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⁽¹⁾ Text with EEA relevance.

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

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/653**of 14 May 2020****correcting Implementing Regulations (EU) No 540/2011 and (EU) 2019/706 as regards the CAS number of the active substance carvone****(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 Article 20(1) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2019/706 ⁽²⁾ renewed the approval of the active substance carvone and included it in the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽³⁾.
- (2) After Implementing Regulation (EU) 2019/706 entered into force, an error was noted concerning the CAS number (Chemical Abstracts Number of the American Chemical Society) used for the active substance carvone in the Annexes to Implementing Regulation (EU) 2019/706.
- (3) The CAS number is a unique chemical substance identifier, which is also used for an active substance contained in plant protection products; it is used as reference for the purpose of trade and regulatory activities for chemicals globally and not limited to pesticidal substances. The column on common name and identification numbers erroneously mention 'carvone 244-16-8'. This specification should be replaced by 'carvone 2244-16-8'.
- (4) The active substance Carvone has several CAS numbers. However, only one has been granted the approval as a plant protection product. The CAS numbers as mentioned in Union implementing acts authorising active substances are taken over in international databases and references are used for the purpose of subsequent authorisation of plant protection products in Member States and outside the Union. CAS number 244-16-8 does not correspond to any existing registered chemical substance; the active substance therefore would not be properly identified for the purpose of the approval of the plant protection products. Therefore, as confusion about the substance identity may arise in chemicals management and trade, a correction of the CAS number mentioned in the Annexes to Implementing Regulation (EU) 2019/706 and consequently in Implementing Regulation (EU) No 540/2011 is necessary.
- (5) For reasons of clarity, it is appropriate to replace Annex I to Implementing Regulation (EU) 2019/706 and the relevant entry 135 in the Annex to Implementing Regulation (EU) No 540/2011.

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) 2019/706 of 7 May 2019 renewing the approval of the active substance carvone 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 (OJ L 120, 8.5.2019, p. 11).

⁽³⁾ 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).

- (6) In the interest of clarity and legal certainty for economic operators and enforcement authorities, this Regulation should enter into force as a matter of urgency.
- (7) 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

Correction to Implementing Regulation (EU) 2019/706

Annex I to Implementing Regulation (EU) 2019/706 is corrected in accordance with Annex I to this Regulation.

Article 2

Correction to Implementing Regulation (EU) No 540/2011

The Annex to Implementing Regulation (EU) No 540/2011 is corrected in accordance with Annex II to this Regulation.

Article 3

Entry into force

This Regulation shall enter into force on the day 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, 14 May 2020.

For the Commission

The President

Ursula VON DER LEYEN

ANNEX I

Annex I to Implementing Regulation (EU) 2019/706 is replaced by the following:

'Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
carvone 2244-16-8 (d-carvone = S-carvone = (+)-carvone) Carvone: 602 d-carvone: not allocated	(S)-5-isopropenyl-2-methylcyclohex-2-en-1-one or (S)-p-mentha-6,8-dien-2-one	923 g/kg d-carvone	1 August 2019	31 July 2034	For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the renewal report on carvone, and in particular Appendices I and II thereto, shall be taken into account. In this overall assessment Member States shall pay particular attention to: — the protection of operators, ensuring that conditions of use include the application of adequate personal protective equipment. Conditions of use shall include risk mitigation measures, where appropriate. In particular, consideration should be given to the necessary time period before entry into storage rooms after the application of plant protection products containing carvone. The applicant shall submit to the Commission, the Member States and the Authority confirmatory information as regards: — the effect of water treatment processes on the nature of residues present in surface and groundwater, when surface water is abstracted for drinking water. The applicant shall submit that information within two years from the date of publication, by the Commission, of a guidance document on evaluation of the effect of water treatment processes on the nature of residues present in surface and groundwater.

⁽¹⁾ Further details on the identity and the specification of the active substance are provided in the renewal report.'

ANNEX II

In Part B of the Annex to Implementing Regulation (EU) No 540/2011, entry 135 on carvone is replaced by the following entry:

No	Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
'135	carvone 2244-16-8 (d-carvone = S-carvone = (+)-carvone) Carvone: 602 d-carvone: not allocated	(S)-5-isopropenyl-2-methylcyclohex-2-en-1-one Or (S)-p-mentha-6,8-dien-2-one	923 g/kg d-carvone	1 August 2019	31 July 2034	For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the renewal report on carvone, and in particular Appendices I and II thereto, shall be taken into account. In this overall assessment Member States shall pay particular attention to: — the protection of operators, ensuring that conditions of use include the application of adequate personal protective equipment. Conditions of use shall include risk mitigation measures, where appropriate. In particular, consideration should be given to the necessary time period before entry into storage rooms after the application of plant protection products containing carvone. The applicant shall submit to the Commission, the Member States and the Authority confirmatory information as regards: — the effect of water treatment processes on the nature of residues present in surface and groundwater, when surface water is abstracted for drinking water. The applicant shall submit that information within two years from the date of publication, by the Commission, of a guidance document on evaluation of the effect of water treatment processes on the nature of residues present in surface and groundwater.'

⁽¹⁾ Further details on the identity and the specification of the active substance are provided in the renewal report.

DECISIONS

COMMISSION DECISION (EU) 2020/654

of 13 May 2020

concerning national provisions notified by Germany on small and medium combustion units

(notified under document C(2020) 2986)

(Only the German text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(6) thereof,

Whereas:

I. FACTS AND PROCEDURE

- (1) By letter of 29 November 2019, Germany notified the Commission pursuant to Article 114(4) of the Treaty on the Functioning of the European Union (TFEU) of its wish to maintain certain national provisions for solid fuel boilers, in accordance with the German Regulation on small and medium-sized combustion units [Verordnung über kleine und mittlere Feuerungsanlagen] of 26 January 2010 ⁽¹⁾ (the '1st BImSchV'). Germany considers it necessary to maintain those national provisions after the entry into force of Commission Regulation (EU) 2015/1189 ⁽²⁾ on grounds related to the protection of human health and the protection of the environment.

1. UNION LEGISLATION

1.1. ARTICLE 114(4) AND (6) TFEU

- (2) Article 114(4) TFEU provides that '[i]f, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.'
- (3) Under Article 114(6) TFEU, the Commission is to, within 6 months of a notification pursuant to Article 114(4), approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

1.2. DIRECTIVE 2009/125/EC ON ECODESIGN REQUIREMENTS FOR ENERGY-RELATED PRODUCTS

- (4) Directive 2009/125/EC of the European Parliament and of the Council ⁽³⁾ provides for the setting of requirements which the energy-related products covered by implementing measures must fulfil in order to be placed on the market or put into service, or both. That Directive contributes to a sustainable development by increasing energy efficiency and the level of protection of the environment.

