likely to affect its security or public order and the Commission to examine whether a foreign direct investment is likely to affect security or public order in more than one Member State.

(2) The categories of personal data processed by the Commission for the screening of foreign direct investments by the Member States and for ensuring the effectiveness of the cooperation mechanism established by Regulation (EU) 2019/452 include identification and contact data, professional data and data related to foreign direct investment.

(3) Personal data will be retained by the services of the Commission in charge of the screening activity for as long as it is necessary for the screening of foreign direct investments by Member States and for ensuring the functioning of the cooperation mechanism and will be stored in a secured electronic environment to prevent unlawful access or transfer of data to persons outside the Commission ([3]).

(4) While carrying out its tasks, the Commission is bound to respect the rights of natural persons in relation to the processing of personal data recognised by Article 8(1) of the Charter of Fundamental Rights of the European Union and by Article 16(1) of the Treaty on the Functioning of the European Union, as well as rights provided for in Regulation (EU) 2018/1725. At the same time, the Commission is required to comply with strict rules of confidentiality as laid down in Article 10 of Regulation (EU) 2019/452.

(5) In certain circumstances, it is necessary to reconcile the rights of data subjects pursuant to Regulation (EU) 2018/1725 with the need for effectiveness of the cooperation mechanism, as well as with full respect for fundamental rights and freedoms of other data subjects. To that effect, Article 25(1) of Regulation (EU) 2018/1725 provides the Commission with a possibility to restrict the application of Articles 14 to 17, 19, 20 and 35 of Regulation (EU) 2018/1725, as well as the principle of transparency laid down in Article 4(1)(a) thereof, insofar as its provisions correspond to the rights and obligations provided for in Articles 14 to 17, 19 and 20 of that Regulation.

([1]) Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79 I, 21.3.2019, p. 1).

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

([3]) The retention of files in the Commission is regulated by the Common Commission-Level Retention List (SEC (2019) 900). The retention period will be defined in the data protection records for this particular processing.

(6) The Union's common commercial policy requires that the Commission effectively and efficiently carry out its tasks under the cooperation mechanism. In order to do so, while respecting the standards of protection of personal data under Regulation (EU) 2018/1725, it is necessary to adopt internal rules under which the Commission may restrict data subjects' rights in accordance with Article 25 of Regulation (EU) 2018/1725.

(7) Those internal rules should cover all data processing operations carried out by the Commission in the performance of its functions under the cooperation mechanism established by Regulation (EU) 2019/452, from the moment it receives information on the foreign direct investments concerned.

(8) In order to comply with Articles 14, 15 and 16 of Regulation (EU) 2018/1725, the Commission should inform all individuals of its activities involving the processing of their personal data and of their rights in a transparent and coherent manner in the form of the data protection notices published on the Commission's website. Where relevant, the Commission should adduce additional safeguards to ensure that the data subjects are informed individually in an appropriate format.

(9) Without prejudice to Article 14(5) and Article 16(5) of Regulation (EU) 2018/1725, the Commission has the possibility, on the basis of Article 25 of that Regulation, to restrict the provision of information to data subjects about the processing of their personal data and the application of their other rights in order to protect the Commission's powers to conduct analyses and procedures related to the screening of foreign direct investments or the cooperation mechanism under Regulation (EU) 2019/452. In this respect, it may be necessary that the Commission restrict the application of those rights and obligations pursuant to Article 25(1)(a),(c),(d),(g) and (h) of that Regulation. This may be necessary where the purpose of the Commission's analyses and procedures related to the screening of foreign direct investments or the cooperation mechanism in relation to the effective implementation of the Union's common commercial policy would otherwise be jeopardised.

(10) In addition, in order to maintain effective cooperation, it may be necessary for the Commission to restrict the application of data subjects' rights in order to protect processing operations of other Union institutions, bodies, offices and agencies or of Member States' authorities. The Commission may do so in a situation where the purpose of such a restriction by another Union institution, body, office or agency or of a Member State authority would be jeopardised were the Commission not to apply an equivalent restriction in respect of the same personal data. To that effect, the Commission should consult those institutions, bodies, offices, agencies, and authorities on the relevant grounds for imposing restrictions and the necessity and proportionality of the restrictions.

(11) The Commission may have to restrict the provision of information to data subjects and the application of other rights of data subjects in relation to personal data received from the Member States or other, be it anonymous or identified sources, where it is necessary to safeguard the national security, public security or defence of the Member States, as referred to in Article 25(1)(a) of Regulation (EU) 2018/1725, or to safeguard the internal security of Union institutions and bodies, as referred to in Article 25(1)(d) of that Regulation. The internal security of Union institutions and bodies may be at stake in particular in those cases of foreign direct investment, which are likely to affect projects or programmes of Union interest on grounds of security or public order.

(12) The Commission may also have to restrict the provision of information to data subjects and the application of other rights of data subjects in relation to personal data received from the Member States, third countries or international organisations, in order to cooperate with the Member States, those third countries or organisations and thus safeguard an important objective of general public interest of the Union, as referred to in Article 25(1)(c) of Regulation (EU) 2018/1725. However, in some circumstances the interest of fundamental rights of the data subject may override the interest of international cooperation.

(13) Accordingly, where necessary for a monitoring, inspection or regulatory function connected to the exercise of its official authority when carrying out its tasks under the cooperation mechanism established by Regulation (EU) 2019/452, the Commission may have to restrict the provision of information to data subjects and the application of other rights, as referred to in Article 25(1)(g) of Regulation (EU) 2018/1725.

(14) In addition, the Commission may have to restrict the provision of information to data subjects and the application of other rights of data subjects in relation to personal data received from anonymous or identified sources, such as informants, that require protection of their rights and freedoms, pursuant to Article 25(1)(h) of Regulation (EU) 2018/1725.

(15) The Commission has therefore identified the grounds listed in Article 25(1)(a), (c), (d), (g) and (h) of Regulation (EU) 2018/1725 as grounds for restrictions that may be necessary to apply to data processing operations carried out in the framework of the Commission's analyses and procedures related to the screening of foreign direct investments or the cooperation mechanism established by Regulation (EU) 2019/452.

(16) Any restriction, applied on the basis of this Decision, should be necessary and proportionate taking into account the risks to the rights and freedoms of data subjects.

(17) The Commission should handle all restrictions in a transparent manner and register each application in the corresponding record system.

(18) The Commission processes personal data under Regulation (EU) 2019/452 jointly with the Member States' competent authorities. The Commission's assessment and procedures in relation to the screening of foreign direct investments or the cooperation mechanism are carried out through different services, but the primary responsibility of coordination lays with the Directorate-General responsible for Trade.

(19) Pursuant to Article 25(8) of Regulation (EU) 2018/1725, controllers may defer, omit or deny the provision of information based on the reasons for the application of a restriction to the data subject if providing that information would in any way cancel the effect of restriction. This is, in particular, the case of restrictions provided for in Articles 16 and 35 of that Regulation.

(20) The Commission should regularly review the restrictions imposed in order to ensure that the data subject's rights to be informed in accordance with Articles 16 and 35 of Regulation (EU) 2018/1725 are restricted only as long as such restrictions are necessary to allow the Commission to conduct analyses and procedures related to the screening of foreign direct investments or the cooperation mechanism.

(21) Where other rights of data subjects are restricted, the controller should assess on a case-by-case basis whether the communication of the restriction would compromise its purpose.

(22) The Data Protection Officer of the Commission should carry out an independent review of the application of restrictions, with a view to ensuring compliance with this Decision.

(23) In order to immediately allow the Commission to restrict the application of certain rights and obligations in accordance with Article 25 of Regulation (EU) 2018/1725 and not to jeopardise analyses and procedures related to the screening of foreign direct investments or the cooperation mechanism established by Regulation (EU) 2019/452, this Decision should enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

(24) The European Data Protection Supervisor has been consulted and delivered his opinion on 29 July 2020,

HAS ADOPTED THIS DECISION:

Article 1

Subject-matter and scope

1. This Decision lays down the rules to be followed by the Commission when informing the data subjects of the processing of their personal data in accordance with Articles 14, 15 and 16 of Regulation (EU) 2018/1725 in the framework of the cooperation mechanism established by Regulation (EU) 2019/452.

It also lays down the conditions under which the Commission may restrict the application of Articles 4, 14 to 17, 19, 20 and 35 of Regulation (EU) 2018/1725, in accordance with Article 25(1)(a),(c), (d), (g) and (h) thereof, in the framework of that cooperation mechanism.

2. This Decision applies to the processing of personal data by the Commission for the purpose of, or in relation to, the activities carried out in order to fulfil the Commission's tasks pursuant to Regulation (EU) 2019/452.