⁽¹⁾ https://www.gesetze-im-internet.de/bimschv_1_2010/BjNR003800010.html

⁽²⁾ Commission Regulation (EU) 2015/1189 of 28 April 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for solid fuel boilers (OJ L 193, 21.7.2015, p. 100).

⁽³⁾ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10).

- (5) Pursuant to Article 6(1) of Directive 2009/125/EC 'Member States shall not prohibit, restrict or impede the placing on the market and/or putting into service, within their territories, of a product that complies with all the relevant provisions of the applicable implementing measure and bears the CE marking in accordance with Article 5 on grounds of ecodesign requirements relating to those ecodesign parameters referred to in Annex I, Part 1 which are covered by the applicable implementing measure.'
- (6) Pursuant to Article 6(2) of Directive 2009/125/EC 'Member States shall not prohibit, restrict or impede the placing on the market and/or putting into service, within their territories, of a product bearing the CE marking in accordance with Article 5 on grounds of ecodesign requirements relating to those ecodesign parameters referred to in Annex I, Part 1 for which the applicable implementing measure provides that no ecodesign requirement is necessary.'
- (7) Under Directive 2009/125/EC, an 'ecodesign requirement' means any requirement in relation to a product, or the design of a product, intended to improve its environmental performance, or any requirement for the supply of information with regard to the environmental aspects of a product.
- (8) Pursuant to Article 15 of Directive 2009/125/EC, implementing measures are to lay down ecodesign requirements in accordance with Annex I ('method for setting generic ecodesign requirements') and Annex II ('method for setting specific ecodesign requirements').
- (9) Generic ecodesign requirements aim at improving the environmental performance of products, focusing on significant environmental aspects thereof without setting limit values. Specific ecodesign requirements aim at improving a selected environmental aspect of the product. They may take the form of requirements for reduced consumption of a given resource, such as a limit on the use of a resource in the various stages of a product's life cycle, as appropriate.

1.3. REGULATION (EU) 2015/1189 WITH REGARD TO ECODESIGN REQUIREMENTS FOR SOLID FUEL BOILERS

- (10) Regulation (EU) 2015/1189 is adopted under the framework of Directive 2009/125/EC. In conformity with the procedure set out in Directive 2009/125/EC, the Commission has carried out a preparatory study to analyse the technical, environmental and economic aspects of the solid fuel boilers typically used in households and for commercial purposes. The study has been carried out with stakeholders and interested parties from the Union and third countries, and the results have been made publicly available.
- (11) The environmental aspects of solid fuel boilers that have been identified as significant for the purposes of Regulation (EU) 2015/1189 are energy consumption in the use phase and emissions of particulate matter (dust), organic gaseous compounds, carbon monoxide and nitrogen oxides in the use phase.
- (12) Accordingly, Annex II of Regulation (EU) 2015/1189 sets out specific ecodesign requirements applicable from 1 January 2020 for solid fuel boilers and, in particular, provides that seasonal space heating emissions of particulate matter shall not be higher than 40 mg/m³ for automatically stoked boilers and not be higher than 60 mg/m³ for manually stoked boilers. Those requirements are to be met for the preferred fuel and for any other suitable fuel for the solid fuel boiler.
- (13) Measurements and calculation methodology are set out in Annex III of Regulation (EU) 2015/1189.

2. NATIONAL PROVISIONS NOTIFIED

- (14) The national provisions notified by Germany are the following provisions of the 1st BImSchV:
 - (a) Section 5, point (1) which sets emission limit values and a measurement methodology for particulate matter (the 'first provision'). Those differ from the values and measurement methodology applicable from 1 January 2020 pursuant to Regulation (EU) 2015/1189;
 - (b) Section 4, point (1), in conjunction with section 3, which provides an exhaustive list of fuels that may be used in firing installations (the 'second provision'). Regulation (EU) 2015/1189 does not contain such an exhaustive list;
 - (c) Section 5, point (4) requires solid fuel boilers to be provided with hot water storage tanks (the 'third provision'). Regulation (EU) 2015/1189 does not contain such a requirement;
 - (d) Section 14 and section 15 point (1) as regards the monitoring of new and significantly modified combustion units (the 'fourth provision'). Regulation (EU) 2015/1189 sets out requirements at the time of placing solid fuel boilers on the market and does not contain provisions for further monitoring.

3. PROCEDURE

- (15) By letter of 29 November 2019, Germany notified the Commission of its wish to maintain national provisions for solid fuel boilers under the 1st BImSchV.
- (16) By letter of 10 January 2020, the Commission confirmed that it had received the notification and that the 6-month period for its examination under Article 114(6) TFEU had begun on 30 November 2019, the day following the day on which the notification was received.
- (17) The Commission published a notice regarding the notification in the *Official Journal of the European Union* ⁽⁴⁾ in order to inform other interested parties of Germany's national provisions, as well as the grounds invoked to support the request. By letter of 6 February 2020, the Commission informed the other Member States and the EEA States of the notification and gave them and relevant entities the opportunity to submit comments within 30 days. The Commission received comments from Cyprus, the Czech Republic and a joint letter from Deutsche Umwelthilfe e. V., ClientEarth, Air Pollution & Climate Secretariat, European Environmental Bureau, Green Transition Denmark and ECOS.
- (18) Cyprus does not oppose to the request of Germany for maintaining more stringent national provisions and considers that the reasons provided by Germany are concrete and completely documented. Cyprus also considers that rejecting the notification of Germany would eventually lead to a deterioration of air quality.
- (19) The Czech Republic perceives positively and supports the German notification to maintain their national provisions derogating from the ecodesign requirements for solid fuel boilers.
- (20) In their joint letter, the organisations referred to in recital 17 considered the request made by the German government to be necessary and proportionate in order to protect human health and the environment.
- (21) By letter of 18 February 2020, the Commission requested complementary information from Germany. The Commission received that information by letter dated 4 March 2020.

II. ASSESSMENT

1. ADMISSIBILITY

- (22) Under Article 114(4) and (6) TFEU a Member State may, after the adoption of a harmonisation measure, maintain its more stringent national provisions on grounds of major needs referred to in Article 36 TFEU, or relating to the protection of the environment or the working environment, provided that it notifies those national provisions to the Commission and the Commission approves those measures.
- (23) The Commission takes the view that Article 114(4) and (6) TFEU may only be applied where national provisions diverge from specific provisions of a harmonisation measure. Therefore, where provisions notified under Article 114(4) do not relate to requirements covered by a harmonisation measure, their notification is to be declared inadmissible.
- (24) On that basis, the admissibility of the application for each of the four German provisions is detailed below.

1.1. FIRST PROVISION: PARTICULATE MATTER EMISSIONS THRESHOLD

- (25) Regulation (EU) 2015/1189 sets out specific ecodesign requirements for various parameters of solid fuel boilers, including emissions of particulate matter.
- (26) The German provisions concerning particulate matter emissions which have been notified to the Commission are requirements in relation to the product and are intended to improve its environmental performance, quantified and measurable. Therefore, they constitute specific ecodesign requirements within the meaning of Directive 2009/125/EC.

⁽⁴⁾ OJ C 42, 7.2.2020, p. 2.

- (27) Whereas under the 1st BImSchV particulate matter emissions are measured for solid fuel boilers within four weeks of installation, conformity assessment under Regulation (EU) 2015/1189 is to be made using the design control procedure set out in Annex IV to Directive 2009/125/EC or the management system set out in Annex V to that Directive. On that basis, under comparable but not strictly equivalent circumstances, at 10 % oxygen content, Section 5 of the 1st BImSchV sets a limit value for emissions of 27,5 mg/m³, whereas Regulation (EU) 2015/1189 sets limit values of 40 mg/m³ and 60 mg/m³ for, respectively, automatically stoked and manually stoked solid fuel boilers.
- (28) The German provisions concerning particulate matter emissions therefore diverge from the provisions of Regulation (EU) 2015/1189 in that they are more stringent.
- (29) In accordance with Article 114(4) TFEU, the German notification is supplemented by a description of the grounds related to human health, which constitutes a major need referred to in Article 36 TFEU, and related to the protection of the environment. It is also supplemented by an assessment of the impact on trade.
- (30) Therefore, the Commission considers that the application by Germany with a view to obtaining authorisation to maintain its national provisions on particulate matter emissions is admissible under Article 114(4) TFEU.

1.2. SECOND PROVISION: USABLE FUELS

- (31) Section 3 of the 1st BImSchV sets out a restrictive list of fuels that can be used in firing installations.
- (32) As that provision relates to the consumption of energy and of other resources during the use phase of solid fuel boilers and anticipated emissions to air, water or soil, the German provisions related to usable fuels constitute ecodesign requirements within the meaning of Directive 2009/125/EC.
- (33) Pursuant to Article 6(2) of Directive 2009/125/EC, 'Member States shall not prohibit, restrict or impede the placing on the market and/or putting into service, within their territories, of a product bearing the CE marking in accordance with Article 5 on grounds of ecodesign requirements relating to those ecodesign parameters referred to in Annex I, Part 1 for which the applicable implementing measure provides that no ecodesign requirement is necessary'.
- (34) Regulation (EU) 2015/1189 does not set out ecodesign requirements related to usable fuels for solid fuel boilers. While the preparatory study conducted to inform the adoption of the implementing measure concluded that 'no further requirements regarding ecodesign parameters for products referred to in Part 1 of Annex I to Directive 2009/125/EC are necessary in the case of solid fuel boilers' ⁽⁵⁾, Regulation (EU) 2015/1189 does not provide that no ecodesign requirement relating to usable fuels are necessary ⁽⁶⁾.
- (35) Usable fuels are thus not a harmonised ecodesign requirement under Regulation (EU) 2015/1189.
- (36) Therefore, the Commission considers that the application by Germany with a view to obtaining authorisation to maintain its national provisions regarding usable fuels is not admissible under Article 114(4) TFEU.

1.3. THIRD PROVISION: HOT WATER TANKS

- (37) Obligations related to the installation of hot water tanks alongside solid fuel boilers set out under section 5 point 4 of the 1st BImSchV are not related to product design, a requirement to supply information or a requirement for the manufacturer. Therefore, they do not constitute ecodesign requirements within the meaning of Directive 2009/125/EC.
- (38) Therefore, the Commission considers that the application by Germany with a view to obtaining authorisation to maintain its national provisions on hot water tanks is not admissible under Article 114(4) TFEU with reference to Directive 2009/125/EC.

⁽⁵⁾ Recital 5 of Regulation (EU) 2015/1189.

⁽⁶⁾ Contrary to, for example, Commission Regulation (EU) No 547/2012 of 25 June 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water pumps (OJ L 165, 26.6.2012, p. 28), which provides in Article 3 that 'No ecodesign requirement is necessary regarding any other ecodesign parameter referred to in Annex I, Part 1, of Directive 2009/125/EC'.

1.4. FOURTH PROVISION: MONITORING

- (39) The verification of proper operation of firing installations by chimney sweeps set out in sections 14 and 15 of the 1st BImSchV is not an ecodesign parameter, a requirement to supply information or a requirement for the manufacturer. Therefore, it does not constitute an ecodesign requirement within the meaning of Directive 2009/125/EC.
- (40) Therefore, the Commission considers that the application by Germany with a view to obtaining authorisation to maintain its national provisions on the verification of proper operation by the chimney sweep of firing installations is not admissible under Article 114(4) TFEU with reference to Directive 2009/125/EC.

2. ASSESSMENT OF MERITS

- (41) Article 114(4) TFEU provides that if, after the adoption of a harmonisation measure a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment, it shall notify the Commission of those provisions as well as the grounds for maintaining them.
- (42) In this respect, the Court of Justice of the European Union has ruled that '[a] Member State may base an application to maintain its already existing national provisions on an assessment of the risk to public health different from that accepted by the Community legislature when it adopted the harmonisation measure from which the national provisions derogate. To that end, it falls to the applicant Member State to prove that those national provisions ensure a level of health protection which is higher than the Community harmonisation measure and that they do not go beyond what is necessary to attain that objective' ⁽⁷⁾.
- (43) In addition, pursuant to the first paragraph of Article 114(6) TFEU '[t]he Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market'.
- (44) Therefore, the Commission has to assess whether or not the national provisions are justified by the major needs referred to in Article 36 TFEU or relating to the protection of the environment or the working environment and do not exceed what is necessary to attain the legitimate objective pursued.
- (45) It has to be noted that, in the light of the time frame established by Article 114(6) TFEU, the Commission, when examining whether the national measures notified under Article 114(4) TFEU are justified, has to take as a basis the justification put forward by the notifying Member State. The burden of proof lies with the requesting Member State that seeks to maintain its national measures.

2.1. THE POSITION OF GERMANY

- (46) Germany considers that existing national provisions are more stringent than those of Regulation (EU) 2015/1189 and that maintaining them is justified both by major needs within the meaning of Article 36 TFEU, in particular the protection of human health, and by the need to protect the environment.
- (47) Germany points out that a reduction of the level of ambition set out by the 1st BImSchV would threaten air quality in Germany and thus contradict the objective of Regulation (EU) 2015/1189 of improving the environmental performance of solid fuel boilers.
- (48) Germany states that the deterioration of air quality would be contrary to the obligation stemming from Article 12 of Directive 2008/50/EC of the European Parliament and of the Council ⁽⁸⁾ to maintain levels of particulate matter below the limit values and to endeavour to preserve the best ambient air quality, compatible with sustainable development. Germany also states that the deterioration of air quality would be contrary to the obligation stemming from Article 13 of that Directive not to exceed limit values for the protection of human health.