Article 2

Applicable exceptions and restrictions

1. Where the Commission exercises its duties with respect to the data subjects' rights under Regulation (EU) 2018/1725, it shall consider whether any of the exceptions laid down in that Regulation apply.

2. Subject to Articles 3 to 7 of this Decision, where the exercise of the rights and obligations provided for in Articles 14 to 17, 19, 20 and 35 of Regulation (EU) 2018/1725 in relation to personal data processed by the Commission would jeopardise the purpose of the Commission's analyses and procedures with regard to the screening of foreign direct investments or the cooperation mechanism pursuant to Regulation (EU) 2019/452, including by revealing its tools and methods, or would adversely affect the rights and freedoms of other data subjects, the Commission may restrict the application of:

(a) Articles 14 to 17, 19, 20 and 35 of Regulation (EU) 2018/1725; and

(b) the principle of transparency laid down in Article 4(1)(a) of that Regulation insofar as its provisions correspond to the rights and obligations provided for in Articles 14 to 17, 19, 20 and 35 of Regulation (EU) 2018/1725.

3. Subject to Articles 3 to 7, the Commission may restrict the rights and obligations referred to in paragraph 2 of this Article:

(a) where the exercise of those rights and obligations in respect of the personal data obtained from another Union institution, body, agency or office could be restricted by that other Union institution, body, agency or office on the basis of legal acts referred to in Article 25 of Regulation (EU) 2018/1725, or in accordance with Chapter IX of that Regulation; or in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council ([4]) or with Council Regulation (EU) 2017/1939 ([5]);

(b) where the exercise of those rights and obligations in respect of the personal data obtained from a competent authority of a Member State could be restricted by competent authorities of that Member State on the basis of acts referred to in Article 23 of Regulation (EU) 2016/679 of the European Parliament and of the Council ([6]) or under national measures transposing Article 13(3), Article 15(3) or Article 16(3) of Directive (EU) 2016/680 of the European Parliament and of the Council ([7]);

(c) where the exercise of those rights and obligations would jeopardise the Commission's cooperation with third countries or international organisations with regard to the screening of foreign direct investments.

Before applying restrictions in the circumstances referred to in points (a) and (b) of the first subparagraph, the Commission shall consult the relevant Union institutions, bodies, agencies or offices or competent authorities of the Member States, unless it is clear to the Commission that the application of a restriction is provided for by one of the acts referred to in those points.

Point (c) of the first subparagraph shall not apply where the interests or fundamental rights and freedoms of the data subject override the interest of the Commission to cooperate with third countries or international organisations.

4. Paragraphs 1, 2 and 3 shall be without prejudice to:

(a) the application of other Commission decisions laying down internal rules concerning the provision of information to data subjects and the restrictions of certain rights under Article 25 of Regulation (EU) 2018/1725;

(b) Article 23 of the Rules of Procedure of the Commission ([8]).

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

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

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

([7]) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

([8]) C(2000) 3614 (OJ L 308, 8.12.2000, p. 26).

5. Any restriction of the rights and obligations, referred to in paragraph 2, shall be necessary and proportionate taking into account the risks to the rights and freedoms of data subjects.

Article 3

Provision of information to data subjects

1. The Commission shall publish on its website data protection notices that inform all data subjects of its activities involving processing of their personal data for the purposes of analyses and procedures with regard to the screening of foreign direct investments or the cooperation mechanism under Regulation (EU) 2019/452. Where it is possible to do so without jeopardising the functioning of the cooperation mechanism, the Commission shall ensure that the data subjects are informed individually in an appropriate format.

2. Where the Commission restricts, wholly or partly, the provision of information to data subjects whose data are processed for the purposes of analyses and procedures with regard to the screening of foreign direct investments or the cooperation mechanism under Regulation (EU) 2019/452, it shall record and register the reasons for the restriction in accordance with Article 6 of this Decision.

Article 4

Right of access by data subject, right of erasure and right to restriction of processing

1. Where the Commission restricts, wholly or partly, the right of access to personal data by data subjects, the right of erasure, or the right to restriction of processing, as referred to respectively in Articles 17, 19 and 20 of Regulation (EU) 2018/1725, it shall inform the data subject concerned, in its reply to the request for access, erasure or restriction of processing:

(a) of the restriction applied and of the principal reasons thereof; and

(b) of the possibility of lodging a complaint with the European Data Protection Supervisor or of seeking a judicial remedy in the Court of Justice of the European Union.