⁽⁷⁾ Case C-3/00, Kingdom of Denmark v Commission of the European Communities, EU:C:2003:167, paragraph 64.

⁽⁸⁾ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1).

- (49) Germany also emphasises that applying the limits set in Regulation (EU) 2015/1189 in relation to the emission of particulate matter would jeopardise its ability to fulfil its obligations under Directive (EU) 2016/2284 of the European Parliament and of the Council ⁽⁹⁾.
- (50) Germany considers that the existing level of protection of health and life of humans within the meaning of Article 36 TFEU and of the environment (Article 114(4) TFEU) could not be maintained in Germany if it applied the requirements of Regulation (EU) 2015/1189.

2.2. EVALUATION OF THE GERMAN POSITION

2.2.1. *Justification on grounds of major needs referred to in Article 36 TFEU or the protection of the environment*

- (51) The evaluation of health and environmental risks linked to particulate matter emissions does not differ between Germany and the Commission.
- (52) A working group of the World Health Organisation (WHO) International Agency for Research on Cancer unanimously classified outdoor air pollution and particulate matter from outdoor air pollution as carcinogenic to humans, based on sufficient evidence of carcinogenicity in humans and experimental animals and strong mechanistic evidence ⁽¹⁰⁾.
- (53) In its report, Air quality in Europe 2019 ⁽¹¹⁾, the European Environment Agency (EEA) notes that in 2016, 374 000 premature deaths could be attributable to fine particulate matter (PM_{2.5}) in the EU-28. The EEA estimates that in Germany alone 59 600 premature deaths were attributable to PM_{2.5} for the same reference year.
- (54) Furthermore, it is recognised by the European legislator that ‘there is as yet no identifiable threshold below which PM_{2.5} would not pose a risk. As such, this pollutant should not be regulated in the same way as other air pollutants. The approach should aim at a general reduction of concentrations in the urban background to ensure that large sections of the population benefit from improved air quality’ ⁽¹²⁾.
- (55) The risks of particulate matter emissions for the health and life of humans are thus significant.
- (56) The German measure is directly linked to the objective of reducing particulate matter emissions, as it sets emissions limit values for particulate matter applicable to solid fuel boilers.
- (57) On that basis, the Commission is to, pursuant to Article 114(6) TFEU, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction of trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.

2.2.2. *Absence of arbitrary discrimination, any disguised restriction of trade between Member States or any obstacle to the function of the internal market*

2.2.2.1. *Absence of arbitrary discrimination*

- (58) Article 114(6) TFEU obliges the Commission to verify that the envisaged measures are not a means of arbitrary discrimination. According to the jurisprudence of the Court of Justice ⁽¹³⁾, in order for there to be no discrimination, similar situations must not be treated in different ways and different situations must not be treated in the same way.
- (59) The German national rules apply to both domestic products and products made in other Member States. In the absence of any evidence to the contrary, the Commission is to conclude that the national provisions are not a means of arbitrary discrimination.

⁽⁹⁾ Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC (OJ L 344, 17.12.2016, p. 1).

⁽¹⁰⁾ IARC monographs on the evaluation of carcinogenic risks to humans. Volume 109. Outdoor air pollution. Lyon: International Agency for Research on Cancer.

⁽¹¹⁾ <https://www.eea.europa.eu/publications/air-quality-in-europe-2019>

⁽¹²⁾ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1), recital 11.

⁽¹³⁾ Case C-477/14, Pillbox 38 (UK) Ltd/Secretary of State for Health, EU:C:2016:324, paragraph 35.

2.2.2.2. Absence of disguised restriction on trade

- (60) National measures which restrict the use of products which comply with a Union harmonisation measure constitute a barrier to trade, in so far as products that are legally placed on the market and used in the rest of the Union cannot in practice, as a result of the national requirements, be placed on the market in the Member State concerned. The pre-conditions laid down in Article 114(6) TFEU are intended to prevent restrictions based on the criteria set out in paragraphs (4) and (5) thereof from being applied for inappropriate reasons, and constituting in effect economic measures to impede the importation of products from other Member States, that is to say, a means of indirectly protecting national production.
- (61) Given that the German rules impose stricter emission limit values requirements on particulate matter than those of Regulation (EU) 2015/1189 also on operators based in other Member States in an otherwise harmonised area, they are liable to constitute a disguised restriction of trade or an obstacle to the functioning of the internal market. The Commission considers ⁽¹⁴⁾ that Article 114(6) TFEU must be read in the sense that only national measures constituting a disproportionate obstacle to the internal market may not be approved.
- (62) In this connection, Germany has submitted figures which indicate that imports of solid fuel boilers from other Member States have been taking place despite its existing legislation. The data provided is derived from the installation of solid fuel boilers that are subsidised by a renewable energy incentive scheme of the German government. Between 2014 and 2018, the data shows that biomass solid fuel boilers from German manufacturers consistently represented between 26 % and 28 % of subsidised boilers, against 70 % to 72 % from other Union manufacturers.
- (63) In the absence of any evidence suggesting that the national provisions constitute in effect a measure intended to protect national production, the Commission can conclude that they are not a disguised restriction to trade between Member States.

2.2.2.3. Absence of obstacles to the functioning of the internal market

- (64) This condition cannot be interpreted in such a way that it precludes the approval of any national measure likely to affect the establishment of the internal market. Indeed, any national measure derogating from a harmonisation measure aiming at the establishment and operation of the internal market constitutes in substance a measure likely to affect the internal market. Therefore, in order to preserve the object and purpose of the procedure laid down in Article 114 TFEU, the Commission considers that the concept of obstacle to the functioning of the internal market has, in the context of Article 114(6) TFEU, to be understood as a disproportionate effect in relation to the pursued objective. That means, it should not go beyond what is necessary to achieve the said objective.
- (65) As a national measure derogating from a harmonisation measure, maintaining the first notified provision is likely to affect the internal market.
- (66) Applying Regulation (EU) 2015/1189 would open the German market to new models of solid fuel boilers, with higher particulate matter emissions, increase competition on this market and therefore potentially reduce the average cost of installations. However, according to data provided by Germany, this average cost has not significantly increased on the German market after the national measure entered into force in 2015.
- (67) According to Germany's analysis, applying Regulation (EU) 2015/1189 particulate matter emission thresholds rather than maintaining the thresholds of the current legislation would lead to an overall yearly increase of particulate matter emissions of 1,3 kilotonnes in Germany. Although there is a limit to the degree of certainty that can be obtained from projections, any increase in the share of higher particulate matter emissions solid fuel boilers would lead to an increase in overall particulate matter emissions and in air pollution.

⁽¹⁴⁾ See for example of Commission Decision (EU) 2018/702 of 8 May 2018 concerning national provisions notified by Denmark on the addition of nitrite to certain meat products (OJ L 118, 14.5.2018, p. 7).

- (68) The current German legislation has been an incentive for investment of manufacturers in less emitting solid fuel boilers over the last years, providing a market for their best performing products. In that regard, lowering the requirements regarding emissions by means of the entry into application of Regulation (EU) 2015/1189 could dis-incentivise investment from manufacturer in better performing products.
- (69) Given the health benefits in relation to the reduction of particulate matter emissions, the limited identifiable trade impact on the basis of the data provided by Germany, the fact that there does not exist an identifiable threshold below which PM_{2,5} would not pose a risk and the direct link between the measure and the objective, maintaining the national provisions should not be considered disproportionate in relation to the objective pursued. Therefore, they do not constitute an obstacle to the functioning of the internal market in the meaning of Article 114(6) TFEU.
- (70) In the light of the foregoing analysis, the Commission considers that the condition relating to the absence of obstacles to the functioning of the internal market is complied with as regards this notification by Germany.

III. CONCLUSION

- (71) In the light of the above considerations, and taking into account of comments received from Germany and other relevant stakeholders, the Commission is of the opinion that:
- the notifications related to the provision on usable fuels, hot water tanks and monitoring of firing installations are not admissible under Article 114(4) TFEU;
 - the notification related to particulate matter emissions thresholds shall be approved,

HAS ADOPTED THIS DECISION:

Article 1

The national provisions related to particulate matter emissions thresholds applicable to solid fuel boilers covered by Regulation (EU) 2015/1189 and contained in section 5 point (1) of the 1st BImSchV are approved.

Article 2

The notifications related to usable fuels, hot water tanks and verification of proper operation by the chimney sweep handicraft of firing installations are rejected as inadmissible.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 13 May 2020.

For the Commission
Kadri SIMSON
Member of the Commission

DECISION (EU) 2020/655 OF THE EUROPEAN CENTRAL BANK**of 5 May 2020****adopting implementing rules concerning data protection at the European Central Bank and repealing Decision ECB/2007/1 (ECB/2020/28)**

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

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

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular to Article 11.6 thereof,

Having regard to 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 ⁽¹⁾, and in particular Article 45(3) thereof,

Whereas:

- (1) Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽²⁾ sets out general rules to protect natural persons with regard to the processing of personal data and to ensure the free movement of personal data within the Union.
- (2) Regulation (EU) 2018/1725 repeals Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽³⁾ and sets out the data protection principles and rules applicable to all Union institutions, bodies, offices and agencies.
- (3) In order to ensure a consistent approach to personal data protection throughout the Union and free movement of personal data within the Union, it is necessary to align as far as possible the data protection rules applicable to Union institutions and bodies with the data protection rules adopted for the public sector in the Member States. Whenever the provisions of Regulation (EU) 2018/1725 follow the same principles as the provisions of Regulation (EU) 2016/679, those two sets of provisions should be interpreted homogenously, in particular because the scheme of Regulation (EU) 2018/1725 should be understood as equivalent to Regulation (EU) 2016/679.
- (4) Article 43 of Regulation (EU) 2018/1725 requires each Union institution or body to designate a data protection officer. Pursuant to Article 45(3) of Regulation (EU) 2018/1725, each Union institution or body must adopt further implementing rules concerning the data protection officer. The implementing rules must in particular concern the tasks, duties and powers of the data protection officer.
- (5) For reasons of efficiency and in line with past practice, the data protection officer of the European Central Bank (ECB) may be authorised to also cover data protection issues in relation to the European Systemic Risk Board (ESRB) if the ESRB's General Board decides to appoint the ECB's data protection officer as the ESRB's data protection officer.
- (6) The implementing rules should also set out how data subjects may exercise their rights and how persons responsible for the processing of personal data should fulfil their duties within Union institutions and bodies.
- (7) Whilst the ECB is the legal entity responsible for the protection of natural persons with regard to the processing of personal data under both Regulation (EU) 2018/1725 and this Decision, the processing operations may in practice be carried out by different organisational units within the ECB.

⁽¹⁾ OJ L 295, 21.11.2018, p. 39.

⁽²⁾ 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).

⁽³⁾ Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (8) Regulation (EU) 2018/1725 prescribes what remedies are available to a data subject for complaints concerning data protection against a Union institution, including the right to lodge a complaint with the European Data Protection Supervisor as laid down in Articles 63 and 68 of that regulation. Accordingly ECB staff members should rely on these remedies for complaints made by them as data subjects concerning data protection after the date of application of this Decision rather than remedies contemplated in the Conditions of Employment for Staff of the European Central Bank.
- (9) The ECB intends to separately provide for restrictions concerning specific principles, rights and obligations concerning data protection in certain well defined circumstances as contemplated by Article 25 of Regulation (EU) 2018/1725 and therefore the date of application of this Decision should be 1 November 2020 to enable those restrictions to be separately provided for.
- (10) Given the repeal of Regulation (EC) No 45/2001 by Regulation (EU) 2018/1725, Decision ECB/2007/1 ⁽⁴⁾ should be repealed and replaced by this Decision,

HAS ADOPTED THIS DECISION:

SECTION 1

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Decision sets out the general rules implementing Regulation (EU) 2018/1725 as regards the ECB. In particular, it specifies the rules relating to the appointment and role of the data protection officer of the ECB (DPO), including the DPO's tasks, duties and powers.
2. This Decision also specifies the roles, tasks and duties of the controllers and of the data protection coordinator and implements the rules pursuant to which data subjects may exercise their rights.

Article 2

Definitions

For the purposes of this Decision, the following definitions shall apply:

- (1) 'controller' means the ECB, and in particular the organisational unit of the ECB, which, alone or jointly with others, determines the purposes and means of the processing of personal data;
- (2) 'data protection coordinator' means an ECB member of staff who assists the controller and the DPO in fulfilling their tasks and responsibilities pursuant to Regulation (EU) 2018/1725 and this Decision;
- (3) 'data subject' means an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (4) 'processing' means processing as defined in point (3) of Article 3 of Regulation (EU) 2018/1725;
- (5) 'Union institutions and bodies' means Union institutions and bodies as defined in point (10) of Article 3 of Regulation (EU) 2018/1725;
- (6) 'processor' means processor as defined in point (12) of Article 3 of Regulation (EU) 2018/1725;
- (7) 'personal data' means personal data as defined in point (1) of Article 3 of Regulation (EU) 2018/1725;
- (8) 'consent' means consent as defined in point (15) of Article 3 of Regulation (EU) 2018/1725.

⁽⁴⁾ Decision ECB/2007/1 of 17 April 2007 adopting implementing rules concerning data protection at the European Central Bank (OJ L 116, 4.5.2007, p. 64).