2. The provision of information concerning the reasons for the restriction referred to in paragraph 1 may be deferred, omitted or denied for as long as it would undermine the purpose of the restriction.

3. The Commission shall record and register the reasons for the restriction in accordance with Article 6.

4. Where the right of access is wholly or partly restricted, the data subject may exercise his or her right of access through the intermediary of the European Data Protection Supervisor, in accordance with Article 25(6), (7) and (8) of Regulation (EU) 2018/1725.

Article 5

Communication of personal data breaches to data subjects

Where the Commission restricts the communication of a personal data breach to the data subject, as referred to in Article 35 of Regulation (EU) 2018/1725, it shall record and register the reasons for the restriction in accordance with Article 6 of this Decision.

Article 6

Recording and registering of restrictions

1. The Commission shall record the reasons for any restriction applied pursuant to this Decision, including an assessment of the necessity and proportionality of the restriction, taking into account the relevant elements set out in Article 25(2) of Regulation (EU) 2018/1725.

2. The record shall state how the exercise of a right by the relevant data subject would jeopardise the purpose of the Commission's analyses and procedures with regard to the screening of foreign direct investments or the cooperation mechanism under Regulation (EU) 2019/452, or of restrictions applied pursuant to Article 2(2) or (3) of this Decision, or would adversely affect the rights and freedoms of other data subjects.

3. The record and, where applicable, the documents containing underlying factual and legal elements shall be registered. They shall be made available to the European Data Protection Supervisor on request.

Article 7

Duration of restrictions

1. The restrictions referred to in Articles 3, 4 and 5 shall continue to apply as long as the reasons justifying them remain applicable.

2. Where the reasons for a restriction referred to in Article 3 or 5 no longer apply, the Commission shall lift the restriction and provide the principal reasons for the restriction to the data subject.

At the same time, the Commission shall inform the data subject of the possibility of lodging a complaint with the European Data Protection Supervisor at any time or of seeking a judicial remedy in the Court of Justice of the European Union.

3. The Commission shall review the application of the restrictions referred to in Articles 3 and 5 one year after adoption and at the closure of the relevant Commission analyses and procedures carried out with regard to the screening of foreign direct investments or the cooperation mechanism under Regulation (EU) 2019/452. Thereafter, the Commission shall monitor the need to maintain any restriction. The review shall include an assessment of the necessity and proportionality of the restriction, taking into account the relevant elements set out in Article 25(2) of Regulation (EU) 2018/1725.

Article 8

Review by the Data Protection Officer of the Commission

1. The Data Protection Officer of the Commission shall be informed, without undue delay, whenever data subjects' rights are restricted in accordance with this Decision. Upon request, the Data Protection Officer shall be provided with access to the record and any documents containing underlying factual and legal elements.

2. The Data Protection Officer may request a review of the restriction. The Data Protection Officer shall be informed about the outcome of the requested review.

3. The Commission shall document the involvement of the Data Protection Officer in each case where the application of rights and obligations referred to in Article 2(2) is restricted.

Article 9

Entry into force

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

Done at Brussels, 15 October 2020.

For the Commission
The President
Ursula VON DER LEYEN

CORRIGENDA

Corrigendum to Council Implementing Decision (EU) 2020/1436 of 12 October 2020 authorising Germany to apply a reduced rate of taxation to electricity directly provided to vessels at berth in a port, in accordance with Article 19 of Directive 2003/96/EC

(Official Journal of the European Union L 331 of 12 October 2020)

On the cover, in the table of contents, on page 30, in the title, and on page 31, in the concluding formula:

for:	'12 October 2020',
read:	'7 October 2020'.

Corrigendum to Commission Implementing Regulation (EU) 2018/330 of 5 March 2018 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

(Official Journal of the European Union L 63 of 6 March 2018)

On page 43, in Annex I, seventh row in the table 'PRC COOPERATING EXPORTING PRODUCERS NOT SAMPLED IN THE ORIGINAL INVESTIGATION':

for:	'Jiangsu Wujin Stainless Steel Pipe Group, Co. Ltd, Beijing,' (TARIC additional code B 242),
read:	'Jiangsu Wujin Stainless Steel Pipe Group, Co. Ltd, Changzhou,' (TARIC additional code B 242).

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