SECTION 2

THE DATA PROTECTION OFFICER

*Article 3***Appointment, status and organisational matters**

1. The Executive Board shall:
 - (a) appoint the DPO on the basis of personal and professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 45 of Regulation (EU) 2018/1725 and in this Decision;
 - (b) issue a non-convertible fixed-term contract for the position of DPO for a period of between three to five years, which may be extended up to the overall limit of 10 years, as set out in the Conditions of Employment for Staff of the European Central Bank; and
 - (c) register the DPO with the European Data Protection Supervisor (EDPS) in accordance with Article 44(9) of Regulation (EU) 2018/1725.
2. The Executive Board shall ensure that the DPO is able to carry out the tasks and duties referred to in Article 45 of Regulation (EU) 2018/1725 in an independent manner without receiving any instructions on how to exercise his or her tasks. Without prejudice to such independence:
 - (a) the DPO shall be subject to the Conditions of Employment for Staff of the European Central Bank;
 - (b) for administrative purposes and for the purpose of applying the ECB's employment framework, the DPO shall be allocated to the ECB's Directorate-General Legal Services;
 - (c) the DPO's appraiser consults the EDPS and may also seek input from other ECB stakeholders, before appraising the DPO's performance of his or her tasks and duties. The DPO shall not suffer any prejudice on account of due performance of his or her tasks and duties;
 - (d) the DPO is subject to dismissal by the Executive Board if he or she no longer fulfils the conditions required for the performance of his or her duties and such dismissal has received the prior consent of the EDPS in accordance with Article 44(8) of Regulation (EU) 2018/1725.
3. The Executive Board may appoint a Deputy DPO to whom paragraphs 1 and 2 shall apply. The Deputy DPO shall support the DPO in carrying out the DPO's tasks and duties, and deputise in the event of the DPO's absence.
4. Any ECB staff member providing support to the DPO in relation to data protection issues shall act solely on the DPO's instructions and shall be bound by professional secrecy and confidentiality in accordance with Article 44(5) of Regulation (EU) 2018/1725 in conjunction with Article 37 of the Statute of the ESCB.
5. In accordance with Article 43(2) of Regulation (EU) 2018/1725, at the ESRB's request, the DPO may be authorised to also fulfil in relation to the ESRB the tasks set out in Article 45 of Regulation (EU) 2018/1725.

*Article 4***Data Protection Officer's tasks**

The DPO shall carry out the tasks specified in Article 45 of Regulation (EU) 2018/1725 and in particular:

- (a) inform and advise the Executive Board, the controllers, the Staff Committee and the data protection coordinators, and respond to consultations from any of them or any data subject on matters concerning the interpretation and application of data protection provisions at the ECB;
- (b) investigate matters and incidents related to data protection either on the DPO's own initiative or at the request of the Executive Board, a controller, the Staff Committee or any data subject, and report back to the requester of the investigation;

- (c) maintain a central register with the records of processing activities at the ECB pursuant to Article 31 of Regulation (EU) 2018/1725 and Article 9 of this Decision;
- (d) assist a controller, upon request, in drafting data protection impact assessments and submissions for the prior consultation of the EDPS in accordance with Articles 39 and 40 of Regulation (EU) 2018/1725;
- (e) respond to requests from the EDPS and, within the sphere of his or her competence, cooperate with the EDPS;
- (f) cooperate with the data protection officers of other Union institutions and bodies, national central banks and national competent authorities, in particular by: (i) sharing knowledge and know-how based on experience; (ii) representing the ECB in relevant discussions relating to data protection issues, excluding court cases; and (iii) participating in interinstitutional committees and bodies;
- (g) ensure in an independent manner the application of Regulation (EU) 2018/1725 at the ECB by monitoring compliance with Regulation (EU) 2018/1725, with other applicable Union law containing data protection provisions and with the policies of the ECB and its processors in relation to the protection of personal data, including the assignment of responsibilities, the raising of awareness and training of ECB staff members involved in processing operations and any related audits.

Article 5

Data Protection Officer's powers

In performing his or her tasks pursuant to Article 4, the DPO:

- (a) may request information from any ECB business area on any matter relating to the DPO's tasks and duties;
- (b) shall have access to personal data being processed, to all ECB premises, and to all information, data processing operations and databases at any time;
- (c) may issue an opinion on the lawfulness of actual or proposed processing operations, on the measures required to ensure that such operations are lawful, and on the suitability or adequacy of data protection measures or on any issue concerning processing operations;
- (d) may bring to the Executive Board's attention any data protection related issue, including the failure of an ECB staff member to comply with the provisions of Regulation (EU) 2018/1725 or any other Union data protection provisions applicable to the ECB;
- (e) may request that data protection related items be added to the Executive Board's agenda and submit relevant documentation to the Executive Board for that purpose;
- (f) may conduct compliance checks of data processing operations carried out by a controller or on behalf of a controller;
- (g) may restrict any data processing that is not in compliance with the provisions of Regulation (EU) 2018/1725 or this Decision or any other Union data protection provisions;
- (h) may inform the EDPS of any issue related to data protection that requires the EDPS's input or guidance.

Article 6

Data Protection Officer and investigation procedure

1. Any request for an investigation under point (b) of Article 4 shall be addressed to the DPO in writing.
2. Within seven working days of receiving the request referred to in paragraph 1, the DPO shall send an acknowledgement of receipt to the requester.
3. The DPO may investigate the matter that is the subject of the request on-site and request a written statement from a controller. The relevant controller shall reply to the DPO within 20 working days of receiving the DPO's request. The DPO may ask for additional information or assistance from any ECB business area at any time. That business area shall provide such additional information or assistance within 20 working days of the DPO's request.

4. The DPO shall consider the issues and facts relating to the investigation impartially and with due regard to the data subjects' rights. If deemed appropriate and subject to paragraph 5, the DPO shall inform all other parties concerned of the investigation.
5. The DPO shall ensure that the request remains confidential and is only disclosed to the extent necessary for the purposes of the investigation, unless the data subject concerned gives its consent for the request not to remain confidential.
6. The DPO shall report back to the requester no later than three calendar months following the receipt of the request.

SECTION 3

DATA PROTECTION OFFICER, CONTROLLERS AND DATA PROTECTION COORDINATORS

Article 7

Tasks and duties of a controller

1. A controller shall ensure that all processing operations involving personal data that are performed within its area of responsibility comply with the provisions of Regulation (EU) 2018/1725 and any other Union data protection provisions applicable to the ECB.
2. A controller shall ensure that the DPO is informed, without undue delay, of the following:
 - (a) any issue that has, or might have, data protection implications;
 - (b) any opinion, document, internal policy or internal decision that may impact on the ECB's data protection compliance, before adoption;
 - (c) any personal data breach or other incident concerning data protection;
 - (d) any direct interaction of a controller with the EDPS.
3. A controller, shall, in particular:
 - (a) consult the DPO in a timely manner on any activities related to the processing of personal data or any other data protection issues;
 - (b) conduct and approve data protection impact assessments in cooperation with the DPO and pursuant to Article 39 of Regulation (EU) 2018/1725;
 - (c) comply with any relevant internal policies related to the processing of personal data or any other data protection issues;
 - (d) maintain, in cooperation with the data protection coordinators, regularly updated records of processing activities in accordance with Article 31(5) of Regulation (EU) 2018/1725, using the template approved by the DPO.
4. When assisting the DPO and the EDPS in performing their duties, a controller shall provide full information to them, grant access to personal data and respond to questions within 20 working days of receiving a request.

Article 8

Data protection coordinators

1. The data protection coordinators shall assist the controllers in fulfilling their obligations, either at the controllers' request or on their own initiative. The data protection coordinators shall liaise with the controllers, who shall provide them with all necessary information.

2. The data protection coordinators shall assist the DPO in:
 - (a) identifying the relevant controller of processing operations relating to personal data;
 - (b) promoting and raising awareness of the DPO's advice and supporting the relevant controller under the DPO's guidance;
 - (c) supporting the relevant controller in maintaining the records of processing activities in accordance with Article 31 of Regulation (EU) 2018/1725 and ensuring that the records are accurate and up to date;
 - (d) addressing other matters concerning the DPO's tasks as agreed between the DPO and the data protection coordinators' management.
3. A data protection coordinator shall generally be a specialist in information management or have the relevant expertise and/or training.

Article 9

Central register

1. Controllers shall submit their records of processing activities to the DPO who shall keep the records in a central register.
2. The central register shall serve as a repository of all personal data processing activities conducted at the ECB. The central register shall constitute a source of information for data subjects and facilitate the exercise of their rights under Articles 17 to 24 of Regulation (EU) 2018/1725. The central register shall be made publicly accessible. The central register shall contain, at least, the information referred to in points (a) to (g) of Article 31(1) of Regulation (EU) 2018/1725.

Article 10

Joint controllers

1. The respective data protection obligations of any joint controller shall be established in accordance with Article 28 of Regulation (EU) 2018/1725.
2. In the event that the ECB acts as a joint controller together with one or more controllers, the responsibilities of the joint controllers for compliance with data protection obligations shall be determined by arrangement between them unless and in so far as those responsibilities are determined by Union or Member State law to which the joint controllers are subject.

SECTION 4

DATA SUBJECTS' RIGHTS

Article 11

Exercise of data subjects' rights

1. Data subjects may contact the relevant controller to exercise their rights pursuant to Articles 17 to 24 of Regulation (EU) 2018/1725.
2. Data subjects' rights may only be exercised by the data subject or their duly authorised representative. Such persons may exercise any of these rights free of charge.
3. Requests to exercise data subjects' rights shall be submitted to the relevant controller in writing or, where appropriate, by electronic means. Upon receiving a request from a data subject, the relevant controller shall send an acknowledgment of receipt to the data subject within five working days, provide them with the contact details of the DPO and inform them of the possibility of lodging a complaint with the EDPS and of seeking judicial redress.

4. If the relevant controller has reasonable doubts concerning the identity of the data subject, or their authorised representative, the relevant controller may request the provision of additional information necessary to identify the data subject or their authorised representative. If the data subject is represented by an authorised representative, the relevant controller shall also verify the relevant authorisation. The relevant controller may request further information from the data subject in order to clarify the data subject's request and effectively address it.

5. In accordance with Article 14(3) and (4) of Regulation (EU) 2018/1725, the relevant controller shall provide information to the data subject on any action taken in relation to a request without undue delay and at the latest within one month of receiving the request. Where necessary, this period may be extended by two further months, taking into account the complexity and number of data subjects' requests received by the relevant controller. The relevant controller shall inform the data subject of any extension within one month of receiving the request and shall provide the reasons for the delay.

6. The relevant controller shall respond to the data subject's request in writing, if appropriate, and if the data subject's request was submitted by electronic means, the relevant controller shall also provide the requested information by electronic means.

7. The data subject may at any point contact the DPO, in particular if:

- (a) the relevant controller does not respect the time limits in paragraphs 3 and 5;
- (b) the data subject is dissatisfied with the action taken by the relevant controller; or
- (c) the data subject wishes to lodge a complaint with the EDPS.

The DPO shall advise the relevant controller on the appropriate course of action.

8. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the relevant controller may, having consulted the DPO, refuse to act on the request in accordance with Article 14(5) of Regulation (EU) 2018/1725 and shall inform the data subject accordingly.

Article 12

Remedies

The remedies available to ECB members of staff under the Conditions of Employment for Staff of the European Central Bank shall not apply to complaints concerning data protection.

SECTION 5

FINAL PROVISIONS

Article 13

Repeal

Decision ECB/2007/1 is repealed with effect from 1 November 2020. References to Decision ECB/2007/1 shall be construed as references to this Decision and shall be read in accordance with the correlation table in the Annex.

Article 14

Entry into Force

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

It shall apply from 1 November 2020.

Done at Frankfurt am Main, 5 May 2020.

The President of the ECB
Christine LAGARDE

ANNEX

CORRELATION TABLE

Decision ECB/2007/1	This Decision
Articles 1 to 5	Articles 1 to 5
Article 6(1)	Article 7(1)
—	Article 7(2)
—	Article 7(3)
Article 6(2)	Article 7(4)
Article 6(3)(a)	Article 8(1)
Article 6(3)(b))	Article 8(2)
Article 7(1)	Article 4(4)
Article 7(2)	—
—	Article 9(1)
Article 8	Article 9(2)
—	Article 10
—	
Article 9(1)	Article 11(1)
Article (9(1)(a)	Article 11(2)
Article (9(1)(b)	Article 11(3)
Article (9(1)(c)	—
—	Article 11(4)
—	Article 11(5)
—	Article 11(6)
Article (9(1)(d)	Article 11(7)(a) and (b)
Article 9(2)	Article 11(7)(c)
Article 10	—
Article 11(1), (2) and (3)	Article 6(1), (2) and (3)
—	Article 6(4) and (5)
Article 11(4)	Article 6(6)
Article 12	Article 12
Article 13	Article 13

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2020 OF THE ESA-EU CUSTOMS COOPERATION COMMITTEE

of 5 May 2020

on a derogation from the rules of origin laid down in Protocol 1 to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, of the one part, and the European Community and its Member States, of the other part, to take account of the special situation of Mauritius with regard to salted snoek [2020/656]

THE CUSTOMS COOPERATION COMMITTEE,

Having regard to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States ('ESA'), of the one part, and the European Community and its Member States, of the other part, and in particular Article 41(4) of Protocol 1 thereto,

Whereas:

- (1) The Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, of the one part, and the European Community and its Member States, of the other part ⁽¹⁾ ('the interim EPA') applies provisionally as from 14 May 2012 between the Union and the Republic of Madagascar, the Republic of Mauritius, the Republic of Seychelles and the Republic of Zimbabwe. Comoros is provisionally applying the interim EPA since 7 February 2019.
- (2) Protocol 1 to the interim EPA concerning the definition of the concept of 'originating products' and methods of administrative cooperation contains the rules of origin for the importation of products originating in the ESA States into the Union.
- (3) In accordance with Article 42(1) of Protocol 1 to the interim EPA, derogations from those rules of origin are granted where the development of existing industries in the ESA States justifies them.
- (4) On 2 October 2017 the ESA-EU Customs Cooperation Committee adopted Decision No 2/2017 ⁽²⁾ granting a derogation from the rules of origin with regard to salted snoek imported into the Union from 2 October 2017 to 1 October 2018 in accordance with Article 42(1) of Protocol 1 to the interim EPA. However, due to the delay in obtaining orders the use of the derogation quota was low.
- (5) On 14 January 2019 the ESA-EU Customs Cooperation Committee adopted Decision No 1/2019 ⁽³⁾ granting a new derogation from the rules of origin with regard to salted snoek imported into the Union from 14 January 2019 to 13 January 2020 in accordance with Article 42(1) of Protocol 1 to the interim EPA. However, financial difficulties encountered by EU buyers made that the use of the derogation quota was below expectations.

⁽¹⁾ OJ L 111, 24.4.2012, p. 2.

⁽²⁾ Decision No 2/2017 of the ESA-EU Customs Cooperation Committee of 2 October 2017 on a derogation from the rules of origin laid down in Protocol 1 to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, of the one part, and the European Community and its Member States, of the other part, to take account of the special situation of Mauritius with regard to salted snoek (OJ L 271, 20.10.2017, p. 47).

⁽³⁾ Decision No 1/2019 of the ESA-EU Customs Cooperation Committee of 14 January 2019 on a derogation from the rules of origin laid down in Protocol 1 to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, of the one part, and the European Community and its Member States, of the other part, to take account of the special situation of Mauritius with regard to salted snoek (OJ L 32, 4.2.2019, p. 32).

- (6) Mauritius has requested another derogation from the rules of origin with regard to 125 tonnes of salted snoek of HS Heading 0305 69 imported into the Union from March 2020 to March 2021 in accordance with Article 42 of Protocol 1 to the interim EPA. Mauritius reiterates in its request that there is no availability of snoek originating in the Union or Mauritius, and that snoek from other African, Caribbean and Pacific Group of States ('ACP States') does not meet the requirements regarding quality and regular supply. Therefore, Mauritius needs to continue sourcing non-originating raw materials for its processing industry.
- (7) The derogation would contribute to the development of small and medium size enterprises in Mauritius, would allow diversification of the Mauritian seafood sector and would help continue its operation at full capacity while sustaining employment. The low quantities, representing less than 1 % in value of total imports of fisheries products of HS Chapter 03 from Mauritius into the Union, and the limited period requested for the derogation are not such as to cause serious injury to an economic sector of the Union or of one or more Member States.
- (8) According to Mauritius the forecasted sales to the EU amount to 125 tonnes for the year 2020/2021. However, given the low use of the derogations granted in the past, it does not appear appropriate to increase the quota for the requested period as compared to the quota granted for the year 2019/2020. Mauritius should therefore be provided with a derogation for 100 tonnes of salted snoek, which respects the ability of the existing industry to continue its exports to the Union, for one year.
- (9) Commission Implementing Regulation (EU) 2015/2447 (*) lays down rules for the management of tariff quotas. Those rules should be applied to the management of the quantity in respect of which the derogation is granted by this decision.
- (10) In order to allow efficient monitoring of the operation of the derogation, the Mauritian authorities should communicate regularly to the Commission details of the EUR.1 movement certificates issued,

HAS DECIDED AS FOLLOWS:

Article 1

By way of derogation from Protocol 1 to the interim EPA and in accordance with Article 42(1) of that Protocol, salted snoek of HS Heading 0305 69 (CN code 0305 69 80) manufactured from non-originating snoek (barracouta) of HS Heading 0303 89 shall be regarded as originating in Mauritius in accordance with the terms set out in Articles 2 to 5 of this Decision.

Article 2

The derogation provided for in Article 1 shall apply to the product and the quantity set out in the Annex to this Decision, declared for release for free circulation into the Union from Mauritius for a period limited to one year from the date of adoption of this Decision.

Article 3

The quantity set out in the Annex shall be managed in accordance with Articles 49 to 54 of Implementing Regulation (EU) 2015/2447.

Article 4

The customs authorities of Mauritius shall carry out quantitative checks on exports of the products referred to in Article 1.

Before the end of the month following each quarter, the customs authorities of Mauritius shall forward to the Commission, via the Secretariat of the Customs Cooperation Committee, a statement of the quantities in respect of which movement certificates EUR.1 have been issued pursuant to this Decision and the serial numbers of those certificates.

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

Article 5

Box 7 of movement certificates EUR.1 issued under this Decision shall contain one of the following indications:

‘Derogation – Decision No 1/2020 of the ESA-EU Customs Cooperation Committee of 5 May 2020’;

‘Dérégation – Décision n° 1/2020 du Comité de Coopération Douanière AfOA-UE du 5 mai 2020’.

Article 6

1. Mauritius and the Union shall take the measures necessary on their part to implement this Decision.
2. Where the Union has made a finding, on the basis of objective information, of irregularities or fraud or of a repeated failure to respect the obligations laid down in Article 4, the Union may seek temporary suspension of the derogation referred to in Article 1 in accordance with the procedure provided for in Article 22(5) and (6) of the interim EPA.

Article 7

The derogation provided for in Article 1 may be renewed, provided that the ESA State concerned submits three months before the end date of this Decision, proof that it is still unable to meet the conditions of Protocol 1, together with evidence of the progress made to overcome the need for a derogation and a clear indication of how much time it will take to comply with the said conditions. The European Union shall reassess its position to be taken in the ESA – EU Customs Cooperation Committee and shall adopt a new Decision.

Article 8

This Decision shall enter into force on 5 May 2020.

Done at Brussels, 5 May 2020.

B. SAMSON
*ESA States Representative
on behalf of the ESA States*

J-M. GRAVE
*European Commission
on behalf of the European Union*

ANNEX

Order No.	CN Code	TARIC code	Description of goods	Period	Net weight (in tonnes)
09.1611	Ex0305 69 80	25	snoek (barracouta), salted	5.5.2020 – 4.5.2021	100

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